

Holding Company Stakes

Foreign investors irrespective of individual or institutional ones, may hold or acquire, in theory, up to 100% stake in all types of local companies, except for some special cases where the investment is made in specific business sectors (e.g. banking) or in public companies operating in a sector where business is conditional for foreign investors and detailed provisions on foreign ownership are not yet available (up to 49%), or the listed or public company's charter limits foreign ownership and the State Securities Commission of Vietnam ("SSC") has been reported thereon. Generally, the current laws recognize and treat the foreign-invested companies (which have member(s) or shareholder(s) being foreign entities) with foreign stakes of 50% or less of the charter capital, or a partnership has not a majority of partners being foreign individuals, similarly to entirely Vietnamese-invested companies, when they establish new subsidiary/ affiliate companies or acquiring shares in other companies in Vietnam.

Legislation

The Law on Enterprises; as amended by Law No. 03/2022/QH15 adopted by the National Assembly on 11 January 2022, amending Law on Public Investment, Law on Investment under the Public-Private Partnership model, Law on Investment Law, Law on Residential Housing, Law on Tendering, Electricity Law, Law on Enterprises, Law on Special Sales Tax, and Law on Civil Judgment Enforcement 2022 ("LE"); and the Law on Investment, as amended from time to time ("LI"); both dated 17 June 2020 and effective from 1 January 2021, constitute the principal legal base for foreigners to buy stakes or shares of local enterprises. This right is further detailed in a number of implementing regulations, including Decree No. 47/2021/ND-CP, dated 1 April 2021, detailing a number of articles of the LE, as amended by Decree No. 16/2023/ND-CP dated 25 April 2023, on organization, management and operation of enterprises directly

serving national defense and security and enterprises combining economy with national defense and security; amending the provisions at Point g, Clause 1, Article 23 of Decree No. 47/2021/ND-CP dated 1 April 2021, providing guidelines for the Law on Enterprises (“Decree 47/2021”); Decree No. 31/2021/ND-CP, dated 26 March 2021, guiding the LI (“Decree 31/2021”); Circular No. 05/2014/TT-NHNN dated 12 March 2014 of the State Bank of Vietnam, providing guidelines for opening and use of indirectly-invested capital accounts for implementation of foreign indirect investment activities in Vietnam (“Circular 05/2014/TT-NHNN”); Circular No. 06/2019/TT-NHNN dated 26 June 2019 of the State Bank of Vietnam, providing guidelines on foreign exchange control for foreign direct investments in Vietnam (“Circular 06/2019/TT-NHNN”); etc. Covering all service sectors and as a supplementation to the national laws and regulations as mentioned above, is the commitments of Vietnam when accession to the WTO, which is particularly reflected in the specific service commitments, which was effective from 11 January 2007; and other relevant international treaties.

Requirements

At present, and in general, all types of companies in Vietnam, including State-owned enterprises (“SOEs”), joint stock companies, limited liability companies, and partnerships are entitled to offer stakes to foreign investors, who can buy, in theory, up to 100% of the charter capital of the company; however, in particular, the maximal or ceiling rates of less than 100% are still in existence and applicable, from time to time, to a number of specific cases, e.g. banking sector in which foreign investment is now permitted to have maximally 30%, or in public companies operating in the industries or trades in which business investment is conditional in respect of foreign investors, and detailed guidelines on foreign ownership are not yet available foreign stakes cannot exceed 49%.

According to the prevailing regulations, foreigners can purchase stakes and transfer abroad dividends and principals, directly or indirectly through local and foreign banks licensed and operating in Vietnam. To facilitate these transactions, foreign stake holders are entitled to open their indirect investment capital accounts ("IICA") at banks licensed to operate in Vietnam, except where Vietnamese company has been granted by competent authorities with investment registration certificate or foreign-invested company (which have member(s) or shareholder(s) being foreign entities) with foreign stakes of more than 50% of the charter capital, such company must open a direct investment capital account ("DICA"), which is a payment account denominated in foreign currencies or Vietnamese Dong, in a bank licensed to carry out transactions relating to the activities of foreign investors in Vietnam.

The laws confirm that the legal rights and benefits of foreign stake holders in Vietnam are protected by the laws and the State of Vietnam.

Permitted Activities

Being stake holders, foreigners can:

- (i) Involve or not involve in the company management and administration;
- (ii) Convert their dividends and all others receipts from local into foreign currency before transferring abroad;
- (iii) Mortgage and pledge by using stakes in hands for their credit transactions;
- (iv) Be exempted from corporate income tax imposed on incomes derived from the activities of capital contribution, joint venture or partnership with domestic companies, after the concerned enterprises have paid corporate income tax;
- (v) Be granted with single entry or multiple entries visas of DT1 category (issued to foreign investors in Vietnam and to representatives of foreign organizations investing in Vietnam

with capital contribution of VND 100 billion or more, or investing in an investment incentive industry and trade or an investment incentive geographical area as decided by the GoV), DT2 category (issued to foreign investors in Vietnam and to representatives of foreign organizations investing in Vietnam with capital contribution of VND 50 billion up to below VND100 billion, or investing in an industry or trade in which investment in development is encouraged as decided by the GoV) and DT3 category (issued to foreign investors in Vietnam and to representatives of foreign organizations investing in Vietnam with capital contribution of VND3 billion up to below VND50 billion), or DT4 category (issued to foreign investors in Vietnam and to representatives of foreign organizations investing in Vietnam with capital contribution of less than VND3 billion), of which the duration of validity shall not exceed 5 years for DT1 visas and DT2 visas, 3 years for DT3 visas and 1 year for DT4 visas, residence certification and temporary residential cards to for entry and exit of, and residence in Vietnam; and
(vi) Enjoy the equal rights and benefits as given to local stakeholders.

Procedures for Purchase of Shares or Portion of Capital Contribution

Much simpler than previously when any buying/ selling capital by local companies to foreign investors was subject to the laws of Vietnam, the recent regulations allow the owners or top management team of the local companies or cooperatives to have the right to decide in accordance with the company charters or regulations. With respect to equitized SOEs desiring to sell capital to foreign investors, the State agencies who decide the equitization shall be the decision makers.

An investor shall carry out the procedures for registration of its capital contribution or of purchase of shares or portion of capital contribution to a local company in the followings:

(i) The capital contribution or purchase of shareholding or purchase of a capital contribution portion by the foreign investor results in an increase in foreign investor ownership in the economic organization or the target company does business in the industry or trade subject to conditions applicable to foreign investors;

(ii) The capital contribution or purchase of shareholding or capital contribution portion results in the foreign investor/s and/or economic organization(s) of which more than 50% of its charter capital is held by:

- a foreign investor(s), or a partnership has a majority of partners being foreign individuals;
- an economic organization(s) of which more than 50% of its charter capital is held by a foreign investor(s), or a partnership has a majority of partners being foreign individuals;
- a foreign investor(s) and an economic organization(s) of which more than 50% of its charter capital is held by a foreign investor(s), or a partnership has a majority of partners being foreign individuals;

holding more than 50% of the charter capital of the economic organization in the following cases: increasing the ratio of charter capital ownership of foreign investors from 50% or below 50% to more than 50%, or increasing the charter capital ownership of foreign investors who already owned more than 50% of the charter capital in the economic organization;

(iii) The foreign investor contributes capital to or purchases shareholding or purchases a capital contribution portion in an economic organization which has a land use right certificate for land on an island or on a coastal or border commune, ward or town or in another area which affects national defense and security.

Foreign investors will submit application for registration of

capital contribution or purchase of shares or portion of capital contribution at the Department of Planning and Investment ("DPI") of the province or centrally-run city where the local company is headquartered. Where the capital contribution or purchase of shares or portion of capital contribution by the foreign investor satisfies the required conditions, the DPI shall, within a period of 15 days from the date of receipt of the complete application, notify in writing the investor for the latter to carry out the procedures for change of a shareholder or member in accordance with law for the cases (i) and (ii), while cases (iii) will need 10 more days to obtain opinions of the MOND and MOPS thereon.

Investors which are not required to carry out procedures for registration of its capital contribution or of purchase of shares or portion of capital contribution to a local company shall carry out the procedures for change of a shareholder or member in accordance with the law upon capital contribution or purchase of shares or portion of capital contribution to the local company.

Enterprises participating in economic concentration in the following forms: (a) Merger of enterprises, (b) Consolidation of enterprises, (c) Acquisition of enterprises, (d) Joint venture between enterprises, (e) Other forms of economic concentration as prescribed by the laws must submit an economic concentration notification dossier to the National Competition Commission ("NCC") before conducting an economic concentration if it falls within the economic concentration notification threshold. After the end of the official assessment and appraisal of the economic concentration, based on the contents of such assessment and appraisal, the NCC shall issue a decision containing one of the following contents: (a) The economic concentration shall be implemented, (b) The economic concentration is conditional, (c) The economic concentration is prohibited; and send it to the enterprises participating in the economic concentration within

5 working days from its date of issuance.

Taxation

No further withholding tax shall be applicable to any abroad transfer of legal income by foreign investors in Vietnam, provided that all tax and financial obligations related thereto have been cleared off by foreign investors, in accordance with the laws of Vietnam. For other taxes, please refer to Section 16 hereunder.