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New provisions of equitisation issue

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New regulations on equitisation were recently enacted under the governmental decree number 109/2007/ND-CP dated June 26, 2007. In Vietnam, equitisation refers to a process of converting state-owned enterprises (SOEs) into private companies, a term which is generally understood as privatisation in western regions. Here we explore some issues of the new legislation, which is linked with a further attempt to boost the competitive edge of the SOEs in the context of Vietnam's accession to the WTO and the eventful development of Vietnam's security market.

More SOEs under the list, foreign strategic investors recognised

The first stronger action to expedite the equitisation process is to expand the list of SOEs to be equitised. All state-owned corporations, parent companies of economic groups, holding companies of parent-subsidiary consortiums and limited liability companies with 100 percent state equity are added to the list, provided that such SOEs are not obliged to fully retain state capital. At the other end of the spectrum, foreign investors are for the first time officially recognised to be able to strategically partner with the equitised SOEs. This is a practical move to encourage further foreign investment to areas in need of capital, experience and power resources (e.g., finance, banking and insurance sectors) to participate earlier in the restructuring and management of an enterprise.

Stricter provision on evaluation of SOEs

More scrutinised measures are introduced to ensure the accurate and fair evaluation of state assets, especially with respect to the land use rights of a state-owned enterprise. The equitised SOE is required to formulate the plan for all land areas under its current use, and then submit it for the consideration and decision of the competent authority.

During the equitisation process the SOE, which was allocated with the land and requested to convert it to land lease regime, must complete all procedures of conversion of land use regime before officially converting to a joint stock company. The value of land use rights shall be added to the value of the enterprise in accordance with the price set by the provincial and municipal authorities. If the enterprise leases the land on the annually paid term, the land value shall not be counted towards the enterprise's value. In the event that the rental has been paid for the entire lease duration, such amount shall be accounted to the value of the enterprise. In addition, the advantage of the geographical location, the brand strength and the potential development of an equitised enterprise will also be evaluated. These regulations shall give investors better assessment of the real value of the enterprises in which they invest.

Additional forms of first share sales

Decree 109 provides for two more methods for the first share sales, namely underwriting and direct negotiation in addition to the usual public auction. If the value of shares offered exceeds 10 billion dong, the auctions will take place at stock exchanges or securities trading centers; if not, this will be held at intermediary financial organisations. However, the equitised SOE might also bring the sale of shares with value less than 10 billion dong to the stock exchanges or securities trading centers, provided that it has the prior written consent of the authority who decided on such equitisation.

Price of purchased shares

The significant note under Decree 109 is the abolition of the regime to offer strategic investors a 20 percent reduction to the average winning price, which was stipulated in the defunct Decree 187. Henceforth, the purchase price shall not be lower than the average winning bidding price.

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