

Relaxation of restrictions on share transfer by the founding shareholders under the new enterprise law of Vietnam



By Pham Van Loi

One of the notable points of the new law on enterprises, dated November 26, 2014 (Law on Enterprise 2014), is the relaxation of restrictions on the founding shareholders' ordinary shares during the period of three years from the initial establishment date of the joint stock company (the Lock-up Period).

Both the old law on enterprises (Law on Enterprise 2005) and Law on Enterprise 2014 regulate that a founding shareholder may freely transfer their ordinary shares to other founding shareholders. However, within the Lock-up Period they are restricted from transferring their ordinary shares to persons not being the founding shareholder unless obtaining approval from the General Meeting of Shareholders (the GMS). Under the Law on Enterprise 2005, such transferee shall automatically become a founding shareholder whilst the Law on Enterprise 2014 has removed such regulation. As a consequence, such transferee shall not be regarded as a founding shareholder, and when re-selling those shares to others within the Lock-up Period, shall not be subject to the aforesaid restriction.

According to Article 119.4 of the Law on Enterprise 2014, all restrictions on ordinary shares of founding shareholders shall be lifted after expiry of the Lock-up Period. Such restrictions shall not apply in the following circumstances:

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1.1. Additional shares which the founding shareholders have after the establishment date of the company

It is hypothesised that on the date of establishing a joint stock company (JSC), A – a founding shareholder – holds 10,000 shares of the JSC. Within the Lock-up Period, A has additional 5,000 shares. Under Article 119.4, Law on Enterprise 2014, those 5,000 shares will be outside the purview of the said transfer restriction. In other words, A may freely re-sell those 5,000 shares to persons not being the founding shareholders of the JSC.

1.2. Shares which the founding shareholders transfer to persons not being the founding shareholders of the company

Under the Law on Enterprise 2014, if A, a founding shareholder, may obtain approval of the GMS and duly transfer his/her 5,000 ordinary shares within the Lock-up Period to B, a non-founding shareholder of the company, B shall not become the founding shareholder of the company as mentioned above. Therefore B may, even within the Lock-up Period, freely transfer those 5,000 shares to any other person.

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