

CAPITAL MARKET WORKING GROUP REPORT

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I. The privatization of State-owned enterprises and public establishment of sectors that are not sensitive to national security

Comments

- The state coffers remain stretched despite the huge need for public spending and investment. Revenues from taxes have become smaller as the economy is going through a difficult time and also due to the reduction of the import tax in alignment with WTO commitments. Most recently (in the 4th quarter 2013), the government has applied for an increase of the State budget deficit to rise from 4.8% to 5.3% of GDP.
- To our understanding (as at 23 May 2014), the gross market value of the 12 top State-owned companies among the top 20 largest companies listed on the Ho Chi Minh City Stock Exchange is US\$ 18.5 billion in market capitalisation, approximately, accounting for 41% of the value of the entire HCMC Stock Exchange. The ownership of 50% alone in these 12 companies is worth US\$ 6.3 billion. Selling part of the State-owned shares in these companies will easily resolve the state budget deficit in the current difficult time, instead of cutting the mandatory minimum wage or maximizing revenue from other sources. Companies, after the sale, will still be subject to local Vietnamese regulations, operating in Vietnam, paying taxes and employing local people.
- A large number of the companies in which the government is the majority shareholder are not operating or doing business in the areas classified as "sensitive" or "restricted", for examples, companies manufacturing consumer goods or fertilizers.
- State-owned enterprises have been treated more favorably in terms of policies and access to loans compared to the private sector. This creates an unfair playground between the two, hampers the development of the private sector, while the public sector is inefficient and does not offer good products or services. This also further impairs the competitiveness of Vietnamese companies' goods and services as a whole when they entering regional and global markets.

Recommendations: Based on the experience of countries in the region, we recommend the following:

- Increase foreign ownership in and decrease the State ownership by selling shares in companies operating in the areas not classified as "sensitive" or "restricted";
- For the first step, reduce the State ownership in some listed companies by around 35%. Later on, there should be a further reduction.
- Accelerate the equitisation process in 100% State-owned companies.
- Narrow the list of sensitive business lines.

II. Draft Law on Investment

1. Subject and Scope

1.1 Observations

The Draft Law does not make a clear distinction and does not clearly stipulate that the forms of investment governed by the Law on Investments (**LoI**) are only applicable to non-public companies, and that other investments in public companies will be governed by the Law on Securities (**LoS**).

1.1.1 Article 5(2)(a) of the Draft Law states:

The public offer of securities, the listing of, transfer of, trading of, and investing in securities and securities-related services are governed by the LoS.

1.1.2 We understand that the Draft Law suggests that:

- (a) securities-related subjects and securities-related businesses are governed by the LoS; and
- (b) the scope and subject of other investments, especially direct investments, are governed by the LoI.

1.1.3 We also understand that:

- (a) The current LoI was passed by the Parliament in 2005;
- (b) The LoS was passed by the Parliament for the first time 1 year later, in 2006;

The LoS, for the first time, introduced a new concept of “public companies” (including “non-listed public companies” and “listed public companies”).

1.1.4 We note that as the LoI was passed before the LoS, the LoI did not make a distinction between public companies and other companies. As a result, although the Draft Law has suggested the LoS governs investments related to securities, the Draft Law does not specifically state that the LoI only applies to non-public companies (including limited liabilities companies, non-public shareholding companies, and partnerships).

1.1.5 As the the Draft Law does not clearly states that the LoI will only apply to non-public companies, the Draft Law contains ambiguous provisions as set out in items 2, 3 and 4 of this submission.

1.2 Suggestions

The Draft Law should clearly state that the forms of investment governed by the LoI will only apply to non-public companies, and that the LoS will apply to investments in public companies.

2. Article 21 of Draft Law

2.1 Observations

2.1.1 Article 21(1) of the Draft Law states:

Investors have the right to invest in the forms of capital contribution, purchase of contributed capital, and **purchase of shares in enterprises** operating in Vietnam.

2.1.2 One of the key activities governed by the LoS is the sale and purchase of shares in listed companies.

- 2.1.3 Article 21(1) of the Draft Law does not clearly stipulate if the “**purchase of shares in enterprises** operating in Vietnam” under the Lol includes the sale and purchase of shares in public enterprises (including non-listed public and listed public companies)?
- 2.1.4 Currently, the purchase of shares in public companies (including non-listed public and listed public companies) is mostly governed by the LoS.
- 2.1.5 Questions then arise as to whether the sale and purchase of shares in public companies will be governed by:
- (a) the Lol or the LoS?
 - (b) both the Lol and the LoS?
 - (c) only by the LoS?

2.2 Suggestions

We suggest as follows:

- 2.2.1 Option 1: The provisions on the subject and scope of the Draft Law should unambiguously state that investments in public companies, including the transfer of, investment in, and trading of shares in public companies are governed by the LoS.
- 2.2.2 Option 2: Article 21(1) of the Draft Law be amended as follows:

Investors have the right to invest in the forms of capital contribution, purchase of contributed capital, and **purchase of shares in enterprises** operating in Vietnam. The purchase of shares in public companies is governed by the Law on Securities.

3. Definition of “Foreign Investor”

3.1 Observations

- 3.1.1 Article 3(3) of the Draft Law defines “foreign investors”.
- 3.1.2 We understand that under the Draft Law, this definition will be applicable to most of enterprises, including public companies (both unlisted public and listed public companies).
- 3.1.3 A question then arises as to whether this definition will be applicable to the LoS (and also to other laws and regulations)?

If the definition is applicable to listed public companies for which the Government will allow the increase in foreign ownership to more than 51%, there will be some consequences as follows:

- (a) a listed public company, for instance Vinamilk, may be a domestic company today (when the foreign ownership is lower than 51%), but may become a “foreign

- investor” tomorrow if the foreign investors acquire more than 51% of the listed shares.
- (b) also under the definition of “foreign investor” under Article 3(3) of the Draft Law, when Vinamilk becomes a foreign investor, all subsidiaries of Vinamilk, which Vinamilk owns more than 51%, will also become foreign investors. This will directly affect some rights of Vinamilk and its subsidiaries, especially the land use rights.
 - (c) likewise, Vinamilk can be a foreign investor today (when the foreign ownership is higher than 51%), but can become a domestic investor when the foreign shareholders reduce their ownership of Vinamilk listed shares below 51%.
- 3.1.4 We, as foreign investors, do not understand the underlying reasons for the Vietnamese Government to differentiate foreign investors and domestic investors in respect of areas/business lines, which are not subject to restricted investments, prohibited investments, or conditional investments. For areas/business lines, which are not subject to restricted investments, prohibited investments, or conditional investments, in our view, there is no need for the application of the definition of “foreign investor”.
- 3.1.5 The differentiation between foreign investors and domestic investors investing in areas/business lines, which are not subject to restricted investments, prohibited investments, or conditional investments, goes contrary to the WTO’s rules of national treatment.
- 3.1.6 In addition, Article 8(1) of the Draft Law states that “foreign investors are entitled to remit the legitimate capital and assets overseas”. The following questions then arise:
- (a) whether the Vietnamese Government is ready for a domestic listed public company, for instance Vinamilk, after it becomes a foreign investor as referred to in item 3.1.4(a), to remit its capital and assets overseas under Article 8(1) of Draft Law without obtaining any further licenses and permits?
 - (b) if yes, whether Vinamilk needs to obtain an offshore investment licence to remit its capital and assets overseas?

3.2 Suggestions

We suggest that the Draft Law amend the definition of “foreign investors” so that this definition will only apply to:

- 3.2.1 **non-public** companies; and
- 3.2.2 companies trading in, or doing business in, areas/business line which are subject to restricted investments or conditional investments.

4. Article 5(2)(a) of the Draft Law

4.1 Observations

- 4.1.1 Article 5(2)(a) of the Draft Law states:

The public offer of securities, the listing of, transfer of, trading of, and investing in securities and securities-related services are governed by the LoS.

4.1.2 The following questions and matters arise from the listing of areas governed by the LoS under Article 5(2)(a):

- (a) whether the Lol or the LoS governs the private placement of shares to foreign investors?
- (b) currently the LoS governs the private placement of shares in public companies to investors, including foreign investors. So, whether the Lol only governs the private placement of shares in non-public companies to foreign investors?
- (c) Whether or not the Lol governs foreign investors investing in securities investment funds (close-ended, open-ended, and exchange-traded funds)? (Currently the investments in those funds are governed by the LoS)
- (d) the LoS currently does not have definitions of “securities transactions”, “trading in securities”, “investing in securities” and “securities-related services” as referred to in Article 5(2)(a) of the Draft Law.

4.2 Suggestions

We suggest that Article 5(2)(a) of the Draft Law be amended as follows:

Investments in public companies, securities investment funds, or securities related activities will be governed by the LoS.

III. Facilitating foreign investors’ activities in Vietnam market

Vietnam market has become increasingly attractive to global investor community these days. Foreign investors are looking for more information about the market in preparation for their investments. One of the main channels which are used by them as a reference for market penetration decision is the market classification by international organisations based on their analyses of market accessibility level.

To support for its sustainable economic development, Vietnam is also looking forward to attracting stable and long-term foreign indirect investments from qualified institutional investors. It is crucial that necessary changes are made to address foreign investors’ concerns on market accessibility level and to improve Vietnam’s market in the MSCI’s classification.

We acknowledge that the SSC has set out clear objectives and plans to increase the ranking of Vietnam in MSCI’s market classification from Frontier Market, currently, to Emerging Market. Among the concerned issues, we would like highlight the outstanding issue below which needs joint efforts from other related ministries:

1. Foreign investors’ information accessibility issues

Comments

Foreign investors need all information related to their investment activities in Vietnam. However, information accessibility encompasses the many issues surrounding availability, accessibility and affordability of information. Foreign investors are encountering difficulties when accessing certain information and knowledge that are being freely shared in the local websites to facilitate their research of Vietnam market.

Almost all local authorities manage to upload on their websites the legal documents which are comprehensive and well-arranged, however, only Vietnamese versions are available. Regulatory news in Vietnamese are published in a timely manner while English version follows after several working days.

Information on corporate actions, meetings and relevant meeting materials published in the websites of local joint stock companies are also in Vietnamese only. In some cases, even the meeting invitation and template of voting letter sent to foreign investors in hard copies are in Vietnamese.

Due to these linguistic barriers, foreign investors cannot find sufficient information in preparation for their investment in Vietnam. It even leads to incomplete understanding about Vietnam government's policies towards foreign investments in the market. This issue is also seen by foreign investors as unequal treatment as they do not have access to the information as timely as domestic investors do.

Recently, State Securities Commission (the SSC) has shared the news that they are planning to publish on their website English version of all legal documents in 2014. This is in an effort to support foreign investors to have better understanding of the legal framework of Vietnam securities market. Though, it is understood that foreign investors would also need access to the legal documents related to their investment activities issued by other regulatory bodies (i.e. State Bank of Vietnam, Ministry of Finance, Ministry of Planning and Investment, etc.) and to news, announcements, documents, etc. provided by local joint stock companies. Hence, there should be integrated actions by all regulators and market participants.

Suggestions

To address the accessibility issues, we would suggest the below:

For regulators:

- Regulatory news/issuance of new legal document should be published in the websites of local authorities in both Vietnamese and English on the same day. Key points of the news must be summarised in English version to ensure the same amount of information is delivered to foreign and domestic investors at the same time.
- Full English translation of the legal documents should be published on the websites of the relevant regulatory bodies within 15 working days from the issuing date. (English version is for reference only)
- A detailed action plan should be introduced to ensure English translation of all effective legal documents are made available on the website of the relevant regulatory bodies at the soonest possible.

For companies:

- News/announcements on corporate actions, meetings or other company events should be published in both Vietnamese and English on the same day in the websites of non-public companies with charter capital from VND 100 billion and all public companies.
- Meeting invitation, voting letter template and meeting materials (including draft resolution) sent to foreign investors should be made in English or bilingual.

- Shareholder meeting minutes should be published in both Vietnamese and English on the same day in the websites of non-public companies with charter capital from VND 100 billion and all public companies.