



VIETNAMESE SOE EQUITISATION

An opportunity to break into
the Vietnam market

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➤ INTRODUCTION

Equitisation' is the terminology used in Vietnam for the conversion of State-owned enterprises (**SOEs**) into companies with capital divided into shares, with those companies simultaneously undergoing partial privatisation by sale of a portion of such shares through public auction or by private treaty to 'strategic' investors.

After a slowdown resulting from the 2007 global financial crisis, equitisation is once again high on the Government's agenda and is intended to play a key role in restructuring the Vietnamese economy. The Government hopes that equitisation will improve the management and operation of the dominant but inefficient SOE sector, as well as raising much needed capital to address the State's budget deficit.

The equitisation process offers opportunities for both domestic and foreign investors. The Government's original target was to equitise 430 SOEs by 2016. However, only 160 of those SOEs have been equitised to date and the remaining SOEs (with an estimated book value of US\$17.5bn) are expected to be equitised in the period 2016-2020.

In a new move to accelerate the equitisation process and improve its efficiency and transparency, in December 2016 the Prime Minister issued a new decision setting out the criteria for classifications of SOEs and a list of 137 specific SOEs to be equitised in the 2016-2020 period. According to the list, the State will retain a stake of over 65% equity in four of these SOEs, 50-65% in 27, and below 50% in the other 106. The State will retain full ownership in 103 SOEs operating in sectors of national importance, such as national defence and security, nuclear power and money printing.

This offer an array of opportunities for private investors – particularly foreign investors – to tap into the Vietnamese market by investing in companies with leading market positions in key areas such as telecommunications, retail, oil and gas trading, infrastructure and power.

Below is a snapshot of some of the current equitisation opportunities the, key legal issues that need to be considered and practical tips for foreign investors when weighing up these opportunities.

➤ INVESTMENT OPPORTUNITIES VIA UPCOMING EQUITISATIONS

	Name	Core business	Capital (USDm)	% of shares to be sold
1	Vietnam Mobile Telecom Services (Mobifone)	Second largest telecommunications operator in Vietnam	600	35-50%
2	Saigon Trading Group (SATRA)	Owner of the biggest retail distribution system in southern Vietnam, with a chain of supermarkets and convenience stores	180	50%
3	PetroVietnam Power Corporation (PV Power)	The second largest electricity provider in Vietnam	655.3	50%
4	Petrovietnam Oil Corporation (PV Oil)	The second largest petroleum import-export and distribution company in Vietnam	205	50%
5	Vietnam Cement Corporation (Vicem)	Vietnam's largest cement manufacturer	570	50%
6	Song Da Corporation (Song Da)	Vietnam's largest hydropower contractor	190	50%
7	Ben Thanh Group	One of the largest groups in Vietnam with interests in tourism, commerce and property	53.6	50%
8	Saigon Tourist Co. Ltd.	The largest tourism company in Vietnam	162	50%
9	Vietnam Rubber Group	Vietnam's largest rubber manufacturer	1189.4	35-50%
10	EVN Generation Corporation 1	Each is a holding company for numerous power plants	510	50%
	EVN Generation Corporation 2		570	
	EVN Generation Corporation 3		162	

› LEGAL ISSUES FOR FOREIGN INVESTORS

FOREIGN OWNERSHIP PERCENTAGE

Foreign investors can participate in the equitisation process as an ordinary investor at the public sale of shares (*IPO*) or as a strategic investor by way of a direct negotiation with the target SOE.

Most of the major foreign investment is expected to be made by strategic investors, who are willing to commit to the minimum five year term of investment required by law and who can assist with improving management and operations of the SOE through the transfer of technology and industry knowledge.

A key question is: what proportion of the SOE will the State sell to foreign strategic investors? The laws on equitisation no longer requires the percentage of shares sold to strategic investors to be capped at 50 per cent of the total shares to be sold to external investors. The ratio is now subject to the approved equitisation plan and, in cases of large SOEs operating in specific sectors such as banking, telecommunications and mining, subject to Prime Minister's specific decision. In practice, the ratio of shares earmarked to be sold to one or more strategic investors usually ranges from 10% to 35%.

MANAGEMENT CONTROL

A related issue is whether the level of shares sold to strategic investors will be enough to enable the investors to have some degree of control in the management of the company following its equitisation. There will be no control via voting if the foreign strategic investor's ownership is limited to 10 to 20 per cent of the total shares, as was the case in the equitisation of the leading Vietnamese insurer, Bao Viet in 2007, and in the case of Vietnam Airlines in 2014.

Therefore, it is necessary for a strategic investor to seek control mechanisms in a shareholders' agreement and potentially the new charter of the company. This requires careful consideration as mechanisms deployed internationally, such as voting agreements, are yet to be tested for enforceability in Vietnam.

TIMING AND PRICE BASIS

Under the previous equitisation regime, the law practically prevented strategic investors securing a stake in the SOE before the public IPO, as the price for the purchase of shares by strategic investors had to be not less than the average IPO price, so could not be set before that IPO price was known.

The current law has removed this requirement and now allows strategic investors to acquire shares prior to an IPO at a price not lower than the officially announced 'starting price'. If the strategic investors acquire shares after the IPO, they will be required to match the IPO results by paying a price not less than the lowest successful bid in the public auction.

VALUATION

Valuation is an integral part of the equitisation process and provides the base line for any price negotiation between the State and strategic investors. There are prescriptive rules that must be followed in undertaking a valuation for equitisation purposes and civil and criminal consequences may arise if these rules are not complied with. In practice, there may be differences in price expectations due to the range of results that different valuation methodologies can yield.

› PRACTICAL TIPS FOR FOREIGN INVESTORS

In our experience, in order to be successful in the equitisation process, it is important for foreign investors to find the right target with a management team that is genuinely looking for changes in the way they do business and sees the foreign investor as someone that is going to help bring about these changes.

Foreign investors should try to get involved early on in the equitisation process to make representations to the valuers and impact the valuation process, which will be the key for the subsequent determination on price. It is also advisable to agree on technology transfer and management control with the target company upfront in a term sheet to avoid unnecessary gaps in expectations that may arise at a later stage.

The organisational structure of the target company and its control by the State should also be studied carefully to identify the decision makers both within and outside the company and to focus the negotiation process on them.

➤ ALLENS' EQUITISATION AND RELATED EXPERIENCE

Our Vietnam practice is focused on cross-border deals for major foreign investors, including corporates and private equity funds. Our experience spans a broad range of sectors, including energy and natural resources, financial services (including banking, insurance and consumer finance), manufacturing, pharmaceuticals, consumer goods and real estate.

We have experience in the equitisation process, having acted for both the Government and foreign investors on major equitisations.

Our recent M&A experience includes:

- **Gazprom** – on its proposed acquisition of an interest in Vietnam's existing Dung Quat refinery.
- **Bao Viet & the Government of Vietnam** – on the equitisation of the leading insurance company in Vietnam, Bao Viet, including on the sale of a strategic stake to HSBC.
- **Talanx** – on its acquisition of a significant minority interest in leading non-life insurance company, PVI Insurance.
- **Vimpelcom** – on increasing its interest in Gtel-Mobile (then operating as Beeline) and the subsequent divestment of its interest in the joint venture.
- **GE** – advised on its proposed participation in the equitisation of Vietcombank and advice on other acquisitions.
- **PepsiCo** – on the disposal of 51% of their Vietnam beverage business to Japan's Suntory.
- **Commonwealth Bank of Australia** – on its acquisition of a 20% stake in Vietnam International Bank and strategic cooperation.
- **Insurance Australia Group** – on its acquisition of its interest in leading non-life insurance company, AAA Assurance.
- **Abbott Pharmaceuticals** – on its acquisition of 100% of Glomed Pharmaceutical Co., Inc. and on its move to a majority stake in Domesco (which is the first listed company to have a majority foreign investor). Glomed and Domesco are both leading Vietnamese pharmaceutical companies and, as a result of these transactions, Abbott is now one of the top 10 pharmaceutical manufacturers in Vietnam.
- **AXA** – on its strategic investment in leading non-life insurer, Bao Minh Insurance.
- **TCC Corporation** – on its proposed acquisition of the Big C retail business in Vietnam from France's Casino Group.

➤ WANT TO LEARN MORE?

Allens will continue to monitor the equitisation opportunities emerging in Vietnam. If you would like to discuss these opportunities and how we can assist, please get in touch with:



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