

Hanoi, 20 April 2007

**DECREE
ON
PURCHASE BY FOREIGN INVESTORS OF SHAREHOLDING
IN VIETNAMESE COMMERCIAL BANKS**

The Government

Pursuant to the *Law on Organization of the Government* dated 25 December 2001;
Pursuant to the *Law on State Bank of Vietnam* dated 12 December 1997 as amended on 17 June 2003;

Pursuant to the *Law on Credit Institutions* dated 12 December 1997 as amended on 15 June 2004;

Pursuant to the *Law on Enterprises* dated 29 November 2005;
Pursuant to the *Law on Securities* dated 29 June 2006;
Pursuant to the international commitments of Vietnam;
Having considered the proposal of the Governor of the State Bank;

Decrees:

**CHAPTER I
General Provisions**

Article 1 *Governing scope*

1. This Decree regulates the purchase by foreign investors of shareholding in Vietnamese commercial banks (hereinafter referred to as *Vietnamese banks*) whose shares are not yet listed.

2. When shares of a Vietnamese bank are listed, foreign investors shall be permitted to purchase shareholding in the Vietnamese bank in accordance with the law on securities and securities market and must comply with the share ownership ratio stipulated in article 4 of this Decree.

Article 2 *Applicable entities:*

1. Vietnamese banks, comprising:
(a) State commercial banks undergoing equitization;
(b) Commercial shareholding banks.

2. Foreign investors.

3. Other organizations and individuals affiliated to the purchase by a foreign investor of shareholding in a Vietnamese commercial bank.

Article 3 *Interpretation of terms*

In this Decree, the following terms shall be construed as follows:

1. *Foreign investor* shall comprise:

(a) A *foreign institution* being an institution established under the laws of a foreign country and operating [and/or] conducting business in a foreign country and/or in Vietnam;

(b) A *foreign individual* being a person with foreign nationality and a resident of a foreign country and/or of Vietnam.

2. *Foreign credit institution* means a foreign institution comprising foreign banks, foreign finance companies, and other types of foreign credit institutions operating principally and regularly in the banking sector.

3. *Existing foreign shareholder* means a foreign investor permitted by the State Bank of Vietnam to purchase shareholding, and already owning shareholding in commercial shareholding banks prior to the date of effectiveness of this Decree.

The rights and obligations of existing foreign shareholders shall be implemented in accordance with regulations of the State Bank of Vietnam.

4. *Foreign strategic investor* means a reputable foreign credit institution with financial capacity and the ability to provide assistance to a Vietnamese bank during the development of banking products and services, raising managerial and executive capability, and applying modern technology; and which has strategic advantages connected with the strategy for development of the Vietnamese bank, [and] which satisfies the specific criteria stipulated by the Vietnamese bank.

5. A person affiliated to an organization or individual (*affiliated person*) means:

(a) The parent company of such organization, or another company which has the same parent company as such organization;

(b) The individual or institution managing the parent company, or the individual or institution with authority to appoint the individual managing the parent company of such organization;

(c) A subsidiary or affiliated company of such organization;

(d) A manager [or] member of the inspection committee, or an individual or institution with authority to appoint the manager of such organization;

(dd) A shareholder or group of shareholders owning ten (10) per cent or more of the total ordinary shares in such organization;

(e) A spouse, parent, adopted parent, child, adopted child or sibling (including a spouse of the sibling) of the manager [or] member of the inspection committee, or of a shareholder owning ten (10) per cent or more of the total ordinary shares in such organization;

(g) A spouse, parent, adopted parent, child, adopted child or sibling (including a spouse of the sibling) of such individual;

(h) An individual [proxy] authorized to represent the persons defined in sub-clauses (a), (b), (c),

(d), (dd), (e) and (g) hereof is affiliated not only to the principal but also to the affiliates of the principal and of such proxy.

Article 4 Principles on ownership of shareholding applicable to foreign investors

1. The total level of shareholding of [all] foreign investors (including existing foreign shareholders) and affiliated persons of such foreign investors shall not exceed thirty (30) per cent of the charter capital of any one Vietnamese bank.

2. The level of shareholding of any one foreign investor not being a foreign credit institution and affiliated persons of such foreign investor shall not exceed five per cent of the charter capital of any one Vietnamese bank.

3. The level of shareholding of any one foreign credit institution and affiliated persons of such foreign credit institution shall not exceed ten (10) per cent of the charter capital of any one Vietnamese bank.

4. The level of shareholding of a foreign strategic investor and affiliated persons of such foreign strategic investor shall not exceed fifteen (15) per cent of the charter capital of any one Vietnamese bank.

In special cases, the Prime Minister of the Government, based on a proposal of the Governor of the State Bank, may make a decision permitting the level of shareholding of any one foreign strategic investor and affiliated persons of such foreign strategic investor to exceed fifteen (15) per cent, but it shall not exceed twenty (20) per cent of the charter capital of any one Vietnamese bank.

5. Where a foreign credit institution holds convertible bonds which are then converted into shares, the share ownership ratios stipulated in clauses 1 to 4 inclusive of this article must be ensured.

6. The total level of shareholding of [all] foreign credit institutions in any one State commercial bank undergoing equitization shall be the same as the total level of shareholding of Vietnamese banks in such State commercial bank. The Governor of the State Bank shall provide guidelines for implementation of this provision.

7. A Vietnamese bank may make its own decision on the share ownership ratio of a foreign investor in the bank, but it must not exceed the ratios stipulated in this article.

Article 5 *Authority to approve the purchase by a foreign investor of shareholding in a Vietnamese bank*

The Governor of the State Bank shall provide written approval for the purchase by a foreign investor of shareholding in a Vietnamese bank in accordance with the provisions of this Decree and other relevant laws.

Article 6 *Participation in management of a Vietnamese bank*

1. A foreign credit institution shall be permitted to be a foreign strategic investor in only one Vietnamese bank.

2. A foreign credit institution shall be permitted to participate in the board of management of no more than two Vietnamese banks.

Article 7 *Currency to be used in transactions of purchase and sale of shareholding*

Vietnamese dong shall be the currency used in transactions of purchase by and sale of shareholding to foreign investors in Vietnamese banks.

CHAPTER II Specific Provisions

SECTION 1

Form and Price of Sale, and Authority to Make a Decision on Plan for Sale of Shareholding to a Foreign Investor

Article 8 *Form of sale of shareholding*

1. A State commercial bank shall be permitted to sell shareholding to a foreign investor when such bank undergoes equitization.

2. A commercial shareholding bank shall be permitted to sell shareholding to a foreign investor when such bank increases its charter capital.

3. Shareholders in Vietnamese banks may transfer their shareholding to a foreign investor which has been approved by the competent authority for the purchase of shareholding in such banks.

Article 9 *Selling price of shareholding*

1. The selling price of shareholding in a State commercial bank to a foreign investor when such bank undergoes equitization shall be fixed via an auction in accordance with current regulations.
2. The selling price of shareholding in a commercial shareholding bank to a foreign investor shall be as fixed via an auction or shall be as agreed between the parties.
3. The price of the transfer of shareholding by shareholders to a foreign investor shall be as agreed between the parties.

Article 10 *Authority to make a decision on plan for sale of shareholding*

1. A State commercial bank shall formulate an equitization plan which includes provisions on the sale of shareholding to foreign investor/s and submit same to the Prime Minister of the Government for his approval.
2. A commercial shareholding bank shall formulate a plan for the increase of its charter capital, which plan shall include provisions on the sale of shareholding to foreign investor/s, and submit same to the general meeting of shareholders for its decision.
3. Shareholders in a Vietnamese bank shall make their own decisions on transfer of their shareholding to foreign investor/s in accordance with law and the charter of the bank.

SECTION 2

Conditions Applicable to the Purchase, Sale and Assignment of Shareholding

Article 11 *Conditions for selling shareholding*

1. Any Vietnamese bank which sells shareholding to a foreign investor must satisfy all the following conditions:
 - (a) Its charter capital is a minimum of one thousand (1,000) billion dong;
 - (b) Its financial status is healthy and it satisfies the relevant conditions stipulated by the State Bank;
 - (c) Its management and executive apparatus, and its internal check and inspection and internal audit systems operate effectively;
 - (d) It was not penalized by the competent authority for a breach of the regulations on safety during banking operations during the period of twenty four (24) months prior to the time when the State Bank gives consideration [to the application for sale of shareholding].
2. In the case of a Vietnamese bank which does not satisfy all the conditions stipulated in clause 1 of this article, the State Bank may consider each specific case and make a submission to the Prime Minister of the Government for his decision on such bank selling shareholding to a foreign investor/s.

Article 12 *Any foreign credit institution purchasing shareholding in a Vietnamese bank must satisfy all the following conditions:*

1. It had minimum total assets equivalent to twenty (20) billion US dollars in the year prior to the year of registration for the purchase of shareholding.
2. It has international operating experience in the banking sector.
3. It is classified by international credit rating institutions at the level of capable of fulfilling financial undertakings and operating normally even when the economic situation and conditions fluctuate in a non-profitable direction.

4. Foreign strategic investors, in addition to satisfying the conditions stipulated in clauses 1, 2 and 3 of this article, must provide a written undertaking to provide assistance to the Vietnamese bank regarding development of banking products and services, increasing managerial and executive manpower, and applying modern technology.

Article 13 *Assignment of shareholding*

1. A foreign strategic investor and any affiliated person shall only be permitted to assign its shareholding to another organization or individual (domestic or foreign) after a minimum of five years from the date it became a foreign strategic investor in the Vietnamese bank.

2. A foreign credit institution and any affiliated person owning ten (10) per cent of the charter capital of a Vietnamese bank shall only be permitted to assign its shareholding to another organization or individual (domestic or foreign) after a minimum of three years from the date it became the owner of ten (10) per cent of the charter capital of such bank.

SECTION 3

Rights and Responsibilities of Foreign Investors

Article 14 *Rights of foreign investors:*

1. To be entitled to the same rights as other shareholders pursuant to the charter of the Vietnamese bank in which the foreign investor has purchased shareholding.

2. To be entitled to convert into foreign currency income from the investment in the purchase of shareholding and income from the assignment of shares in order to remit it overseas after discharging financial obligations stipulated by the law of Vietnam.

3. To have the right to participate on the board of management, inspection committee and board of executives of the Vietnamese bank in which the foreign investor has purchased shareholding in accordance with the provisions of law and the charter of the Vietnamese bank.

4. To be guaranteed by the Socialist Republic of Vietnam its other legitimate rights and interests pursuant to the law of Vietnam.

Article 15 *Responsibilities of foreign investors:*

1. To fulfil all obligations stipulated by the law of Vietnam and the charter of the Vietnamese bank in which the foreign investor has purchased shareholding.

2. To ensure the legality of the funding source for the purchase of shareholding, and the validity of the application file for the purchase of shareholding pursuant to the law of Vietnam.

3. To remit to a Vietnamese bank the full amount registered for the purchase of shareholding in accordance with regulations of the State Bank.

4. To notify the State Bank of any change relating to shareholding capital in the Vietnamese bank.

CHAPTER III

Implementing Provisions

Article 16 *Responsibilities of Vietnamese banks*

After a Vietnamese bank has written approval from the Governor of the State Bank to the purchase of shareholding by a foreign investor, it must publish a notice on the mass media about the sale of shareholding to the foreign investor and organize implementation of the sale of shareholding correctly in accordance with law.

Article 17 *Dealing with breaches*

Any breach of the provisions of this Decree shall, depending on the nature and seriousness of the breach, be dealt with in accordance with law.

Article 18 *Effectiveness*

This Decree shall be of full force and effect fifteen (15) days after the date of its publication in the Official Gazette.

Article 19 *Implementing guidelines*

1. The Governor of the State Bank shall be responsible for providing guidelines for implementation of this Decree.
2. Ministers, heads of ministerial equivalent bodies, heads of Government bodies, chairmen of people's committees of provinces and cities under central authority, and chairmen of boards of management and general directors of Vietnamese commercial banks shall be responsible for implementation of this Decree.

On behalf of the Government
Prime Minister
NGUYEN TAN DUNG