



VIETNAM M&A IN 2018 AND 2019 OUTLOOK

DR. OLIVER MASSMANN - Partner, General Director
DUANE MORRIS VIETNAM LLC

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AGENDA:

- **VIETNAM'S ECONOMIC OVERVIEW**
- **MAJOR M&A TRENDS IN VIETNAM IN 2018**
- **WHAT TO BE AWARE OF WHEN DOING BUSINESS IN VIETNAM: A GUIDE FOR FOREIGN INVESTORS**
- **VIETNAM'S M&A FORECAST FOR 2019**

Vietnam 2018 Economy at a glance



- GDP: **US\$220.3 billion**
- GDP per capita: **US\$2,385**
- GDP Growth: **7.08%** (record breaking since 2008)
- Inflation: **3.54%**
- Population: **About 91.70 million**
- Labor force aged 15 and above: **54.61 million**
- Total export and import turnover: : **>US\$482 billion (14% increase compared with 2017)**
- Regional Minimum wage (Region I): **VND 4.180 million (US\$ 180) per month (Jan 2019)**
- Vietnam's average age: **29 years old**

Welcome to the most dynamic country on this planet : Vietnam!

90 million people

Which are the world's most dynamic cities?
According to the JLL City Momentum Index 2017*

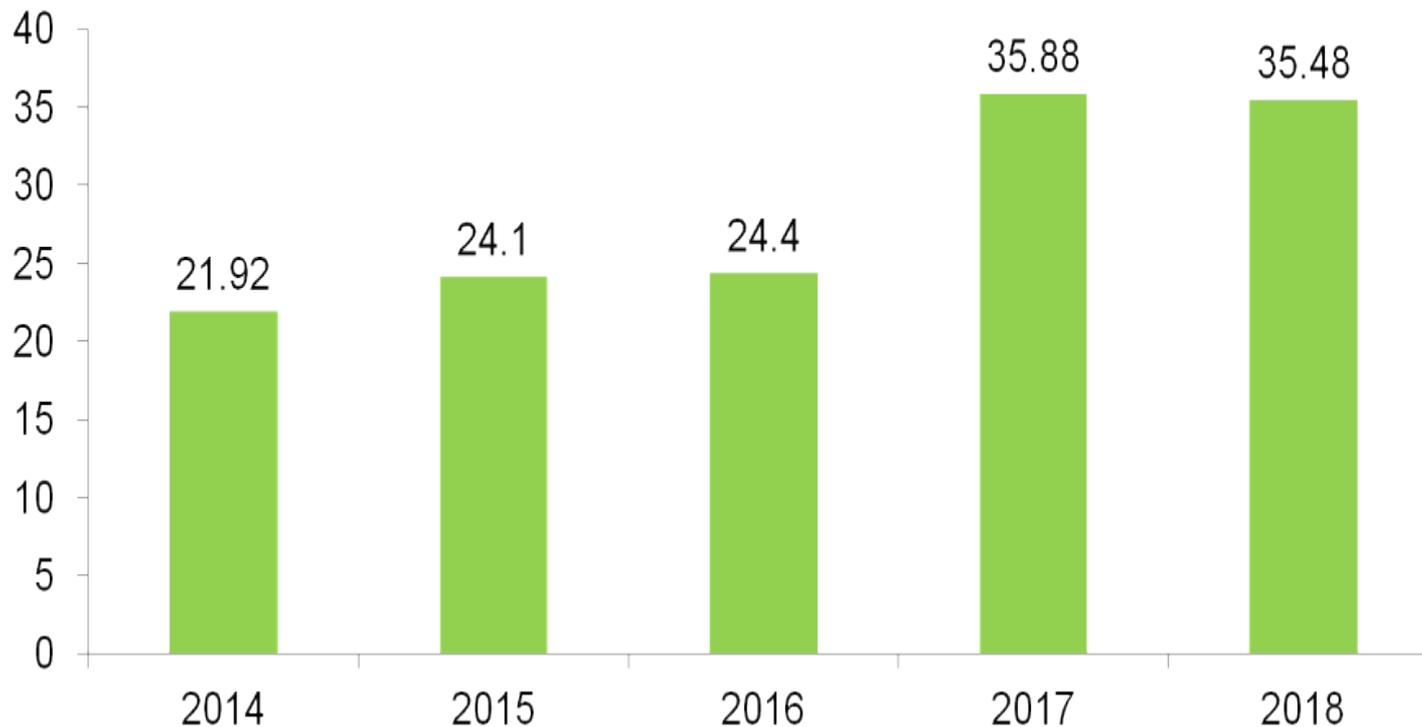
1. Bangalore (India)
2. Ho Chi Minh City (Vietnam)
3. Silicon Valley (USA)
4. Shanghai (China)
5. Hyderabad (India)
6. London (UK)
7. Austin (USA)
8. Hanoi (Vietnam)
9. Boston (USA)
10. Nairobi (Kenya)

Growing middle-class
(doubled by 2020 to
33 million people
according to Boston
Consulting Group)

Fastest-growing ASEAN economy
in 2018 and 2019, as in 2017 –
Standard Chartered Bank predicts

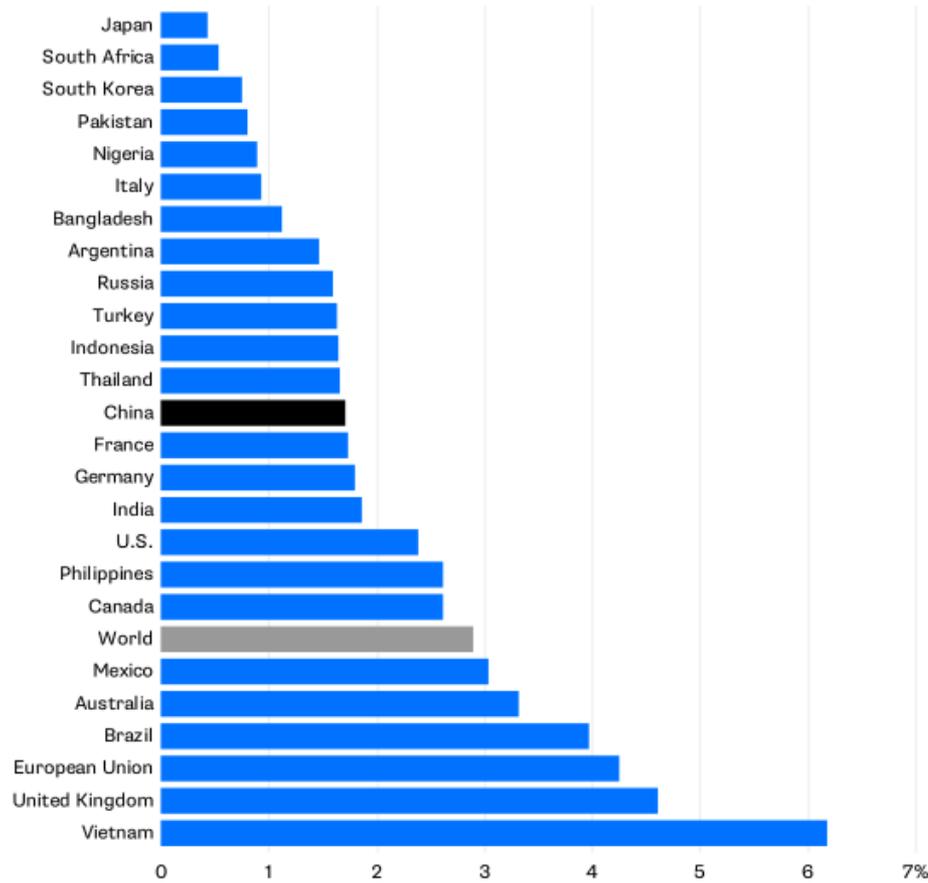
Increasing Foreign Direct Investment

Foreign Direct Investment Value (2014-2018) (billion USD)



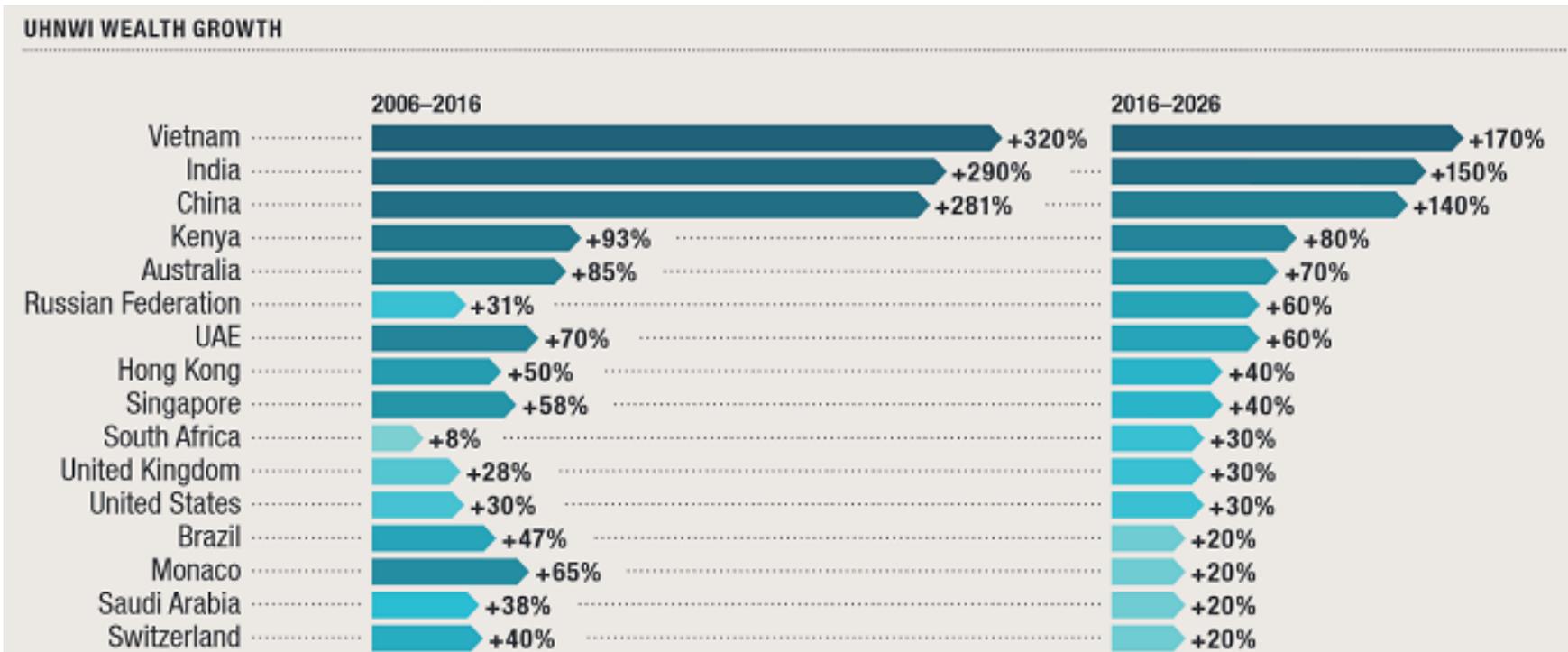
Trading Places

China is on a par with France, Germany and India in terms of foreign direct investment inflows as a share of gross domestic product



Note: We've taken three-year averages of the 2015-2017 period, as year-by-year figures can be volatile as a result of major transactions.
 Source: World Bank, Bloomberg Opinion calculations

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



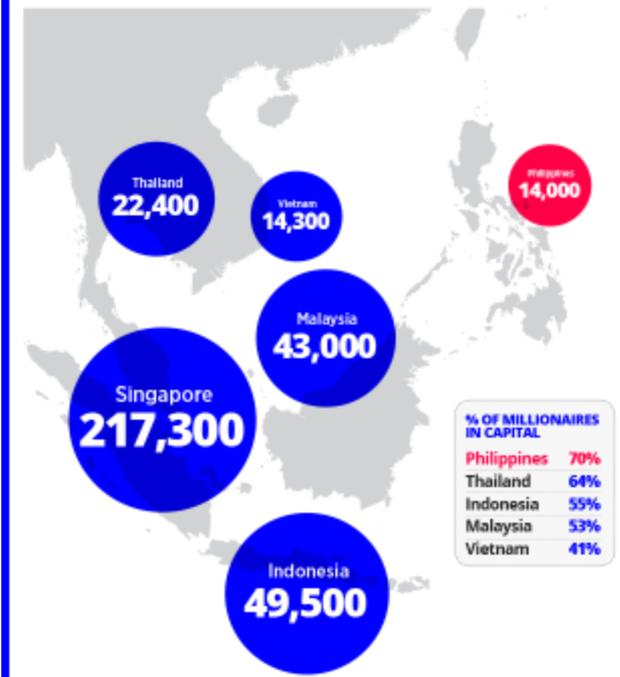
... and is on track to continue leading the growth in the next decade

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



% OF MILLIONAIRES IN CAPITAL	
Philippines	70%
Thailand	64%
Indonesia	55%
Malaysia	53%
Vietnam	41%

Source: Knight Frank, The Wealth Report 2017

Entrepreneur

Female Business Ownership



1st in Asia, 6th / 53 surveyed countries

18th in terms of women's advancement outcomes, knowledge assets, financial access and supporting entrepreneurial conditions*

Women hold 25% of CEO or board-level positions in Vietnam**

* Similar to Thailand, Hong Kong and Switzerland

** Far above Singapore, Myanmar and Indonesia

MAJOR M&A TRENDS IN VIETNAM IN 2018

Deals overview in 2018

- M&A deals in Vietnam hits USD9.9 billion in 2018, rocketing 160% compared with 2017.
- M&A deals value is worth USD9.89 billion in 2018, up 160% compared with last year.



Notable M&A deals in Vietnam in 2018

The market sees many large M&A deals in real estate sector:

- Nomura Real Development bought 24% shares in Sun Wah – an A class office building in HCMC centre
- CapitaLand bought 0.9ha land in Tay Ho District, Hanoi at USD29.78 million from Hien Duc Group and 6ha land from BCLand JSC in District 2, HCMC at USD60 million
- Mapletree Logistics Trust invested USD31.5 million in Unilever Vietnam's warehouses
- Vinhomes bought 200ha Cu Chi Golf Course from Cu Chi JS Development JSC at USD41.5 million.
- CRE, via CRE Asia invested USD6.1 million in Sembcorp Infra Services (SIS) to develop additional 30,000 m² warehouse of SIS

Notable M&A deals in Vietnam in 2018 (cont.)

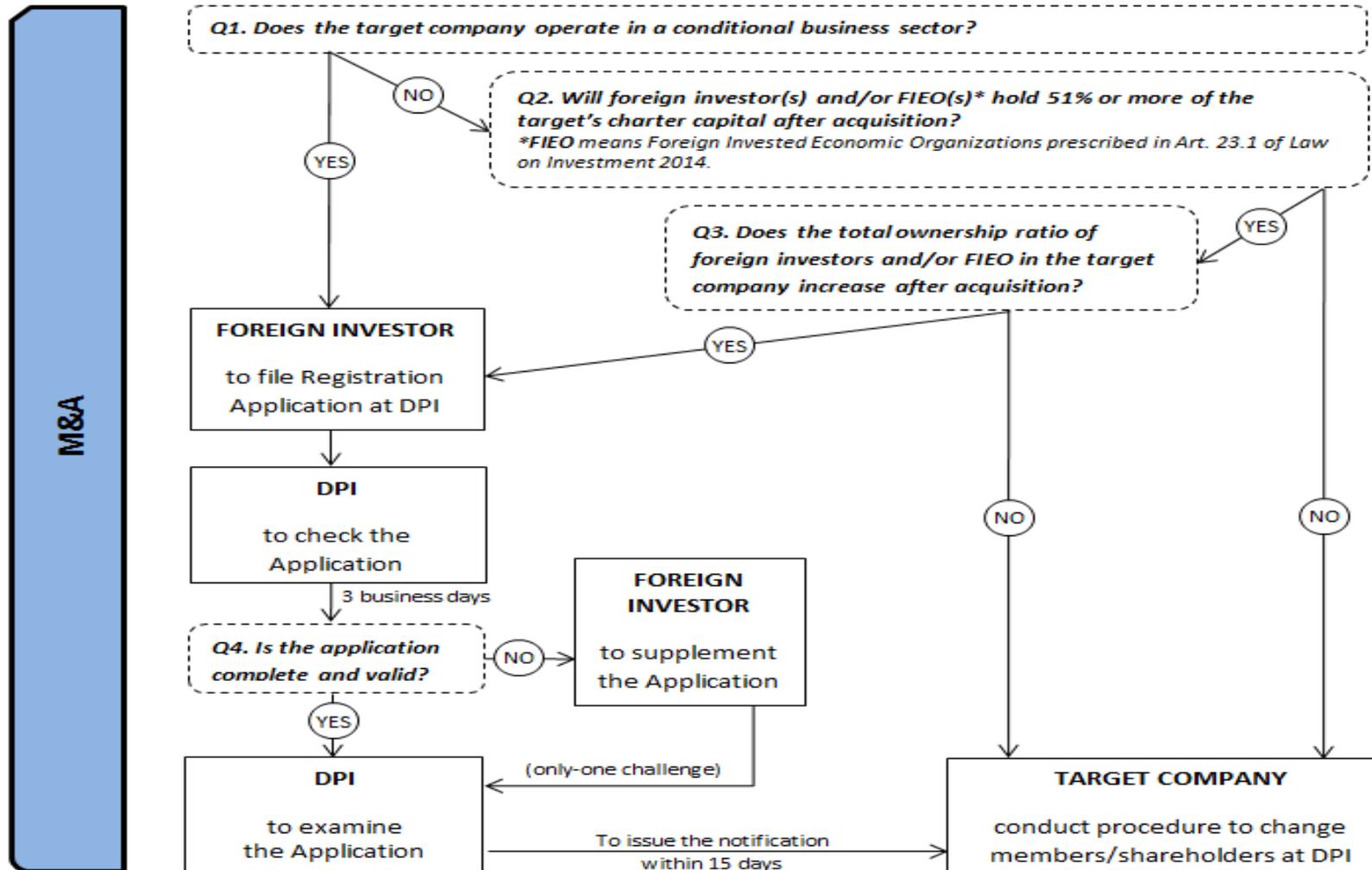
- Nawaplastics Industries (Saraburi) (Thai) bought SCIC's shares in Binh Minh Plastic Group (BMP) at USD100.2 million and others' shares in BMP to increase ownership ratio to more than 50%.
- VinFast bought all Chevrolet's authorized agencies to be the sole distributor of Chevrolet products/ services in Vietnam and General Motors' factories in Hanoi to produce small-sized cars whose copyrights are bought from General Motors.
- Sojitz (Japan) bought more than 90% shares in Saigon Paper at USD91.2 million.
- Prudential Finance was wholly transferred to Shinhan Card Ltd – a subsidiary of Shinhan Finance Group (Korea) at USD151 million.
- Uniqlo bought 35% shares in Elise (a Vietnamese fashion brand).

Main drivers of Vietnam M&A 2018

- Privatization of state-owned enterprises. Around 140 companies will be equitized by 2020, including big corporations like Vinamilk and FPT.
- Trade liberalization as a result of CPTPP, EU- Vietnam FTA, etc.
- Government's efforts to resolve bad debts in banking and finance sector.
- Government's commitments to complete the legal framework and strengthen institutional reform
- Vietnam's market potential and growth of the economy

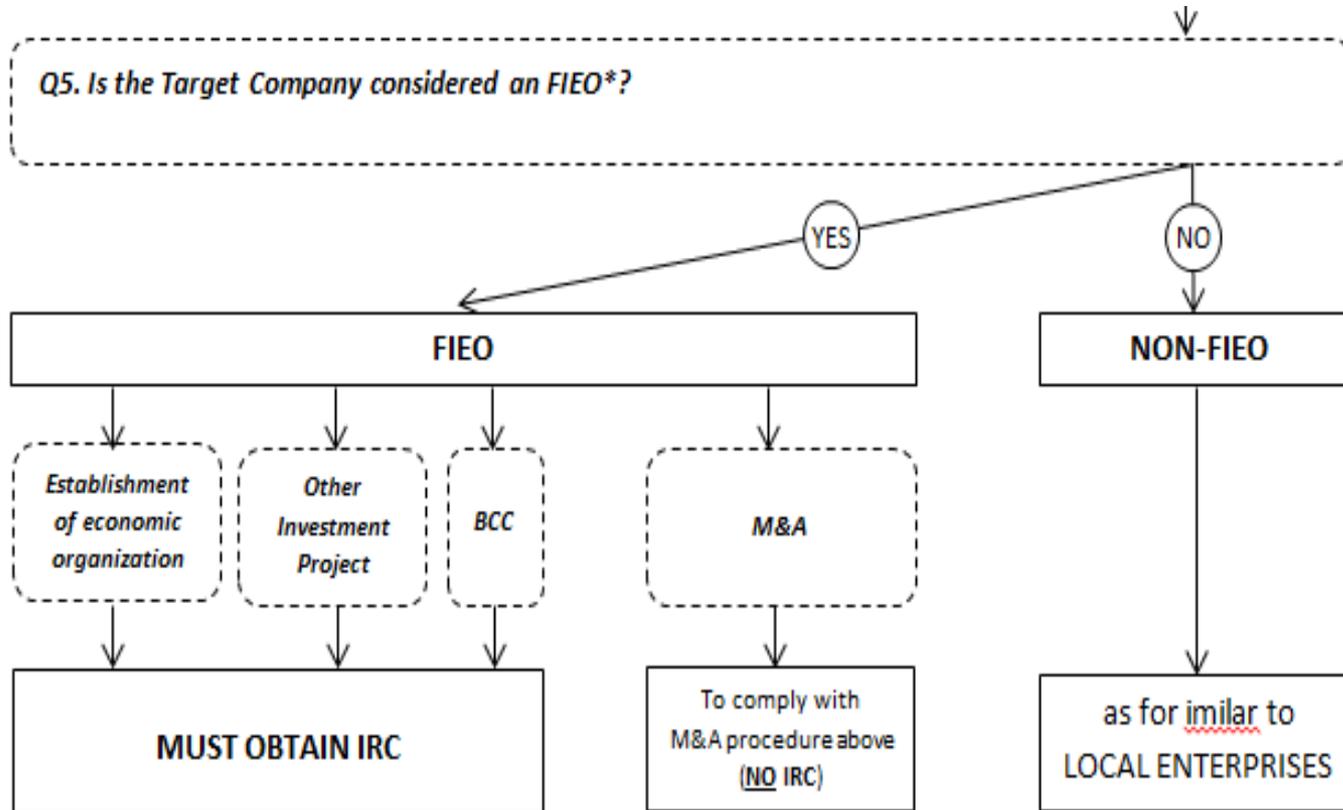


M&A PROCEDURES UNDER NEW LAW ON INVESTMENT



M&A

POST M&A



FOREIGN EQUITY CAP LIFTED IN PUBLIC COMPANIES

Rules on foreign ownership in a listed company

- If Vietnamese law, including international treaties, provides for a specific ownership cap, the maximum foreign ownership (MFO) must not exceed such a cap.
- If Vietnamese law treats a business activity as conditional on foreign investment (pursuant to the list of conditional sectors under the Investment Law) but does not yet provide any ownership limit, MFO must not exceed 49%.
- If Vietnamese law provides ownership limit for public companies in specific business sectors (for example, 30% for banking), MFO must not exceed such limit.
- If a public company conducts different business activities in which MFOs have been provided differently, the MFO will not exceed the minimum ratio specified in relation to the business activities which such company is conducting, unless otherwise stipulated in any applicable international treaty
- In cases that do not fall within the above 4 groups, MFO can be up to 100%.

Positive effects of the relaxed foreign equity cap

- Foreign investors are no longer restricted from investing in public listed companies
- More investment opportunities for foreign private equity investors to invest in majority stakes in companies. However, the Government still takes certain control over conditional business sectors where MFO is still limited in the Investment Law and the company's charter (if any).
- Enhance market liquidity and capitalization levels.
- Easier to find strategic investors (lessons learned from failed IPOs of Vietnam Airlines and other big companies).
- Accelerate companies' restructuring and equitization of state-owned enterprises

State-owned enterprises open up to foreign investors (Decision No. 58/2016/QD-TTg)

Sectors in which the state will retain ownership of over 65% (there are 4 companies in total) include:

- Operation management of airports; operating flight area services;
- Navigation information services, surveillance, aviation meteorological services;
- Mineral mining of large scale according to current regulations on classification of mine scale;
- Exploration, development and exploitation of oil and gas mines; and
- Finance and Banking (excluding insurance, securities and fund management companies, finance companies and financial leasing companies).

State-owned enterprises open up to foreign investors (Decision No. 58/2016/QĐ-TTg) (cont.)

Sectors in which the state will retain ownership of 50%-65% (there are 27 companies in total):

- Production of basic chemicals;
- Air carriage;
- Enterprises whose market share is 30% or higher, having a role to ensure major balance of the economy and stabilize the market, operating in the following areas:
 - a) Rice wholesale;
 - b) Focal petroleum imports.
- Production of cigarettes;
- Provision of telecommunications services with network infrastructure;
- Growing and processing rubber, coffee in strategic areas, mountainous and remote area linked to national defense and security;
- Enterprises ensuring basic needs for the development of production and improving material life, spirit of ethnic minorities in mountainous, remote and isolated area;
- Electricity retail business (consistent with the formation and development of the electricity market levels).

WTO ANALYSIS OF LIBERALIZATION OF MARKET ACCESS

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

WHAT TO BE AWARE OF WHEN DOING BUSINESS IN VIETNAM: A GUIDE FOR FOREIGN INVESTORS



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 Only law !!!*
registration required, no more Investment Registration Certificate
 - ✓ *Satisfy the requirements for investment*
 - ✓ *Submit application dossier*
 - ✓ *Assessment by the licensing authority and decision after 15 da*



Getting the Deals Done!
DEAL PROCESS

M&A procedures under Investment Law 2014

- Check whether the target company operates in a conditional business sector.
- Determine the total charter capital foreign investor(s) will hold in the target company (51% or more?).
- It then decides whether the foreign investor must file a registration application to the local DPI or the target company only needs to conduct procedures to change members/ shareholders at local DPI.

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 sale 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!

**BOTTOMLINE: 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

- 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 2019

- Retail and consumer goods are the most promising sector in a market of over 90 million people.
- Real estate is also a good destination for foreign investors. Transactions will be mainly related to buying back land for further development or transfer of licensed projects. Investors will still be particularly interested in residential housing projects, and more attention is now paid to commercial real estate (e.g., offices type A).
- M&A in industrial sector will continue its trend from 2018.
- Investors will mainly come from China (as a result of the proposed RCEP), Thailand, Singapore, Japan, Hong Kong and South Korea.
- Targets will be those already listed or well branded.
- Difficulties in due diligence process are foreseeable due to lack of responsiveness, preparedness and information.

**CONNECTIONS ARE BUSINESS
PLEASE CONNECT WITH ME ON
LINKEDIN:
OLIVER MASSMANN**

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

References (1)



International Consulting & Trading Services Ltd.,

Hanoi, 15th October 2015

To Whom It May Concern

Recommendation of Excellent Services of Mr. Oliver Massmann

I am Managing Director of International Consulting and Trading Services Ltd, a company registered in British Virgin Islands with operations based from our Hanoi Representative office. Over 15 years we have assisted many international overseas suppliers, from a wide range of industries, to identify markets and thereafter representing their interests to secure ongoing business here in Vietnam. The majority of our clients are based in Asia, Eastern and Western Europe.

While we endeavour to enforce our contractual rights, this is – unfortunately – not always possible. In this regard, we would like to highlight our satisfaction with the highly professional services rendered by Mr. Oliver Massmann of Duane Morris LLC, Hanoi, who successfully represented us and settled a defaulted payment, due to us for services provided to an international German company.

We would further note that Mr. Massmann's successful handling of the case exceeded our expectations since he achieved a settlement without the need for costly arbitration in the courts of Vienna.

Mr. Massmann's capability in legal analysis and his commercial aptitude combined with his exceptional negotiation skills, led to a timely and efficient resolution of the dispute at hand. Of course being German himself was also a significant contributing factor, since he was able to tease out information from the opposing German lawyer, giving him a winning hand.

Mr. Massmann has demonstrated to us his capability as a real problem solver. We regard him and his team at Duane Morris LLC as an excellent choice for dispute resolution services and would not hesitate to entrust them with further work.



Michael Anthony Langrish-Smith
Managing Director

Registered office: Trident Chambers, P.O Box 146, Road Town, Tortola, British Virgin Islands (No. 395663)
Representative Office: Suite 201.1, No. 5 To Ngoc Van Road, Quang An Tay Ho District, Hanoi, Vietnam
Tel: +84 4 37183112 Fax: +84 4 37183113 Email: incontrasco@fpt.vn

References (2)



I am Andrew Meyer, CEO of Nine Dragons Group LLC. We have been actively involved in Vietnam Real Estate since 1999. We have gone through many lawyers and law firms, and were disappointed by all of them. Lack of knowledge of the laws, the differences between buying and selling in specific cities, very slow response time and poor client service.

Finally, we met Mr. Oliver Massmann. The first project we did with him was the same as working with our attorneys in NYC. He has a very strong knowledge of the laws, procedures and intricacies of Vietnam. Speaks the language fluently (a rarity) and is a consummate professional who responds to my requests very quickly.

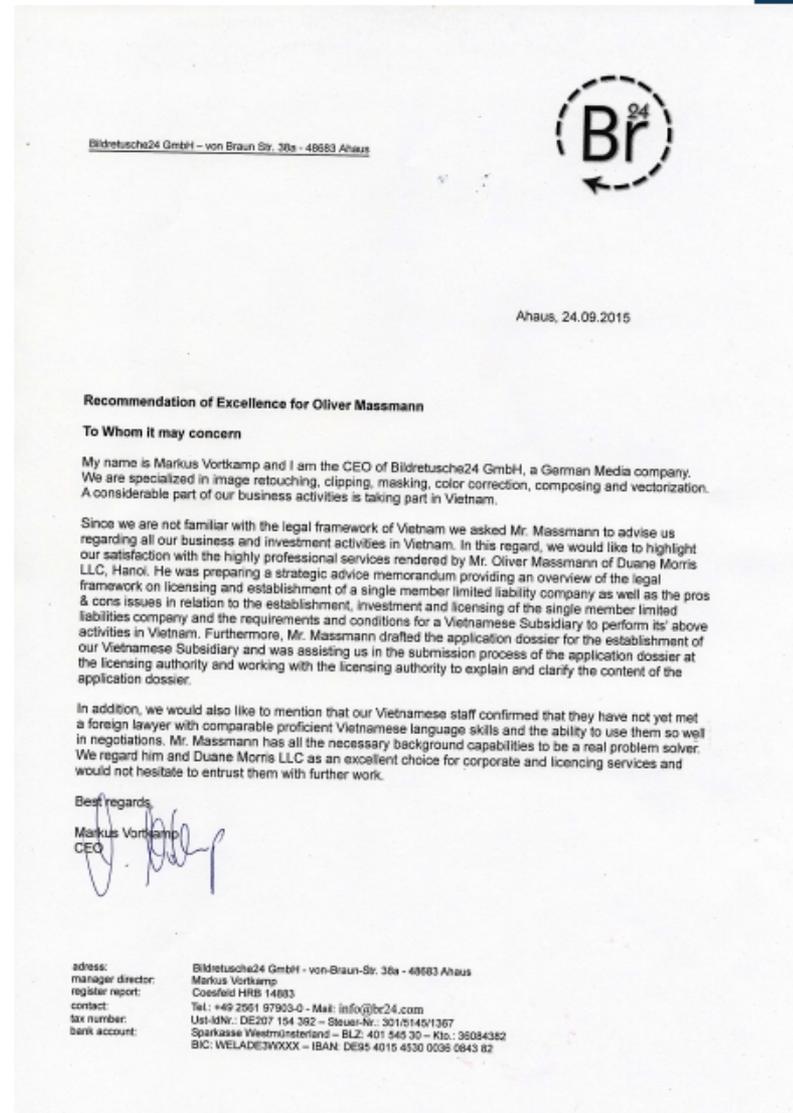
We continue to work with Mr. Oliver Massmann and are thrilled to have an attorney who brings so much to the table working on our team.

I highly recommend Mr. Oliver Massmann and his firm, Duane Morris Vietnam LLC. Should you have any questions, please feel free to contract me at any time.

Andrew Meyer

CEO

References (3)



References (4)



Hong Kong, 01 Jan 2015

To Whom It May Concern

My name is Thomas Domanski and I am Managing Director of Bauer Hong Kong Ltd shareholder of Bauer Vietnam Ltd). Bauer Hong Kong Ltd is a member of the German based Bauer Group of Companies and a subsidiary of the Bauer Spezialtiefbau GmbH which belongs to the MDax listed ultimate holding company Bauer AG. The Bauer Group is specialized in foundation engineering, machinery, and Resources related services. A considerable part of Bauer Group's corporate activities takes place in Asian countries, among them Vietnam.

While we try our utmost to avoid entering into legal proceedings to enforce contractual rights, this is – unfortunately – not always possible. In this regard, we would like to highlight our satisfaction with the highly professional services rendered by Mr. Oliver Massmann of Duane Morris LLC, Hanoi, who successfully represented Bauer in Singapore (SIAC) based arbitration proceeding concerning a dispute about payment for construction works provided by Bauer in Vietnam.

We would like to note that Mr. Massmann's handling of the case significantly contributed to the successful conclusion of the case out of court/Arbitration. Mr. Massmann's services combined thorough legal analysis with a strong commercial approach, lead to a timely and efficient resolution of the dispute at hand. In addition, we would also like to mention that our Vietnamese staff confirmed that they have not yet met a foreign lawyer with comparably proficient Vietnamese language skills and the ability to use them professionally in negotiations. Mr. Massmann has proven himself to be capable to use local knowledge paired with legal competence to resolve disputes in an efficient manner. We regard him and Duane Morris LLC as an excellent choice for dispute resolution services and would not hesitate to entrust him with further work.

Best regards

Thomas Domanski
Managing Director

HEAD OFFICE
BAUER Spezialtiefbau GmbH
D-66322 Schmelzenhausen, P.O.Box 1063
D-66329 Schmelzenhausen, BAUER-Strasse 1
Germany
Tel.: +49 4352 87-0
Fax: +49 4352 97-9399
www.bauer.de

HONG KONG
BAGET Hong Kong Ltd
Units 1824-6, 18th Floor
Cheong Chee Moon Plaza
445-457 Castle Peak Road
Tsim Sha Tsui, New Territories
Hong Kong
Tel.: +852 2430 9328
Fax: +852 2430 9746
info@bauerhk.com.hk

MALAYSIA
BAUER Malaysia Sdn. Bhd.
Unit 504, 8th Fl, Peko Damansara 1
No. 1, Jln 18/11, Off Jln Damansara
46700 Petaling Jaya
Selangor Darul Ehsan
Malaysia
Tel.: +60 3-7350 9305
Fax: +60 3-7350 9390
info@bauer.com.my



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