

Vietnam: Securities update

After much anticipation the Government has succeeded in issuing Decree 58 (dated 20 July 2012) implementing the amended Law on Securities (“Decree 58”). This is a significant step as the implementation on this new law introduces a number of key reforms which we have outlined in this briefing.

Amended Law on Securities

Decree 58 took effect on 15 September 2012 and replaced Decree 14 of the Government dated 19 January 2007 (“Decree 14”), Decree 84 of the Government dated 2 August 2010 (“Decree 84”), and Decree 01 of the Government dated 4 January 2012 (“Decree 01”).

Private placement

Before the issuance of Decree 58, a private placement of shares in a private company was subject to various restrictions under Decree 01, including:

- Shares privately issued were subject to a lock-up period of 1 year;
- The proceeds resulting from the sale of shares had to be kept in an escrow account; and
- There had to be a six-month gap between two tranches of a private placement.

Decree 58 has removed these restrictions and has therefore substantially relaxed the regulations on private placements. In addition, under Decree 58, after 15 September 2012, private placements of shares by all public companies including public credit institutions and public insurance

companies will be administered by the State Securities Commission (“SSC”).

Further clarification needed

Decree 58 still fails to clarify or simplify various issues relating to the private placement of shares. Clarification is needed on the applicability of private placement regulations to the issuance of convertible securities and on the issuance of new shares to all existing shareholders of a shareholding company on pro-rata basis. Clarification is also needed as to the documents required to be submitted to the licensing authority for registration of a private placement.

Public offerings

Decree 58 now provides more detailed provisions on the conditions and procedures for various types of public offerings (which have been implemented in practice but which were not covered by the old regulations). Decree 58 now covers public offers of, among other things:

- existing shares by major shareholders;
- convertible bonds;
- shares for the purpose of merger or consolidation of enterprises;
- shares for exchange of shares in another company;
- dividend shares and bonus shares; and

- foreign stock options for Vietnamese employees of foreign organisations in Vietnam.

Decree 58 also further clarifies the commencement date and completion date of a public offer tranche.

Key issues

- Decree 58 substantially relaxes the regulations on private placements
- Detailed provisions introduced covering public offerings
- More stringent local listing requirements
- Substantial revision of the procedures for a Vietnamese company to offer and list its shares offshore making offshore issues easier
- Foreign investment in securities companies still restricted
- Legal framework for real estate investment funds introduced

Public companies

Decree 58 provides more detailed regulations on registration of public companies. In particular, Decree 58 requires a public company to submit:

- brief information on the relevant public company including specific details on the company; and
- latest audited annual financial statements.

The Securities Law provides various criteria of what constitutes a public company. However, Decree 58 appears to focus on the number of shareholders (i.e. 100) and the paid-up charter capital of the relevant company to determine whether a company is a public company.

Except in certain limited scenarios, a company, which ceases to be a public company, will still be subject to the restrictions applicable to a public company for a period of one year after the date on which it is no longer a public company.

Listing

Decree 58 now provides more stringent listing requirements for shares to be listed on the Ho Chi Minh Stock Exchange (“HSX”) and Hanoi Stock Exchange. For example, a public company can now only list its shares on the HSX if, among other things, it has:

- a paid up charter capital of VND 120 billion instead of VND 80 billion;
- operated in the form of a shareholding company for at least two years;
- a return on equity rate of at least 5% for the latest financial year; and
- at least 300 shareholders who are not major shareholders (instead of 100 shareholders including major shareholders) holding at least 20% of the total voting shares of the relevant company.

Companies listed on the HSX before the effective date of Decree 58 which do not satisfy the new listing conditions under Decree 58 are permitted to maintain their listing without having to comply with the new listing conditions.

Offshore offering and listing

Decree 58 has substantially revised the procedures for a Vietnamese company to offer and list its shares offshore. In particular,

- For the first time, Decree 58 introduces the concept of “depository receipt”. The use of “depository receipt” and a foreign depository bank could potentially reduce many difficulties and obstacles arising from directly offering and listing shares of Vietnamese companies offshore; and
- Decree 58 also simplifies the documents and procedures required for a Vietnamese company to register its proposed offshore offering and listing with the SSC.

Foreign investment in securities companies

Under Decree 58, a foreign investor can generally acquire up to 49% of the charter capital of an existing securities company.

Limitations of foreign ownership

Decree 58 only allows a limited number of foreign investors to acquire 100% of the charter capital of an existing securities company or to set up a 100% foreign-owned securities company. Such foreign investors must be, among other things, a foreign bank, a foreign securities company or a foreign insurance

company with at least two years of operational history. It is not clear if a foreign investor can own more than 49% but less than 100% of the charter capital of a securities company in Vietnam under Decree 58.

Under Decree 58, a foreign securities company may only set up a branch in Vietnam to provide asset management services for assets mobilized offshore.

It appears that the provisions on foreign investment in the securities sector in Decree 58 are more restrictive than Vietnam’s commitments to the WTO regarding the securities sector. Therefore, the provisions concerning foreign investment in securities companies under Decree 58 are likely to be subject to further guidance and clarification of the Ministry of Finance.

Real Estate Investment Fund

For the first time, Decree 58 provides a legal framework for real estate investment funds. A real estate investment fund must be a public fund managed by a fund management company under the supervision of a supervisory bank. The fund units must be listed on a stock exchange. At least 65% of the net assets value of a real estate investment fund must be invested in property. The property invested in by the fund must be for leasing or other use with a stable income. A real estate investment fund must hold its property for at least two years except in certain limited cases. A real estate investment fund must not engage in property development and can only purchase under-construction properties in limited circumstances.

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