

FRASERS LEGAL ALERT

Equitisation of Vietnam oil and gas, and energy sectors SOEs

The Prime Minister recently issued three Decisions approving the equitisation plans of several state-owned enterprises in oil and gas, and energy sectors.

Specifically, on 8 December 2017, Decision No. 1979/QD-TTg approving the equitisation plan for PetroVietnam Oil Corporation (**PVOil**) and Decision No. 1977/QD-TTg approving the equitisation plan for PetroVietnam Power Corporation (**PVPower**) were adopted. Later, on 27 December 2017, Decision No. 2100/QD-TTg approving the equitisation plan for Power Generation Joint Stock Corporation 3 (**EVN Genco 3**) was adopted.

These Decisions clarify a number of issues in relation to each equitisation plan, including, among others, the form of equitisation, the charter capital of the company after equitisation, the charter capital structure after equitisation, the foreign ownership cap, the timing and starting price for the public offer, the timing, period and price for the sale to strategic investor(s), and the authority responsible for the selection of strategic investor(s).

Equitisation of state-owned enterprises is governed by Decree No. 126/2017/ND-CP dated 16 November 2017 on the equitisation of State-owned Enterprises having 100% equity owned by the State (**Decree No. 126**). As of 1 January 2018 Decree No. 126 replaced the earlier Decree No. 59/2011/ND-CP dated 18 July 2011 and all of its amendments governing the same topic (**Decree No. 59**). Our legal alert on Decree No. 126 is available at [Legal Alert - New Decree on Equitisation](#).

The transitional clause under Decree No. 126 provides that if a decision on an equitisation plan was adopted prior to the effective date of Decree No. 126, the equitisation shall nevertheless be implemented in accordance with such decision (and any laws and regulations as referred to in such decision).

The above decisions were all adopted during December 2017, meaning that the implementation of these equitisation plans must comply with the requirements specified in both Decree No. 126 and the earlier Decree No. 59. A summary of the key points under these equitisation approvals are set out in the table below.

| No | Issues | PVPower | PVOil | EVN Genco 3 |
|----|---|--|----------------------------|--|
| 1. | Form of equitisation | Divestment of state capital from the charter capital of the company | | State capital in the company remains the same, and issuance of shares to increase capital. |
| 2. | Charter capital after equitisation | 23,418,716,000,000 VND | 10,342,295,000,000 VND | 20,809,000,000,000 VND |
| 3. | Par value per shares | 10,000 VND | 10,000 VND | 10,000 VND |
| 4. | Charter capital structure after equitisation: | | | |
| | (i) State-owned | 51% held by PetroVietnam until end of 2025 <i>However, from 2019: if PetroVietnam enters into debt restructuring, PetroVietnam is obliged to divest the state capital to less than 50%.</i> | 35.1% held by PetroVietnam | 51% held by EVN until end of 2019 <i>From 2020: EVN is considering to divest further if EVN enters into debt restructuring.</i> |
| | (ii) Strategic investor(s) | 28.882% | 44.72% | 36% |
| | (iii) Public offer | 20% | 20% | 12.8355% |
| | (iv) Employees | 0.118% | 0.18% | 0.1645% |
| 5. | Foreign ownership cap | Not specified | 49% | Not specified |

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|-----|--|--|------------------|-------------------------------|
| 6. | Timing for public offer | 31 January 2018 | 25 January 2018 | 9 February 2018 |
| 7. | Starting price for public offer | 14.400 VND/share | 13.400 VND/share | 24.600 VND/share |
| 8. | Timing for sale to strategic investor(s) | <p>Not clearly specified.</p> <p><i>Note: Under Decree No. 59, the sale to strategic investor(s) can be conducted either before or after the public offer.</i></p> <p><i>However, under Decree No. 126:</i></p> <ul style="list-style-type: none"> - <i>the selection of strategic investor(s) and the organisation of registration of strategic investor(s) must be conducted <u>before</u> the public offer, but</i> - <i>the determination of price and actual sale to strategic investor(s) must be performed <u>after</u> the public offer.</i> | | <u>After</u> the public offer |
| 9. | Period for sale to strategic investor(s) | <p>In accordance with Decree No. 59 (<i>i.e. within 3 months from the date of the respective approval decisions</i>).</p> <p>If the sale cannot be completed within 3 months, the Ministry of Industry and Trade (MOIT) must report to the Prime Minister for further decisions.</p> | | |
| 10. | Price for sale to strategic investor(s) | <p>In accordance with the prevailing legislation at the time of the sale.</p> <ul style="list-style-type: none"> - <i>If the sale is conducted before 31 December 2017: In accordance with Decree No. 59, the purchase price paid by the qualified strategic investor(s) must be either of the following:</i> <ul style="list-style-type: none"> (i) <i>If the sale to strategic investors is conducted before the public offer: at a negotiable price (in the case of one</i> | | |

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| | | <p><i>strategic investor), or at the successful bid price (in the case of auctioning amongst strategic investors), but in any case not less than the starting price of the public offer as approved in the Decision for equitisation; or</i></p> <p><i>(ii) If the sale to strategic investors is conducted after the public offer: The price of the sale to strategic investors shall be no less than the <u>minimum</u> bid price of the public offer.</i></p> <p><i>– If the sale is conducted after 1 January 2018: In accordance with Decree No. 126, the purchase price paid by the qualified strategic investor(s) must in no case be less than the <u>average</u> successful bid price of the public offer.</i></p> | | |
| 11. | Authority responsible for selection of strategic investor(s) | Vietnam Oil and Gas Group (PVN) shall select and negotiate with strategic investor(s), and report to the MOIT and Prime Minister | PVN shall select and negotiate with strategic investor(s), and report to the MOIT and Prime Minister | Vietnam Electricity Corporation (EVN) shall select and negotiate with strategic investor(s), and report to the MOIT and Prime Minister |
| 12. | Criteria for selection of strategic investor(s) include, among others: | <ul style="list-style-type: none"> – Profitable during the last 2 years; no accumulated losses; – Long-term commitment; not transferring the shares held by the strategic investors within 5 years since the Enterprise Registration Certificate (ERC) issuance date; – Investors with experience in power or technology | <ul style="list-style-type: none"> – Equity under the most recent Financial Statements at a minimum of 2,000 billion VND; profitable during the last 2 years; no accumulated losses; and – Written commitments by authorised persons to: <ul style="list-style-type: none"> (i) maintain the main business activities of the equitised company for at least 10 years; (ii) not transfer the shares held by the strategic investors within 10 years since ERC issuance; (iii) provide support to PVOil on technology transfer, high | Not specified, subject to the MOIT's decision. |

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| | | <p>sectors related to power production and trading; or financial capacity to support upcoming power projects of PVPower, shall be prioritised; and</p> <p>– Investors undertaking to vote in favour of the transfer of power plants from PVN to PVPower (if any) shall be prioritised.</p> | <p>resources, corporate governance, etc.;</p> <p>(iv) allow PVOil to continue to purchase products manufactured by Nghi Son and Binh Son Refinery Companies for at least 10 years from equitisation, at the market price and in accordance with specified minimum outputs; and</p> <p>(v) be willing to deposit up to 20% of the total value of total registered shares.</p> <p><i>Note: Specifically for foreign investor(s), there is a requirement that such investor has invested or has committed to invest in oil refinery projects in Vietnam.</i></p> | |
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Previous related Alerts and Newsletters which you may find of interest:

A legal alert on Decree No. 126 is available at [Legal Alert - New Decree on Equitisation](#).

Other publications are also available on our website at <http://www.frasersvn.com>.

We trust that you find this legal alert an interesting read and welcome any feedback or comments you may have on any of our topics. Our address for comments is legalenquiries@frasersvn.com.

Ho Chi Minh City

Unit 1501, 15th Floor, The Metropolitan
235 Dong Khoi Street, District 1
Ho Chi Minh City, Vietnam
Tel: +84 28 3824 2733

Email: legalenquiries@frasersvn.com

Hanoi

Unit 1205, 12th Floor, Pacific Place
83B Ly Thuong Kiet Street, Hoan Kiem District
Hanoi, Vietnam
Tel: +84 24 3946 1203

Website: www.frasersvn.com

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