Vietnam: New securities laws ease some foreign ownership restrictions

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The latest HSBC Asia Economics Quarterly report shows Vietnam successfully dealing with the pandemic crisis with the fastest growth in Asia in 2020. The bank forecasts Vietnam will carry the momentum into 2021 and recommends investing in Vietnam's stock market, at least in the short term.

Vietnam's securities authorities are actively working with global providers of financial services in MSCI and FTSE Russell to speed up the process for upgrading Vietnam's stock market to Secondary Emerging Market. Vietnam has also passed a Securities Law and issued Decree 155/2020/ND-CP guiding its implementation, both of which (**New Securities Laws**) took effect on 1 January 2021.

The New Securities Laws includes the relief of some restrictions on foreign ownership of public companies. This article highlights the implications of those changes to foreign investors and public companies.

REMOVAL OF RESTRICTIONS ON THE PUBLIC OFFERING AND LISTING OF FDI COMPANIES

The old Securities Law states that the government shall regulate the conditions for conducting a public offering by "a foreign invested enterprise being converted to a joint stock company." Under the investment laws prevailing at the time the old Securities Law was in force, such a "foreign invested enterprise" was a foreign direct investment company (**FDI company**), meaning a company initially incorporated as a foreign invested enterprise (in contrast with an enterprise which becomes foreign-owned via an M&A).

Due to controversies, the government never issued a regulation guiding the conditions for public offerings of FDI companies. Consequently, since the old Securities Law took effect in 2007, no FDI company has been approved for conducting a public offering or listing on the Vietnamese stock exchanges.

The New Securities Laws no longer discriminates between an FDI company and other foreign-owned companies in terms of legal requirements for public offering or listing. FDI companies may now conduct a public offering and listing subject to the satisfaction of relevant foreign ownership restrictions.

RELIEF OF SOME FOREIGN OWNERSHIP RESTRICTIONS

A public company may have up to 100% foreign ownership unless it falls under one of these cases:

(a) if it operates in business sectors where Vietnam's World Trade Organisation (WTO) schedule, an international treaty to which Vietnam is a party, or relevant other Vietnamese laws provide for a foreign ownership limit, then such foreign ownership limit applies;
(b) if it operates in a business sector falling on the *list of sectors subject to market access restriction for foreign investors*, the foreign ownership rule provided therein applies; or
(c) if it operates in a business sector falling on the list of sectors subject to market access restriction for foreign investors, but the business sector does not prescribe a specific foreign ownership ratio, then the maximum foreign ownership shall be 50%.

The list of sectors subject to market access restriction for foreign investors is included as Annex I to the recently issued Decree 31/2021/ND-CP guiding the implementation of the new Investment Law. Accordingly, if a business sector is on the list in such Annex but the laws and Vietnam's international treaties are silent on any specific foreign ownership ratio, then a public company operating in such business sector would be subject to the foreign ownership limit of 50%.

If a public company operates in more than one business sector – each sector subject to different foreign ownership ratios – then the lowest foreign ownership ratio shall apply.

If a public company wishes to apply a lower foreign ownership ratio than which is applicable to its business sectors, it must obtain the approval of its general meeting of shareholders of such lower ratio and specify it in its charter.

Foreign ownership is ownership by (i) foreign investors and (ii) enterprises incorporated in Vietnam in which foreign investors hold more than 50% of the charter capital.

In Vietnam, investments in public companies are in some respects favoured over investments in private companies because foreign investments in public companies are not subject to the M&A approval requirement under the investment laws. Additionally, public companies are subject to higher standards of investor-protection corporate governance and public disclosure requirements.

The new changes to foreign ownership and public offering requirements will likely encourage more investments on the country's stock exchanges.

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