

# Luther.

## Mergers & Acquisitions 101

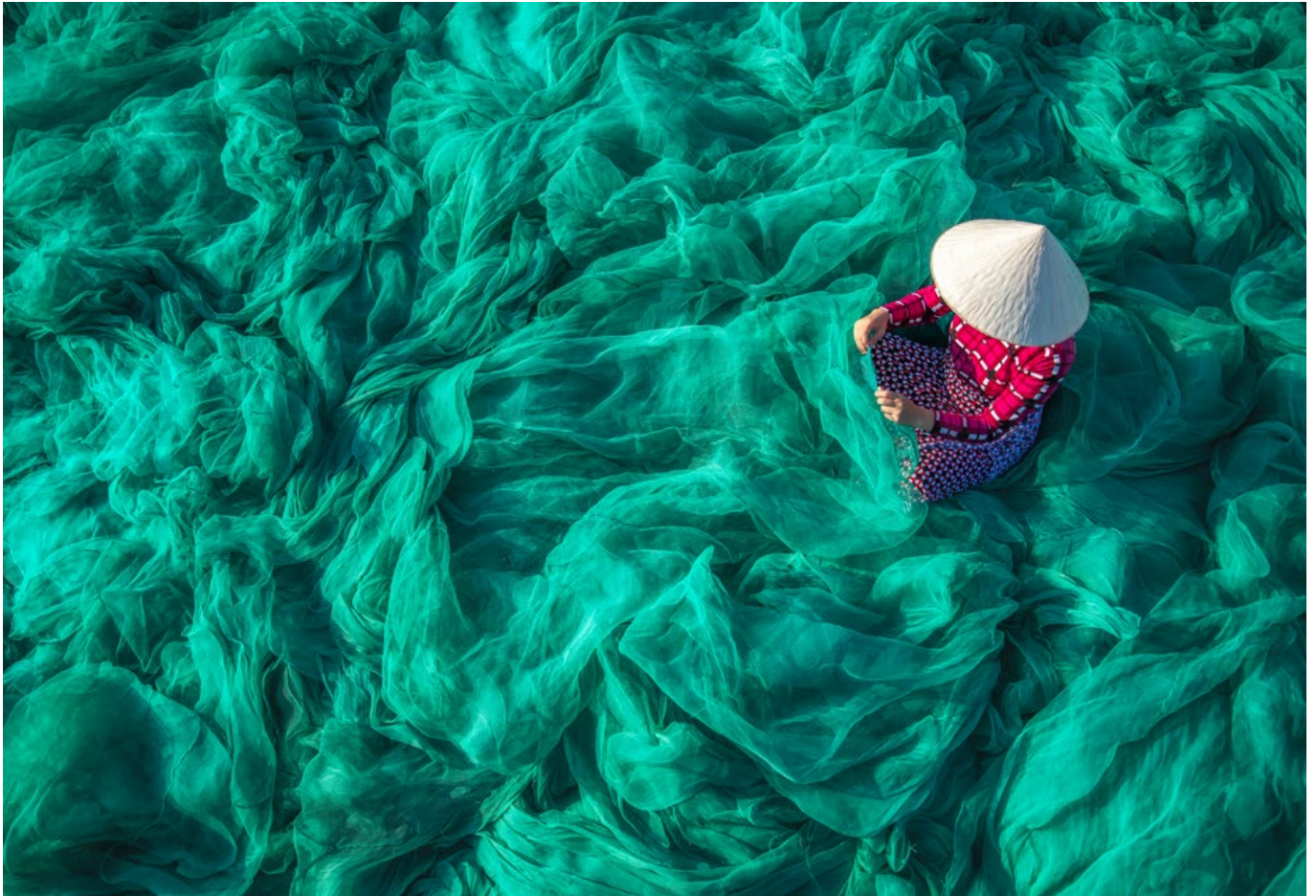


## Investing in existing enterprises in Vietnam

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# Introduction



**When entering a new market, establishing your own subsidiary is the all-in-option. Besides this approach alternatives include opening a branch or representative office as less adhesive steps. More and more we are now asked about buying into existing, fully established business vehicles for a quick, ready-to-operate market entry.**

Safety, transparency and predictability of the process and a trustworthy working relationship between the stakeholders involved make key criteria on how an investment can be structured and what precautions need to be taken into account. Each of these components may impact the budget, time and allocation of other resources in the long term.

Understanding the particularities of mergers and acquisitions under the laws of Vietnam is essential for making sensible decisions and may require some input by advisors on the ground. Pre-acquisition to-dos may be more demanding than you might be used to from your domestic legal landscape and

commencing the project happens under close supervision of local authorities. It becomes essential to understand the local practices, manage expectations realistically and maintain flexibility to adapt to current dynamics.

This briefing serves the purpose to give you some insights on differences from your home turf and to allow for better decisions prior to your investment. We have done our job well if you find some useful input and feel that you can move forward from here. We would be very happy to support and accompany your endeavours in this exciting market.

# Incorporation alternatives – why and when to buy

**When looking at investing in Vietnam the well-trodden establishment route may not be feasible for your specific needs or ideas or strategic approach. Alternatives that have spiked both, in supply and demand, are acquisitions of equity interest (LLC), shares (JSC) or assets of locally registered or foreign-registered but locally operational vehicles. Obtaining ownership in a running business comes with a number of benefits in general, and may even be the sole option to set foot in the market for some particular set-ups. Any actionable advice in this regard requires a mature and thorough understanding of your investment strategy, goals and risk management, your priorities and vulnerabilities. There is surely no such thing as a one-fits-all solution in M&A. In this context we want to provide this briefing as orientation and invitation to partner up in the exciting venture ahead of you.**

Buying into an existing local business may, bluntly spoken, be the door-opener to certain industry sectors, or conditional business lines. As some sectors impose restrictions on foreign ownership or require some form of local partner involvement it appears easier to scout suitable targets that satisfy this condition even upon taking in the foreign investor, than to find the local partner first and hope to engage in a fruitful business relationship with them.

The door-opener is unavoidable when it comes to real property. That is if the location is unique and irreplaceable, and already owned by a corporate enterprise. Real estate, though an asset, cannot be acquired directly by the foreign investor in a continental European sense of ownership. The alternatives are long-term land use rights in close coordination with the competent authorities.

## I. Identifying a suitable target

### 1. Business vehicles open for foreign acquisition

Vietnam's revised Law on Investment (LoI 2020), Law on Enterprises (LoE 2020) and the Law on Securities (LoS 2020), each effective per 1 January 2021, build the general framework for foreign investment activities, flanked by numerous sectoral and local regulations and the opinions, standards and interpretations of the competent authorities involved in the individual case. To some extent the Commercial Law (2005) and Civil Code (2015) contain relevant legal principles applicable to the target, asset transfer or parties.

Generally the legal framework offers a familiar arrear of investment opportunities to what you would know from your domestic market.

For buying into existing businesses the target's structure may be single-owned, multi-member or – on a larger scale – joint stock corporation (JSC). Private Partnerships exist but are less accessible, as are established private-public-partnerships as the underlying relationship of the partners may require personal prerequisites. Business cooperation contracts (BCC) are another form of investment and manifest in any of the legal forms above, but are subject to sectoral regulation and less transferable at a later stage. We are happy to share more in-depth information on any of the investment forms in our briefing *Doing Business in Vietnam*.

Practically most transactions involve either full acquisition of a single-member LLC (100 %) or buying into a multi-member LLC (with 1 to 49 co-investors). These will be the focus of this briefing, but please do reach out if buying shares in JSC is of interest to you.

### 2. Preliminary steps

Against common misconceptions, Vietnam is a noteworthy market with a modern investment environment aiming ambitiously to attract foreign investment with an open, western-style enterprise and investment law. It has a clear concept of property ownership and proprietary rights, and yields towards international corporate governance concepts. Operating in Vietnam's business environment is a dynamic, adaptive process. Buyers will have to consider whether they are willing and practically able to integrate the need to comply with formal - in particular - documentary and transparency requirements.

On the other hand, obtaining reliable, correct and complete information may require patience and preparation more than elsewhere. Vietnam is committed to a digitalisation agenda by

2025 and aims to implement international standards, e.g. for accounting practices, taxation, IP and data protection, and incorporation as well as dispute resolution and commercial transactions. However, it is a new-comer in most of these aspects and has yet a long way to go.

## 2.1. Risk mitigation by due diligence assessment

Great emphasis lies on doing the work prior to the investment thoroughly: Gathering as much and as high-quality information about the target and the seller, but also about the local investment conditions at the specific zone the target is located in and the expected developments in the next years is crucial to help the acquisition succeed.

Due diligence assessments are meanwhile known and established practice. The scope generally includes company information on incorporation, representation and restructuring history, liabilities and licensing status, current governance, taxation, real property ownership, land use right status, employee situation, involvement in and history of legal disputes. However, access to such information from external, **independent sources is very limited**. There is no official quality control for the numerous private company intelligence service providers that praise themselves as most reliable.

Whereas previously there was in fact no reliable official source for company data, recently the Ministry of Planning and Investment has opened its registry of businesses to the public: the **National Business Registration Portal (NBRP)** is an online source for what can be considered reliable, official information. Excerpts from the NBRP can be obtained in certified versions and may serve as proof of the company information contained therein. This means that the company must accept such data to be true if held against it, but not necessarily that it reflects the matter of fact situation. Access requires at least the number of the Enterprise Registration Certificate (ERC) of the target of interest.

Relevant data to be obtained from the NBRP is foremost:

- information on the processing of a specific application
- business registration certificate
- historical business registration certificate
- enterprise history
- e-gazette announcements, attachments, etc.

- roles of natural persons as corporate functions

- a list of enterprises where a specific natural person is/was involved in establishing and managing roles during the last 3 years
- data on contribution of the natural person to the enterprise

On a pay-for-data basis further documents can be accessed by account holders to the NBRP, if such documents have previously been uploaded by the subject itself:

- audited annual financial statements
- resolutions and announcements
- dissolution or suspension notification

Beyond the bare minimum of corporate information contained in the NBRP, due diligence assessments face practical obstacles, at least in locally or state-owned enterprises. Where the state is invested, the enterprise may quickly reject any request for disclosure with reference to state secrecy regulation. This is not indisputable or even mandatory, but tends to be a quick fix to avoid what most privately held local enterprises face: The bookkeeping, documentation and filing practices of on-going business are not yet quite at eye-level with international standards, regardless of the target's size.

Lack of knowledge as to what needs to be presented in a due diligence and what quality the data should have, let alone a lax relation to reliability and validity are common in the private sector. Demands for disclosure may also come across as mistrust or intrusion. English translations of documents may only be expected alongside international business relations.

Consequently, it may appear more convenient to buy a black box than to go through the troublesome, lengthy process of conducting a due diligence of the target. However, since the M&A and liability regulation follows mostly international standards, the gap between the practical and written conduct may be too broad to be bridged at a later stage and rights to remedy should not be sacrificed for convenience at this early stage. In other words: Rather put the complicated process into experienced hands that take on the communication, diligence and liability on your behalf than to skip the step entirely.

We offer an international standard of comprehensive due diligence assessments in any transaction type advised by us. We will give you a clear and realistic picture of what to expect time- and cost-wise. We emphasise the early effort to be taken as a means to mitigate later liability risks to the greatest



extend possible. Our approach helps even inexperienced sellers/targets' staff to provide information or to react in a reliable manner to our data requests. Our proprietary legal tech tools include a fully managed virtual data room hosted in the EU. The aim of our experienced M&A team is to provide you with a foundation for your risk evaluation and a legal basis for contractual risk mitigation later in the process.

## **2.2. Risk mitigation by negotiation**

Once an understanding of the target and the seller has been established and risks have been identified and evaluated internally, we support you in finding and negotiating appropriate means of remedy, liability limitation and other forms of risk mitigation in the transaction agreement.

In order to make ends meet with the sell-side and to bring the transaction to a success without compromising red lines on your side we make use of long years of M&A experience and deal structuring know-how.

The laws of Vietnam allow to a broad extend for contractual design and give the parties relative freedom when agreeing on the terms and conditions of their transaction. However, in the course of the transaction some commercial terms, such as the transaction value and payment terms may have to be disclosed to competent authorities, including licensing and tax authorities, local and sectoral authorities. Verbal agreements may not uphold in the event of a dispute, if the written agreement contains conflicting statements.

A long-stop mechanism is common practice and acceptable for both parties given their subjection to external decision making when waiting for approvals whilst transactions documentation have been finalised and signed for the necessary submissions. This can either be designed as an extendable fixed date in the future or a period upon final confirmation of acceptance of the relevant submissions by the authority, then triggering decision terms on their side that provide predictability to some extent.

Though one hopes to avoid it, from a legal perspective we know it pays off to equip well for a dispute situation. In Vietnam, court procedures are still lengthy, insecure in the outcome and costly as for the formal preconditions to trial and to provide evidence. Alternative dispute resolution has therefore been found favorable, though not equally convenient compared to most overseas venues. It is crucial that you ef-

fectively remain in the driver's seat of drafting the transaction documents in respect of the deficits of the local judicial system and the local partners' lack of know-how.

This would include provisions on the quality of evidence and the burden of proof when in dispute. Other clauses in this regard would refer to a beneficial regime for remedy for failure to perform and a balanced limitation of liability.

## **2.3. Risk mitigation by documentation**

A word of warning may be required as to the time frame: often enough the steps described above will not be finalised before executed versions of the transaction documents must be submitted. Naturally, this causes concerns as to how to withdraw from the project and reimburse expenses made if the approvals are rejected or the transaction cannot proceed for other reasons. This is particular true with regards to payment and tax obligations which are triggered on the seller's side within 10 days upon receipt of the purchase price.

For this reason a number of precautionary clauses may be included in the documentation that you would not normally expect from your domestic jurisdictions or under international standards.

One significant cause for warranty claims have been unpaid social security contributions or otherwise out-standing obligations with regard to employer's statutory obligations. Such obligations will be inherited by the buyer and it will be fully liable for accumulated interest and penalty payments. Buyers are strongly advised to insist on receiving gapless documentation proving that the seller has fully satisfied all its obligations in this regard to closing date – or otherwise insist that it will hold the buyer harmless against any claims arising out of failure to do so.

MAC clauses (Material Adverse Change) are common, however, there is no established wording as a go-to-standard and chances are that you need to invest in some negotiation to get away with the preferred wording and scope.

The clause on dispute resolution may be turning point for any other provision agreed upon. It is no longer true that foreign court rulings can per se not be enforced in Vietnam, since the number of FTAs take care of previous enforcement deficits by allowing foreign investors to sue the State itself for any unfair

treatment by its courts including the rejection of foreign court rulings. However, if forced to take this path, it is lengthy, strenuous and mostly uphill to say the least.

Choosing a foreign arbitration venue and applying arbitration as preferred dispute resolution is therefore still market practice. Since Vietnam has subscribed to the New York Convention, it must enforce foreign arbitrary awards on a reciprocal basis and the practical handling is indeed improving.

Note that any part of the documentation to be submitted to courts, authorities or other public institutions must be provided in (certified) Vietnamese translations or Vietnamese original. For the investor's purposes naturally all documents shall at least be made in English as an original. It makes therefore sense to produce bilingual originals consistently.

### **3. Employment considerations for post-transfer integration**

Under the Labour Code 2019, neither, the ordinary equity interest nor asset acquisition will trigger requirements to notify or consult with employee representatives or authorities as such. However, where it is the parties' intention to optimise the employee situation upon or during the transaction such notification and consultation procedures apply.

In a share deal acquisition there is no change of the employing entity. Where such change of identity occurs following restructuring (merger, split, etc.) any existing employment contracts may be transferred to the resulting entity with the same terms and conditions as in the old employment relationship.

Where employment conditions shall be adapted to the buyer, this requires additional steps including the employees' consent. In such way the same entity may change into different contractual employment conditions. However, labour laws in Vietnam impose quite a tight regimen on contractual design. It makes therefore sense to carefully review the employment contracts, the internal labour regulation and to consult with the employees representatives (labour union) early in the due diligence phase.

Employing foreigners is not legally subject to an official quote (per local employee), however qualified Vietnamese shall be preferred if possible and the employment of an expat requires prior assessment and approval by the Ministry of Labour, In-

valids and Social Affairs or the provincial Peoples' Committee and the provincial Department of Labour, Invalids and Social Affairs (DoLISA). Same goes for the essential work permit, work visa or work permit exemption.

## **II. Obtaining authorisation to commence an acquisition and other approvals**

### **1. Market entry requirements**

Foreign investments by means of buying shares in a JSC or equity interest in a LLC (i.e. taking over capital contribution) may trigger approval requirements of the licensing authorities of the target and further authorities competent to oversee foreign investment (on a national, provincial or sectoral level).

From the investor's point of view and outside the ongoing negotiation with the seller there should be a clear understanding that the target's sector is open and unrestricted for foreign investment, or restrictions are sufficiently taken into account and acceptable. The envisaged provincial and zoning requirements must be met throughout the entire process, including proposed local developments, and the target in its own right must satisfy the applicable conditions to receive the foreign investment, too.

Please find a detailed assessment on market entry conditions for foreign investors in our briefing *Doing Business in Vietnam*.

### **2. Approval requirements**

Once the required approvals have been identified any submissions of documents and applications should be preceded by clear and constructive correspondence with the relevant officers to exactly determine their expectations in advance. This may not completely avoid discussions, adaptations and further document requests (all stretching the process into a matter of months rather than days), but it certainly supports the overall aim to obtain the approval.

The authority competent for the final approval may inter alia consult with – or request the applicants (parties) to consult with – other departments and ministries to provide non-objection statements or letters of opinions depending on the industry line and applicable, often internal or momentary, regulations.



## 2.1. Equity Interest Acquisition: M&A Approval

Whether contributing additional capital or purchasing capital from existing members in a LLC, purchasing existing shares or subscribing new shares in a JSC – if the transaction results in the target company being required an investment registration certificate, the transaction shall also need M&A approval. M&A approval pertains to the investor's intention to enter the domestic market. It is a pre-condition to signing.

The investment registration certificate is required, for instance, if the foreign ownership ratio in the target company is increased to more than 50 % of the charter capital in the course of the transaction or the target company has obtained a certificate of land use right located within areas affecting national security interests. In other scenarios M&A approval may be triggered by the target's engagement in a specific sector or industry.

The competent authorities will demand disclosure of the transaction documents, and further request proof of corporate documentation of the foreign investor, the seller and the target. Part of our M&A practice is the precise and close correspondence with the relevant authorities ensuring early and optimal preparation of the application dossier for the M&A

approval. Once the authorities have confirmed receipt of a complete and sufficiently detailed application dossier, their decision shall be available within 15 days.

The target is subjected to filing requirements with regard to its corporate documentation upon closing and must duly and timely submit updated charter and enterprise registration files disclosing the buyer's details to its registration authorities. Within 3 working days of complete and accurate filing the authorities shall register the buyer as new owner/shareholder. Only once this is accomplished may the investor derive proprietary rights vis-à-vis third parties. Any references made to the seller as owner in the target's investment registration certificate may be updated to reflect the buyer at their discretion, but this is not mandatory.

One common practice to avoid local approval requirements has been the indirect share acquisition conducted entirely overseas. The investor would acquire shares in the holding vehicle that the seller has previously set up before investing in Vietnam. This holding would be transferred under the domestic overseas laws and would result on changing only the indirect (ultimate) ownership of the local Vietnamese vehicle, but not trigger the investment approvals. There is currently no records of ultimate beneficial owners in Vietnam.



## 2.2. Share acquisition – private placement in JSC

JSC are either public or private, and listed or unlisted. A JSC is considered “*public*” if at least 100 of its (generally unlimited number of) shareholders are minor shareholders (pooling into at least 10 % of shares with voting rights). If the envisaged transaction entails an offer to less than 100 investors, none of which qualifies as institutional investor, and no public announcement is to be made, then the State Securities Commission must be requested for approval.

## 2.3. Asset acquisition: SPV establishment and asset transfer approval

Asset ownership is indeed still a novum and may trigger additional steps in Vietnam. Up to date, foreign investors are restricted in acquiring real assets and some special items. Real estate – or the land beneath – is considered the peoples’ property alone. Foreign investors need to engage specific instruments to obtain what comes closest to proprietary rights.

One way is to establish a special purpose vehicle (“**SPV**”) as a locally registered enterprise prior to acquisition, then have the SPV acquire the asset and hold it as the investor’s agent but in its own name and right. The SPV is treated as an investment project in its own right and requires to complete the process of investment and enterprise registration (IRC and ERC) prior to the acquisition. This may significantly extend the time frame.

Sell-side shall then carry out procedures to obtain the permission to transfer the project. Upon approval and execution of the transfer the buyer’s name has to be registered in the investment registration certificate and the buyer may proceed to establish its SPV and carry out the necessary procedures to close the transfer.

Asset types other than real property may require specific registration and licensing to be satisfied; this applies to certain movable assets such as cars, bikes, vessels.

## 2.4. Antitrust approval under competition laws

Internationalisation has driven anti-trust and competition regulation in Vietnam, too. The entire transaction may be subjected to the approval of the competition authorities if it results in a concentration of market or economic power. The new National Competition Commission, previously the Com-

petition and Consumer Protection Authority, is the competent authority under the directive of the Ministry of Industry and Trade. The term “*economic concentration*” under the competition law is applied to a broad band of transactions including inter alia mergers & acquisitions if corporate control is effectively transferred to the buyer, and certain types of joint ventures involving real contributions by the partners.

Change of control to the buyer as the key factor has been interpreted by the competition authority as follows:

- Buyer acquires 50 % + of charter capital or voting rights or all assets of a business line of the target
- Buyer reserves the right to determine operational, strategic or financial decisions with regard to the business, such as business line, location, scope, capital allocation
- Buyer reserves the right to appoint corporate functions and / or otherwise effect changes to the charter, the other corporate functions including management, legal representative and members’ council

It has been unclear whether veto and rejection rights pertaining to minority shareholding or capital contribution suffice to grant (“negative”) control. There is some indication in this direction if negative control comes with additional positive rights of the buyer despite minority participation.

Anti-trust notification is mandatory if economic concentration according to the above is poised and per financial statements preceding the transaction the following thresholds are met or exceeded:

- the purchase price/transaction value is 1 trillion VND or above (applies to transactions in Vietnam only)
- The parties upon closing have reached a market share in Vietnam of 20 % and above in the relevant geographical and sectoral market
- a party to the transaction comprises a total asset value of 3 trillion VND in the local market (including its group companies’ assets) across all sectors
- a party to the transaction comprises a total turnover in or into the Vietnamese market valued at 3 trillion VND or above (including in-bound trade by overseas sellers via local distributor network) across all sectors
- the transaction takes place in a specific sector (financial, insurance, securities and others)

Notification may further be required even though the transaction takes place overseas, but has a (broader) Vietnam context. If the (overseas) target owns assets or generates

turnover inside Vietnam, then the change of control will likewise trigger the Vietnamese competition control mechanisms as if the target were a locally registered vehicle.

The competition laws do not contain exceptions for intra-group transactions. Thus consolidations of group companies may, if the general conditions are met, trigger the notification requirement.

Notification must be made prior to closing. It may be advisable to file before signing on the basis of a comprehensive memorandum of understanding containing the key terms, which is generally sufficient. A market share report must be included and may take time to prepare. The duly notified authority enters into a preliminary assessment of the transaction ending with either approval or escalation into the official assessment within 30 days. Official assessment will then be conducted over 90 days and optional 60 days extension.

There is good news when it comes to the parties' concerns on premature disclosure of sensitive deals or details thereof. The notification will not be public and neither will the commercial details of the transaction be. The authority publishes its clearance decisions and annual reports of transactions cleared in the past year, but will not go beyond a broad and general statement. If clearance is obtained without decisions (on a time-lapse basis), no such publication appears.

### **III. Paying the purchase price and dealing with tax implications**

Difficulties with regard to money movement in Vietnam still collide with international standards for purchase price mechanisms. Payment execution methods should be determined in accordance with the local formal and practical requirements. Please be aware that locally registered banks are subjected to close supervision by the State Bank of Vietnam (SBV) and yield to its internal policies and regulations all too eagerly at times. They have a tendency towards over-achievement in terms of documentation, authorisation and rejection of transactions that do not meet each formal requirement currently in place. More details on payment streams are available for you in our briefing *Moving Money*.

Set aside these hick-ups, purchase price payments may be structured as full payment at closing, less commonly as deposit or down-payment and per-rated payment, and recently also as convertible loans. This approach helps accommodate

the waiting periods pertaining to obtaining necessary approvals and are less densely regulated than direct payment streams in certain industry lines.

#### **1. Payment – not as straight-forward an affair**

The purchase price is generally an early-stage aspect of negotiation, but frequently not agreed upon until the final stretch. Given the transparency of M&A deals to authorities and the subjection to disclosure for taxation purposes, it is by all means recommended to find a fair valuation of the transferred assets or the equity interest and to stick to this unless valid grounds give cause for purchase price adjustments.

Once agreed and signing is completed, payment of the purchase price may become just another bump in the road. It is common to use escrow accounts to fulfill payment obligations. This provides some security for remedies for the buyer during the waiting period. Also, the seller's tax obligations commence within 10 days of the taxable event, being the receipt of payments in its own accounts.

Where a foreign buyer acquires equity interest in a locally registered enterprise with foreign investment in excess of 50 % foreign ownership (prior or upon closing of the envisaged transaction), the payment of the purchase price must be effected through a specific account held by the target itself, the so called Direct Investment Capital Account ("DICA", for more in-depth information on money mobility in Vietnam see our briefing *Moving Money*). From there the seller may receive the proceeds.

On the other hand the foreign investor itself will need to create a specific account at a locally licensed bank, a so called Indirect Investment Capital Account ("IICA") if the ownership in the target has not previously and will not turn out to exceed the foreign investment threshold, so that effectively it is not considered an FDI entity. The procedure to open the IICA takes time. The valid currency for all payments herein is VND and the payments shall be generated from an overseas account in the investor's name. This leads to practical obstacles for sourcing alternative acquisition financing. Borrowing locally is practically inexistent for foreign investors; but even borrowing overseas is challenging local documentation requirements as such funds would not be sourced from the buyer's own accounts. Under recent FTA this situation is gradually improving but should be considered when structuring the transaction.

Payments to a foreign seller shall be made in Vietnamese Dong (into the local target's DICA account).

## 2. Tax implications and side-effects

Acquiring equity interest or securities will not trigger value-added tax (VAT) in Vietnam. Tangible asset transfers are, however, subject to VAT at 8 % in most asset classes.

The purchase price is taxable on the sellers' side as capital gains, depending on the nature of the seller, in the form of personal or corporate income tax. The tax authority will therefore demand full disclosure of the pricing mechanism and the underlying documentation. To be clear: the taxation is not a mere reflex of the agreed purchase price, but – in worst case – may hinder the transaction to be completed if the authorities object. In this context, price adaptation mechanisms may impose a risk of rejection by the authorities. It is part of our advisory services to enter into early communication with the authorities with regard to the purchase price and to prepare the path to approval.

There is not too much of a tax advantage to be expected from an indirect shares acquisition performed overseas. The local, in particular HCMC tax authorities have opinionated that such transaction may trigger capital gains tax inside Vietnam as would the domestic transfer.

Where loans are to be repaid, a 5 % withholding tax applies to interest payments which is the borrower's obligation to declare, withhold and deliver.

Tax exemptions may apply under various DTA for any of the above.

## IV. Selling & divesting

### 1. Sellers' obligations under tax regulation

As reflected above, sellers are subjected to capital gains tax for the proceeds of the transaction. Rates and nature depend on the seller's nature and the target's structure:

Seller Type	Applicable Tax	Tax rate
Natural person, Tax resident	Personal Income Tax	20 % for LLC 0.1 % for JSC
Natural person, non-resident	Personal Income Tax	0.1 %
Local company with legal personality	Corporate Income Tax	20 %
Foreign company with legal personality	Corporate Income Tax	20 % for proceeds from LLC and shares in a private JSC
Foreign company with legal personality	Corporate Income Tax	0.1 % for proceeds from shares in a public JSC

In an asset deal the CIT rate of 20 % applies unilaterally.

Please be aware that a foreign seller's tax obligations will be filed, declared and thereby disclosed by the resident buyer or the target. It makes sense to prepare the process mutually to remain in charge of the documentation and have certainty that the obligations have been satisfied.

### 2. Sellers' obligations under labour regulation

For asset deal structures the seller (entity holding the assets) needs to prepare and submit an employment plan envisaging the continuous employ under the future owner (buyer). If the transaction is used to optimise the staff situation, terminations are upon the seller and it is its responsibility to consult with the employees' representative (trade union, if any), notify and compensate the employees effected by termination and notify the provincial Peoples' Committee in time.

## V. Consequences of non-compliance

Failure to notify a transaction to the competition authorities is a serious merger control violation and may be sanctioned by administrative fines: If a transaction is closed prior to clearance, but later cleared, the fine can go up to 5 % of market revenue of each party. The same applies to closing a deal for which approval was finally denied and the transaction thereby prohibited (as opposed to conditional clearance where the

conditions are yet to be met). In the event of commencing a prohibited transaction the state may then impose state control over pricing from operations, or may order the demerger of the vehicle.

Gun-jumping actions (already taking steps on the post-closing integration path before clearance) may be fined with 1 % of total revenue. This includes overseas actions even though only the Vietnam-related business was notified.

Up to 3 % of total revenue in fines shall be applied for breaches of conditions imposed by the competition authorities (conditional clearance where the conditions are yet to be met before the approval has clearing effect).



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- advise on market entry regulation & restrictions
- correspondence & representation vis-à-vis authorities
- drafting & submission of application dossiers

## Establishment of a business presence in Vietnam

- choice of type of investment vehicles
- corporate & tax structuring
- registration of branch or representative offices
- establishment of Vietnamese-foreign joint ventures and PPP projects

## Corporate house-keeping

- capital measures (increase and reduction in charter or share capital), filing of relevant amendments to the charter
- changes of company name, charter, capital (transfer of shares, issuance of shares), shareholders/members, directors, representatives, auditors, office address
- shareholders' or members' agreements
- charter, rules of procedure
- out-of-court dispute resolution measures
- corporate documents (minutes, resolutions, notices)
- submissions to and correspondence with authorities
- authentication and legalisation of foreign documents

## Termination & suspension of business operations

- liquidation of entities
- support in bankruptcy proceedings
- de-registration of branch or representative offices

## Mergers & acquisitions

- M&A transactions
- domestic and cross-border asset or share deals
- full-scope legal and tax due diligence
- corporate restructuring measures
- post-merger / closing integration

## Finance advisory

- banking, finance and insurance law
- corporate finance
- loan and security agreements
- local business bank accounts
- legal opinions for envisaged transactions

## Real estate

- sale and purchase of land use rights
- commercial lease agreements
- construction contracts and
- financing structures

## Compliance

- anti-corruption & anti-money-laundering compliance
- corporate governance and corporate compliance measures; advise on best practice corporate governance
- regulatory compliance
- tax compliance

## Employment and labour law

- employment contracts
- secondments
- internal labour regulations and employment policies
- dispute resolution
- correspondence with labour authorities

## Immigration law

- business visa, temporary residence cards
- work permits and work permit exemptions

## Contract law and contract administration

- drafting and structuring of all types of domestic and cross-border commercial contracts
- INCOTERMS and int. contract framework
- FTA advisory services
- customs regulations, import and export restrictions
- structuring of e-commerce business models
- review of general terms and conditions

## Intellectual property, business secrets & privacy law

- development and implementation of IP protection strategies
- registration of trademarks, designs and patents
- licence agreements, research and development agreements
- cross-border data transfer risk assessment (TRA)
- data protection requirements under GDPR for global services

## Tax advice and tax structuring

- cross-border tax advisory services
- direct and indirect taxes
- tax structuring of M&A transactions
- transfer pricing
- e-commerce tax collection

## Tax compliance

- commercial tax and special goods tax
- corporate income tax and withholding tax
- applications for relief under Double Taxation Agreements
- liaison with the relevant authorities and internal accounting departments
- digital economy taxation
- stamp duty and other local special taxes

## Environmental Protection Law

- assessment of investment locations under environmental regulation aspects
- advise on applicable EIA regulation & restrictions
- correspondence & representation vis-a-vis authorities
- drafting & submission of application dossiers for:
  - Feasibility plan
  - Preliminary EIA and complete EIA
  - Environmental Permit
- renewal of permits.

# Luther in Asia

## Expertise

Legal advice – especially in Asia – is more than explaining the legal system to you. We are here to do more. We make a true effort to understand your business. We devise and help you implement legal and tax structures that work and let you focus on being successful in the world's most dynamic economic region.

Our Vietnam office works closely together with the other Luther offices in Asia and Europe. We take a holistic approach, dealing with Asia-wide compliance issues, assisting with the creation of international holding structures and ensuring tax-efficient repatriation of profits.

We provide the complete range of legal and tax advice to clients doing business in and from Asia. To offer a seamless service, we have teams in Europe as well as in Asia, led by partners with many years of experience on both continents. That way, we can immediately answer questions concerning investment decisions and provide our clients with an accurate assessment of the particularities of their projects, no matter where they are located.

Our lawyers unite substantial practical knowledge in important legal areas and cover the entire spectrum of law in Asia and beyond. We support foreign investors in the assessment of location and investment criteria, the structuring of investment projects, acquisitions and joint ventures. Finding and implementing solutions for sensitive areas like technology transfer and know-how protection also form part of our work. Alongside our clients we negotiate with future partners and local authorities and ensure the enforcement of their rights, in and out of court as well as in arbitration proceedings.

The services of our lawyers are complemented by our accountants, HR professionals and tax consultants offering all the services one would necessarily associate with a “one-stop shop” concept, from outsourced administration to accounting, payroll and tax compliance. Additionally, we provide corporate secretarial services, especially in Asian “common law” countries.

Collectively, our lawyers, tax consultants and professionals combine the competence and experience necessary to comprehensively assist comprehensively on all business matters in Asia. Our tax experts advise on individual and corporate tax compliance as well as on withholding tax issues, on Double Taxation Agreements and on complex international tax struc-

tures. Our accountants and professionals carry out the time-consuming administrative tasks of accounting and payroll functions a business must undertake, allowing our clients to concentrate on growing their business.

## Singapore

Singapore is a leading international trade and financial hub. As such, it serves as Asian headquarters for many international companies operating within the Asia-Pacific region.

With a staff strength of more than 90, Luther is by far the largest continental European law firm in Singapore. More than 26 lawyers from Singapore, Germany, France and other jurisdictions cover the full range of corporate and commercial legal work as well as the structuring of investments within South and South East Asia.

Our team is supported by excellent local Singaporean lawyers, notary publics, tax advisors, accountants, corporate secretaries and other professionals.

## Shanghai

Shanghai is the main hub for doing business in China, and with a team of more than 20 international lawyers, Luther is the largest German-speaking law firm in the city. Our China team consists of German and Chinese legal experts most of whom have over a decade of experience in developing and entering the Chinese market.

Luther Shanghai is fully authorised to offer legal services including litigation and provides advice on all questions of Chinese law. Our legal team is supported by Chinese tax advisors, accountants, corporate secretaries and other professionals.

## Region

Our two principal Asian offices in Singapore and Shanghai are complemented by offices and teams in Yangon (Myanmar), Bangkok (Thailand), Delhi-Gurugram (India), Ho Chi Minh City (Vietnam), Kuala Lumpur (Malaysia) and Jakarta (Indonesia).

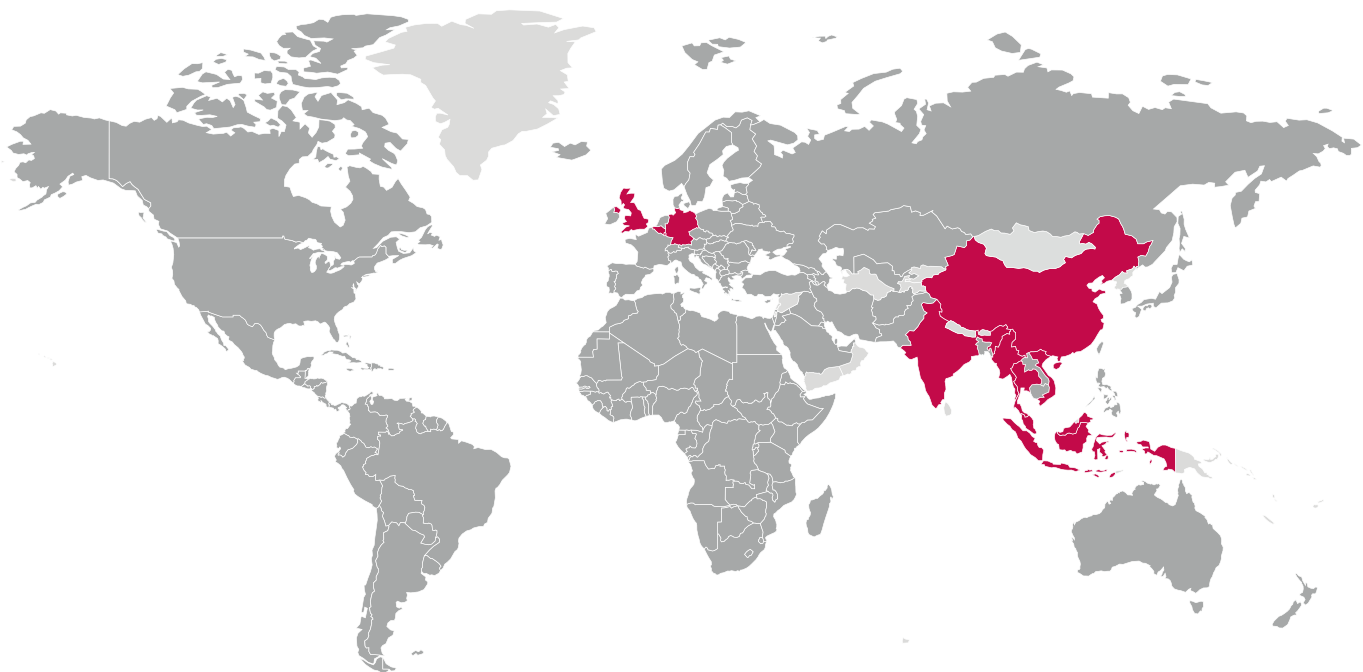
This network of Luther offices is further strengthened by the long-established business relationships that we have successfully developed both locally and with our regional partners in Australia, Hong Kong, Japan, New Zealand, the Philippines and South Korea.



# Our locations

We have a global outlook, with international offices in 11 key economic and financial centres in Europe and Asia. We also maintain close relationships with other commercial law firms in all relevant jurisdictions. Luther is a founding member of unyer ([www.unyer.com](http://www.unyer.com)), a global organisation of leading professional services firms that cooperate exclusively with each other. This way, we ensure a seamless service for our clients throughout their demanding international projects.

Our partner firms are based in Africa, Australia and New Zealand, Europe, Israel, Japan and Korea, the Middle East, Russia and the CIS, South and Central America, the US and Canada.



- Luther locations
- Best friends

### Our locations

Bangkok	Jakarta
Berlin	Kuala Lumpur
Brussels	Leipzig
Cologne	London
Delhi-Gurugram	Luxembourg
Dusseldorf	Munich
Essen	Shanghai
Frankfurt a.M.	Singapore
Hamburg	Stuttgart
Hanover	Yangon
Ho Chi Minh City	

# Contact

## Our office in Ho Chi Minh City

INC Legal Vietnam Law Co. Ltd.

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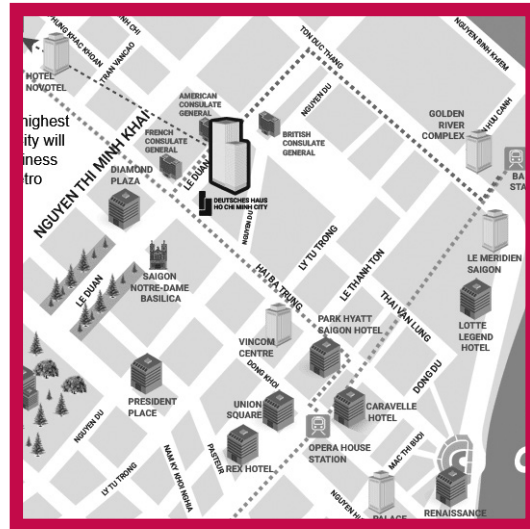
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For reasons of better legibility, the simultaneous use of gender-specific language forms is dispensed with. Corresponding terms apply in principle to all genders in the sense of equal treatment. The abbreviated form of language has editorial reasons and does not imply any valuation.

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# Luther.

**Bangkok, Berlin, Brussels, Cologne, Delhi-Gurugram, Dusseldorf, Essen,  
Frankfurt a.M., Hamburg, Hanover, Ho Chi Minh City, Jakarta, Kuala Lumpur,  
Leipzig, London, Luxembourg, Munich, Shanghai, Singapore, Stuttgart, Yangon**

You can find further information at:

[www.luther-lawfirm.com](http://www.luther-lawfirm.com)

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