

DuaneMorris

M&A STRATEGY

How General Counsels can deliver quality and value?

DR. OLIVER MASSMANN – PARTNER
DUANE MORRIS VIETNAM LLC

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AGENDA:

- **FOREIGN INVESTMENT IN VIETNAM**
- **M&A DEAL ENVIRONMENT**
- **REGULATORY BACKGROUND**
- **TRANSACTIONAL ISSUES**
- **OUTLOOK**

FOREIGN INVESTMENT IN VIETNAM

Vietnam 2017 Economy at a glance



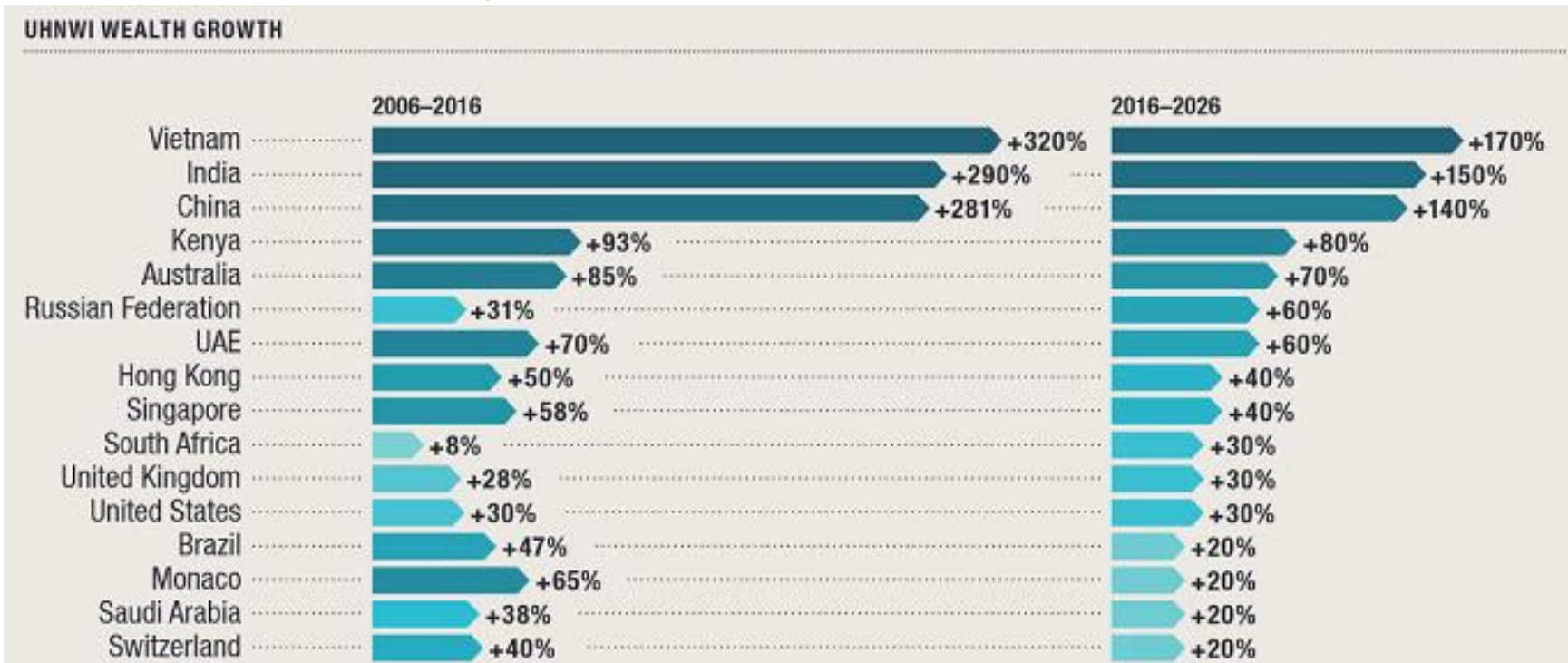
- GDP: US\$220.3 billion
- GDP per capita: US\$2,385
- GDP Growth: 6.81% (record breaking in 10 years)
- Inflation: 1.41%
- Population: About 91.70 million
- Labor force aged 15 and above: 54.61 million
- Total export and import turnover: : >US\$420 billion (7.1% increase)
- Regional Minimum wage (Region I): VND 3.980 million (US\$ 175) per month (Jan 2018)

Which are the world's most dynamic cities?

According to the JLL City Momentum Index 2017*

1. Bangalore (India)
2. Ho Chi Minh City (Vietnam)
3. Silicon Valley (USA)
4. Shanghai (China)
5. Hyderabad (India)
6. London (UK)
7. Austin (USA)
8. Hanoi (Vietnam)
9. Boston (USA)
10. Nairobi (Kenya)

Vietnam's super rich population is growing faster than anywhere else....



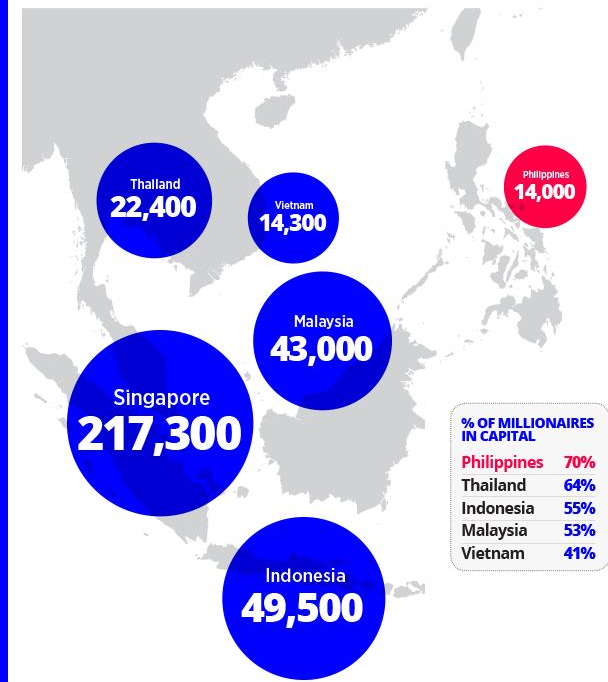
... and is on track to continue leading the growth in the next decade

Communist Vietnam Has More Millionaires Than Capitalist Philippines



ASEAN Millionaires

Number of residents in large Southeast Asian countries with a net worth of at least a million US dollars in 2016



Source: Knight Frank, The Wealth Report 2017

Entrepreneur
PHILIPPINES

FOREIGN INVESTMENT IN VIETNAM

REGIONAL COMPARISON OF COMPETITIVENESS ON MARKET ACCESS

Vietnam ties in first place with Singapore

Country	Limitation of market access*	Country	Limitation of market access*
Malaysia	medium	Myanmar	high
Indonesia	medium	Cambodia	medium
Philippines	medium	Laos	medium
Singapore	low	India	high
Thailand	medium	China	medium
Brunei	high	Vietnam	low

- ***Typical restrictions: number of opened sectors, JV requirement, limits on foreign-owned shares, permission requirement**



Getting the Deals Done!

M&A DEAL ENVIRONMENT



Deals overview in 2017

- Vietnam's M&A market continues to be active in 2017 after reaching a record-breaking deal value of USD5.8 billion in 2016.
- The number of M&A deals amounts to 2,062 deals worth USD1.8 billion from January – May 2017, up 116.2% compared with the statistics last year.

Notable M&A deals in Vietnam in 2017

- The market in 2017 sees several M&A deals in state-owned enterprises where the privatization is pushed hard by the Government. Vietnam Beverage – a company of a Thai billionaire managing ThaiBev buying more than 53% shares in Sabeco – a company owned by the Ministry of Industry and Trade at USD 5 billion, is the most notable and successful privatization deal this year.
- In December 2017, Shinhan Bank Vietnam Ltd. (“Shinhan Bank Vietnam”) acquired ANZ Bank (Vietnam) Limited (“ANZ Vietnam”)’s retail business. This successful transaction has been considered as a big step for Shinhan Bank Vietnam’s development in Vietnam market, as well as a rapid growth for Vietnam retail banking in the upcoming time.



Getting deals done!

REGULATORY BACKGROUND

REGULATORY BACKGROUND

- *M&A involves a very wide range of legal areas:*

Labor

Land

Tax

Intellectual Properties Rights

Regulatory

Competition law

Corporate/ licensing

Environment

- *Legislative system:*

- Law on Investment 2014
- Law on Enterprises 2014
- Securities Law No. 70/2006/QH11
- Vietnam's Commitments on WTO Accession
- Decision No. 58/2016 of the Prime Minister

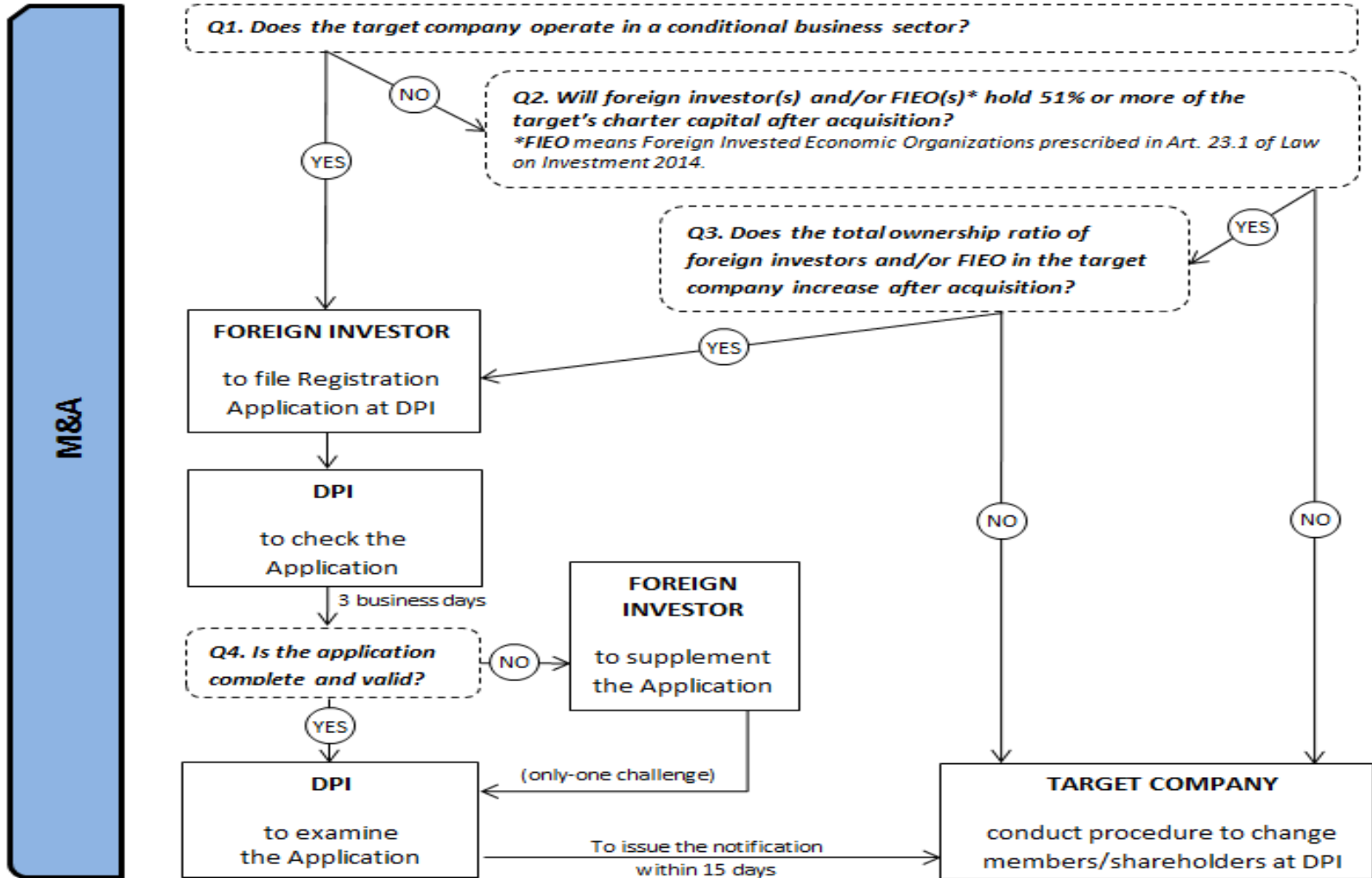
REGULATORY BACKGROUND

- *Appears to be simple under the new Investment Law !!!*
Only registration required, no more Investment Registration Certificate
 - ✓ *Satisfy the requirements for investment*
 - ✓ *Submit application dossier*
 - ✓ *Assessment by the licensing authority and decision after 15 days*

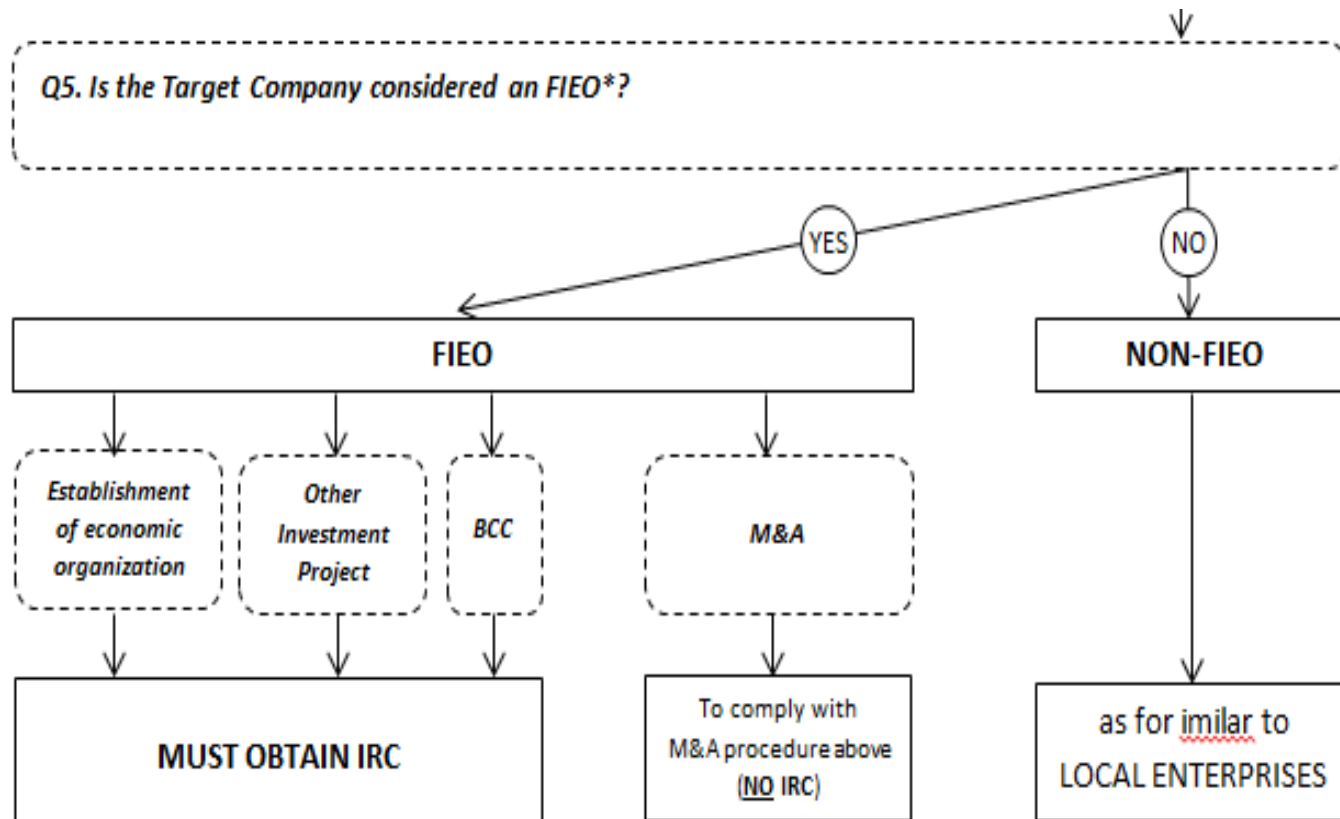


Getting the Deals Done!
DEAL PROCESS

M&A PROCEDURES UNDER NEW LAW ON INVESTMENT



POST M&A





Getting the Deals Done!

TRANSACTIONAL ISSUES



TRANSACTIONAL ISSUES

Step 1: Pre-Deal Negotiations & Deal Structuring

- Business scope
- Licensing process
 - Understand licensing process in the context of the deal particulars
- Expectations
 - Buyer / seller (pricing, payment terms, funding, timing, transaction complexity, professional costs etc.)
- Assets / Shares
 - For 100% acquisitions assets usually preferable
- Corporate Structure (Onshore / Offshore)
 - Exit / tax considerations
- Financing Structure (Onshore / Offshore)

TRANSACTIONAL ISSUES

Example 01: Foreign Capital Accounts

- Foreign investors must observe Vietnamese foreign exchange control laws:
 - *Decree 70/2014/ND-CP dated 17 July 2014*
 - *Decision 88/2009/QD-TTg dated 18 June 2009*
 - *Circular 05/2014/TT-NHNN dated 12 March 2014*
- *Decree 70/2014/ND-CP and Circular 05/2014/ TT-NHNN* distinguishes between two types of capital accounts for capital transactions
 - *Direct investment-capital foreign currency accounts => For the foreign investor who is issued IRC for project implementation in Vietnam*
 - *Indirect investment-capital Vietnamese Dong accounts => Generally for the foreign investor who involves in M&A deals, purchase and sales on the securities market, entrustment of investment in VND, etc...*
- *WHAT IF* the foreign investor acquires the Vietnamese target company?
- *=> Convert the capital account from VND to foreign currency*

TRANSACTIONAL ISSUES

Step 2: Memorandum of Understanding

- Parties
 - Deposits (discussed below)
 - Often expressed to be non-legally binding except:
 - *Exclusivity*
 - *Confidentiality*
 - *Costs*
- Take legal advice before signing!*
- **Enforceable?**

TRANSACTIONAL ISSUES

Step 3: Legal, Financial & Tax Due Diligence

- UNDERSTANDING / ALLOCATING RISK
- Due diligence, disclosure and acquisition finance are often unfamiliar concepts to many Vietnamese sellers and is often hampered:
 - By limited access to documents
 - Poorly organized data rooms / DD document request list / site visit

DD IS CRUCIAL WHERE LEGAL RECOURSE IS LIMITED

SO DON'T BE FOBBED OFF

PERSEVERE!

**BOTTOM LINE: RISK ALLOCATION MEANS RESOLVING ISSUES
PRIOR TO COMPLETION OR ACCEPTING THE RISK**

EXAMPLE DD ISSUES

Issue	Issue Description	Risk	Solution
Capital structure	Unlawful increase of charter capital by revaluation of fixed assets	Fines / future compliance	<ul style="list-style-type: none"> • Solution??
Construction Permits	Buildings completed without construction permits	Demolition	<ul style="list-style-type: none"> • Seller to obtain pink book prior to completion
Land Rental Fees	Investor's potential liability to pay land rental fees on the conversion of allotted land to leasehold status and applies to 100% M&A deals	Risk that land rental fee become payable	<ul style="list-style-type: none"> • Quantify US\$ risk • [Indemnity] • Retain sum to cover
Internal Labour Rules	Target has no internal labour rules	Fines	Seller to register prior to completion

TRANSACTIONAL ISSUES

Step 4: Sale and Purchase Agreement:

- Settlement / Solutions for Security of Payment
 - *Deposits (capital account!)*
 - *Escrow accounts (workable in practice?)*
 - *Retention sum*
 - *Buyer granting seller security over shares (complicated!)*
- Reps, Warranties & Indemnities
 - *Form of retrospective price adjustment? Enforceable?*
- Disclosure Letter
 - *Not common practice*
- Funded deals
 - *Loan CPs require IRC – Chicken & Egg???*
- Jurisdiction / Choice of Law

TRANSACTIONAL ISSUES

Step 5: Submission of M&A notification dossier and change of ERC application dossier

The buyer and seller must work jointly to submit the notification to the DPI

The seller must work with the DPI to apply for change of members/ shareholders

TRANSACTIONAL ISSUES

Step 6: Completion

- The ERC application is COMPLETED when:
 - The relevant licensing authority issues an amended Enterprise Registration Certificate for the target company
 - The target's share registry is updated with the name(s) of the buyer



Getting the Deals Done!
M&A OUTLOOK



Outlook

Current Realities for Foreign Investors

- Legislative and bureaucratic obstacles
- Inconsistent application of regulations
- Rapidly changing legal and policy environment

However, there are great financial benefits and opportunities for foreign investors who persevere in Vietnam's business sector!

TPP is back without the US



EU – Vietnam Free Trade Agreement (EVFTA) expected to be signed in 2018



Sealing the deals

- Conduct a careful Due Diligence (including legal and financial)
- Make sure all business lines of the target entity are transferred to the new entity upon the deal completion
- Note that M&A activities are administered by the Foreign Department under the Department of Planning Investment and dossiers are subject to very strict examination



M&A OUTLOOK 2018

- Start-up trends in Vietnam will drive more M&A, especially in technology, e-commerce and financial sectors
- Real estate sector will continue to see a number of M&A big deals, especially in sale and purchase of real estate projects (FDI in real estate sector in 2016 ranks No. 3, an increase of 12% compared with 2015) when the Ministry of Construction proposes to amend certain provisions of the Housing Law and the Real Estate Law.
- There is great room for growth in the retail and consumer goods sectors. Modern trade channels such as supermarkets and convenience stores only account for less than 30% of sales, while the government targets a double number within the next 4 years.
- Pharmaceutical, healthcare and telecommunication sectors will also back to the development track this year

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WHEREVER YOU ARE - BE ALL THERE

Jim Elliot

DUANE MORRIS VIETNAM LLC

Thank you very much!

HANOI OFFICE

**Pacific Place, Unit V1307/08, 13th Floor,
83B Ly Thuong Kiet, Hoan Kiem District
Hanoi, Vietnam**

Tel.: +84 4 39462200

Fax: +84 4 3946 1311

HO CHI MINH CITY OFFICE

**Suite 1503/04, Saigon Tower
29 Le Duan Street, District 1
Ho Chi Minh City, Vietnam**

Tel.: +84 8 3824 0240

Fax: +84 8 3824 0241

Contact email:

omassmann@duanemorris.com