

How to Buy Sabeco Shares

28 September 2016

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The Saigon Beer Alcohol Beverage Corporation (**Sabeco**), Vietnam's top beer producer, is proposing to list on the Ho Chi Minh City Stock Exchange (**HOSE**) in anticipation for the State to sell its 89.59% interest in Sabeco for a reported amount of USD1.8 billion.

This briefing sets out how investors can participate in the acquisition and the various legal and regulatory issues that may arise.

This briefing is not legal advice and investors should consult their lawyer accordingly.



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Due Diligence

The principal disclosure document for investors will be the listing prospectus of Sabeco prepared by a securities firm. Sabeco must use the form of prospectus for listing prescribed by the Ministry of Finance. The State Securities Commission ("**SSC**"), which regulates securities offerings, will oversee matters disclosed to ensure that the prospectus contains information set out in the general form. There is no general rule on misrepresentations and there are no continuous disclosure requirements in Vietnam. Therefore, boards in Vietnam are not subject to the same rigour of information disclosure as in developed jurisdictions. There has not been any shareholder action in relation to prospectus disclosures in Vietnam. Further, it will be a challenge for a substantial investor to obtain from the Government certain warranties in relation to information disclosed for the sale. If a strategic investor is to be supplied with information outside the prospectus then a cleansing process should be established to comply with insider trading laws.

Foreign Ownership

Foreign ownership restrictions in Vietnam are based on the business lines carried on by a company. Sabeco has over 23 subsidiaries and has over 20 registered business lines. In addition to beer, wine and spirits manufacturing and trading, Sabeco carries on restaurant and hotel business, road and waterway transportation services, logistics and warehouse services, construction and real estate services and mechanical installation services.

On its face the foreign ownership for Sabeco should be capped at 49% of the capital of Sabeco unless Sabeco removes the conditional business lines that limit foreign ownership. Foreign ownership of 100% is possible if Sabeco only manufactures alcohol and other beverages and distributes the products on a wholesale basis. The general meeting of shareholders can approve an enlarged foreign shareholding. The SSC will also need to approve the enlarged foreign holding.

Governmental Approvals

The State's shareholding in Sabeco is being held by the Ministry of Industry and Trade ("**MOIT**"). Ordinarily the State's holding would be held by the State Capital Investment Corporation. However, for Sabeco this is directly held by the MOIT. There will be a number of approvals that must be obtained for the sale of the State's stake:

- The purchase price and strategic shareholder from the Prime Minister and the MOIT.
- If the acquisition is of 25% or more of the shares of Sabeco then a tender offer must be conducted by the purchaser. There are exemptions to the tender offer rule including if the transfer is approved by the shareholders.
- Competition law clearance for the acquisition is required if a strategic shareholder acquires a controlling interest of Sabeco.

About Asia Counsel

Asia Counsel is a dynamic international corporate and commercial law firm dedicated to serving clients in Vietnam. Our partners have over nine years of experience in working on complex and challenging matters in Vietnam. We are committed to helping clients achieve their business strategies and providing outstanding legal services.

If you have any questions on any of the items discussed above, please do not hesitate to contact us.

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The Government proposes to sell its 89.59% over two tranches: 53.59% in 2016 and 36% in 2017. Heineken through its subsidiary holds about 5% of Sabeco and is currently the only foreign shareholder in Sabeco. If a strategic shareholder is acquiring a substantial interest of Sabeco then the list of matters below are important considerations.

- According to the charter of Sabeco, ordinary shareholder resolutions are passed with a majority of 51% or more of the total voting shares of Sabeco. Special shareholder resolutions are passed with a voting threshold of at least 65%. It is possible for a strategic shareholder to enter into a shareholders agreement in order to pass certain matters with assistance from other shareholders.
- The board of management of Sabeco comprises seven board members and appointed by the shareholders for a term of five years. Board resolutions are passed if more than 50% of the members agree to the resolutions.
- There are two legal representatives of Sabeco who have the power to bind the company. These are the chairman and general director of Sabeco.
- The supervisory board is a body appointed by the shareholders to monitor compliance by the board of management and officers of Sabeco to ensure that they comply with the resolutions of shareholders and law.

Pricing

The laws on management of State asset prescribes how State assets are sold. According to the laws, shares held by the State in a listed company may be sold on the stock exchange under the normal way by the put through or order matching methods.

The MOIT announced in September 2016 that Sabeco will list on the Ho Chi Minh City Stock Exchange ("**HOSE**"). This gives the MOIT flexibility in the way that the shares may be sold. News reports provide that there will be a proportion of shares that will be sold by way of an auction process conducted by HOSE for retail investors. A substantial number of shares will be sold to a strategic shareholder and this will be done pursuant to a negotiated sale under a share sale and purchase agreement.

The State asset management laws also prescribe that the sale price for the Sabeco shares listed on HOSE must be within the price fluctuation band on the assignment date. On HOSE, the price fluctuation band is +/- 7% of the reference share price which is normally the previous day closing price for the relevant shares.

The current price on the over-the-counter market for the Sabeco shares have been hovering around VND100,000 per share. Interestingly, the floor price for the Sabeco shares when it equitized in 2008 was VND70,000 per share. The law also provides that the share price of State owned shares cannot be lower than the book value of the shares calculated at the time of assignment.

How to Buy Sabeco Shares?

As the Sabeco shares will be listed on HOSE, investors wanting to buy Sabeco shares will need to open a securities trading account with a Vietnam licensed securities firm. For foreign investors, they will also need to obtain a securities trading code and open a VND indirect capital investment account with a Vietnamese commercial bank.

A strategic investor acquiring the shares under a sale and purchase agreement would likely complete the share purchase under a put through method following completion of the conditions precedent which would include the Government approvals above.

If the Sabeco share sale is conducted by way of auction, the auction will be managed by HOSE. Investors will need to register their interest in the auction with an authorized securities broker in Vietnam acting as an agent. The investor must deposit 10% of the total number of shares to be purchased multiplied by the floor price per share. The deposit must be paid to the securities agent at least five days before auction day. Shares will be allocated to investors in order of highest bids to the lowest bids (not lower than the floor price) until all shares are allocated. Investors who submit the same bid price will be allocated shares proportionally.

Successful bidders must pay the bid price within 10 days after the publication of the auction results. A failure to pay the bid price will mean the bidder will forfeit the deposit.

