# SOME RECOMMENDATIONS BY CAPITAL MARKET WORKING GROUP

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As a macro-policy consideration, Vietnam now has capital markets. However, they are not yet functioning efficiently (very little capital raised vs FDI).

In our view, the solution is to increase both scale and liquidity of the capital markets.

For that solution, we wish to make the following comments and suggestions:

## 1. <u>Clarify and streamline the environment for Foreign Ownership Limit opening</u>

a. Although the Government passed Decree 60/2015/ND-CP to increase foreign ownership limits (FOL) in public companies, the impact of this decree on the stock market has been very limited;
b. The current procedures for public companies to increase FOL are very complicated and on a case-by-case basis. Public companies have to go through a very expensive process, including hiring consultants, lawyers, to have FOL increased;

c. To attract a new flow of foreign capital to the stock market and also to the newly privatised SoEs, Vietnam should clarify and streamline the environment for foreign ownership limit opening as follows:
   - make a clear distinction between the scope of the Law on Investments and the scope of the Law on Securities by clearly stipulating that the Law on Investments do not apply to public companies and public investment funds;

   - allow 100% foreign ownership in public companies except where the Vietnamese laws or international agreements, to which Vietnam is a party, **specifically** and **clearly** provide for a lower foreign ownership;

   - treat all public companies and public investment funds as local entities regardless of foreign ownership in those companies and funds except where the Vietnamese laws or international agreements, to which Vietnam is a party, **specifically** and **clearly** provide for a lower foreign ownership;

   - for the time being, the government (State Securities Commission and the Ministry for Finance) should just release a list of sectors/public companies that are still subject 49% FOL restrictions. Any other sectors/public companies, which are not on that list, will be eligible for up to 100% FOL; and

   - increase the foreign ownership limit in the banking sector as follows:

     a. for banks, which the State is still a majority shareholder: 35% FOL;

     b. for private banks: 49% FOL; and

     c. for banks, which have been bought by the State Bank of Vietnam for zero: 100% FOL.

## 2. Clarify the privatisation timetable and force privatised companies to abide by the listing calendar, and apply a book building process to privatisation

The Government's most recent announcement on its divestments in large SoEs was positive news. However, for a more accessible and liquid stock market for Vietnam, we suggest as follows:

***Auction***

a. clarify and publicly publish the privatisation timetable, including names of SoEs to be privatised and estimated time frames for privatization of those SoE;

b. offer to sell off at least 20%-30% of an SoE;

c. force privatised companies to strictly abibe by the listing calendar and listing procedures for UPCOM, Hanoi Stock Exchange (**HSX**) and Ho Chi Minh Stock (**HOSE**) Exchange as clearly stated in Decision 51/2014/QD-TTg, Decree 60/2015/ND-CP and Circular 180/2015/TT-BTC;

   (in our view, listing on UPOM, HSX or HOSE will remove career concerns among government officials on pricing for SoEs to be privatised).

d. increase the fine for violating of the listing calendar and listing procedures to 10% of the net profit of the violating company;

e. make the chairperson and all members of the board of management of the violating company be personally accountable and responsible for the company's violation of the listing calendar and listing procedures; and

f. consider a schedule for permanently removing UPCOM and OTC, and for companies go directly onto Hanoi or Ho Chi Minh City Stock Exchange (for example in 3 years from now).

***Book building process***

Apply a book building process to selected large SoEs to be privatised;

## 3. Pension Funds

We understand that the Government passed a new decree on voluntary pension funds in July 2016. However, fund managers in Vietnam have now been waiting for 3 more months for guidelines on this decree and will then need to go through a long licensing process to set up the funds. As a result, we urge the Government to immediately complete the legal framework for pension funds.

We note that tax incentives applicable to contributions to the funds, which are key factors affecting the success of the voluntary pension funds, are inadequate. We consider that the existing tax policy does not provide enough incentives for employees and employers to participate in a voluntary pension scheme. We have discussed this issue with the Ministry of Finance, and expect that the relevant tax regulations will be amended to address this matter.

## 4. <u>Increase fines for breach of corporate governance rules of public companies</u>

In our view, fines for breach of listed companies' corporate governance rules are insufficient. For example, a fine of VND50 mil for breaches of both conflict of interest and related parties transaction rules for a director of a listed company is too light.

We recommend that the Government increase fines for breach of corporate governance rules of public companies to the higher of VND100 mil or 10% of the value of the transaction or matter in breach.