VIETNAM

bizconsult
ATTORNEYS & CONSULTANTS

Purchasing shares of banks in Vietnam

By Nguyen Anh Tuan

In compliance with Vietnam's commitment to the World Trade Organization (WTO) to open the banking services sector to foreign investors, on April 20, 2007 Decree 69/2007/ND-CP governing the purchase and acquisition by foreign investors of shares of unlisted commercial banks in Vietnam was promulgated by the Government. Decree 69 does not govern the purchase and acquisition by foreign investors of shares issued by commercial banks listed in capital markets, which are relatively governed by the Law on Securities, except in regard to foreign ownership limits.

Governing objects

Vietnamese banks selling shares to foreign investors include equitised state-owned commercial banks and commercial joint stock banks.

Foreign investors purchasing shares of Vietnamese banks include: foreign organisations established and operating under laws of other countries; foreign individuals bearing foreign nationality; foreign credit organisations, ie, banks, finance companies or other financial organisations operating in the banking industry; existing foreign shareholders, or foreign investors who have been approved by the State Bank of Vietnam (SBV) to purchase and currently own shares of commercial joint stock banks prior to the effectiveness of Decree 69; and foreign strategic partners, such as foreign credit organisations of reputation, which are able to help Vietnamese banks develop their services and management systems.

Foreign ownership limits and restrictions

Foreign investors are only permitted to purchase up to 30 percent of a Vietnamese bank's chartered capital. A foreign investor who is not a credit organisation must not exceed ownership of a Vietnamese bank's chartered capital by 5 percent. Foreign credit organisations must not exceed 10 percent and foreign strategic partners and their related persons must not exceed 15 percent.

Subject to the specific approval of the Prime Minister, a foreign strategic partner can purchase up to 20 percent of chartered capital of a Vietnamese bank.

The above foreign ownership limits are only applied to shares of a bank and may not be applicable to bonds issued by such a bank. However, when a bank's bonds are converted into shares such foreign ownership limits will apply. A foreign credit organisation can be a strategic partner of a Vietnamese bank only, and is permitted to participate in the Management Boards of no more than two Vietnamese banks. The purchase of shares by foreign investors is also subject to approval of the SBV.

Share price

The price of shares sold by an equitised state-owned commercial bank to foreign investors is determined through auction. The price of shares sold by a commercial joint stock bank can be determined through auction or agreement between the parties. The price of shares acquired through assignment from existing shareholders can be agreed between the parties.

Conditions on foreign credit organisations

For a foreign credit organisation to obtain approval from the SBV to purchase shares of a Vietnamese bank it must: have total assets of at least US$20 billion as of the year applying for the share purchase; possess international experience in the banking industry; be qualified by an international ranking organisation as being able to implement their financial commitments and maintain normal operations in unfavourable economic conditions; and provide written commitment to support the Vietnamese bank concerned to develop its banking services and management systems.

Rights of foreign investors

Foreign investors purchasing shares of Vietnamese bank are entitled to: the rights of a shareholder as stipulated in the charter of the Vietnamese bank; take home the income generated from their shares after fulfilling their tax obligation; participate in the Management Board, Inspection Board and Executive Board of the Vietnamese bank in accordance with the bank's charter and Vietnamese law; and have their rights and benefits protected by Vietnamese law.

bizconsult law firm
20 Tran Hung Dao
Hanoi, Vietnam
Tel: (84 4) 933 2129
Fax: (84 4) 933 2130
Email: tuan.na@bizconsult-vietnam.com
www.bizconsult-vietnam.com