

Some Limitations in Legal Regulations and Notes for Businesses When Conducting Mergers and Acquisitions



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ABSTRACT: Research from practice shows that in Vietnam, mergers and acquisitions (M&A) play an important role in diversifying channels for attracting investment capital, contributing significantly to promoting innovation in growth models, restructuring, and improving the competitiveness of businesses in the market. However, in recent times, some investors have not adequately assessed the risks after M&A to have a correct strategy; along with that, the Law regulating M&A activities still has many limitations and inadequacies, making the implementation of M&A transactions difficult.

KEYWORDS: transaction, purchase, merger, Enterprise

INTRODUCTION

Recently, the Vietnamese market has recorded many diverse merger and acquisition (M&A) deals in various fields of life, such as banking, consumption, and construction... such as Central Group's acquisition of Big C Vietnam, SK Group's investment of 410 million USD in VinCommerce, Bamboo Capital's acquisition of 71% of AAA shares...

In addition to successful M&A transactions, there are also M&A transactions that did not go as expected due to subjective and objective factors. M&A transactions and "open" opportunities for Vietnamese enterprises

During the development cycle, companies want to expand their business areas or scale, dominating the market for their growing industries. At that time, they will consider the options of "building" or "buying" in their development strategy, depending on their professional and financial capacity. Both methods have their advantages and disadvantages.

The "Build" option is often less costly or allows costs to be spread throughout the implementation process. "Build" also helps the company to be entirely under control and more flexible in making changes throughout the construction process corresponding to changes in market demand.

However, this option also has its disadvantages. We can see the problems that arise during the "building" process. It requires specialized knowledge that the company does not have if investing in a new field; building operations in a new geographical area requires the company to have some understanding of culture, people, legal regulations, etc. Especially the time factor. "Building" a capacity, an activity, or any asset can be a very long process. Mainly related to a company with certain advantages, or having a license to own a technology or a strong brand, other companies will not be able to have that advantage, technology, or brand unless they buy the above company.

The "Acquisition" option is considered and compared for the above reasons. "Acquisition" has the advantage of speed because it often takes less time to get the desired capacity than building equivalent values from the initial "zero" point.

"Acquisition" is quite an optimal option in fast-changing markets and fast-growing regions because the difference between a few years or even a few months can be equivalent to the difference between seizing the opportunity to quickly penetrate and dominate the market versus having to struggle and struggle to adapt to the new environment; In addition, the business will have operations in a new area and also have a team of local employees who already understand the local culture. Therefore, spending a large amount of money but achieving the desired goal is also worth it. However, "acquisition" also has many often overlooked difficulties, such as Disputes between new and old shareholders, reorganization, and rearrangement of personnel....

In Vietnam, practice shows that M&A activities have become an effective capital mobilization channel, playing an important role in diversifying investment attraction channels for the economy, contributing significantly to promoting the process of growth model innovation, economic restructuring, equitization of state-owned enterprises, and improving the competitiveness of enterprises in the market.

Recently, the COVID-19 pandemic and geopolitical instability that have been taking place globally have strongly impacted the investment and production markets in general and the M&A sector in particular. Due to financial pressure, many businesses are

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forced to restructure, sell assets, and call for investment. At that time, shifting investment capital and production facilities to potential markets with cheap human resources like Vietnam is a priority for multinational companies.

To immediately access the market, M&A is considered an effective tool to help foreign investors access and invest in the Vietnamese market at a lower cost and take advantage of existing advantages to avoid difficulties adapting to the new culture and business environment.

According to the Ministry of Planning and Investment, as of February 20, 2023, the total newly registered capital, adjusted capital, and capital contribution to buy shares and purchase capital contributions (GVMCP) of foreign investors (FDI) reached nearly 3.1 billion USD. That shows that international investors are very interested in the Vietnamese market, where there are still many "resources" to exploit.

Therefore, as the Seller, Vietnamese enterprises must grasp the situation well and build enterprises according to high standards of environment, society, and governance (ESG) to suit the general trend. Therefore, it is possible to attract investment capital, seek synergy for restructuring, and focus more on core activities evident in many domestic enterprises, which can only be met through M&A activities. Especially in the real estate sector, domestic real estate developers face difficulties in capital sources, are entangled in investment procedures, and have prolonged legal issues, so accessing new and flexible capital sources will help create opportunities for recovery and growth.

INADEQUACIES AND LIMITATIONS IN LEGAL REGULATIONS GOVERNING M&A ACTIVITIES

M&A transactions are events that profoundly impact companies and often mark the end of a company as an independent business unit or at least mark a change that significantly impacts the ownership composition or fate of a company.

However, the legal regulations governing M&A activities in Vietnam are currently not designed in a unified document but are scattered in many different legal documents such as Civil Code 2015, Law on Credit Institutions 2010 (amended and supplemented in 2017), Competition Law 2018; Securities Law 2019; Enterprise Law 2020 and Investment Law 2020. Therefore, the implementation of M&A transactions faces many difficulties.

The 2020 Enterprise Law provides concepts and regulations on procedures for mergers, consolidations, and enterprises and identifies enterprise M&A as a form of enterprise reorganization arising from the Enterprise's needs. Although this Law does not provide a specific definition of enterprise M&A, there are some quite particular regulations on M&A for each type of Enterprise.

The 2020 Enterprise Law contains several legal regulations regulating social relations arising from enterprise mergers and acquisitions. These regulations have played an effective role in creating a safe, legal corridor for developing M&A transactions.

However, the element of enterprise information needs to be considered and regulated more closely because, to conduct M&A activities, it is essential to identify potential target companies that meet the requirements and expectations of investors. In the Vietnamese market, information about businesses that investors are targeting is minimal, and there are no helpful search tools with reliable data sources from which investors can collect information. Meanwhile, companies that want to be merged or sold often conceal unfavorable business information, debt disputes, and lawsuits, putting investors at risk when they do not have information from the company they intend to invest in.

The 2020 Investment Law recognizes two forms of M&A: merger and acquisition of enterprises. Enterprise M&A activities are considered one of the forms of direct investment. According to the provisions of this Law, the acquisition of enterprises can be carried out in the form of partial or complete acquisition of enterprises or branches. Accordingly, investors can contribute capital, purchase shares, and contribute to economic organizations Foreign investors can invest in capital contributions, purchases of shares, and capital contributions to economic organizations In addition, the approval procedures for M&A transactions in Vietnam are also quite cumbersome, as most transactions need to be approved by competent authorities. The approval process can take up to several months, primarily if the M & A is related to a conditional business sector; the time will be longer because it has to wait for approval from many different agencies.

From the above limitations, to develop M&A activities, Vietnam needs to build a unified legal corridor system for this activity, thereby creating peace of mind for investors in implementing these transactions with clear regulations on management, responsibilities, and rights of the entities participating in M&A transactions.

COMMON RISKS AFTER M&A THAT BUSINESSES NEED TO PAY ATTENTION TO

In addition to the existing problems of legal documents, Vietnamese businesses, when participating in M&A transactions, also need to be carefully prepared for each step of an M&A deal to avoid possible disputes and lawsuits after M&A.

According to actual records, there are a few unexpected risks that can occur after the M&A process, including:

Disputes over the issue of forged legal documents when the Seller intentionally presents these documents to convince the Buyer to carry out the M&A transaction.

In the process of reviewing and evaluating legal documents, although the Buyer's appraisal team may have made every effort to control the quality of documents and papers, there may still be problems with legal documents due to intentional forgery that the naked eye or senses cannot assess as to whether they are original documents or not.

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Therefore, the study and evaluation of legal documents must be carried out synchronously using the correct procedures and by people who are genuinely knowledgeable about the field. In particular, the parties must carefully check these documents with the issuing agency.

In practice, when conducting M & A transactions, the team performing legal document appraisal can be a combination of two human resources: inside the company and outside the company. The legal experts inside the company are the ones who understand the transaction better. How the company's leaders view it, but these people are less experienced than lawyers specializing in the M&A field. Using a combination of resources will ensure efficiency and increased safety, avoiding errors in the collection and evaluation process.

Labor disputes occur when the new owner restructures the workforce or terminates the contracts with key employees in the old labor apparatus.

In most cases, when announcing the transaction to employees, especially employees of the Seller, will be the most disappointed. Therefore, to avoid possible problems related to the labor contract of the Seller's employees, the Buyer needs to research and plan the personnel handling issue carefully. The Buyer or the new company management should handle the matter by Law but consider the interests of employees with the target company. The company should have a roadmap for retraining and job transfer before considering cutting employees.

Before that, the Seller can inform the employees about the deal, and in addition to laying off some employees, most employees will continue to work and receive better benefit packages and have more stable jobs in the larger Enterprise of the Buyer.

Disputes about business, trade, contracts, intellectual property, etc., with partners with cooperative relationships.

Usually, in addition to the legal appraisal of the Enterprise, the Buyer also conducts appraisal activities of the Enterprise's activities that have been and are taking place in reality. To avoid shortcomings, the appraisal must be carried out thoughtfully and professionally. After reviewing and listing, the buyer needs to specifically notify the company's partners to grasp the situation and develop an optimal solution to ensure the interests of all parties.

CONCLUSION

The main factor for the success or failure of M&A is the compatibility of the integration plan between the parties after the merger and acquisition process. This plan needs to comprehensively address issues of personnel, compensation, investor relations, operational integration, asset sale, and liquidation, reactions of competitors, relations and communication between departments and member companies, backup plans..., and especially the factor of effective management and operation must be considered an essential task in the post-merger period. Besides, the perfection of institutions and regulations of the legal system is also a practical factor contributing to creating motivation for M&A transactions.

REFERENCE

- 1) Ministry of Planning and Investment. (2023). Foreign Direct Investment Statistics. Retrieved from <https://www.mpi.gov.vn>
- 2) Central Group. (2016). Acquisition of Big C Vietnam. Vietnam Investment Review.
- 3) SK Group. (2021). Investment in VinCommerce. Vietnam Investment Review.
- 4) Bamboo Capital. (2022). Acquisition of AAA Shares. Vietnam Investment Review.
- 5) Nguyen, T. A. (2023). Mergers and Acquisitions in Vietnam: Trends and Challenges. *Journal of Economics and Development Studies*, 20(3), 45-67.
- 6) Vietnam Investment Review. (2023). M&A Trends in Vietnam Post-Pandemic. Retrieved from <https://www.vir.com.vn>



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