Chapter

Vietnam

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1 Relevant Authorities and Legislation

1.1 What regulates M&A?

Vietnam is a civil law based jurisdiction. Although there is no single law governing M&A in Vietnam, a number of regulatory changes to general corporate and investment law since the enactment of the Law on Enterprises No.60/2005/QH11 dated 29 November 2005 ("**Law on Enterprises**") and the Law on Investment No.59/2005/QH11 dated 29 November 2005 ("**Law on Investment**") have greatly clarified and modernised the regulatory framework. However, M&A transactions are still relatively new in Vietnam, and the legal framework remains fairly restrictive and under-developed, with the overwhelming majority of acquisitions occurring privately.

The Law on Securities No.70/2006/QH11 dated 29 June 2006, as amended by Law No.62/2010/QH12 ("Law on Securities"), and its implementing and guiding regulations, in particular, Decree 58/2012/ND-CP dated 20 July 2012 ("**Decree 58**"), regulate the acquisitions of shares of a public company in Vietnam including public tender offers. There are no other regulations applicable to the takeover of public companies.

The acquisition of shares in a Vietnamese company operating in certain sectors, for instance in the banking, financial services and insurance industries, is further regulated by sector-focused legislation. In particular, specific legislation exists regulating mergers between credit institutions.

1.2 Are there different rules for different types of company?

In general, all M&A transactions are subject to the same rules set out in the Law on Enterprises and its implementing and guiding regulations, although sector-specific regulations may apply to certain companies. Some other specifications include:

(i) A capital contribution in a limited liability company (a company not limited by shares and with no more than 50 owners) may only be sold once each of the capital owner's share of capital has been fully paid and the company has issued a certificate of capital contribution.

(ii) Sales of shares of the initial founding shareholders of a joint-stock company (i.e. a company limited by shares) are restricted for a period of three years from the creation of the company, unless the General Meeting of Shareholders consents to their sale.

(iii) An M&A transaction involving a public company (as defined below), whether listed or non-listed, will also be subject to the Law on Securities and its implementing and guiding regulations.

Under the Law on Securities, joint-stock companies (otherwise known as shareholding companies or companies limited by shares) that belong to any one of the following three categories are included in the definition of a "public company":

- companies that have made a public offer of shares;
- companies that have shares listed on the Stock Exchanges; or
- companies that have shares owned by at least 100 investors (excluding professional securities investors), and have paid-up charter capital of VND 10 billion or more (being approximately USD 500,000).

All public companies must lodge a public company file with the State Securities Commission ("**SSC**") within a time-limit of 90 days from the date of becoming a public company, following which they remain regulated by the SSC. For the purpose of Decree 58, the date of becoming a public company is the later of the date on which capital contribution is completed in full and that on which the number of shareholders recorded in the register of shareholders of the company is 100 investors or more.

1.3 Are there special rules for foreign buyers?

The Law on Investment and its guiding regulations have clearly formulated the right for foreign investors to invest in Vietnamese companies by way of "a capital contribution, the purchase of shares, or a merger". Nonetheless, a number of restrictions and specific procedures remain applicable to foreign investors in Vietnam, whether required by law or by local administrative practice.

In particular, the law provides that any acquisition by a foreign purchaser of an interest of more than 49% in any Vietnamese company will require the issuance of an Investment Certificate to the company by the local Department of Planning and Investment ("**DPI**"). Any acquisition by a foreign investor of an interest of less than 49% of the shares in a company will simply require the amendment of the company's registration certificate to show the change in ownership.

However, in practice, the DPI also requests the issuance of an Investment Certificate for cases of acquisition by a foreign investor of an interest of less than 49% of the shares in a Vietnamese company. Although the role of the DPI is in principle restricted to a legal review, the procedure for obtaining this Investment Certificate can be, in practice, extremely burdensome and time-consuming from an administrative perspective, particularly where the sector in which the company operates is deemed to be "sensitive", such as, for instance, the distribution sector.

The acquisition by a foreign investor of shares in a listed public company will require the investor to comply with certain

formalities. In particular, the investor will be required to obtain a "trading code" at the Vietnam Securities Depository ("**VSD**"), and to open an account dedicated to the transaction with a depository bank authorised by the State Bank of Vietnam ("**SBV**") to conduct foreign exchange transactions.

In addition, the aggregate cap on the participation of foreign investors (which include Vietnamese organisations where the capital contributed by foreign parties in such Vietnamese organisation exceeds 49%) in any public company may not exceed 49% of the total number of issued shares.

Certain specific limitations, including ownership caps, resulting from the transition provisions applicable to Vietnam's accession to the World Trade Organisation ("**WTO**") also apply (continuing in some cases until 2014, or otherwise with no time limit), for instance, to companies providing services such as catering, container station and depot services and freight transport agency services.

Furthermore, additional limitations on aggregate or individual foreign shareholding may be imposed by specialised sector laws regulating activities of public companies. For instance, in the banking sector, the total aggregate shareholding of all foreign investors and their affiliated persons may not exceed 30% of the charter capital of a Vietnamese bank.

1.4 Are there any special sector-related rules?

There are special sector-related rules. The requirement of approval of relevant Ministries is often necessary concerning transactions in the banking, financial services and insurance industries.

For example, under Vietnamese insurance law, Ministry of Finance ("**MOF**") approval must be obtained for any transfer of shares involving 10% or more of the charter capital in an insurance company or insurance brokerage company. This is supplemented by guiding regulations issued by the MOF to the effect that (a) any transfer after which a shareholder that previously held less than 10% would hold 10% or more of the charter capital of the company; or (b) any transfer following which a shareholder that had previously held more than 10% of the charter capital of the company would hold less than 10%, is also subject to MOF approval.

In addition, under applicable Vietnamese regulations on banking, written approval of the Governor of the SBV must be obtained prior to the purchase and sale of the shareholding of a shareholder owning 5% or more of the voting shares of a bank, as well as prior to the subscription of any shares in a Vietnamese bank by a foreign investor.

1.5 What are the principal sources of liability?

Contractually, the main liabilities would lie in breaches of the provisions of the share sale and purchase agreement. There is no specific or alternative remedy prescribed by law for misrepresentation; a court would be likely to view this as a breach of contract, although there is no publically available jurisprudence on this issue and it may be viewed as deception, giving rise to statutory liability.

With respect to other possible non-contractual liabilities that may arise in the course of an M&A transaction, Decree 108/2013/ND-CP sets forth administrative fines of between VND 800 million and VND 1.4 billion for violations committed in the course of trading securities, such as insider trading, manipulation of the securities market, fraud or creation of a false market, amongst others. In addition, depending on the nature and severity of their violations, violators may also be subject to the confiscation of all illegal amounts earned as a result of the violation.

The Criminal Code also allows prosecution of the offence of: *(i) wilfully disclosing untruthful information or concealing the truth in the securities issuance, listing, trading; (ii) using insider information for buying or selling securities; or (iii) manipulating securities price that causes serious consequences (there are no guidelines defining "serious consequences*"). Generally, the penalty may be a fine of between VND 100 million and VND 500 million or non-custodial re-education for up to three years or imprisonment ranging from between six months and three years. It is worth noting that there are no formal exceptions for information acquired during a due diligence exercise.

2 Mechanics of Acquisition

2.1 What alternative means of acquisition are there?

Under Vietnamese law, control of a public company may be acquired by way of: (i) an acquisition of shares; or (ii) a merger.

Acquisition of shares

Purchasers may acquire newly-issued shares of a public company by way of subscription or otherwise purchase the shares or share options of existing shareholders/stakeholders of a company.

The offer to purchase shares of existing shareholders in a public or listed company will trigger tender offer requirements in the following cases:

- a purchase of circulating shares which results in a purchaser, with no shareholding or less than 25% shareholding, passing the threshold of 25%;
- a purchase of circulating shares which results in a purchaser (and affiliated persons of the purchaser), with 25% or more shareholding, purchasing a further 10% or more of currently circulating shares of the company; or
- a purchase of circulating shares which results in a purchaser (and affiliated persons of the purchaser), with 25% shareholding or more, purchasing a further 5% up to 10% of currently circulating shares of the company within less than one year from the date of completion of the previous offer tranche.

However, a purchaser shall not be required to make a tender offer in any of the following cases:

- subscription of newly-issued shares resulting in ownership of 25% or more of the voting shares in a public company pursuant to an issuance plan approved by the company's General Meeting of Shareholders;
- acquisition of shares by way of transfer from an existing shareholder resulting in ownership of 25% or more of the voting shares in a public company, where such transfer has been approved by the company's General Meeting of Shareholders;
- transfer of shares between companies within a group of parent-subsidiary companies;
- donation of bequeathing shares;
- assignment of capital pursuant to a decision of a court; and
- other cases as decided by the Ministry of Finance.

Merger

The Law on Enterprises sets forth the general procedures for company mergers by way of transfer of all lawful assets, rights, obligations and interests to the merged company and the simultaneous termination of the existence of the merging companies. These procedures apply to "companies of the same type", but there is no official guidance on this term in particular, and no implementing detailed regulations on the merger provisions of the Law on Enterprises of general application to public companies.

Sector specific regulations do exist however; a specific example is the banking sector.

2.2 What advisers do the parties need?

Most M&A transactions would require the assistance of tax, financial and legal advisers, and, in some cases third party valuers. These advisors will be involved in due diligence, structuring and documentation of the acquisition or merger.

The parties may need other sector-based advisors depending on the size, structure, and form of the acquisition, as well as the business lines of the target company.

2.3 How long does it take?

In practice, a merger or acquisition may take anywhere from three to six months, depending on the sector of the acquisition, the nationality of the purchaser and the quantity and complexity of required governmental registrations and approvals. If central authority involvement is necessary, the transaction will usually take longer.

In addition, Decree 58 contains a detailed timeline in respect of public tender offers. In particular, the law provides that the offeror must implement the offer within 30-60 days following the first announcement as certified in the registration slip sent to the SSC. There is no time period within which a merger must be completed.

2.4 What are the main hurdles?

The lack of a single legal framework applicable to M&A transactions, together with the conflicting and ambiguous provisions in various laws and regulations governing M&A and the various sectors of operation of a company – which are due to the rapidly evolving nature of the Vietnamese economy and the legal landscape – are a major hurdle.

Furthermore, the requirement for administrative and, in some cases, governmental approvals in M&A deals relating to target companies in specific sectors or going through equitisation processes (i.e. the conversion of a state-owned company into a joint-stock company with a view to partial privatisation), can be greatly discouraging for investors, especially for prospective foreign investors.

It is not uncommon to have to overcome very long periods of delay, during which requests for additional documentation and information must be complied with, while the competent authorities assess the file relating to the acquisition of shares by an investor and, in the case of a public company undergoing equitisation, approve the choice of the target company's foreign strategic shareholder(s).

2.5 How much flexibility is there over deal terms and price?

The parties to an M&A deal are generally permitted to negotiate the terms and conditions of the transaction directly, including a price for the shares.

General restrictions on pricing applicable to foreign investors

However: (i) in the case of a sale of shares by a company to foreign purchasers via auction (often conducted in the context of an equitisation), the selling price must not be less than the book value of the shares at the time the plan to sell shares to foreign purchasers was approved at the appropriate corporate level; and (ii) in the case of a direct agreement between the company and a buyer relating to an issuance of shares, the selling price to a foreigner must not be less than the market price at the time of sale, or if there is no market price, not less than the book value of the shares as at the time of approval of the plan to sell the shareholding to foreign purchasers.

In addition, in an acquisition of shares from existing shareholders, the selling price to foreign purchasers may not be less than the selling price to domestic purchasers at the same point in time.

Equitisation/Strategic Shareholders

Specifically in the context of the acquisition by a "strategic shareholder" of an interest in an equitising state owned enterprise ("SOE"), the following pricing restrictions apply:

(i) following a public action: the price must not be lower than the lowest successful price of the public auction (this lower limit was decreased from the average successful price limitation that existed under previous legislation); and

(ii) in respect of eligible strategic investors investing prior to an initial public offering: the price must not be lower than the price approved by the relevant government body deciding on the equitisation plan.

In tender offers where there is an obligation under law to make a tender offer in respect of the shares of a listed company, the offer price must not be less than the average reference price of shares as published by the Stock Exchange for the last 60 consecutive days prior to registration of the tender offer. If the target company is not listed, then the offer price must not be less than the average price of shares as regularly published by at least two securities companies for the last 60 consecutive days prior to registration of the tender offer or no less than the price of shares in the most recent rights issue of the target company. In both cases, the offer price must also not be less than the highest purchase price paid by any entity which made a tender offer in respect of the shares of the target company within such period. During the tender process the offer price of shares may not be reduced.

2.6 What differences are there between offering cash and other consideration?

Under Vietnamese law, shares may be purchased by offering cash (Vietnamese currency and foreign currency), gold, land use rights, intellectual property rights, technology, technical know-how, or other assets. Any purchase other than by way of cash will trigger the following considerations:

(i) the value of the capital contribution portion, which is not cash or gold, may be determined by the parties to the transaction or by a professional valuation organisation; and

(ii) where assets that are subject to registration are offered, such as intellectual property rights, technology, and technical know-how or land use rights, the purchaser must implement the procedures to transfer the ownership of the relevant assets with the competent authorities.

In practice, most acquisitions are still made for cash consideration.

2.7 Do the same terms have to be offered to all shareholders?

In principle, under Vietnamese law, the terms and conditions of the transaction may be freely negotiated by the parties, subject to the exceptions relating to the pricing of sales of shares to foreign investors, as set out in question 2.5.

Where there is a requirement for a purchaser to make a tender offer, the conditions of the tender offer must apply equally to all shareholders of the target company and the offeror is required to provide complete information to all shareholders of the target company at the same time to enable them to equally assess the proposal for the purchase of the shares.

In the case of a tender offer, except in the case where a tender offer has been conducted for all of the currently circulating shares with voting rights, the law requires that, if at the end of a tender offer tranche the offeror holds 80% or more of the currently circulating shares of a public company, then the offeror must continue to purchase, within the next 30 days, the remaining number of shares with voting rights with the same conditions on the price and method of payment as applicable to the previous tender offer.

The offeror must notify the SSC of the continued tender offer within 5 days from the date of completion of the tranche where the 80% threshold is reached.

2.8 Are there obligations to purchase other classes of target securities?

There is no legal obligation on the purchaser to purchase other classes of securities of the target.

2.9 Are there any limits on agreeing terms with employees?

There is no general requirement under Vietnamese laws for either the existing shareholders or the target company to consult with the employees of the target company on the terms of an acquisition transaction.

However, in the case of a merger, notice of the merger contract (specifying the plan for employment of employees) must be given to employees of the relevant companies within 15 days from the date of its approval by the General Meeting of Shareholders of the relevant companies. If the merger results in the reorganisation of the personnel, an employee placement plan must be prepared and agreed with the grassroots trade union.

2.10 What role do employees, pension trustees and other stakeholders play?

In general, except for the notice requirement in case of a merger as mentioned in question 2.9 above, employees of the target company play no role in an acquisition transaction and in negotiation of the terms of transaction by the parties.

However, in the case of an equitisation, the employees and the grassroots trade union of the target companies going through equitisation processes are entitled to purchase shares at an incentive price. In addition, the grassroots trade union is entitled to appoint a representative of its capital portion as a candidate to the Board of Management and the Supervisory Board of the target company.

There is no concept of pension trustees under Vietnamese law.

The merger contract must be approved by the General Meeting of Shareholders of the relevant companies.

As mentioned in question 2.1 above, the approval of the General Meeting of Shareholders is necessary to carve out the tender offer requirement in case of acquisition of shares by way of transfer from an existing shareholder and resulting in ownership of 25% or more of the voting shares in a public company.

In addition, as mentioned in question 1.2 above, the approval of the General Meeting of Shareholders is necessary in case of acquisition of shares from any of the initial founding shareholders of a joint-stock company within a period of three years from the creation of the company.

2.11 What documentation is needed?

The required documentation differs depending on the type of the transaction.

Acquisition of shares

Generally, the share purchase agreement or the subscription agreement is the key document in a share purchase transaction.

Where there is a requirement to make a tender offer, the offeror must lodge with the SSC and the target company:

(i) a registration slip for the tender offer;

(ii) the decision of the company's General Meeting of Shareholders approving the tender offer;

(iii) the decision of the company's General Meeting of Shareholders, in the case of redemption of shares by the public company for the purpose of reducing its charter capital;

(iv) audited financial statements of the immediately preceding year and other data certifying the financial capability of the offeror;

(v) data proving that the company satisfies the conditions for redemption of shares, in the case of redemption of shares by the public company; and

(vi) a document disclosing information on the tender offer.

The tender offer can only be implemented after the SSC has provided written consent to registration of the tender offer, and following the public announcement by the acquirer referenced in question 2.12.

Merger

A merger transaction will involve the following documentation:

- a merger contract (containing in particular: the procedures and conditions for the merger; the plan for employment of employees; and the procedures, timeline and conditions for conversion of assets and for conversion of shares and bonds of the merging companies to the shares and bonds of the merged company);
- a charter of the merged company; and
- resolutions of the related companies' General Meeting of Shareholders approving the merger contract and the charter of the merged company.

In addition, under the specific regulations applicable to the merger of a credit institution, an application must be made for approval by the SBV of the merger.

2.12 Are there any special disclosure requirements?

Refer to question 5.2 for post-acquisition disclosure of major shareholders.

In the case of a tender offer, the target company must disclose information regarding the receipt of information relating to the tender offer on its information disclosure media (e.g. its website) and (in the case of a listed company only) on the Stock Exchange within three days from the date of receipt of the registration data sent by the offeror.

The Board of Management of the target company must also send the company's opinion on the tender offer to the SSC and to all shareholders for their information within 10 days from the date of receipt of the registration data sent by the offeror.

Within seven days from receipt of the SSC's opinion, the acquirer must publicly announce the tender offer in three consecutive editions of one electronic newspaper or of one written newspaper.

In addition, within five days from the completion of the tender offer, the acquirer must provide a report to the SSC and make a public announcement on the result of the tender offer in the mass

media including the website of the Stock Exchange where the shares of the target company are listed (in the case of a listed company only).

2.13 What are the key costs?

When the seller of the securities is a resident entity, an individual seller must pay personal income tax (at the rate of 20%) and an institutional seller must pay corporate income tax ("CIT") (until 31 December 2013 at the rate of 25%, and as from 1 January 2014 at the rate of 22%, and as from 1 January 2016 at the rate of 20%) on the income generated from a capital assignment or transfer of securities (including others). In the case of a merger, the difference between the book value of the merging companies and their re-assessed value as a merged entity will also be taxable in Vietnam, at this rate. A separate regime applies to non-resident foreign companies selling shares in listed or public companies as 0.1% CIT on sales proceeds will apply.

In addition, the cost for hiring consultants, and, in the case of an equitisation, the costs of organising an auction/tendering of shares newly issued by the company may be considered key costs in an M&A transaction.

2.14 What consents are needed?

State Securities Commission

In the case of a tender offer, SSC approval of the offeror's registration of the tender offer must be obtained (see question 2.11).

In addition, if the target company is a public company conducting a public offer, the company must first register the issuance with the SSC and obtain from the SSC a certificate of acceptance of the issuance of shares for the tranche of shares of the company issued to the acquirer.

In the case of a private placement, the company must be notified by the SSC that the file for registration of the private placement is valid and complete and the SSC must publicly announce the private placement on its website.

Central authority approvals

If a company's activity lies in certain regulated sectors, in particular, in the banking, financial services and insurance industries, specific regulations governing the relevant sector can require specific regulator consent.

Competition approvals

The Law on Competition No.27/2004/QH11 dated 3 December 2004 provides that where merging companies or an acquiring company and a target together hold 30% to 50% of the market shares in the relevant market(s), the transaction must be submitted for approval to the Competition Authorities at the Ministry of Industry and Trade. Where the companies concerned together hold more than 50% of the market shares in the relevant market(s) in Vietnam, the transaction is prohibited. Vietnamese competition law does not, however, clearly define "market share" or "relevant market" and there is little practice of implementation of this law to date.

2.15 What levels of approval or acceptance are needed?

Individual selling shareholders may accept the offer made by an offeror (provided that the appropriate approvals have been received, as set out in question 2.14 above).

Otherwise, an issuance of new shares requires approval by the General Meeting of Shareholders. In case of merger transactions, the approval of the related companies' General Meeting of Shareholders with respect to the merger contract is required. The level of approval required is 75% of the voting shares of the shareholders participating in the vote.

2.16 When does cash consideration need to be committed and available?

Generally speaking, other than the specific limitations set out below, Vietnamese law does not limit the possibility for payment relating to the purchase of shares to be staggered by agreement between the parties, which could allow the buyer to retain a portion of the cash consideration subject to conditions.

However, in the case of an acquisition of the entire share capital of an SOE, the first payment in respect of the shares being acquired must not be less than 70% of the value of such shares, with the balance being paid within 12 months.

In a transaction involving the auction of shares by the company (usually in the context of an equitisation of an SOE), the purchaser is also obliged to pay a deposit of 10% of the value of the shares registered for subscription based on the reserve price at least 5 working days before the auction date provided in the auction rules of the target company. Additionally, the purchaser must transfer the entire consideration for the shares into the bank account of the body conducting the auction within 10 working days of the date of announcement of the auction results.

In practice, payment is almost always made in full at the time of issuance of the share certificates to the purchaser, or at the time of issuance of a new enterprise registration certificate/investment certificate acknowledging the purchaser as a new shareholder/member of the company and escrow arrangements are very common.

In the case of a public tender offer, payment must be remitted and the shares transferred via a securities company appointed to act as an agent for the public tender offer in accordance with Decree 58.

3 Friendly or Hostile

3.1 Is there a choice?

There is no legal distinction between a friendly and hostile acquisition under Vietnamese law.

In practice, the most common type of M&A transaction in Vietnam is a friendly acquisition, due in large part to the fact that limited information on target companies is usually publicly available and the sellers are quite reluctant to fully disclose.

3.2 Are there rules about an approach to the target?

There are no general rules set out by laws for approaching the target company. Thus, there are no legal restrictions on access to negotiations with the shareholders and the Board of Management of the target company, although the parties should bear in mind that the managers of the target company must be obliged to be loyal to the interests of the target company and the shareholders of the target company.

However, in the case of a tender offer, the offeror wishing to acquire shares in the target company must forward registration data to the SSC and the target company. From the time of sending registration data, the offeror shall not be permitted to:

- directly or indirectly purchase or undertake to purchase shares in the target company outside the tender offer;
- treat unfairly holders of shares of the same class as the shares currently being offered to purchase in the target company; or
- provide separate information to certain shareholders of the target company at different levels or at different points in time.

3.3 How relevant is the target board?

The target board often manages the due diligence process, including the scope of information made available from the target company, resulting in an important practical role.

In addition, in the case of a tender offer, an announcement of the opinion of the board of the target company is required. In the case of a negative opinion, the board must provide a written response specifying its reasons, signed by the majority of its members. While the effect of a negative evaluation is not stipulated at law, it is likely to significantly influence shareholder behaviour.

3.4 Does the choice affect process?

The most important difference in terms of process will be with respect to the information made available to the prospective buyer, which is likely to be significantly more limited in a hostile acquisition.

4 Information

4.1 What information is available to a buyer?

There are no legal requirements obliging the seller and/or the target company to disclose information to a buyer, and the level of disclosure will depend on the agreement between the parties prior to the due diligence investigation.

Publicly available information is generally limited. The buyer may obtain general registration information relating to the target from the national system of information on enterprise registration. The buyer may also obtain information that is required to be made publicly available by a public target company, including: (i) information periodically disclosed (for example the audited annual financial statements, annual report, report on corporate governance and resolutions of annual shareholders' general meeting); (ii) information extraordinarily disclosed (such as information relating to freezing of accounts, temporary suspension of part or the whole business, revocation of enterprise registration certificate, redemption of shares by the company); and (iii) information disclosed at the request of the SSC or Stock Exchange (an event which seriously affects the lawful interests of investors and information relating to the public company which seriously affects the price of securities). In many cases, in practice, this will not be enough for a buyer to form an investment decision.

There are no explicit limitations on the target's ability to provide information, although the parties should bear in mind potential technical exposures to insider information provisions of Vietnamese securities laws in the case of listed companies.

4.2 Is negotiation confidential and is access restricted?

The confidentiality of M&A negotiations is not protected by law, and it is typical for the parties to enter into a confidentiality agreement prior to beginning the due diligence process. In the absence of any publicly available jurisprudence or precedent, the enforcement of confidentiality agreements before the courts of Vietnam is untested.

There are no legal restrictions on access to negotiations with the target's shareholders.

4.3 When is an announcement required and what will become public?

There is no legal requirement that information relating to the negotiations be publicised.

At the point where a tender offer to acquire shares of a public company is made, the tender offer information must be disclosed, as mentioned in question 2.12.

In case of a merger involving a public company, such public company is required to disclose, on its website and (in the case of a listed public company) on the relevant Stock Exchange, within 24 hours of its adoption, the relevant resolution of the General Meeting of Shareholders approving such merger.

Otherwise, the acquisition will become public once any announcement is made to the public following completion, although knowledge of the transaction may come into the public domain if it is notified to the competition authorities or to employees and creditors (following the application of mandatory requirements in the case of a merger).

4.4 What if the information is wrong or changes?

The information provided to prospective buyers during due diligence is usually reflected in the representations and warranties of the seller or the company, as set out in the relevant agreement. The liability for a breach of these provisions is regulated by the agreement, which also sometimes provides that the acquirer may not be required to complete the acquisition if the change occurs between signing and closing.

The law does not address the situation where information upon which a tender offer is based proves to be incorrect or changes. In particular, it is not clear that an offeror can withdraw its offer.

5 Stakebuilding

5.1 Can shares be bought outside the offer process?

Shares can be bought outside the offer process if they represent less than the thresholds stipulated by law for a tender offer (see question 2.1). During the tender offer period, the offeror may only purchase shares through the offer process.

5.2 Can derivatives be bought outside the offer process?

There is no official guidance specifically on derivatives. However, during the tender offer period, the offeror is not permitted to purchase share purchase rights outside the offer process.

5.3 What are the disclosure triggers for shares and derivatives stakebuilding before the offer and during the offer period?

As mentioned in question 2.12 above, the offeror is required to publicly announce the tender offer in three consecutive editions of

one electronic newspaper or one written newspaper and (in the case of a listed company only) on the relevant Stock Exchange within a time-limit of seven days from receipt of the SSC's opinion regarding the registration of the tender offer. The tender offer can only be implemented after the SSC has provided its opinion, and following the public announcement by the offeror.

During the offer period, the offeror is only permitted to increase the offered purchase price and is required to announce such increase at least seven days prior to the end of the offer tranche.

5.4 What are the limitations and consequences?

The tender offer rules will apply to a purchase of voting shares in a public company once a 25% threshold has been met (see questions 2.1 and 5.1 above) and the authorities can monitor the tender offer.

6 Deal Protection

6.1 Are break fees available?

Under Vietnamese law, there are no provisions regulating break fees. In practice, these can be included in the purchase/subscription agreement.

6.2 Can the target agree not to shop the company or its assets?

The approval of the target company on the transaction often depends on the corporate and/or capital structure of the target and type of transaction. There are no statutory provisions restricting the target company or its shareholders from seeking other purchasers or selling the target's assets prior to competition of a transaction. However, in practice, the parties may agree to set out such restrictions between signing and closing in the purchase/subscription agreement.

6.3 Can the target agree to issue shares or sell assets?

The target may agree to issue shares subject to the approval of the target's General Meeting of Shareholders.

The target company can agree to sell its assets although certain situations, as specified in the charter of the target, must be met. This usually requires the approval of the General Meeting of Shareholders or the target's board.

Either of these acts could permit the bidder to call off a tender offer under Decree 58.

6.4 What commitments are available to tie up a deal?

There are no clear regulations to tie up a deal under Vietnamese laws. In practice, the parties may agree and set out the appropriate instruments to protect the transaction (for example, damages, if the transaction does not close due to the fault of one of the parties, or break fees).

7 Bidder Protection

7.1 What deal conditions are permitted and is their invocation restricted?

Decree 58 and Circular 194/2009/TT-BTC dated 2 October 2009 provide certain conditions that the bidder must include in an application to register the tender offer to be submitted to the SSC, in particular:

- the proposed number of shares which are the subject of the offer;
- the time limit for implementation of the offer;
- the acquisition price (which cannot be less than the average reference price of shares and the highest purchase price paid by any other entity which made a tender offer in respect of the shares of the target company within a period determined by law as mentioned in question 2.5); and
- the conditions for rescission of a tender offer tranche (which may only be one of the following circumstances: (i) the volume of shares registered for sale by offerees does not meet the percentage announced by the bidder; (ii) the target company increases or reduces the volume of its voting shares; (iii) the target company reduces its shareholding capital; (iv) the target company issues additional securities in order to increase charter capital; or (v) the target company sells all or a part of its assets or an operational section of the company).

As mentioned in question 5.2 above, during the offer period, the offer price of shares may not be reduced but may be increased and the bidder is required to announce the increase in the price at least seven days prior to the end of the offer tranche. In addition, the increased price shall apply to all shareholders in the target company including shareholders who have already agreed to sell to the bidder before the increase in the price.

In case of rescission of a tender offer tranche, the bidder must obtain consent from the SSC and must make a public announcement of the rescission in three consecutive editions of one electronic newspaper or one written newspaper.

7.2 What control does the bidder have over the target during the process?

The bidder has no control over the target during the bidding process under Vietnamese regulations. However, the bidder will have the right to rescind a tender offer tranche if the target company takes any action that triggers a condition for rescission, as mentioned in question 7.1 above.

In addition, the bidder may seek to reach an agreement with the target company and major shareholders that the company will not take any adverse actions during the bidding process, and that the bidder may call off the bid if any such actions are taken. If an agreement of this type is reached, it should be registered with the SSC as part of the tender offer registration file, but its effectiveness under Vietnamese law is not clear.

7.3 When does control pass to the bidder?

In principle, the control passes to the bidder upon completion of the acquisition of the shares. Depending on the corporate form of the target company and shareholding percentage acquired by the bidder, and subject to the provisions of the charter of the target company, the bidder may control the activities of the target company through shareholders' voting rights at the General Meeting of Shareholders or its direction with respect to its nominees on the Board of Management of the target company. However, members of the board are elected by the General Meeting of Shareholders and, following election, the duties of the members of the board should be to the company and its shareholders (as a whole), not to the nominating shareholder.

For completeness, the transfer of shares in non-listed public

companies is effective as from the date of issuance of share certificates to the bidder, and registration of the bidder into, the register of shareholders of the company. The transfer of shares in listed public companies is effective as from the date on which a book entry is made in respect of the purchase shares in the securities depository account at the VSD.

7.4 How can the bidder get 100% control?

The bidders may proceed with a tender offer for up to 100% of the shares. If all the shareholders sell their shares, the bidder will obtain 100% control over the target company.

As mentioned in question 2.7 above, if following a tender offer, a bidder holds 80% or more of the currently circulating shares with voting rights in a public company, Decree 58 requires such bidder to continue buying the remaining shares with voting rights, at the offer price, and for a time-limit of 30 days from reaching the 80% threshold.

There are, however, no "squeeze out" rights that would force the sale by the remaining shareholders.

8 Target Defences

8.1 Does the board of the target have to publicise discussions?

In case of receipt of a tender offer, the target company must disclose information relating to a tender offer on its information disclosure media (e.g. its website) and on the Stock Exchange within three days from the date of receipt of the registration data sent by the bidders. Furthermore, the Board of Management of the target company must send the company's opinion on the tender offer to all shareholders for their information within 10 days from the date of receipt of the registration data sent by the bidder.

8.2 What can the target do to resist change of control?

As discussed in question 3.1 above, hostile acquisitions are rarely made in practice and the law is silent on measures for the target company to defend its position following the hostile bid. The Board of Management of the target company may issue an unfavourable assessment of the tender offer to acquire shares. Although the applicable regulations are unclear on the impact of a negative evaluation by the board, it may affect the decision of the shareholders of the target company as a practical matter.

8.3 Is it a fair fight?

Under Vietnamese laws, there are no clear regulations which are designed to create a distinction between a preferred bidder and an unsolicited competing bidder (and any number of bids may co-exist). The results may depend on what measures are undertaken by the target and it's Board with respect to a particular tender offer.

9 Other Useful Facts

9.1 What are the major influences on the success of an acquisition?

There are a number of factors that may lead to the success or failure of an acquisition, including the conditions on which the parties agree to complete the transaction, such as the price offered, the terms of payment, and the satisfaction of all agreed conditions precedent. Support of the board and substantial shareholders is of course important. Furthermore, regulatory approvals can play a key part in the success of a transaction.

9.2 What happens if it fails?

The failure of the transaction will give rise to the question of recovery of the costs spent in connection with the acquisition of the aggrieved party. However, as mentioned in question 6.1, the ability for the aggrieved party to recover the costs will depend on the agreement between the parties. In the case of a tender offer, the bidder is not prohibited from making a new tender offer if its initial tender offer failed.

10 Updates

10.1 Please provide a summary of any relevant new law or practices in M&A in Vietnam.

The Government issued new Decree 194/2013/ND-CP dated 21 November 2013 on the re-registration and conversion of foreign invested enterprises and renewal of investment licences of investment projects in the form of business cooperation contracts ("Decree 194"). Decree 194 came into full force on 15 January 2014 and replaced Decree 101/2006/ND-CP of the Government dated 21 September 2006 on re-registration, conversion and registration for new investment certificates of foreign invested enterprises and Decree 38/2003/ND-CP of the Government dated 15 April 2003 on equitisation of foreign invested enterprises. **Decree 194** provides detailed guidance of the Law No. 37/2013/QH13 dated 20 June 2013 amending Article 170 of the Law on Enterprises. Decree 194 now allows foreign invested enterprises established before 1 July 2006 to decide on the time of its re-registration and conversion as well as its management and operational organisation. This Decree 194 also allows foreign invested enterprises established before 1 July 2006 and that have not dissolved despite the expiry of their license, to re–register under the Law on Enterprises in accordance with the conditions set out therein. The deadline for such re-registration was 31 January 2014, after which date such enterprises must carry out the procedure for dissolution.

With the purpose to restructure SOEs, the Government promulgated several amendments in the legal framework in relation to the equitisation and management of SOEs. Decree 59/2011/ND-CP on conversion of SOEs into shareholding companies was amended by Decree 189/2013/ND-CP dated 20 November 2013, setting out more guidance on the equitisation of SOEs, and in particular, the valuation of land use rights held by such SOEs.

In terms of practice, the trend of restructuring the commercial banking system through mergers and acquisitions continues to develop with several deals in the year 2013. The most significant deals include:

- the merger of Petro Vietnam Finance Corporation and Western Bank, to create "PVcomBank", in March 2013;
- DaiABank was merged into HDBank, in November 2013;
- Chau Tho Investment Joint Stock Company and OCBC sold their respective 14.99% and 14.88% total shares in VPBank in early 2013 and late November 2013; and
- Vietnam Airlines withdrew from Techcombank, selling 24.03 million shares in December 2013.

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Samantha Campbell heads the GLN Vietnam practice and shares her time between the Ho Chi Minh City and Hanoi offices. Samantha also advises on a broad range of corporate and finance matters. She has acted on a variety of international finance transactions, including mainstream bank lending, project development and financing, acquisition financing, real estate finance and restructuring.

In addition, Samantha has considerable experience of cross border M&A/private equity transactions and has advised on numerous joint venture arrangements, private acquisitions and divestitures. Her work to date has involved transactions around the world in both developed and emerging economies, including in Asia, the Commonwealth of Independent States, sub-Saharan Africa, Europe and South America.

Building on her international experience outside Vietnam, Samantha is also very active in the field of projects, PPPs and real estate/construction in Vietnam, and is currently working on significant large scale infrastructure projects.

Her experience cuts across a broad range of sectors, including energy, transport, steel, waste and water. She recently advised an international roads construction and operating company on its potential participation in a road project to be built under the new PPP regulation in Vietnam.

Samantha has authored the Vietnam chapter for numerous leading legal investment guides, including the International Banking Regulation Review, the PLC Finance Handbook, the International Comparative Legal Guide to M&A and the International Comparative Legal Guide to Corporate Tax.

Samantha has been named as a leading individual for Banking and Finance and Corporate/M&A in Vietnam by Chambers Asia Pacific and Chambers Global, and is recommended in the latest Asia Pacific Legal 500 in Vietnam for Banking and Finance, Capital markets, Corporate and M&A, Projects and Energy; Real Estate and Construction, and Dispute Resolution.

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Huynh Tuong Long is a senior associate with 15 years of experience in advising clients (mainly, foreign companies doing business in the country and foreign-invested enterprises) in Vietnam. He has extensive experience with corporate and M&A and foreign direct investment matters in Vietnam, advising numerous foreign investors on a wide range of share and asset acquisitions, divestments and joint venture arrangements in a number of sectors, including in respect to tax regulation and labour.

Long has advised on the creation of numerous wholly-owned subsidiaries and representative offices of foreign clients in Vietnam and provides ongoing legal and administrative support for those Vietnamese entities. He also has significant experience of Vietnamese capital markets matters (including advising on cross-border issuances), tax regulation, major project and infrastructure matters, and commercial dispute resolution.

His sector experience includes banking and finance, investment funds, insurance, oil and gas, construction, engineering and project management, food and beverages, and professional services.

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Our Vietnam offices advise international investors on numerous foreign investment projects across a wide range of sectors, including financial services, infrastructure, real estate and construction, retail, pharmaceuticals and logistics, projects and infrastructure/PPPs, dispute resolution and arbitration, employment, TMT and IP, taxation as well as trade and custom law.