

# 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. The current laws recognize and treat the foreign-invested companies (which have member(s) or shareholder(s) being foreign entities) with foreign stakes of less than 51% of the charter capital similar to entirely Vietnamese-invested companies.

## **Legislation**

The Law on Enterprises and the Law on Investment, both dated 26 November 2014 and effective from 1 July 2015, 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.96/2015/ND-CP, dated 19 October 2015; Circular No.131/2010/TT-BTC dated 6 September 2010 guiding the Regulation on capital contribution to or purchase of shares by foreign investors in Vietnamese enterprises ("Circular 131"); Circular No.19/2014/TT-NHNN dated 11 August 2014 of the State Bank of Vietnam providing guidelines on the foreign exchange control for foreign direct investments in Vietnam ("Circular 19"); v.v. 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.

## **Requirements**

At present, and in general, all types of companies in Vietnam, including SOEs, join 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 remit 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 accounts at banks licensed to operate in Vietnam, except where Vietnamese company was now granted by competent authorities with investment certificate/ investment registration certificate, such company must open a direct investment account, which is a payment account denominated in foreign currencies or Vietnam, 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 remitting 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 DT category, of which the duration of validity shall not exceed 5 years, 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 it was in the past when any buying/ selling capital by local companies to foreign investors was subject to the prevailing 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 the equitized SOEs having the demand of selling 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 following circumstances:

(i) Foreign investors contribute capital to, purchase the shares or portion of capital contribution in a local company operating in the industries or trades in which business investment is conditional in respect of foreign investors;

(ii) The capital contribution or purchase of shares or portion of capital contribution shall result in the fact that the foreign investor or economic organization that foreign investors have control over more than 51% of its charter capital holds 51% or more of the charter capital of a local company.

Foreign investors will submit file 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 conditions prescribed, the DPI

shall, within a period of 15 days from the date of receipt of the complete file, notify in writing the investor for the latter to carry out the procedures for change of a shareholder or member in accordance with law.

Investors not within the cases 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 law upon capital contribution or purchase of shares or portion of capital contribution to the local company.

### **Taxation**

No further withholding tax shall be applicable to any abroad remittance 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 the [Section 16](#) hereunder.