

client alert

BANKING | VIETNAM |

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THE VIETNAMESE BANKING SECTOR: revisions to foreign ownership limits and investment criteria

The Vietnamese Government started the New Year by passing long awaited legislation relating to foreign investment in the Vietnamese banking sector.

On 3rd January 2014 it issued *Decree 01/2014/ND-CP on the purchase by foreign investors of shares of Vietnamese credit institutions* (“**Decree 01**”) replacing *Decree 69/2007/ND-CP on the purchase by foreign investors of shareholding in Vietnamese commercial banks* (“**Decree 69**”).

Decree 01 will become effective on 20 February 2014.

The changes appear to be aimed at supporting the current strategy of the Government to attract capital into the banking sector in Vietnam against the on-going policy of restructuring weaker credit institutions and consolidating the sector, which commenced in 2011.¹

This Client Alert highlights the most significant changes introduced by Decree 01.

SCOPE OF APPLICATION WIDENED

Decree 01 is broader in scope than Decree 69, as it applies to purchases of shares not only in Vietnamese joint-stock commercial banks, but also in Vietnamese finance companies and finance leasing companies. It does not apply to other types of credit institutions, such as joint venture banks or credit institutions established with sole shareholder ownership.

DEFINITION OF FOREIGN INVESTORS CLARIFIED

Decree 01 has maintained the definition of “*foreign investors*” as comprising “*foreign organisations*” as well as “*foreign individuals*” but has clarified that branches of foreign established entities operating both in Vietnam and abroad will be treated the same way as foreign organisations for purposes of the Decree.

In addition, entities established and operating in Vietnam with more than 49% of foreign ownership (including close-end funds, mutual funds and securities investment companies) are also included in the definition as foreign investors.

¹ An ambitious banking sector restructuring scheme for 2011–2015 was approved by the Prime Minister in early 2012 through Prime Minister Decision 254/QĐ-TTg and is centred on the merger of weak banks with their stronger competitors. Nine weak banks were targeted by the SBV last year. The results, according to official sources, are that eight out of nine weak banks have completed the first stage of the restructuring process and that one foreign bank wanting to buy a controlling stake in a weak bank is waiting for direction from the Prime Minister in order to carry out the purchase, and Decree 01 may form the legal basis for that transaction.

FOREIGN OWNERSHIP LIMITS REVISED

Decree 01 has maintained the previous total aggregate foreign ownership cap of 30% of a commercial bank imposed by Decree 69.

Total foreign investment in a finance company or a finance leasing company will be subject to a 49% cap, which is the limit applicable to public (both unlisted and listed) companies².

Decree 01 has aligned the limits applicable to each type of foreign investor with Article 55 of the Law no. 47/2010/QH12 on Credit Institutions dated 16 June 2010 (the "LCI") which sets out ownership limits applicable to categories of investors, including Vietnamese investors.

Most importantly, Decree 01 allows the Prime Minister to lift the limits on foreign shareholders' participation in a Vietnamese credit institution, but only for the purpose of (i) restructuring weak credit institutions facing difficulties; or (ii) ensuring the stability of the credit institutions system. The determination of institutions that would fall into this definition will in practice be at the discretion of the SBV or other competent authorities.

The below table provides a comparison between the new caps and the limits set out in Decree 69.

Decree 69		Decree 01	
Type of Investor	Ownership Limit	Type of Investor	Ownership Limit
Non-credit institutional investors (inc. organisations and individual investors) and related parties	5%	Individual investors	5%
Credit institutions and related parties	10%	Organisations	15% (may be lifted by the Prime Minister to restructure or ensure stability of credit institutions)
Strategic investors and related parties	15% (20% with Prime Minister approval)	Strategic investors ³	20% (may be lifted by the Prime Minister to restructure or ensure stability of credit institutions)
		Related parties cap applicable to all categories of investors	20%
Aggregate foreign ownership	30%	Aggregate foreign ownership applicable to commercial banks	30% (may be lifted by the Prime Minister to restructure or ensure stability of credit institutions)
		Aggregate foreign ownership applicable to finance and finance leasing companies	49% (based on current regulations on foreign ownership of shares in Vietnamese public companies)

² The Government is apparently preparing a decree increasing this 49% cap to 60% for all public companies which will in due course increase the foreign cap in finance companies and finance leasing companies following the operation of Decree 01.

³ A "foreign strategic investor" is defined by Decree 01 as a foreign entity which has financial capacity and has provided a written undertaking from the competent person of the entity to ensure long term partnership with the Vietnamese credit institution and to assist the Vietnamese credit institution in modern technology transfer, developing banking products and services, raising financial, administration and management capacity.

REQUIRED APPROVALS

- **Acquisitions where the resulting shareholding is 5% or less**

Decree 01 has lifted the requirement for prior SBV approval in respect of acquisitions by foreign investors not exceeding 5% of the charter capital of a credit institution.

- **Acquisitions where the resulting shareholding is more than 5%**

SBV approval is required in all cases resulting in the acquiring shareholder owning more than 5% of a credit institution's charter capital.

Decree 01 is silent on the procedures for approval but the SBV is expected to issue detailed guidelines in the near term.

- **Acquisitions where the resulting shareholding is more than 10%**

In addition, where an investment will result in the foreign investor holding more than 10% of the charter capital of a Vietnamese credit institution, the foreign investor must satisfy the following conditions (which are generally less stringent than those set out in Decree 69):

- It is rated by international credit rating institutions (e.g. Moody's, Standard & Poor's, Fitch, etc.) as stable or higher or equivalent rating;
- It has sufficient financial resources to finance the purchase based on the audited financial reports of the year immediately prior to the year of the application;
- The purchase has no impact on the security and stability of the Vietnamese system of credit institutions;
- It has not committed any serious breach of home country and Vietnamese currency, banking and security laws within 12 months preceding the submission of the application; and
- For the year immediately prior to the year of the application, the value of its total assets must have been the equivalent of at least USD 10 billion (if the foreign investor is a bank, finance company or finance leasing company) or the value of its charter capital must have been equivalent of at least USD 1 billion (for other types of entities). The requirement is lower than the current USD 20 billion in total assets required by Decree 69 (applicable to foreign credit institutions).

- **Acquisitions by foreign strategic shareholders**

Foreign strategic investors are subject to the following additional conditions:

- It must be either a bank, a finance company or a finance leasing company authorised to conduct banking activities by its home regulator (while foreign banks can become strategic investor in Vietnamese banks, finance / finance leasing companies, foreign finance companies and finance leasing companies can only become strategic investors of a Vietnamese finance company and finance leasing company respectively)
- It must have minimum 5 years of international operating experience in the banking and finance sector;

- For the year immediately prior to the year of the application, the value of its total assets must have been the equivalent of at least USD 20 billion;
- It must provide a written undertaking on and clear plans for long term partnership with the target Vietnamese credit institution;
- It must not own more than 10% of shares of any other credit institution in Vietnam (which is stricter than Decree 69 which prohibits a strategic shareholder to be a strategic shareholder of another commercial bank); and
- It must undertake to purchase or provide a statement of current shareholding of more than 10% of the charter capital of the target Vietnamese credit institution.

Note that there are also minor changes relating to the conditions which the Vietnamese credit institutions must fulfil in order to qualify for foreign investment.

MANAGEMENT LIMITATIONS

A foreign investor may nominate representatives to participate in operations of the Board of Management of only one Vietnamese credit institution, except where the representatives are appointed to credit institutions which are subsidiaries of the invested credit institution or which are weak credit institutions under restructuring approved by the SBV.

This rule is stricter than its equivalent in Decree 69, which provided that a foreign investor may not nominate representatives to participate in operations of the Board of Management of more than two Vietnamese banks.

LOCK-UP PERIOD

Decree 01 has maintained the following lock-up periods applicable to a foreign investor holding significant stakes in a Vietnamese credit institution: (i) 3 years if they own at least 10% of charter capital of the credit institution; or (ii) 5 years in the case of a foreign strategic investor. However, unlike under Decree 69, the above limitations do not apply to the investor's related persons.

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