

Client Alert

August 2011

New Rules to Improve the Equitization Process

Decree No. 59 sets out new rules on equitization in Vietnam in an attempt to overcome previous problems with the process. The most important change in this regard is the ability to de-link the pricing for a strategic investor for the public auction price.

New Rules in Decree No. 59

Under Decree No. 59/2011/ND-CP, which replaces Decree No. 109/2007/ND-CP from 5 September 2011, the price of shares sold to strategic investors is determined according to the following principles:

- When selling shares to strategic investors after the public auction, the Steering Committee for Equitization negotiates the price directly with strategic investors under the condition that the price must not be less than the lowest successful price at the public auction.
- In the event of a direct negotiation or an auction between strategic investors who register to purchase prior to the public auction, the price is negotiated between parties or the final price of the auction (in the event that the auction is carried out) with the condition that the price must not be less than the initial price approved by the competent authority responsible for determining the equitization plan.

These new rules provided welcome changes to several problems that arose under Decree No. 109. Under Decree No. 109, the price of shares sold to a foreign strategic investor was not permitted to be lower than the average successful public auction price, and the foreign strategic investor deal could only be finalized after the conclusion of the public auction. First, where a foreign strategic investor is selected after the public auction, the price has been reduced to the lowest successful price, rather than the average successful price.

Decree No. 59, however, goes beyond this, and now provides for the possibility of the strategic investor sale to be de-linked from the public auction, and the possibility that a strategic investor sale may be conducted prior to the public auction with the pricing determined independently from the private auction price. These changes should allow for a more efficient selection of strategic investors, which if announced prior to the public auction should provide additional comfort for retail investors as to the future of the equitizing enterprise.

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Greater Restrictions on Strategic Investors

While Decree No. 59 allows a more flexible process in the sale to a strategic investor, it places greater restrictions and responsibilities on the part of the strategic investor. Decree No. 59 limits the number of strategic investors to a maximum of three. Further, under Decree No. 59, the lock-up period during which a strategic investor is restricted from transferring its shares is five years, compared to the three years previously set forth under Decree No. 109.

Decree No. 59 also clarifies the previous requirement that 'a strategic investor assist the equitizing enterprise in technology, finance, management, raw materials, and so on' means that the strategic investor must provide a written commitment with regard to such assistance, although it does not clarify other conditions in relation to such a commitment.

Conclusion

The changes to the rules on selection of strategic investors clearly shows an appreciation of the reasons for previously failed equitizations. Although the new rules do not resolve every issue, it appears that the major hurdles have been addressed, and that a smoother equitization process may be possible going forward.

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