# THE MERGERS & ACQUISITIONS REVIEW

THIRTEENTH EDITION

**Editor**
Mark Zerdin

THE LAWREVIEWS

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# PREFACE

2018 was the year of the mega-deal, with an unprecedented number of big-ticket mergers taking place across a range of jurisdictions and sectors. In the first six months of 2018, global deal value rose by 59 per cent compared to 2017, despite volumes falling by 12 per cent. Although there was a considerable drop off in activity in the second half of the year, 2018 nonetheless saw robust overall performance by market participants, with global activity in 2018 exceeding US$3 trillion for the fifth consecutive year.

The United States remained the most targeted and acquisitive region globally in 2018; however, the deal-making landscape in the US for the remainder of 2019 presents a mixed picture. On the one hand, tax reform, a more relaxed US regulatory climate and growing cash reserves present a favourable environment for investors. On the other, dealmakers are likely to be concerned by the trade dispute between the US and China – which is already threatening economic growth and, at the time of writing, shows no sign of abating – and the ongoing uncertainty regarding antitrust policies, which may lead to increased scrutiny of M&A deals.

In Europe, after a record-breaking start to the year, the prolonged uncertainty caused by stuttering Brexit negotiations and wider political tensions across the continent finally caught up with dealmakers in the second half of 2018. In line with a softening of the global economy, the value of European deals in H2 plummeted to its lowest level since 2013, and the volume of transatlantic deals between North America and Europe also fell by 29 per cent year-on-year.

One of the main disruptors to M&A activity over the past 12 months has been the rise in political intervention in cross-border deals. In particular, concerns over national security have led to the tightening of foreign investment regimes and antitrust regulations, coupled with more active enforcement by regulators. This growth in protectionism is likely to remain one of the main obstacles facing dealmakers in the near future.

Nevertheless, looking forwards into the remainder of 2019, there is certainly cause for optimism: private equity continues to enjoy record-breaking levels of dry powder, and developments in technology are driving both the sector itself and the facilitation of deals more broadly. Finally, and perhaps most importantly, the past 12 months have highlighted the resilience of companies and private equity firms in their navigation of global political uncertainty and economic shifts.

I would like to thank the contributors for their support in producing the 13th edition of *The Mergers & Acquisitions Review*. I hope the commentary in the following 47 chapters will provide a richer understanding of the shape of the global markets, and the challenges and opportunities facing market participants.

**Mark Zerdin**
Slaughter and May
London
July 2019

Chapter 47

# VIETNAM

*Hikaru Oguchi, Taro Hirosawa and Ha Hoang Loc*[1]

## I OVERVIEW OF M&A ACTIVITY

According to the 2018 Annual Report of the Ministry of Planning and Investment,[2] there were a total of 6,496 acquisition and subscription deals by foreign investors registered nationwide with a total value of US$9.89 billion, which is a 59.8 per cent increase compared to 2017.

## II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

M&A activity has developed in Vietnam during the past 12 years following the government's issuance of a large number of new legal regimes, which was considered the government's preparation for Vietnam's official accession to the World Trade Organization (WTO) on 11 January 2007. However, there is no united legal platform for M&A activities, and investors need to consider the requirements, guidance and other information concerning the interpretation or practice regarding investments found in different pieces of legislation. The principal regulations for M&A activities may be classified under the following main categories:

*a* international treaties and agreements to which Vietnam is a contracting party include Vietnam's commitments to the WTO applicable to foreign investment into Vietnam from other state party investors, and other mutual agreements between Vietnam and a specific country or countries;

*b* general regulations, including the Civil Code 2015, which is the key general law regulating the 'legal status and standards for conduct of individuals and legal entities, the rights and obligations of individuals and legal entities in property and personal relations arising from relations established based on equality, freedom of will, independence of property and self-responsibility'. (Article 1 of the Civil Code 2015);

*c* the primary sources for regulating M&A activities are the Law on Enterprises 2014 (which governs the establishment, management, organisation and operation of enterprises) and the Law on Investment 2014 (which mainly focuses on investment activities within Vietnam);

*d* regulations on land, including the Law on Land 2013. Ownership of all land lies with the entire population, with the state acting as the representative owner. Therefore, no

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1 Hikaru Oguchi is the partner in charge of the Vietnam practice, Taro Hirosawa is a local partner and Ha Hoang Loc is a Vietnam partner at Nishimura & Asahi.

2 The 2018 Annual Report of the Foreign Investment Agency under the Ministry of Planning and Investment: http://fia.mpi.gov.vn/tinbai/6110/Tinh-hinh-thu-hut-Dau-tu-nuoc-ngoai-nam-2018.

enterprise, whether a domestic private enterprise, state-owned enterprise or foreign private enterprise, is the actual owner of the land. Investors may use land through a land use right;

*e* regulations on specialised business areas, which specifically govern the relevant investment businesses of investors in, for instance, the areas of finance, education, distribution or restaurant services;

*f* regulations applicable to public companies, including the Law on Securities 2006 (as amended in 2010) and its implementing decrees and circulars. In 2015, total foreign investment in a public company was relaxed by the government (see Section III. iii). According to Article 25 of the Law on Securities 2006, a public company is a joint-stock company that has already conducted the public offering of its shares, has its shares listed on the Stock Exchange or at the Securities Trading Centre, or has its shares owned by at least 100 investors, excluding professional securities investors, and has a contributed charter capital of 10 billion dong or more;

*g* regulations on competition, including the Laws on Competition 2004 and 2018 and their implementing decrees and circulars (Section IX on the Law on Competition); and

*h* regulations on other relevant matters, including foreign exchange management and labour.

Some parts of the above regulations are not sufficiently well developed, such as the overlapping and inconsistent regulations between the Law on Enterprises and the Law on Investment, as well as regulations on securities and on competition. In addition, similar to other new market economies, foreign restrictions still play an important part, and foreign investors should look at both domestic laws and international treaties, including bilateral and multilateral treaties, to understand the differences and decide the most appropriate type of M&A arrangement. In addition, if state-owned enterprises (SOEs) or state-owned capital are involved in the contemplated transactions, investors should also pay attention to the regulations applying to those SOEs or state-owned capital, which sometimes prolongs the closing of an M&A deal.

## III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT

### i The Law on Enterprises 2014 and the Law on Investment 2014

According to the old regime (before 1 July 2015), upon establishment, all companies, including domestic companies, had to be issued with a business registration certificate (or, after 1 June 2010, an enterprise registration certificate), except where foreign investors invested in Vietnam for the first time and were issued with investment certificates that concurrently acted as their business registration certificates.

The Law on Enterprises 2014 and the Law on Investment 2014, which have come into effect since 1 July 2015, introduced a new regime. Accordingly, an enterprise registration certificate will be required for the establishment of all companies with or without foreign capital; in addition, foreign investors have to apply for and obtain an investment registration certificate. Specifically, foreign investors (i.e., foreign individuals or foreign organisations incorporated under foreign laws) that wish to set up a new entity in Vietnam will first need to apply for investment approval from the investment licensing authorities (under the form of an investment registration certificate) for their investment projects in Vietnam. Upon issuance of the investment approval, the foreign investors will carry out the establishment procedure for the issuance of an enterprise registration certificate. These steps are also applicable if a company of which foreign shareholders together hold (directly and indirectly) 51 per cent or more of the total shares or equity wishes to set up its subsidiary in Vietnam.

In the case of a share acquisition or subscription in an existing Vietnamese company, foreign investors must register the proposed acquisition or subscription with the investment licensing authority if the target company engages in conditional business sectors, or the proposed transaction would result in 51 per cent or more of the total shares being held (directly or indirectly) by foreign investors. This registration step is not required in other acquisition or subscription situations. Upon completion of the registration, the target company shall carry out the procedure for the amendment of its enterprise registration certificate or enterprise registration details in accordance with the Law on Enterprises 2014, namely changes in the foreign shareholders of a joint-stock company or members of a limited liability company, or to the charter capital of a company, or both. This procedure is also applicable when the acquirer or subscriber is a foreign-invested company based in Vietnam of which 51 per cent or more of the total shares is held (directly and indirectly) by foreign shareholders.

In March 2019, the government introduced the draft law on amendments to the Law on Enterprises 2014 and Law on Investment 2014, which is expected to enhance the competitiveness of Vietnam's business market. One notable point of the draft law is that foreign investors may not be required to register a proposed acquisition or subscription if such acquisition or subscription causes no increase in foreign shareholding in the target companies. In addition, the law reduces the requirements for the establishment and operation of a company.

### ii The Law on Land 2013

For the first time, the Law on Land 2013 allows foreign-invested companies to use land in allocation form where foreign-invested companies develop a residential-house-for-sale or for-lease-sale project.[3] Nevertheless, domestic entities still have more mechanisms and options to acquire a land use right than foreign-invested companies. Specifically, domestic economic organisations, households and individuals can obtain a land use right by:

*a* being allocated land from the state;
*b* leasing land from the state;
*c* receiving a transfer, donation or inheritance of land use rights;
*d* receiving land use rights as in-kind capital contribution from a lawful land user (applicable to economic organisations);
*e* recognition by the state of land use rights;
*f* leasing and subleasing land from a developer of an industrial zone, high-technology zone or economic zone;
*g* receiving the transfer of an ongoing project using land; or
*h* receiving land use rights in accordance with the result of a land dispute settlement.

Foreign-invested companies cannot acquire land under method (c) above.

Corporate real estate M&A in Vietnam are not commonly conducted in the form of an asset or land direct transfer, as asset or land direct transfers involve rather complicated processes, not to mention that where the transferee is a foreign-invested company, the land

3 Article 55.3 of the Law on Land No. 45/2013/QH13.

must be returned to the government before being transferred to the transferee. In practice, corporate real estate M&A in Vietnam are normally structured in the form of a project or asset holding company M&A, as this will save the new owner from having to re-obtain the necessary licences for the real estate project's development (if the permits and licences have already been obtained), as well as offering more options for tax planning.

If a project or asset holding company M&A changes the status of the target company from a domestic private company into a foreign-invested one, the target company can still retain the licences and permits and the rights of a land user over the target land or asset that were obtained as before the transaction.

Another key point under the Law on Land 2013 relates to the definition of offshore entity, under which it is clear that an offshore entity itself may not obtain a land use right. Additionally, with respect to a foreign-invested company being a land user in Vietnam, there is no difference whether it is a 1 or a 100 per cent foreign-invested company.

#### iii The Law on Securities

Decree 60/2015/ND-CP, providing guidance on the Law on Securities, took effect on 1 September 2015, thereby relaxing the restrictions imposed on foreign investment in public companies. Foreign ownership in a public company is regulated as follows:

*a* if an international treaty to which Vietnam is a party has provisions governing the foreign ownership ratio, then such provisions apply;

*b* if a public company operates in a business investment line for which the law on investment and other relevant laws have provisions on foreign ownership ratio, then those provisions apply. If a public company operates in a business investment line with conditions applicable to foreign investors, but there is not yet any specific provision on the foreign ownership ratio, then the maximum foreign ownership ratio is 49 per cent;

*c* if a public company operates in several business lines with different provisions on the foreign ownership ratio, then the foreign ownership ratio shall not exceed the lowest ratio of the business lines (in which the company operates) wherein there are provisions on foreign ownership, unless otherwise provided in international treaties; and

*d* for public companies not falling into any of the above scenarios, foreign ownership is unrestricted, unless otherwise provided in the company charter.

A proposal for an amended Law on Securities as a replacement for the current Law on Securities (Report No. 97/TTr-CP of the government) was submitted to the National Assembly's Standing Committee on 22 March 2019, with key highlights on notable changes being as follows:

*a* the maximum foreign ownership ratio will be governed specifically by the government from time to time, and will not be specified in the Law on Security. In 2017 and late 2018, the Ministry of Finance kept introducing draft amendments to the Law on Securities to lift the maximum foreign ownership ratio to 100 per cent with respect to business investment lines not prescribed in Vietnam's WTO commitments;

*b* the conditions for the first public offering of securities are as follows: an increased requirement on the offering company's charter capital from 10 billion dong to 30 billion dong, and profitable business results from the previous one to two years;

*c* adding a new condition that the new share issuance's par value must not be higher than the total par value of the issued shares;

*d* the conditions for the public offering of bonds are as follows: an increased requirement on the offering company's charter capital from 10 billion dong to 30 billion dong;
*e* supplementing the conditions on reliance ratings applicable to certain organisations that issue bonds;
*f* linking public offerings of securities with the listing and registration of transactions on the securities trading floor, accordingly requiring that companies that apply for their public offering of securities via the State Securities Committee must also apply for listing or registering transactions on a securities trading floor at the same time; and
*g* for private offerings of shares, specifying the entities eligible to take part in the private offering of shares or convertible bonds that include only strategic investors and professional security investors, and a restriction on the transfer of the shares or convertible bonds post-purchase lasting for a period of three years or one year, respectively.

## IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS

According to StoxPlus, investors from Thailand and Singapore have aggressively seized megadeals since 2017 and also lead in terms of deal value. Meanwhile, Japanese and Korean investors, although they have contributed the largest number of deals, usually conduct small and medium-sized deals.

The accumulated inbound M&A deal value entering Vietnam since 2013 amounts to US$26.89 billion from 535 transactions. The inbound deal value in 2017 increased by more than double compared with 2016. By the first half of 2018, US$2.83 billion from 40 transactions had already been recorded.

The shift in inbound M&A in 2017 and the first half of 2018 was to megadeals. In these agreements, foreign investors acquired a majority stake in leading Vietnam-domiciled enterprises, including leading brewery SABECO, real estate conglomerate Vinhomes and Vincom Retail, dairy corporation Vinamilk, Ho Chi Minh City Infrastructure Investment, Techcombank and Nam Long Investment Corp.[4]

## V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

M&A deals that focused on real estate, processing and manufacturing, wholesale and retail were the most attractive deals for investors in 2018.

The real estate sector continues to be one of the most active in M&A due to a high demand for real estate, policies on tightening capital flow to the real estate sector and State Bank Vietnam's control over non-performing loans. The physical transfer of land, buildings and other types of real estate, however, is a problematic issue and can take a long time, especially if it is a transfer to a foreign investor. In particular, an offshore investor may need to set up its subsidiary in Vietnam, apply to the licensing authorities to implement projects in connection with the use of the real estate to be transferred and register the physical transfer of the real estate with the relevant authorities. Therefore, in practice, foreign entities often

4 Stoxplus' Vietnam M&A 2018 Research Report, Issue 8, September 2018.

consider acquiring vendors' shares in the project company that owns the real estate. The procedure for share acquisition is much simpler, and offshore investors still own the real estate through the project company. Highlight transactions in 2018 included the following:

*a* GIC Private Limited (a Singapore government fund) purchased 5.74 per cent of shares of Vinhomes Joint Stock Company for a value of approximately US$853 million. Vinhomes Joint Stock Company Vietnam is the biggest integrated real estate developer in Vietnam with a focus on residential and office property;

*b* Singapore-based Frasers Property Limited acquired, through its subsidiaries Frasers Property Investments (Vietnam) 2 Pte Ltd and Frasers Property Investments (Vietnam) 1 Pte Ltd, 75 per cent of the shares of Phu An Dien Real Estate JSC (PAD) and Phu An Khang Real Estate JSC (PAK) for the respective prices of US$35.2 million and US$18 million. PAD and PAK are developers of the residential-cum-commercial projects in Thu Duc District and District 2 of Ho Chi Minh City;

*c* Hanoi Hotel Tourism Development Limited Liability Company acquired 75 per cent of the shares in TPC Nghi Tam Village Ltd, which operates the international five-star hotel Intercontinental Hanoi West Lake Hotel in Hanoi, for about US$53.3 million;

*d* through its wholly owned subsidiary, CVH Nereus CapitaLand acquired 16.97 million shares, or 99.49 per cent of the charter capital, of Hien Duc Tay Ho Joint Stock Company for about US$29.7 million. Hien Duc Tay Ho Joint Stock Company, which changed its name to Capitaland - Hien Duc Joint Stock Company after the acquisition, is the developer of a real estate complex located on 0.9 hectares of land in the Tay Ho District in Hanoi; and

*e* Mapletree Logistics Trust Management Ltd, as the manager of Mapletree Logistics Trust, announced its acquisition of a warehouse in Vietnam–Singapore Industrial Park I, Binh Duong province, for a purchase consideration of about US$31.5 million from Unilever International Company Limited in November 2018.

M&A activities in manufacturing and processing remain active in 2018. Notable deals include:

*a* The Nawaplastic Industries (Saraburi) Co, Ltd additionally acquired 27,823,623 shares in Binh Minh Plastics Joint Stock Company for US$107 million to increase its shareholding to 54.39 per cent;

*b* Sojitz Corporation acquired over 95 per cent of the shares in Saigon Paper Corporation for US$91.2 million;

*c* Kyoei Steel additionally acquired more than 50 per cent of shares of Viet Italy Steel Company 2018; and

*d* Itochu Textile Prominent (ASIA) Ltd, a subsidiary of ITOCHU Corporation, paid around US$47 million to additionally acquire 10 per cent of the shares in Vietnam National Textile and Garment Group (Vinatex), raising its shareholding in Vinatex to 15 per cent.

In the wholesale and retail sector, M&A activities were bolstered by local retailers, as they have the edge in expanding their reach via M&A amid fierce competition; specifically, they are closer to local consumers and not subject to the requirement of an economic needs test.

Vingroup continued its M&A activities in 2018, either directly or through its retail brand, to acquire various smaller companies and expand its retail chain, including:

*a* 23 supermarkets in the Fivimart chain;
*b* 87 convenience stores in the Shop&Go chain;
*c* the acquisition of mobile retail chain mobile Vien Thong A; and
*d* becoming the exclusive distributor of the Chevrolet in Vietnam.

In early 2018, the Malaysia-based private equity firm Creador announced its acquisition of 35 per cent of the shares of Mobile World Investment JSC, which is one of Vietnam's biggest retailers with over 2,200 retail shops in Vietnam, for US$43 million.

M&A deals in the banking and finance sector, consumer finance received attention thanks to strong growth in recent years, with the following being notable deals:

*a* Shinhan Card acquired a 100 per cent stake in Prudential Finance Vietnam for around US$150.8 million from Prudential Hoborn Life Limited;
*b* Lotte Card Company Limited wholly acquired Technological and Commercial Finance Company Limited (Techcom Finance) from Techcombank for US$74.67 million; and
*c* Southeast Asia Commercial Joint Stock Bank (SEABank) won an auction to wholly acquire Vietnam Posts and Telecommunications Group for 710 billion dong;
*d* in March 2018, Techcombank announced that two legal entities managed by Warburg Pincus would invest over US$370 million into the bank, subject to appropriate regulatory approval, which was one of the most notable deals in banking that year.

The food and beverage sector also saw one of the biggest deals of the year when South Korean Group acquired 109.9 million Treasury shares, accounting for a 9.5 per cent stake in Masan Group Corporation for around US$470 million.

With respect to the sale of state-owned capital, the state equalised and sold shares to strategy shareholders in 30 enterprises in 2018 according to Government Notice No. 39/TB-VPCP dated 25 January 2019, which falls short of its target of 181 enterprises. The equalisation and divestment of state-owned capital continues to face obstacles due to many factors, such as a lack of accuracy in evaluating state-owned capital, foreign ownership limitations in several sectors, lack of transparency and consistency in the process, and a complicated procedure.[5] The government's goal, by 2020, is to retain only 150 state-owned enterprises in the following vital sectors:

*a* electricity transmission;
*b* cartography related to national security and military operations;
*c* railway infrastructure;
*d* air traffic services;
*e* postal services;
*f* irrigation management;
*g* lending for socioeconomic development;
*h* banking safety; and
*i* the lottery.

5 Saigon Online, available at http://sggpnews.org.vn/business/economy/transparency-must-be-improved-in-soe-equitisation-to-attract-strategic-investors-71602.html.

## VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS

Foreign investment is the main factor driving M&A in Vietnam, especially in the real estate sector. Foreign investors may mobilise capital from overseas countries and pour it into the domestic market. Regarding Japanese acquirers, they seem to prefer to finance their acquisitions of Vietnamese companies by using their existing equity capital and retained profits.

Local investors, by contrast, rarely disclose the source of their purchases' financing. For example, in the largest M&A deal by a local investor in 2018, An Quy Hung Limited Company, with charter capital of 500 billion dong, succeeded in acquiring a 57.71 per cent stake in Vietnam Construction and Import-Export JSC (Vinaconex), which is one of the largest conglomerates in construction, for 7.366 billion dong, but the financing of the deal is still unclear. Considering that there is a limit on the amount of credit that can be extended by banks and security companies for the acquisition of stakes, it is assumed that the acquisition was sourced by the acquirer's partners, which are various real estate companies. Other domestic acquirers tried to mobilise capital from their shareholders and foreign investors to fund M&A deals in 2018, such as Saigon Thuong Tin Real Estate JSC, which sought the approval of the general shareholders' meeting to issue and sell new shares to mobilise a total of US$90 million for M&A.

For the first time in three years, the State Bank of Vietnam (the central bank of Vietnam) has reduced its lending interest rate by 0.25 per cent, to 6.25 per cent, to boost economic growth.[6] However, enterprises, especially small and medium-sized ones, continue to face difficulties in gaining financing from domestic banks because of high interest rates.

Vietnamese parties are familiar with the typical clauses applicable to offshore loan arrangements, such as financial covenants and security requirements. However, while an offshore creditor's right to collect payment from debtors in the event of default is protected, enforceability of some terms may in practice be questionable. For instance, offshore creditors may face challenges if they wish to exercise the right to acquire secured shares in the event of default if a project company is operating in areas that are conditional or restricted for foreign investment. In addition, offshore creditors are not allowed to have collateral over a land use right in Vietnam.

According to foreign exchange management regulations, offshore loans with terms of more than one year are subject to registration with the State Bank of Vietnam. However, the loan registration requirement is just an administrative tool for the State Bank of Vietnam to manage and control the flow of foreign exchange currencies in Vietnam from time to time; it is not a confirmation or certification of the state that an agreement is legally recognised.

## VII EMPLOYMENT LAW

The current Labour Code[7] has been effective since 1 May 2013. According to Article 106, the number of overtime hours worked by employees must not exceed 50 per cent of the normal working hours in one day. In the case of working on a weekly basis, the total of the normal

6 VN Express International, available at https://e.vnexpress.net/news/business/vietnam-cuts-lending-interest-rate-to-spur-economic-growth-3611173.html.

7 Labour Code 10/2012/QH13.

working hours plus overtime hours must not exceed 12 hours in one day, 30 hours in one month, and 200 hours in one year. The previous law simply provided that the number of overtime hours must not exceed four hours per day and 200 hours per year.

Key provisions of the current Labour Code also include:

*a* adding one more day off during the lunar new year period (Article 115);

*b* extending the maternity leave period for female employees from four to six months in general (Article 157);

*c* extending the limitation period for dealing with breaches of labour discipline from three to six months, or 12 months in some special cases (Article 124); and

*d* providing more details regarding cases in which foreign workers are exempted from work permit requirements (Article 172). In particular, exemption cases include:
 - capital-contributing members or owners of limited liability companies;
 - members of the boards of directors of joint-stock companies;
 - chiefs of representative offices and directors of projects of international organisations or non-governmental organisations in Vietnam;
 - those who stay in Vietnam for less than three months to offer services for sale;
 - those who stay in Vietnam for less than three months to deal with complicated technical or technological problems that adversely affect or are at risk of adversely affecting production and business activities where these problems cannot be handled by Vietnamese and foreign experts who are currently in Vietnam;
 - foreign lawyers possessing a professional practice licence in Vietnam in accordance with the law on lawyers;
 - cases that are in accordance with a treaty to which Vietnam is a contracting party;
 - those who are studying and working in Vietnam, provided that their employer shall notify the provincial level state management agency of labour of their employment seven days in advance;
 - internal transfers within an enterprise and within the scope of the 11 services on the List of Commitment on Services of Vietnam with the WTO, namely, business, information, construction, distribution, education, environment, financial, medical health, tourism, culture and entertainment, and transportation;
 - entering Vietnam to provide expert technical consultancy services or to undertake other tasks servicing the work of research, formulation, evaluation, monitoring and assessment, management and implementation of a programme or project using official development assistance (ODA) in accordance with an international treaty on ODA signed by the competent authorities of both Vietnam and the foreign country; and
 - entering Vietnam to work as an expert, manager, executive director or technician for a working period of less than 30 days and for a total cumulative period not exceeding 90 days in any one year.

In 2017, the government introduced a draft of the new Labour Code to replace the existing Labour Code, which is scheduled to be submitted for approval by the National Assembly in October 2019. The second version of the new law was presented for the solicitation of the public's opinion from April to June 2019, and includes some notable changes as follows:

*a* the maximum overtime of employees in specific situations regulated by the government increases to 400 hours per year from the existing limit of 300 hours;

*b* the retirement ages, which are currently 60 for men and 55 for women, are proposed to be gradually raised to 62 and 60, respectively, from January 2021;
*c* the executive committees of trade unions at the directly superior level are no longer able to perform the rights and duties of trade unions in workplaces. In other words, there must be a trade union at workplaces to carry out certain procedures relating to labour matters, such as disciplinary procedures;
*d* probation for managerial positions may be extended to six months from the current limit of 60 days; and
*e* the term of work permits may not exceed two years, and may be extended once for a maximum term of two years.

## VIII TAX LAW

The current Law on Tax Administration was enacted in 2006 and amended three times in 2012, 2014 and 2016, and is now proposed to be replaced by a new version. The draft Law on Tax Administration (amended) has been reviewed at the National Assembly of Vietnam (National Assembly) meeting in February 2019, and will be continuously updated as determined by the National Assembly in this meeting. The proposed changes are mainly based on technical aspects.

In 2017 and early 2018, the Ministry of Finance introduced its draft proposals for some amendments to certain tax laws. Nevertheless, there has been no update or any agenda for reviewing this draft in the National Assembly meeting schedule for 2019.

## IX COMPETITION LAW

On 12 June 2018, an entirely new Law on Competition 2018 was adopted by the National Assembly, effective from 1 July 2019. Below is a summary of the merger control provisions introduced by this new Law.

Unlike its predecessor, which sets the trigger for a merger filing requirement based on the combined market share of the parties concerned, the new Law prescribes several general factors, one of which the government may use as a basis to set the thresholds for triggering an obligation of the parties concerned to keep the local competition authority notified of a deal. These factors are:

*a* the total assets in the Vietnam market of the parties to the M&A transaction;
*b* the total revenue in the Vietnam market of the parties to the M&A transaction;
*c* the value of the M&A transaction; and
*d* the combined market share in the relevant market of the parties to the M&A transaction.

If a notification is required, the parties involved in the M&A transaction will need to submit a number of documents to the National Competition Committee for the purpose of the notification. The Committee will then carry out a two-phase appraisal: a preliminary one, which may take up to 30 days, and an official one, which will take up to 90 or 150 days, depending on the complexity of the case.

A transaction may be carried out, but the parties concerned must undertake to conduct one or more of the following pre-closing or post-closing measures as a condition for the National Competition Committee to allow it:

*a* to divide, separate or sell part of the shares or assets of the companies participating in the transaction;
*b* to control the price of goods or services and other terms and conditions in contracts signed by the company formed from the transaction; or
*c* to conduct other measures to overcome the effect of restricting competition in the market or to enhance the positive impact of the transaction.

An M&A transaction is prohibited if it significantly restricts or is capable of significantly restricting competition in the market. The significant competition-restraining impact or the ability to cause a significant competition-restraining impact will be assessed based on any or a combination of the following factors:
*a* the combined market share of the parties participating in the contemplated transaction;
*b* the extent of concentration in the relevant market before and after the contemplated transaction;
*c* the relationship of the parties participating in the contemplated transaction;
*d* the competitive advantages brought by the contemplated transaction in the relevant market;
*e* the ability of the company formed from the contemplated transaction to significantly increase prices or the rate of return on sales;
*f* the ability of the company formed from the contemplated transaction to exclude or hinder other businesses from entering or expanding the market; and
*g* special factors in the industry or sector in which the companies taking part in the contemplated transaction operate.

### i The Grab/Uber case

Grab's acquisition of Uber's business remains the most recent notable merger control case in Vietnam (it was handled under the Law on Competition 2004, which was replaced by the new Law on Competition 2018).

On 25 March 2018, Grab Inc announced its acquisition of all of Uber's assets and operations in South East Asia. As a result, GrabTaxi Company Limited and Uber Vietnam Company Limited entered into an agreement under which Uber Vietnam Company Limited transferred to GrabTaxi Company Limited all of its assets, operations and interests in Vietnam. On 16 April 2018, the Vietnam Competition Authority (VCA) issued a decision to conduct a preliminary investigation into the acquisition. In an explanatory document submitted to the VCA, the parties claimed that as their combined market share in Vietnam was less than 30 per cent, they did not need to comply with the merger notification requirement. However, an official investigation was carried out from May 2018, and the investigation results were issued on 30 November 2018. Accord to these, the VCA found signs of violations of competition law, including failure to notify an economic concentration under Article 20 of the Law on Competition 2004 and falling into the prohibited category of economic concentration under Article 18 of the Law on Competition 2004. In addition, it was held that Grab and Uber had market power and competed directly with each other; therefore, Grab's acquisition of Uber's business in Vietnam would change the market structure, undermine competition, and potentially result in a powerful enterprise that may abuse its dominant market position.

The VCA delivered the investigation's conclusion to the Competition Council, which subsequently established a council to deal with the case. By law, within 30 days from the receipt of the file, the Council is authorised to decide whether to conduct an investigative hearing, to return the file for additional investigation or to suspend resolution of the case. After the discovery of new evidence, the file was returned and the investigation procedure extended.[8]

## X OUTLOOK

Vietnam experienced strong economic growth in 2018, with the gross domestic product (GDP) rate sitting at 7.08 per cent (exceeding its target of 6.7 per cent), the highest rate in the past 11 years. According to the Annual Report of the General Statistics Office,[9] foreign direct investment reached US$35.46 million[10] and Vietnam's total import and export turnover reached over US$480 billion,[11] and Vietnam remains a very attractive place for investment in the private sector. Vietnam is expected to benefit greatly from the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, which it signed in March 2018; according to the World Bank, the Agreement is expected to increase Vietnam's GDP from 1.1 to 3.5 per cent by 2030.

The banking sector could be more active than ever as the government works hard to reform the banking system. Foreign ownership limits relating to the restructuring of weak commercial banks may be relaxed by the Prime Minister on a case-by-case basis, allowing for greater participation by foreign investors under a restructuring plan approved by the State Bank of Vietnam.

Real estate will remain one of the most attractive sectors for foreign investors, given the speed of the country's urbanisation with the rise of the middle-income class. In 2017, the National Assembly issued a resolution aimed at easing the procedures for enforcement of property mortgages by banks. This is also one of the key factors to facilitate M&A in the real estate sector, as banks will find it easier to sell mortgaged properties and real estate development projects.

Both foreign and domestic deal makers continue to seek to acquire pharmaceutical distribution chains. Given the existing stringent restrictions on foreign investments in this sector, foreign deal makers should structure their deals creatively.

Retail, energy, and fast-moving consumer goods will continue to lure foreign investments. There are also opportunities in renewable energy projects, high-tech agriculture and other high-tech industries.

The speeding up of the privatisation of state-owned companies offers foreign investors many more opportunities to enter the market through M&A. The government's plan to further divest the following enterprises may draw the attention of foreign investors: Petrolimex,

8 Vietnam Competition Authority, Annual Report (2018), page 24: http://moit.gov.vn/tin-chi-tiet/-/chi-tiet/ket-qua-%C4%91ieu-tra-vu-viec-grab-mua-lai-uber-13470-22.html and http://www.vca.gov.vn/NewsDetail.aspx?lg=1&CateID=1&ID=3964.

9 The 2018 Annual Report of the General Statistics Office: https://www.gso.gov.vn/default.aspx?tabid=621&ItemID=19037.

10 The 2018 Annual Report of the Foreign Investment Agency under the Ministry of Planning and Investment: http://fia.mpi.gov.vn/tinbai/6110/Tinh-hinh-thu-hut-Dau-tu-nuoc-ngoai-nam-2018.

11 The 2018 Annual Report of the General Department of Vietnam Customs was published on 15 January 2019: https://www.customs.gov.vn/Lists/ThongKeHaiQuan/ViewDetails.aspx?ID=1559&Category=Ph%C3%A2n%20t%C3%ADch%20%C4%91%E1%BB%8Bnh%20k%E1%BB%B3&Group=Ph%C3%A2n%20t%C3%ADch.

Airports Corporation of Vietnam, Vietnam Machinery Installation Corporation (LILAMA), Viglacera Corporation, Vietnam National Textile and Garment Group (Vinatex), Vietnam Steel Corporation (VNSteel), Vietnam Rubber Group and Vinachem.

According to *Nikkei Asian Review*, as efforts by manufacturers to establish a business in Vietnam have stabilised, infrastructure exports are creating a new wave of investment as Vietnam lures private sector funding in infrastructure development, with an anticipated need for US$400 billion in infrastructure spending over the next 10 years.

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