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# Decision 55/2009/Qd-TTg - New Regulations On Foreign Ownership Of Vietnamese Companies

As of 1 June 2009, foreign ownership limits in public companies will be capped at 49%. The Prime Minister of Vietnam has signed Decision 55/2009/QD-TTg ("Decision 55"), dated 15 April 2009, on Foreign Ownership Limits ("FOLs") for portfolio investments in the Vietnamese securities market. Decision 55 sets out foreign investors' participation rates in Vietnam's securities market.

A copy of Decision 55 (English) may be viewed at (site not currently available):
https://www.nationalncs.com/pub/Decision%2055\_3e4ec9351fb06265dfd4943fc1ff53c6.pdf

Under Decision 55, 'foreign investors' includes:

* organisations established and operating under foreign laws with subsidiaries in foreign countries and in Vietnam;
* organisations established and operating in Vietnam with over 49% foreign ownership; Investment funds and securities investment companies with over 49% foreign ownership;
* Foreign individuals without Vietnamese nationality residing in foreign countries or in Vietnam.

Should any excess in FOL arise from the new definition of foreign investors, a grandfather clause allows the affected foreign investors to maintain their current ownership proportion.

Decision 55, which comes into effect on 1 June 2009, will replace Decision 238/2005/QD-TTg ("Decision 238") of 29 September 2005.

Under the new Decision, the FOL threshold will be set at 49% for all public companies, both listed or unlisted. The following limits will apply to foreign investors purchasing and selling shares in Vietnam's securities market:

* No more than 49% of the total number of shares of a public joint stock company. Unless it is expressly provided in the specialised laws, the provisions of the specialised laws shall prevail. If the foreign parties' ownership ratios are classified according to the list of specific business lines, then the ownership ratios in the list of classification shall apply.
* No more than 49% of the total investment fund certificates of a public securities investment fund.
* No more than 49% of the charter capital of a public securities investment company.
* Limits may be set by bond issuers for the shareholding ratio for outstanding bonds.

Decision 238 only covers listed shares and shares egistered to trade on the securities exchange. A lower FOL threshold may be applicable to certain sectors if it is expressly provided in the specialised laws. It must also be noted that the threshold can also be adjusted either way if specific FOLs are included in Vietnam's commitments to enter the World Trade Organisation.

Under the local Securities Law, a public company is defined as follows:

*'A public company is a joint stock company under one of the following three types: (a) A company whose securities have been offered to the public; (b) A company whose securities have been listed in the Stock Exchange or Securities Trading Centre; (c) A company whose securities have been owned by at least 100 investors, excluding professional securities investors, and whose contributed charter capital is VND10 billion or more.'*

The public offering of securities is conducted through one of the following methods:

* mass media, including the Internet;
* offering of securities to 100 investors or more, excluding professional securities investors; or
* offering to an unspecified number of investors.

Professional securities investors under Decision 55 include commercial banks, finance companies, finance leasing companies, insurance companies and securities trading organisations.

Local investment vehicles, such as public investment funds and public securities investment companies fall under the supervision of Vietnam's State Securities Commission and are allowed to offer their shares or units to the public.

The State Securities Commission has confirmed that Decision 55 shall prevail over Decision 36/2003/WD-TTg, dated 11 March 2003, which states that the FOL for unlisted public companies shall be 30% of the chartered capital of the Vietnamese enterprise. Effective as of 1 June 2009, the FOL for unlisted public companies shall be 49% of the total shares.

Decision 55 provides clarification when determining whether foreign-invested local investment funds should be treated as local investors. However, the Decision only deals with foreign investors' capital contributions and it is still unclear whether foreigners are allowed to purchase existing shares from existing shareholders in securities companies or fund management companies.

It is anticipated that the Minister of Finance will provide guidelines for the implementation of Decision 55.

*This note contains a summary only of information included in 'Decision 55/2009/QD-TTg' and its contents do not constitute legal advice. Charltons is qualified to advise only as to matters of Hong Kong law.*

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