

# Vietnam



## 1. Mergers

### Overview of regime

#### 1.1 What is the applicable legislation and who enforces it?

Chapter 5 of the 2018 Law on Competition (the **2018 Law**) sets out the merger control provisions applicable in relation to Vietnam. In contrast to the previous approach under the 2004 Law on Competition that was based solely on market shares, the current merger control regime adopts an effects-based approach, prohibiting economic concentrations that cause or would probably cause substantial anti-competitive effects on relevant markets in Vietnam.

A mandatory and suspensory merger control regime applies in Vietnam. Economic concentrations that meet the relevant thresholds regarding turnover, assets, transaction value or market shares must be notified to the VCC, which was established and became operational in 2023. Such effects are evaluated on a case-by-case basis, taking into account various factors, including the parties' presence and business activities within Vietnam.

#### 1.2 Are any other approvals required for mergers in the jurisdiction, e.g. foreign investment approvals or approvals from sector specific regulators? Please give some examples.

Vietnam's foreign investment rules are administered by the Vietnamese Government, Ministry of Finance, and other relevant ministries and ministerial equivalent agencies (including those primarily responsible for issuing licences and approvals in respect of investment activities in Vietnam, who may generally be referred to as '**Investment Registration Authorities**').

Under those rules, any investment (whether domestic or foreign) in sectors specified in the officially legislated list of prohibited sectors, is prohibited entirely. Also prohibited entirely is foreign investment in sectors specified in the officially legislated list of sectors in which foreign investment is prohibited. Foreign investment in sectors specified in the officially legislated list of sectors subject to conditions for foreign investment is only permitted with prior approval of the relevant Investment Registration Authorities. Lastly, foreign investment in sectors not appearing in any of the aforementioned officially legislated lists is generally permitted without any prior approval of any Investment Registration Authorities, except where the investment would result in foreign equity ownership reaching 50% or higher, or where it would increase foreign equity ownership in a company that already has at least 50% foreign equity ownership.

### Jurisdiction

#### 1.3 What kinds of transactions are caught by the merger control regime?

A VCC notification obligation arises where any one or more of the following conditions is met:

- the total assets or total sales turnover (or total cost of purchased inputs (goods, services, and raw materials)) in Vietnam in the preceding financial year of any party (aggregated together with its entire affiliated corporate group) is at least VND 3 trillion (increasing to VND 6 trillion as from 1 July 2026);
- the value of the transaction is at least VND 1 trillion (increasing to VND 2 trillion as from 1 July 2026) (applicable only in respect of transactions taking place at least partly within Vietnam, for example where the target company is domiciled in Vietnam or the target assets are located in Vietnam); or
- the combined market share of the parties within any relevant market in Vietnam in the preceding financial year was at least 20%.

However, in relation to transactions which occur within certain sensitive or high-profile sectors including banking, insurance, or securities, separate specific thresholds apply.

- In relation to the banking sector:
  - the value of the total assets in Vietnam in the preceding financial year of any party (aggregated together with its entire affiliated corporate group) is equivalent to or greater than 20% of the value of the total assets of all credit institutions in the Vietnam market;
  - the total turnover in Vietnam in the preceding financial year of any party (aggregated together with its entire affiliated corporate group) is equivalent to or greater than 20% of the total turnover of all credit institutions in the Vietnam market;
  - the value of the transaction is equivalent to or greater than 20% of the total value of the contributed charter capital of all credit institutions in the Vietnam market (applicable only in respect of transactions taking place at least partly within Vietnam, for example where the target company is domiciled in Vietnam or the target assets are located in Vietnam); or
  - the combined market share of the parties within any

relevant market in Vietnam in the preceding financial year was at least 20%.

- In relation to the insurance sector or the securities sector:
  - the value of the total assets in Vietnam in the preceding financial year of any party (aggregated together with its entire affiliated corporate group) is equivalent to or greater than VND 15 trillion;
  - the total sales turnover (or total cost of purchased inputs (goods, services, and raw materials)) in the preceding financial year of any party (aggregated together with its entire affiliated corporate group) is equivalent to or greater than (in relation to insurance enterprises) VND 10 trillion or (in relation to securities enterprises) VND 3 trillion;
  - the value of the transaction is equivalent to or greater than VND 3 trillion (applicable only in respect of transactions taking place at least partly within Vietnam, for example where the target company is domiciled in Vietnam or the target assets are located in Vietnam); or
  - the combined market share of the parties within any relevant market in Vietnam in the preceding financial year was at least 20%.

The merger control regime applies to economic concentrations, which include merger, consolidation, acquisition of control or influence over another undertaking, joint venture formation, and other forms prescribed by law.

In the context of an acquisition, the necessary degree of control or influence will arise where, in general terms, the acquirer gains:

- ownership of more than 50% of the target's capital or total voting rights;
- ownership or the right to use more than 50% of the target's assets in all or at least one of its business lines; or
- any one of certain specified decision-making rights, such as the right unilaterally to appoint or dismiss a majority of the board, the right unilaterally to determine amendments to the target's key constitutional document (for example, Memorandum and/or Articles of Association or Incorporation, Constitution, or Charter), or the right unilaterally to determine certain significant business matters of the target, namely:
  - form of business organisation;
  - lines of business, location of business activities, and methods of conducting business activities;
  - adjustments to scale and scope of business activities; or
  - form and method of capital raising, allocation, and utilisation.

Negative control rights (such as veto rights, blocking rights, or consent rights that merely allow an investor to obstruct the making of a decision without having the power to determine the relevant matter unilaterally) do not constitute "control" for the purposes of Vietnam's merger control regime.

Joint ventures are subject to the merger control regime where the venture involves two or more parties jointly establishing a new undertaking by contributing a portion of their lawful assets, rights, obligations or interests. Non-structural joint ventures (for example, based only on contractual arrangements) which do not involve the establishment of a legal entity fall, *prima facie*, outside

the joint venture definition. Although changes may be legislated or VCC interpretations revised in the future, to date the Vietnamese merger control regime has not applied in respect of the formation of unincorporated joint ventures.

#### 1.4 What are the jurisdictional thresholds?

See section 1.3 above.

#### 1.5 Do foreign-to-foreign mergers need to be notified?

Generally, yes, as there are no legislative exemptions for foreign-to-foreign mergers.

A filing can be triggered by one party's turnover, assets, or market share alone, even if the target has no nexus to Vietnam.

It is important also to note that there are no exceptions for intra-group corporate reorganisation transactions, under Vietnam's merger control regime.

#### Notification and procedure

#### 1.6 Is notification mandatory or voluntary and are there deadlines for making a notification?

Vietnam operates a pre-closing, mandatory regime. Clearance must be obtained before parties can proceed to closing.

#### 1.7 Does notification have suspensory effect preventing completion until clearance has been received?

Yes, notification has a suspensory effect in Vietnam's merger control regime. See section 1.6 above.

#### 1.8 Who is responsible for making a notification and is a filing fee payable?

Under Article 33(1) of the 2018 Law, the obligation to make the notification applies to all parties who are engaged in the relevant economic concentration. However, only one single notification dossier is required to be filed, and this can be done jointly by the parties. In practice, a designated lead party (often the acquirer) coordinates preparation and submission for efficiency, but legally, all parties are subject to a joint obligation to make the notification.

There is no filing fee payable.

#### 1.9 What are the sanctions for (i) failure to file and (ii) closing prior to clearance (where applicable)?

Failure to make a notification may result in a monetary fine of up to 5% of each party's turnover in the relevant market (generated in Vietnam during the entirety of the preceding financial year). If a party's turnover in the relevant market in Vietnam is zero, then the maximum fine is VND 200 million.

If the parties proceed with submission, but close the transaction prior to VCC clearance (or expiry of the review period), each party may face a fine of 0.5% to 1% of its turnover in the relevant market, generated in Vietnam during the entirety of the preceding financial year.

The VCC generally does not publish the decisions under which it imposes sanctions upon parties. However, the VCC does publish in its annual reports summaries of noteworthy merger control notification cases (amongst other matters), which may include summaries of sanctions imposed. The imposition of sanctions is, however, rare in Vietnam. There are very few examples of the VCC having published information in relation to its imposition of sanctions.

#### 1.10 What are the applicable phase I and phase II review

## periods?

The 2018 Law provides for a two-stage merger review process. The process commences with a preliminary review (Phase I), which is to be completed within 30 days of the VCC's receipt of a complete and valid filing and the parties will be notified of the result. Absent of notice of clearance or escalation to Phase II review upon the expiry of that 30 days, a transaction is automatically cleared.

Where potential competition concerns arise, the transaction may be escalated by the VCC to a full review (Phase II). Phase II is to be completed within 90 days of the notification of the Phase I result, but this time period may be extended by a further 60 days by written notice to the parties.

### Pre-notification stage

The VCC will start the review process after the notification form and supporting documents are declared complete by the VCC.

Upon receipt of the notification, the VCC will typically take seven working days to conduct an initial review and may issue requests for additional information. The parties have 30 calendar days to respond to each such request and provide the required information.

#### 1.11 Overall, the merger control process typically takes around three months (excluding preparation time) to complete. Is a simplified review procedure available?

There is no simplified or accelerated notification procedure available under Vietnam's merger control regime.

However, the preliminary appraisal phase (Phase I) effectively functions as a simplified review in practice, with most notified transactions being cleared at this stage without proceeding to a full review (Phase II).

#### 1.12 Are decisions of the competition authority appealable?

Yes. The VCC's decisions may be appealed if there are grounds to consider that such administrative decision is unlawful or directly infringes upon the rights and legitimate interests of the complainant. Any party (including third parties) may lodge an appeal to the VCC's Chairman for first instance complaint or the Minister of the Ministry of Industry and Trade for second instance complaint. Administrative proceedings before the courts are also available.

There are time limits to appeals:

- First instance complaint: 90 days from the VCC's decision.
- Second instance complaint: 30 days from the: (i) expiry date of the first instance time limit; or (ii) issuance date of the first instance resolution.
- Administrative litigation: One year from the date of receipt or awareness of the (i) VCC's decision; or (ii) decision on complaint resolution (either first or second instance).

#### 1.13 Does the competition authority cooperate with competition authorities in other jurisdictions in respect of merger control?

Yes. The VCC has engaged in cooperation programmes with various authorities, such as the Japan Fair Trade Commission and the Australian Competition and Consumer Commission. These programmes are primarily focussed on enhancing antitrust enforcement and promoting consumer welfare.

### Substantive assessment

#### 1.14 What is the applicable substantive test applied by the competition authority?

The substantive test applied by the VCC under the 2018 Law is whether an economic concentration causes or is likely to cause substantial anti-competitive effects in the Vietnamese market. The VCC balances potential anti-competitive harm against pro-competitive benefits, which may result in unconditional approval, conditional approval (subject to remedies), or prohibition.

In Phase I, the VCC conducts preliminary screening, primarily relying on quantitative indicators to determine whether the concentration falls within safe harbours (and may be cleared without escalation to full Phase II review) or requires a more detailed review in Phase II. The key factors assessed include:

- the combined market share of the parties in the relevant market;
- the degree of market concentration before and after the transaction; and
- the relationship between the parties in the supply chain (for example, horizontal overlaps, vertical relationships, or complementary products or inputs).

Safe harbours for Phase I clearance generally apply where, in the case of horizontal concentrations, (i) the combined market share of the parties is below 20%, or (ii) where the combined market share is 20% or more but the post-transaction Herfindahl–Hirschman Index (HHI) is below 1,800, or (iii) where the HHI is 1,800 or above but the increase in HHI delta is less than 100. For vertical concentrations, safe harbours typically apply where the market share of each party in its respective upstream or downstream market is below 20%.

In Phase II, the VCC conducts a comprehensive and in-depth assessment, including:

- an evaluation of the substantial anti-competitive effects caused or likely to be caused by the concentration, together with any proposed remedial measures (for example, commitments or conditions) to mitigate such effects;
- an assessment of the positive effects of the concentration (such as contributions to industry development, technological advancement, support for small and medium-sized enterprises, or enhancement of the international competitiveness of Vietnamese enterprises), as well as measures to enhance such effects; and
- a consolidated assessment balancing the anti-competitive effects against the positive effects, which forms the basis for the VCC's final decision: unconditional approval, conditional approval (with remedies), or prohibition.

#### 1.15 Parties are also required to produce an assessment report on the positive effect brought about by the concentration and measures for enhancing such effect. Is it possible to remedy any concerns through commitments?

While there is no formal remedy negotiation process, parties are required to submit remedy proposals to mitigate the potential anti-competitive effects of economic concentration as part of the notification dossier, especially during Phase II review. During its review, VCC would be likely to consult with relevant third parties

to design clearance conditions.

Both structural and behavioural remedies are available. The VCC has imposed remedies on foreign-to-foreign transactions, all of which are behavioural remedies.

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