

# Practical Legal and Tax Tips for Vietnam M&A

I prepared this paper as I celebrate two decades of practicing law as a foreign lawyer in Vietnam. It aims to provide practical legal and tax tips for M&A transactions in Vietnam, highlighting some key transactional trends and sector-specific considerations.

Vietnam's M&A landscape has evolved significantly over the past two decades, driven by economic growth, regulatory changes, and increasing foreign investment. As a transactional lawyer, I have witnessed these transformations firsthand.

My passion for making M&A deals successful for our clients stems from the profound impact these transactions can have on their business growth and strategic goals.

Over the years, our team has serviced hundreds of M&A deals, each presenting unique challenges and opportunities. This extensive experience gives us a deep understanding of the technicalities involved in M&A transactions, as well as the commercial implications for various sectors.

We believe sharing our insights and experience is valuable because it helps clients navigate the complexities of the M&A landscape, ensuring that they make informed decisions that align with their long-term objectives. By providing practical legal and tax tips, we aim to empower clients and stakeholders with the tools they need to achieve successful outcomes in their M&A endeavors.



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# Understanding the Vietnam M&A Landscape

Vietnam's M&A market has seen robust activity, particularly in sectors such as manufacturing, real estate, consumer goods, and technology. Despite a challenging post-Covid environment, the country recorded USD 3.2 billion worth of M&A transactions across 96 deals during the first 9 months of 2024, an increase of 46% compared to the same period in 2023. Nearly USD 2.3 billion of Private Equity and Venture Capital money was deployed across 141 deals during the full year 2024.

The government's commitment to economic reforms and integration into global trade networks has made Vietnam an attractive destination for foreign investors. However, navigating the legal and tax landscape requires a deep understanding of local regulations and commercial implications.

Vietnam's economic growth has been a major driver of M&A activity. The country's GDP has consistently grown at an impressive rate – 6% yearly on average for the last decade, attracting foreign investors looking to capitalize on Vietnam's young, well-trained workforce and the expanding market. Additionally, Vietnam's strategic location in Southeast Asia makes it a gateway to other ASEAN countries, further enhancing its appeal.

The regulatory environment in Vietnam has also undergone significant changes over the period, and is announcing more to come in an attempt to streamline further the investment bureaucracy and improve Vietnam's attractiveness. The government has implemented various reforms to

improve the business climate and attract foreign investment. These reforms include the simplification of administrative procedures, the reduction of restrictions on foreign ownership, and the enhancement of transparency in the legal system. As a result, foreign investors are now more confident in entering the Vietnamese market.

## Legal Considerations for Vietnam M&A

**1. Regulatory Framework:** Vietnam's legal framework for M&A transactions is governed by various laws, including the Law on Enterprises, the Law on Investment, and the Competition Law. Understanding these regulations is crucial for ensuring compliance and smooth execution of transactions.

The Law on Enterprises provides the foundation for corporate governance and the establishment of businesses in Vietnam. It outlines the procedures for setting up different types of enterprises, including limited liability companies, joint-stock companies, and partnerships. The Law on Investment, on the other hand, regulates foreign investment activities and provides guidelines for investment incentives and protection.

The Competition Law is another important piece of legislation that affects M&A transactions. It aims to prevent anti-competitive practices and ensure fair competition in the market. Under this law, certain M&A transactions that may affect market competition require notification and

approval from the competition authorities. Understanding the thresholds and requirements for notification is crucial to avoid regulatory hurdles.

- 2. Due Diligence:** Conducting thorough due diligence is essential to identify potential risks and liabilities. This includes reviewing corporate documents, financial statements, contracts, intellectual property rights, and compliance with environmental and labor laws.

Due diligence is a critical step in the M&A process as it helps uncover any hidden issues that could impact the transaction. It involves a comprehensive review of the target company's financial health, legal compliance, and operational performance. Key areas to focus on during due diligence include:

- **Corporate Documents and Licenses:** Reviewing the target company's articles of incorporation, bylaws, shareholder agreements, and board resolutions to ensure compliance with corporate governance requirements, but also the necessary operation licenses, and the need for additional licenses in case the target becomes foreign invested as a result of the investment. Foreign investors into Vietnam are often surprised to discover that different authorities in different provinces have different views on the applicable requirements to a specific case. Hence consultations with local authorities is critical as part of this exercise.
- **Accounts and Financial Statements:** Analyzing the target company's financial statements, including balance sheets, income statements, and cash flow statements, to assess its financial stability and profitability. Irregularities are

frequent and some Vietnamese targets maintain several sets of accounts. In such situations, understanding the motives and the discrepancies is a necessity, but planning for ways to rectify prior or post completion is the most challenging task.

- **Contracts:** Examining the target company's contracts with suppliers, customers, employees, and other stakeholders to identify any potential liabilities or obligations. Here the role of lawyers is also to check the documentation against the reality of the business and most importantly the understanding of the proposed investor of how the target's business is structured and operates.
  - **Intellectual Property Rights:** Assessing the target company's intellectual property portfolio, including patents, trademarks, copyrights, and trade secrets, to ensure proper protection and ownership. While this is changing, Vietnamese companies have historically ignored the most basic IP protection rules. Due diligence can in some instances be a good forum for checking the target's practice against the proposed investor's expectations, as well as designing plans to improve compliance and adherence to international standards.
  - **Environmental and Labor Laws:** Evaluating the target company's compliance with environmental regulations and labor laws to identify any potential legal risks. Here also experience shows massive discrepancies of standards depending on the size, background and location of the targets and its owners.
- 3. Foreign Investment Restrictions:** Vietnam has specific regulations that restrict foreign

ownership in certain sectors deemed sensitive or strategic, which may force foreign investors to team up with a local partner. These sectors include telecommunications, banking, real estate, and media. In the telecommunications sector, for example, foreign ownership is limited to a maximum of 49% in certain types of telecommunications services. Similarly, in the banking sector, foreign ownership in Vietnamese banks is capped at 30%. Understanding these restrictions and structuring the transaction accordingly is crucial to ensure compliance with local regulations.

#### 4. **Contractual Protections and Enforcement:**

Drafting clear and comprehensive contracts is vital to protect the interests of both parties. Key provisions include representations and warranties, indemnities, covenants, and dispute resolution mechanisms. Contracts play a crucial role in M&A transactions as they define the rights and obligations of the parties involved.

The key provisions to include in M&A contracts are:

- **Representations and Warranties:** Statements made by the seller regarding the condition of the target company. These statements provide assurances to the buyer and can be used as a basis for indemnification if they are found to be false.
- **Indemnities:** Provisions that require the seller to compensate the buyer for any losses or liabilities arising from breaches of representations and warranties or other specified events.
- **Covenants:** Promises made by the parties to perform certain actions or refrain from certain activities. These can include non-compete clauses, confidentiality

agreements, and obligations to obtain necessary approvals.

- **Dispute Resolution Mechanisms:** Procedures for resolving disputes that may arise during or after the transaction. Common mechanisms include arbitration, mediation, and litigation.

Designing an efficient strategy on enforcement is also key, as the best contract is useless if it is not respected and the most favorable court decision is vain if it is not enforced. This exercise must closely align with the selection of an adequate disputes resolution mechanism, it but requires adopting a much forward looking and practical approach.

- #### 5. **Competition Law Compliance:** Vietnam's Competition Law requires notification and approval for certain M&A transactions that may affect market competition. Understanding the thresholds and requirements for notification is crucial to avoid regulatory hurdles.

The Competition Law aims to prevent anti-competitive practices and ensure fair competition in the market. Under this law, certain M&A transactions that may affect market competition require notification and approval from the competition authorities. The thresholds for notification are based on factors such as market share, transaction value, and the nature of the transaction.

For example, if the combined market share of the parties involved in the transaction exceeds a certain threshold, the transaction may need to be notified to the competition authorities. Similarly, if the transaction value exceeds a specified amount, it may require approval. Understanding these thresholds and requirements including on timing, is crucial to avoid regulatory hurdles and ensure

compliance with the Competition Law, but also on the sequencing of the merger filing analysis and review with the remainder of the M&A transaction steps. It is critical to ascertain the current views of the competition regulators on any specific situation that is not clearly contemplated in the law, at the position of the competition authority can change over time. This has occurred on a number of subjects with the recent reshuffling of the administrative body implementing the competition law on merger controls.

## Tax Insights for Vietnam M&A

Advising efficiently on tax matters in Vietnam require stamina. Indeed the implementing regulations change often and the practice of the tax department on any specific matter often departs from a plain interpretation of the law. Our team of tax lawyers sit with our legal team. This has proven very efficient to spot issues early and deliver a truly integrated legal and tax assistance to our client. Below are some of the key tax considerations for Vietnam M&A.

**1. Capital Gains Tax:** Capital gains from the sale of shares or assets are subject to tax in Vietnam. Vietnam imposes a corporate income tax (CIT) rate of 20%, that applies to corporate sellers on their capital gains derived from sale of equity in Vietnamese companies. It is important to consider the tax implications of the transaction structure, such as asset acquisition versus share acquisition, and the potential for tax optimization.

Corporate income tax is a significant consideration in M&A transactions as it affects the overall tax liability of the parties involved.

When structuring the transaction, it is important to consider the tax implications of asset acquisition versus share acquisition. In an asset acquisition, the buyer acquires specific assets and liabilities of the target company, while in a share acquisition, the buyer acquires the shares of the target company. Each structure has different tax implications, and proper planning can help optimize the tax liability.

**2. Value Added Tax (VAT):** VAT is levied on the sale of goods and services in Vietnam. M&A transactions involving the transfer of assets may be subject to VAT. Understanding the VAT implications and potential exemptions is essential for accurate tax planning.

Value Added Tax (VAT) is another important consideration in M&A transactions. VAT is levied on the sale of goods and services in Vietnam at a standard rate of 10%. However, certain goods and services may be subject to reduced rates or exemptions.

M&A transactions involving the transfer of assets may be subject to VAT. For example, if the transaction involves the sale of tangible assets such as machinery or equipment, VAT may be applicable. Understanding the VAT implications and potential exemptions is essential for accurate tax planning and compliance.

**3. Transfer Pricing:** Vietnam has stringent transfer pricing regulations to prevent tax avoidance through related-party transactions. Ensuring compliance with transfer pricing rules and documentation requirements is crucial for avoiding penalties.

## Selected Sector Specific Insights

Transfer pricing regulations are designed to prevent tax avoidance through related-party transactions. These regulations require companies to conduct transactions with related parties at arm's length prices, similar to transactions with unrelated parties.

Ensuring compliance with transfer pricing rules and documentation requirements is crucial for avoiding penalties. This includes preparing transfer pricing documentation, conducting transfer pricing studies, and maintaining proper records of related-party transactions. A proper due diligence transfer pricing compliance before an acquisition is therefore key for both sellers and buyers, as is adopting a transitional post-closing transfer pricing strategy for the buyer.

- 4. Tax Incentives:** Vietnam offers various tax incentives to attract foreign investment, including tax holidays, reduced CIT rates, and exemptions for certain sectors. Identifying and leveraging these incentives can enhance the financial viability of the transaction.

Vietnam offers various tax incentives to attract foreign investment and promote economic development. These incentives include tax holidays, reduced CIT rates, and exemptions for certain sectors and regions.

Identifying and leveraging these incentives can enhance the financial viability of the transaction. For example, certain sectors such as high-tech industries, renewable energy, and agriculture may qualify for tax incentives. Similarly, investments in certain regions such as economic zones and industrial parks may be eligible for tax benefits. If the benefit of incentives has been claimed by the target, it is crucial to ensure any applicable conditions linked to the incentive have been respected.

- 1. Manufacturing:** The manufacturing sector in Vietnam has attracted significant foreign investment due to its competitive labor costs, strategic location, and favorable trade agreements. When engaging in M&A transactions within this sector, it is crucial to consider compliance with environmental regulations, labor laws, and intellectual property protection. Manufacturing companies often face stringent environmental standards, and ensuring compliance can mitigate risks associated with regulatory penalties. Additionally, labor laws in Vietnam mandate specific working conditions and employee benefits, which must be adhered to during the acquisition process. Intellectual property protection is vital to safeguard proprietary technologies and processes, which are often the backbone of manufacturing operations. Conducting thorough due diligence in these areas will help identify potential liabilities and ensure a smooth transaction.

- 2. Real Estate:** Real estate transactions in Vietnam require careful navigation of land use rights, zoning regulations, and foreign ownership restrictions. The legal framework governing property transfers and lease agreements is complex, and understanding these regulations is essential for successful M&A deals. Foreign investors must be aware of the limitations on land ownership and the need to obtain appropriate licenses and approvals. Zoning regulations can impact the development potential of acquired properties, and it is important to assess these

factors during due diligence. Additionally, real estate transactions often involve significant financial investments, making it crucial to structure deals in a tax-efficient manner. Proper planning and compliance with local laws will help mitigate risks and maximize the value of real estate acquisitions.

**3. Consumer Goods:** The consumer goods sector in Vietnam is characterized by rapid growth and evolving consumer preferences. M&A transactions in this sector should consider brand protection, distribution agreements, and compliance with consumer protection laws. Brand protection is essential to maintain the value and reputation of acquired brands, and it involves securing trademarks and addressing any potential infringements. Distribution agreements play a critical role in ensuring the efficient delivery of products to consumers, and reviewing these agreements during due diligence can help identify potential challenges. Compliance with consumer protection laws is vital to avoid legal issues and maintain consumer trust. Understanding market trends and consumer behavior will also provide valuable insights for strategic decision-making in M&A transactions within the consumer goods sector.

**4. Technology:** The technology sector in Vietnam is booming, driven by digital transformation and innovation. M&A transactions in this sector should focus on intellectual property rights, data protection regulations, and cybersecurity compliance. Intellectual property rights are crucial for technology companies, as they protect innovations and provide a competitive edge. Ensuring proper ownership and protection of

patents, trademarks, and copyrights is essential during the acquisition process. Data protection regulations in Vietnam are becoming increasingly stringent, and compliance is necessary to avoid legal penalties and protect consumer data. Cybersecurity compliance is also critical to safeguard against data breaches and cyber-attacks, which can have severe financial and reputational consequences. Conducting thorough due diligence in these areas will help identify potential risks and ensure a successful transaction in the technology sector.

**5. Education:** The education sector in Vietnam is experiencing rapid growth and transformation, driven by increasing demand for quality education and the government's focus on educational reforms. M&A transactions in this sector should consider regulatory compliance, accreditation standards, and intellectual property rights. Regulatory compliance is crucial, as educational institutions must adhere to specific guidelines set by the Ministry of Education and Training. Accreditation standards play a significant role in maintaining the credibility and reputation of educational institutions, and ensuring compliance with these standards is essential during the acquisition process. Intellectual property rights are also important, particularly for institutions with proprietary educational materials and technologies. Conducting thorough due diligence in these areas will help identify potential risks and ensure a successful transaction in the education sector.



Vietnam's M&A landscape offers significant opportunities for investors willing to enter or accelerate or reinforce their penetration of the market, but navigating the legal and tax complexities requires expertise and careful planning.

By understanding the regulatory framework, conducting thorough due diligence, and leveraging tax structures, investors can optimize their transactions and achieve successful outcomes.

Our team of seasoned corporate and tax lawyers will be instrumental in guiding through the intricacies and make our clients' transactions a success.