Vietnam Investment Review

Revised decree vital for aviation M&A

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The Vietnamese government is considering revising Decree 92 to boost investment and increase development in aviation. Tom Treutler (left), managing director of Tilleke and Gibbins Vietnam, and John Frangos (right), head of Bangkok-based Tilleke and Gibbins' Aviation Practice Group, analyse the importance of the revisions for the future outlook of mergers and acquisitions in the sector.

Tremendous growth

Tom Treutler (left), managing director of Tilleke and Gibbins Vietnam, and John Frangos (right)

Since the investment boom in Vietnam that started around 1993, the country's airline industry has seen tremendous growth. For example, in 1993, only 20 international airlines were flying to Vietnam, and there were only about 20 international destinations one could fly to from the country. Fast forward to 2018, there are about 60 airlines flying to Vietnam, and you can fly to about 100 destinations.

Among the factors leading to strong development in the aviation industry is the geographical shape of Vietnam–with a long coastline and relatively large distances between destinations for business, tourism, and visiting family, air travel is preferrable. Furthermore, Vietnam is within very close flying distance of many prosperous Asian countries, and with its beautiful scenery, outstanding resorts, historical landmarks, and great weather, why would Vietnam not be set to become a number one tourism destination for persons in Japan, South Korea, China, Singapore, and so on? This is not to mention the increased flight demand due to the burgeoning economy of Vietnam, which will result in much higher demand for international and domestic business travel by both locals and foreigners.

Over the last few years, Vietnam has consistently achieved about 14-15 per cent growth in airline travellers to the country. 2017 saw about 13 million visitors to Vietnam (beating previous projections by three million visitors), and over three million trips abroad by Vietnamese people. Growth in tourism has exceeded expectations, and by 2020, it is expected that international tourism will be double what was previously predicted.

Decree 92 on the aviation industry may be amended, including the minimum capital requirements, Photo: Le Toan

	Decree 92 (currently effective)		Draft amendments to Decree 92
	International air carriage	Domestic air carriage	
Up to 10 aircraft	VND700 billion ($30.5 million)	VND300 billion ($13 million)	VND700 billion ($30.5 million)
From 11 up to 30 aircraft	VND1 trillion ($43.5 million)	VND600 billion ($26 million)	VND1 trillion ($43.5 million)
Over 30 aircraft	VND1.3 trillion ($56.5 million)	VND700 billion ($30.5 million)	VND1.3 trillion ($56.5 million)

Breakthrough in regulations

Over the years, Vietnam has gradually improved its aviation regulations to encourage investment and development of the aviation sector. For example, with the 2016 issuance of Decree No.92/2016/ND-CP, which governs the conditions for investment and business in the aviation industry, several reforms were introduced to facilitate greater investment in the sector, namely:

- The licensing process for passenger carriage services was reduced from about nine months under the previous Decree No.30/2010/ND-CP on aircraft carriage business (which was partially replaced by Decree 92) to just 60 days under Decree 92;

- The approval authority for capital transfers for foreign investment in the sector was transferred from the prime minister to the minister of transport, to help facilitate quicker changes (only 10 days for approval) in investors and investment structures;

- More flexibility was given to the documentation that can be provided to prove financial capacity (two years' financial statements or a reference letter from a credit institution); and lState capital requirements were loosened in relation to airport business.

Nevertheless, the aviation sector still contains many regulatory and bureaucratic hurdles for potential new investors. For example, there are still 120 types of permits and over 25 types of approvals provided for in the various regulations related to the aviation industry.

Recognising that further liberalisation of the regulatory regime can boost investment and increase development in the sector, the Vietnamese government is considering revising Decree 92 just two years after it was issued. With more and more expansion in the industry, the regulatory framework must be updated.

In particular, Vietjet's prominence in the sector and quick growth changed the face of the industry. In 2012, Vietnam Airlines had 70 per cent domestic market share. Now its market share is only about 50-55 per cent, according to reports. New entrants are clamouring to join the market, such as Bamboo Airlines, the plan of which to fly in Vietnam is near full approval. Other established airlines may also undertake initial public offerings in the future to further raise capital. The international route market shares of major carriers from East Asia have been affected by new entrants in international carriage from the Middle East. The success of the new entrants in both the domestic and international routes has sent a signal that Vietnam presents great opportunities to new players in the market.

In response to these factors, the Vietnamese government has recently published draft amendments to Decree 92, as well as amendments to Decree 30. The new amendments will open up expanded opportunities for foreign investors in the aviation industry, but in one aspect will make it more difficult for new domestic entrants: increased capitalisation requirements. It is expected that the government will continue reviewing and possibly refining the draft for issuance in the near future. It is important for potential investors to review the proposed draft of amendments to Decree 92 because, notably, during the drafting process of that Decree 92 in 2016, despite several comments and suggestions for tweaking the draft, the draft decree was ultimately issued without significant change.

According to the draft amendments, the investment ceiling for foreign investment in an air carriage business enterprise will be raised to 49 per cent from the previous limitation of 30 per cent of the share capital. The largest shareholder will be required to be a Vietnamese company or individual. If the Vietnamese company or entity has foreign investment capital, the foreign capital may not exceed 49 per cent of the company's capital.

The new Vietnamese to foreign shareholder ownership ratio contemplated in the draft is generally in accordance with other Southeast Asian countries. For example, foreign ownership in Thai airlines is limited to 49 per cent. In both Indonesia and Malaysia, local investors must own more than 50 per cent. And in the Philippines, foreign investors are limited to less than 40 per cent ownership.

It is also proposed that there will no longer be a distinction between international and domestic-only carriers in determining minimum capital requirements. In comparison with Decree 92, the changes to minimum capital requirements can be summarised as seen in the table above.

Opening up foreign investment opportunities

The elimination of the differentiation in capital requirements between foreign and local airlines puts Vietnamese law in a similar position to Thailand, which also has no distinction. However, Thai minimum capital requirements are far lower, where scheduled operators are required to have a fully paid-up registered capital of at least THB200 million ($6 million), and charter operators must have paid-up registered capital of at least THB25 million ($753,000).

Other proposed amendments will also help liberalise investment. For example, the requirement that new airlines must be consistent with government master plans for the airline industry may be abolished. This change should reduce the steps in the application process and is one fewer regulatory hurdle. It is hoped that the new amendments can reduce the number of bodies involved in the approval process, for example by eliminating the step of initial pre-approval by the prime minister on the nvestment project. Other improvements in the draft decree may simplify processes for share transfers (only registration required).

The proposed amendments to Decree 92 are also geared towards encouraging private investment in airports. Vietnam currently has nearly 25 commercial airports, with more than 10 of them international-ready, though only five or so are currently handling international direct flights. The government has announced plans for expansion of Tan Son Nhat International Airport in Ho Chi Minh City, as well as the major investment in a world-class international airport in Long Thanh, relatively close to Ho Chi Minh City. Hanoi and Danang's airports have recently been upgraded significantly. Many regional airports servicing international flights, such as Cam Ranh near Nha Trang, are already attracting private investment. Under the proposed amendments to Decree 92, an airport enterprise, whether establishing and maintaining a domestic or international airport, is only required to have minimum capital of VND200 billion ($8.85 million).

The draft amendments to Decree 92 are indicative of Vietnam’s overall revamping of its aviation regulatory framework. In addition to Decree 92, the Vietnamese government has been considering amendments to Decree No.68/2015/ND-CP governing aircraft registration and rights over aircraft. Decree 68 provides domestic enforcement of the Convention on International Interests in Mobile Equipment (known as the Cape Town Convention), providing aircraft lessors and financiers greater security rights over their assets.

The new draft amendments to Vietnam’s aviation regulations show that the government is seeking to encourage more foreign investment to meet the country’s rapidly growing air transportation demands.

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