

Vietnam Update: Equitisation of Petrolimex

Background

In January 2010 Petrolimex was granted approval for a partial initial public offering (IPO)¹ as part of Vietnam's renewed equitisation programme. This was followed in December 2010 by the company submitting an equitisation plan for government approval and on 21 January 2011 it announced that it intends complete a partial IPO in 2011.

Whilst Petrolimex is permitted to equitise up to 25 per cent of the company's share capital it is not yet known what the size of the initial sale will be, although it is expected that an offer to employees and private investors will be made prior to the selection of a strategic investor.

In addition to containing a valuation it is customary that the equitisation plan details a list of preferred strategic investors and the criteria on which they shall be selected, in order that a partial or complete sale of the authorised amount may be completed upon approval of the equitisation plan.

The Vietnamese Government's equitisation agenda, aimed at both reforming and partially privatising the country's state-owned enterprises (SOE's), witnessed a revival in 2010 with the commencement of the equitisations of PV Gas, Vietnam Steel Corporation and Petrolimex. It is also expected that following a stalling of the equitisations of Mobifone and Vietnam Airlines, as a consequence of the financial crisis, that these entities may resurrect their equitisation programmes in 2011.

Petrolimex

Petrolimex is a state owned company that is run by the Ministry of Industry and Trade (MOIT). It is Vietnam's largest fuel distributor (holding a 60 per cent share of the market) and its scope of business includes, amongst other products, insurance and transportation.

In 2010 it made a pre tax profit of VND1,210 billion (USD 62 million) on turnover of VND 138,603 billion.²

Equitisations in Vietnam

Equitisation is the process of converting a 100 per cent SOE into a joint stock public company. The process of converting SOE's into shareholding companies is currently regulated by Decree 109, which was passed by the Vietnamese Government in August 2007.

Key Issues

- **Background**
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¹ Prime Minister Nguyen Tan Dung announced on 4 January 2010 that approval had been given for the equitisation of the Vietnam Steel Corporation (VSC)

² Petrolimex Press Release – *Results of Business Activities in 2010* dated 20 January 2011

To date, the equitisation process has generally involved the majority of shares in each newly established shareholding company being retained by the State, with a small portion sold at public auction or to strategic investors prior to or as part of an IPO. Strategic investors are defined broadly to mean foreign and domestic investors, with financial and enterprise management capability, who are capable of transferring benefits to an enterprise and whose long term interests are connected with that enterprise. Recent successful equitisations include those of the Vietnam Insurance Corporation (Bao Viet) and Vietnam Bank for Foreign Trade (Vietcombank).

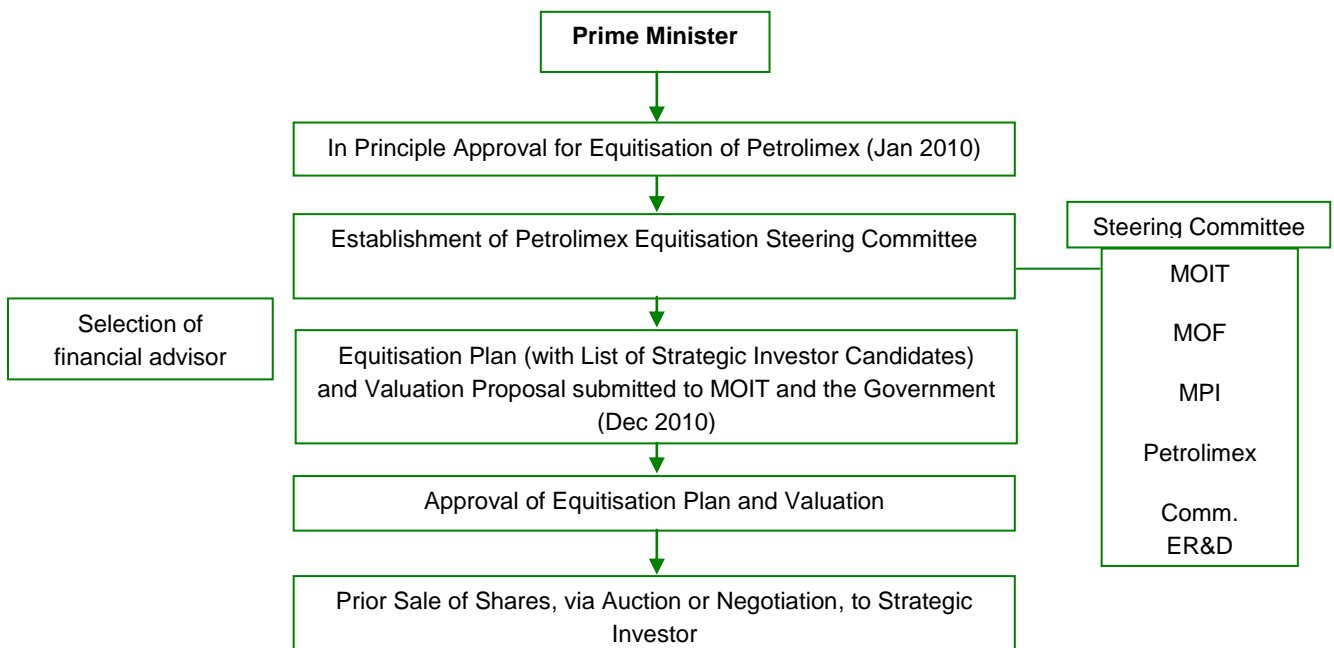
The equitisation process in Vietnam is currently subject to government review and draft legislation which could lead to an acceleration of the equitisation timetable and provide a more attractive environment for strategic investors going forward. Amendments in respect of Decree 109, which seek to address some of the key issues which have been encountered with respect to the equitisation process, are currently being considered by the Ministry of Finance. Notably the draft legislation proposes that strategic investors will no longer be required to match the average public auction price and will now only have to meet the approved “reserve price” or “lowest successful public auction price”. In the event that a strategic investor is appointed prior to the IPO it is proposed that the negotiated offer price must not be less than the minimum price as set and approved by the relevant authority and if appointed after the IPO the negotiated price must not be less than the lowest public auction price. In circumstances where the strategic sale occurs separately from the IPO process it is proposed that the negotiated price must not be less than the minimum price as set and approved by the relevant authority for the purposes of the competitive bid among the strategic candidates.

Petrolimex equitisation

Equitisation will see Petrolimex converted from a wholly state-owned enterprise in to a shareholding company (a joint stock company). The State has indicated that it will retain 75 per cent of the shares in the newly established company and 25per cent will be sold at public auction or to strategic investors in advance of an IPO. Petrolimex may apply to select one or more strategic investors before an IPO and sell to these at the average price per share in the IPO. The equitisation of Petrolimex will be governed by Vietnamese law and specifically Decree 109 and Circular 146.

Next Steps

The table below outlines the Petrolimex equitisation process.



Circular 146 details the steps required for conducting the equitisation process. The Prime Minister has yet to announce that a timetable has been approved, however it is understood that the current intention is for the equitisation to be completed before the end of 2011 and for the equitisation plan to be approved within the next few months.

Key issues

Issues that will need to be considered by potential investors include:

- Petrolimex related issues:
 - Proposed plans to permit private domestic operators into the fuels market.
 - Increased competition from private firms as the liberalisation of the downstream segment continues.
 - Threats to its current market position as domestic refineries come on-stream and a lack of exposure to the burgeoning refining sector (Vietnam's only operating refinery is at present run by PV Oil).
 - Separation of its activities and assets from the State.
- General issues:
 - The State's continuing control and whether Petrolimex's management will act solely on a commercial basis or subject to political factors.
 - The State's intention regarding its controlling interest.
 - The equitisation agenda is not conducted on time.
 - The equitisation process is complicated (e.g. the registration procedure for the amendment of investment certificates/business registration certificates arising from an assignment of an equity interest is not clear).
 - Transparency (especially in terms of company valuation and the availability of information).
 - Potential for the process to be stalled or fail.
- Price Control:
 - Petrol and oil prices in Vietnam are subject to price control as a consequence of the state-controlled market mechanism. The MOF is the petroleum pricing regulator and governs the manner in which prices may be determined.
 - "Key traders" (i.e. petrol and oil exporters, importers and producers, such as Petrolimex, PV Oil, Saigon Petrol) may adjust and decide wholesale prices.
 - Key traders may reduce retail prices following a decrease within 12 per cent and an increase within 7 per cent of current retail prices.
 - When changes in price cause the base price to increase between the 7 per cent to 12 per cent band, key traders may increase retail prices by 60 per cent of the base price's increase. The remaining 40 per cent will be offset by price valorisation funds under MOF guidance. In the event of price increases over 12 per cent, the State may announce price valorisation.
 - The interval between two consecutive price adjustments must be at least ten days, for a price increase and a maximum of ten days, for a price decrease. Key traders must submit pricing decisions and schemes to the MOF, which supervises traders in adjusting prices.
- Competition Law:
 - Petroleum trading activities are subject to the Competition Law, which legislates against dominant market positions and monopolies
 - "Economic concentration", as a consequence of a merger, consolidation, acquisition of or joint venture between enterprises or other forms of economic concentration is prohibited if it results in the new entities combined market accounting for more than 50 per cent of relevant market. Approval must be sought from the MOIT if it results in a 30 per cent to 50 per cent share of the relevant market.

Experts in privatisations, oil, gas & Vietnam

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The international reach of Clifford Chance's practice combined with VILAF's unrivalled local knowledge, expertise and contacts enable us to together understand local issues with an international perspective.

Clifford Chance has acted on some of the most high profile privatisations globally, across all sectors and in a wide variety of locations. We have a deep understanding of the oil and gas sector, risks and structuring issues. In Vietnam, VILAF has worked on some of the major equitisations which the country has seen, recently acting for the strategic investors in connection with Mobifone. With long experience and strong working relationships with various Government agencies and SOEs, VILAF and Clifford Chance understand the working methods and expectations of these organisations and can leverage this understanding to assist clients in dealing and negotiating most effectively with them.

Clifford Chance

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- International Arch of Europe Award for Quality and Excellence 2009 (*B.I.D*)
- Vietnam Deal Firm of the Year 2007, 2009 (*Asian Legal Business*)
- National Law Firm of the Year 2006, 2007, 2008 (*International Financial Law Review*)

Your key contacts

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Andrew is Head of the Corporate and M&A practice in Thailand. Andrew has over 26 years experience of cross border M&A. He has been a partner based in Bangkok for over 8 years and was previously resident in Dubai, Moscow, Prague and Rome.

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Phong has represented numerous multinational corporations in relation to their projects in oil & gas, power, chemical, automobile, telecommunication, insurance, real estate development, and consumer goods industries. He is reputable in advising foreign companies on corporate restructuring and financing, share subscriptions, mergers and acquisitions transactions, and BOT projects in Vietnam. Phong is a highly regarded attorney for his admirable capacity to provide practical solutions that well suit the clients' needs.

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Denzel Eades is a lawyer in the banking and finance practice of Clifford Chance currently seconded to VILAF. Prior to working at Clifford Chance in Thailand he worked at our London and Moscow offices..

This client briefing does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal advice.

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