
M & A in Vietnam: Trend and Legal Framework

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Abstract

The trend of mergers and acquisitions (M&A) is overgrowing throughout the world, especially in Vietnam. Vietnam is one of the countries active in M&A activities. The development of M&A values in Vietnam from 2006 to 2017 and 2018 experienced a significant increase. The development of M&A in Vietnam shows a substantial increase from year to year. The total value of M&A in 2017 reached a record \$ 10.2 billion, the highest level ever and rose 175% from 2016. In the first six months of 2018, the total value of M&A sales in Vietnam reached \$ 3.55 billion (equivalent to 155% of the same period in 2017). So the trend of development of M&A in Vietnam is exciting to study. In addition to the development trends of M&A, another exciting thing to examine is the issue of a legal framework for M&A in Vietnam. There are three main legal aspects of M&A in Vietnam, first is Controlling Economic Concentration under the Law on Competition, Management of Investment Activities under the Law on Investment and Management of Companies 'Activities under the Corporate Law.

Keywords: Legal framework; M&A

I. INTRODUCTION

Since mid-1990s, Vietnam has been emerging as a new market economy. It has been a member to the Association of Southeast Asian Nations (ASEAN) since 1995, then the World Trade Organization since 2007 (Q. H. Vuong, Tran, & Nguyen, 2010). Quan-hoang, et al. (2008) in their research found various aspects of M&A market in Vietnam's newborn market economy. The market has been booming since the middle of 2000s, although M&A transactions appeared much earlier. The surge in these activities by no means 'incidentally' coincides with the large jumps in FDI and FPI inflows into the Vietnamese economy. In fact, they have been interacted and closely, and positively, correlated. As relevant to previous results, in the boom time, M&A transactions account portion of FDI annual flow. The increasing activeness of M&A transaction is definitely inevitable (Q.-H. Vuong, Tran, & Nguyen, 2009). The trend of mergers and acquisitions is overgrowing throughout the world. M&A activities greatly influence the condition of the company. all over the world. M&A activities significantly affect the condition of the company. Companies view M&A with an expectation of creating value through better efficiency, reduction of costs through economies of scale, larger product offerings and other synergies (Shah & Arora, 2014). These developing countries in Asia are offering various advantages to potential investors, which includes steady economic growth, increasing trend in entrepreneurial class, continuously improving financial systems, developing infrastructure, single digit inflation, growing number of skilled labors, vast domestic markets and expanding capital markets (Ahmed, Ahmed, & Kanwal, 2014). M&A activity is to gain the control of a business through the ownership of a portion or the whole of that business. M&A (mergers and acquisitions) seems to be a phrase pronounced together, with the same meaning, but in fact they have different characteristics (Viet, 2015). The trend of mergers and acquisitions is very developed throughout the world, especially in Vietnam. The development of M&A values in Vietnam from 2006 to 2017 shows a level of development that has significantly increased this can be seen in the figure below:

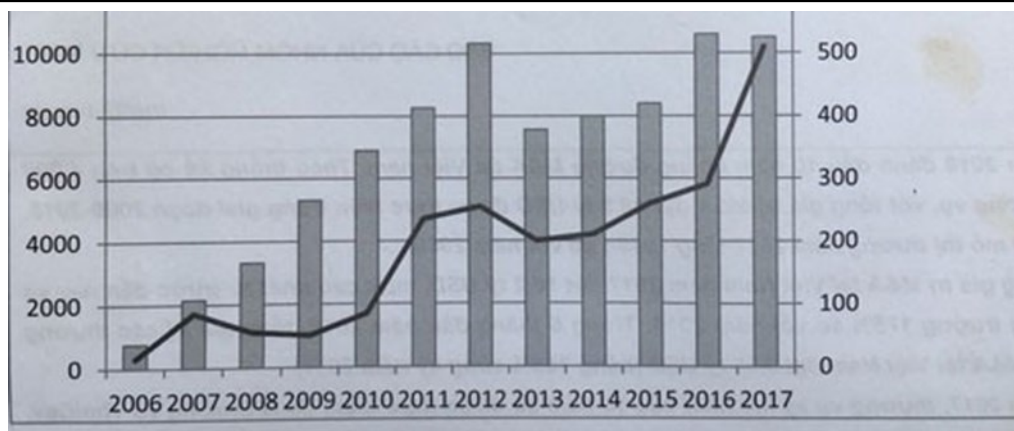


Figure 1
The development of M&A in Vietnam from 2016-2017

The total value of M&A in 2017 reached a record \$ 10.2 billion, the highest level ever and rose 175% from 2016. In the first six months of 2018, the total value of M&A sales in Vietnam reached \$ 3.55 billion (equivalent to 155% of the same period in 2017). Based on the above data, it can be seen that the development of M&A in Vietnam shows a significant increase from year to year. So the trend of growth of M&A in Vietnam is exciting to study. In addition to the development trends of M&A, another exciting thing to examine is the issue of the legal framework for M&A in Vietnam.

Vietnam as a developing country, of course, overgrowing a merge and acquisitions (M&A) system that is very interesting to research. , Based on the background, this research aims to examine trends in M&A development in Vietnam and the problem of the M&A legal framework in Vietnam.

II. RESULT AND DISCUSSION

Trend of M&A in Vietnam

Vietnam is very active in mergers and acquisitions. Even the M&A trend in Vietnam was highly developed especially in 2018, the total value of M&A sales in Vietnam shows a significant increase for 3.55 billion dollars with a 155% increase compared to 2017. The merger is a combination of the two companies which usually have the same size, agree to pool, share ownership and acquisition of a company that has the position of the new owner (Viet, 2015). M&A activities that develop especially in Vietnam can certainly provide positive benefits and impacts for those involved in them. M&A has opportunities and potential to grow especially in the Asian market. In the first six months of 2018, the total value of M&A sales in Vietnam reached \$ 3.55 billion (equivalent to 155% from the same period in 2017). Of the total M&A sales value of \$ 3.55 billion, it can be seen that the development of M&A in Vietnam is very significant. Foreign investors related to M&A in Vietnam are Japan, Korea, Singapore and other Asian investors.

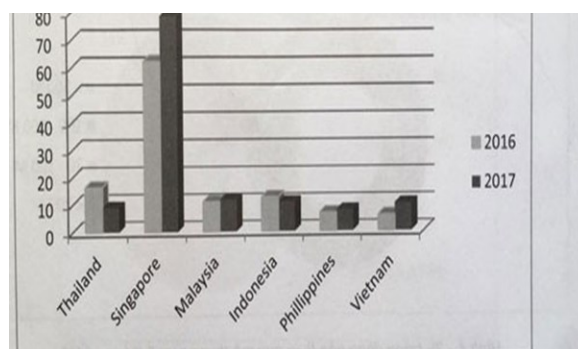


Figure 2
The comparison of the total M&A in Southeast Asia

From the picture above it can be seen that the comparison of the total M&A values in Southeast Asia, especially in Singapore, Indonesia, Thailand and Malaysia, shows different developments in each country. The total amount of M&A in 2016 for the Singapore market reached \$ 62.3 billion, far surpassing \$ 11-16 billion from Indonesia, Thailand and Malaysia. Vietnam's market size is 86.22% compared to the Philippines market, the country with a total M&A 2016 value reached 6.75 billion. In 2017, the M&A amount of Vietnam was equivalent to that of Malaysia with 11.73 billion USD, Indonesia 10.7 billion USD. If examined, it can be seen that the M&A market remains moderate in Southeast Asia. M&A activities are highly developed in Vietnam, while the potential market in M&A operations in Vietnam is related to real estate, retail, consumer products, games and IT. These five things are potential markets related to M&A activities in Vietnam. Up to 80% of deals are valued, and there are deals in the field of consumption and industry, and significant sales are in the consumer sector. The size of the deal is the US \$ 20 million, accounting for 70% of the total numbers of transactions in 2016, mainly Asian companies traded, 5% of M&A deals come from US investors, Private companies from Thailand account for 21% of all M&A deals.

Beside, Viet (2016) in his research entitled *The Current Situations and Solution in Mergers and Acquisitions of Retail Section in Vietnam*, finds in the context that the retail market of countries in the region is approaching saturation, the Vietnamese market with more than 91 million people, including 60% of young consumers, the proportion of Vietnam's modern retailers is only 25% of distribution channels, much lower than countries in the region such as Thailand (34%), Malaysia (60%), Philippines (33%), China (51%), Singapore (90%). According to the general plan of Vietnam's commercial development, until 2020, the country will have around 1200-1500 supermarkets, 180 commercial centres and 157 shopping centres, trying to reach the 45% advanced retail level of retail distribution channels on the market (Viet, 2016). Therefore, Vietnam's retail sector is a very attractive destination for foreign investors. In the future, more competition will emerge in Vietnam's retail market, competition will become increasingly fierce given the large number of international traders who will try the market in Vietnam, and M&A in the retail sector will be unavoidable and will be more varied.

Legal Framework for M&A in Vietnam

M&A developments in Vietnam, of course, have an impact on economic growth in Vietnam. So that the necessary legal rules governing this matter. M&A through government trade liberalisation, regulatory reforms, and privatisation; the target of M&A is favourable (Ahmed et al., 2014). There are several legal rules relating to M&A (Mergers and Acquisitions) in Vietnam, namely Regulations on mergers, acquisitions, and consolidation in Vietnam are presented dispersedly in-laws including the Civil Code 2005, the Enterprise Law 2005, the Competition Law 2004, and the Investment Law 2005; decrees; decisions; or circular with little connection and guidance for implementation between these legal documents (Linh, 2012):

Mergers and acquisitions concepts in-laws

The Civil Code provides the basic definitions of mergers and consolidations in Article 94 and 95, which are developed in the Enterprise Law. According to Article 152 of the Enterprise Law 'two or more companies of the same type may be consolidated to form a new company by transferring all legal assets, rights, obligations and interests to the consolidating company simultaneously with the termination of the existence of the consolidated companies'.

Types of transactions

A foreign investor undertakes acquisitions of Vietnamese companies by buying or transferring some or all of the charter capital or shares from the original investor. Asset acquisitions are also possible in cases where the investor wants to subsume new assets into an already licensed entity.

Current issue

There are some issues related to the existing provisions of laws and regulations and enforcement of this law regarding M&A activities in Vietnam. First, there are still restrictions such as the maximum share ownership as mentioned above, and monopolies in fields such as electricity and business press. Secondly, regulations on M&A are spread in many different legal documents along with various rules concerning banking, finance and insurance.

Besides that, the Vietnamese menu for selection of M&A structures is to share the deal and asset deal. The share of acquisition/subsorption consist of share deal, share deal after business transfer, share deal after division/separation of a target, merge and joint venture. Besides, there are also other options, namely asset deals that include asset acquisition and project transfers. The most important thing that becomes the central legal aspect regarding the regulation of Mergers and Acquisitions in Vietnam is concerning:

- 1) Controlling Economic Concentration under the Law on Competition
- 2) Management of Investment Activities under the Law on Investment
- 3) Management of Companies' Activities under the Corporate Law

Related to the implementation of investment activities of economic organisations with foreign-owned capital in Vietnam regulated in the Investment Law, especially in the provisions of Article 23. The contents of the provisions of Article 23 of the Law on Investment are:

An economic organization must satisfy the conditions and carry out investment procedures in accordance with regulations applicable to foreign investors upon investment for establishment of an economic organization; investment in the form of capital contribution or purchase of shares or portion of capital contribution to an economic organization; or investment on the basis of a BCC contract in any one of the following cases:

- a) 51% or more of its chapter capital is held by a foreign investor(s), or a partnership has a majority of partners being foreign individuals in respect of economic organizations being a partnership;
- b) 51% or more of its chapter capital is held by an economic organization(s) prescribed in paragraph (a) of this clause;
- c) 51% or more of its chapter capital is held by a foreign investor(s) and an economic organization(s) prescribed in paragraph (a) of this clause.

In addition to regulating requirements and implementing investment procedures by applicable regulations for foreign investors, the Investment Law specifically in Article 23 also regulates economic organisations. The contents of the provisions of Article 23 of the Law concerning Investment are:

Economic organizations with foreign owned capital other than those prescribed in paragraphs (a), (b) and (c) of clause 1 of this article shall satisfy the conditions and carry out the investment procedures in accordance with regulations applicable to domestic investors upon investment for establishment of an economic organization; investment in the form of capital contribution or purchase of shares or portion of capital contribution to an economic organization; or investment on the basis of a BCC contract.

Any economic organization with foreign owned capital which has been established in Vietnam and has a new investment project may carry out the procedures for implementation of such investment project without being required to establish a new economic organization.

One of the main legal aspects regarding the regulation of Mergers and Acquisitions in Vietnam is related to Controlling Economic Concentration. Controlling the Economic Concentration stipulated in Law on Competition 2004 and Corporate Law 2014. Concerning economic concentration, three zones are divided based on the market share, namely the free zone (white zone), controlled zone (gray zone), and prohibited zone (black zone). Following is a picture of zone division based on total market share:

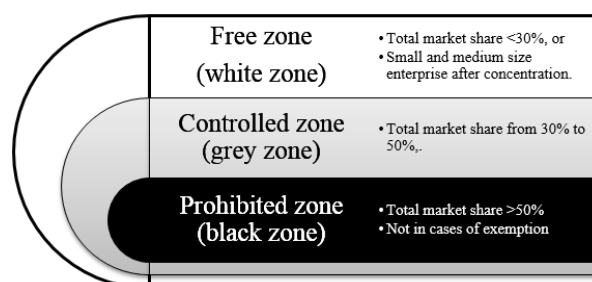


Figure 3
Zone division based on total market

There are several cases of liberation from economic concentration which are prohibited. Cases of exemption from prohibited economic concentration is stipulated in the Law on Competition 2004, Art.19, (this article will be expired from 1st July 2019). Law on Competition 2004 regulates cases of exemption from prohibited economic concentration, namely:

One or more of the participants in economic concentration is/are in danger of dissolution or bankruptcy; or

The economic concentration has an effect of expanding export or contributing to socio-economic development, technical and technological advance.

The role of M&A should be understood in the existence of major transformations of the economy, in the light of growing globalization, re-integration of the Vietnamese of the economy, vibrant transformation of economic functions assumed by local entrepreneurs, public investors and the state (Q. H. Vuong et al., 2010).

III.CONCLUSION

M&A activities are very developed in Vietnam. The trend of M&A development in Vietnam is dominated by investors from Japan, Korea, Singapore and other investors from Asia with potential markets in the real estate, retails, consumer products, games and IT fields. There are three main legal aspects of M&A in Vietnam, first is Controlling Economic Concentration under the Law on Competition, Management of Investment Activities under the Law on Investment and Management of Companies 'Activities under the Corporate Law.

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