



**DEZAN SHIRA & ASSOCIATES**

Your Partner for Growth in Asia

# M&A Overview and Legal Concerns on M&A Registration in VN

**Presented by Tam Nguyen,  
legal Team of Dezan Shira**

**Dated 8 September, 2022**



---

## The M&A Landscape in VN

---

## Legal Frame on M&A

---

## M&A Registration and Importance Concerns in VN

---

# Vietnam's M&A Landscape in 2022

## M&A transactions statistic in Vietnam (08 first months of 2022) :

- Number of M&A deals: 2.425 deals (8.915,40% over the same period last year)
- Total value of the above M&A deals: USD 2.913,28 million (10.360% over the same period last year.

## Industry M&A trends in 2022

- Real Estate M&A deals
- Banking M&A deals
- Renewable energy, fintech, education, consumer
- Healthcare Industry, Steel Industry, Electronics Industry and Beverage Industry

## Factors contributes the increase of M&A in 2022

- The implementation of recently adopted Free Trade Agreements (FTAs), specifically the EU-Vietnam FTA, the UK-Vietnam FTA, and CPTTPP
- Development of supply chains in Vietnam;
- Stable investment environment;
- Continued benefit from the so called “China plus one” policy;
- Economic Recovery from Covid-19;

## Forecast for M&A in 2022

# Legal Frame on M&A in VN



# M&A Registration and importance concerns



# Basis steps of an M&A transaction

**Determine  
Target  
(asset or  
equity)**

**Preliminary  
negotiation**

**NDA/LOI  
Signing**

**Due  
diligence**

**Negotiation  
and  
Signing  
Contracts**

**M&A  
approval/  
registration**

**Deal  
Closing/  
Completion**



# Approvals and procedures in M&A Registration

Procedures on M & A Approvals

Procedures on Approval for economic concentration

Procedures on updating the change of enterprise information

Procedure on updating the investment project information (applied for FDI target companies)

# Important considerations on M&A registration



## Restrictions/conditions on Market Access

- International Treaties, FTAS, business lines restricts market entry of foreign investors,
- Conditional business that impacts M&A transaction



## Place of M&A implementation

- M & A transaction inside VN (the Target Company established in VN and subject to the governance of Laws of VN on M&A approval and procedures)
- M&A transaction outside VN (the Target Company established outside VN, no change on ownership structure of VN subsidiary, no M & A approval is applied)



## M & A Forms

- Subscription for new shares (JSC) or new capital (LLC); and
- Acquisition (Asset or Equity)



## Circumstances which are required to obtain the M&A Approval



# Scenarios required to obtain M&A approvals

- ❑ The M&A transactions **cause the increase of the foreign ownership up to 50% or more** of charter capital in the target company;
- ❑ The M&A transactions cause the foreign ownership in the target company that conduct business **sectors with market access restriction to foreign investors**; or
- ❑ M&A transactions conducted by foreign investors in the target company that **holding a land use right certificate** on an island or in a border or coastal commune;; **in an area that affects national defense and security.**

# Attentions prior request an M&A Approval

## Market Access conditions (*Article 9.3 Law on Investment 2020*):

- Foreign ownership limit;
- Investment forms;
- Investor's capacity and Vietnamese partner;
- Other conditions regulated by local laws

## The Business Negative List

- List of business lines which are prohibited for foreign investors; and
- List of business lines which are conducted conditionally by foreign investors (i.e. insurance, banking, advertisements, education, casino, real estate, security services, trading activities and activities related to trading activities conducted by foreign invested enterprise, sport and entertainment services, logistics service

## National Defense and Security

## Conditions for use of land on islands or border or coastal communes

# Approval for economic concentration

The M&A transactions that satisfy one of the following thresholds (except for Insurance, Securities, and Banking sector) shall be subject to requirement on applying and obtaining the clearance approval for the economic concentration from the **Vietnamese competition departments**:

- Total assets of one of the parties (including affiliates) in Vietnam: VND 3,000 billion ~ USD 129 million of the latest fiscal year;
- Total sales/purchase revenue of one of the parties (including affiliates) in Vietnam: VND 3,000 billion ~ USD129 million of the latest fiscal year;
- Transaction value for onshore transaction only: VND 1,000 billion ~ USD 43 million;
- Combined market share of the parties: 20%

# Process of M&A Registration

## SCENARIO 01: The Target Company is a foreign-owned company

**Step 01:** Obtain M&A approval at either (i) Department of Planning and Investment or (ii) Industrial Zone Management Board (15 days)

**Step 02:** Amend the enterprise registration certificate to record new owner at Department of Planning and Investment (03 – 05 working days)

**Step 03:** Amend the investment registration certificate to record new investor at either (i) Department of Planning and Investment or (ii) Industrial Zone Management Board (15 days)

## SCENARIO 02: The Target Company is a Vietnamese company

**Step 01:** Obtain M&A approval at either (i) Department of Planning and Investment or (ii) Industrial Zone Management Board (15 days)

**Step 02:** Amend the enterprise registration certificate to record new owner at Department of Planning and Investment (03 – 05 working days)



**DEZAN SHIRA & ASSOCIATES**

Your Partner for Growth in Asia

# Tax impacts and compliance in Vietnam on M&A transactions



# TYPES OF M&A DEALS

## Asset deals

- The asset ownership of the Target company is transferred to the Buyer.
- The Seller preserves the possessions of the legal entity, including entitlements and obligations such as tax incentives and tax debts.
- The transferred asset must be held by an interposed company in Vietnam.

## Share deals

- The capital ownership of the Target company is transferred to the Buyer.
- All the entitlements and obligations of the Target company is transferred to the Buyer, including tax incentives & tax losses.
- An approval from the licensing authority is required before the M&A can be carried out by a foreign Buyer.

# TAX IMPLICATIONS FOR ASSET DEALS

- **Value Added Tax** (“VAT”) applies on asset disposals and is creditable to the Buyer.
- Gains of asset disposal are taxed at standard **Corporate Income Tax** (“CIT”) rates of 20%

→ TRANSFER OF ASSET vs TRANSFER OF PROJECT

# TAX IMPLICATIONS ON SHARE DEALS

TYPES OF TRANSACTION	CORPORATE SELLER		INDIVIDUAL SELLER	
	Tax resident	Non-tax resident	Tax resident	Non-tax resident
Transfer of Capital	20% on capital gain (***)	20% on capital gain	20% on capital gain	0.1% on capital proceeds
Transfer of Securities	20% on capital gain	0.1% on capital proceeds	0.1% on capital proceeds	0.1% on capital proceeds

(\*\*\*) *Capital gains = Capital proceeds – cost base – expenses incurred in the disposal process*



# TAX IMPLICATIONS ON SHARE DEALS (CONT')

SELLER	BUYER	THE OBLIGATION FOR TAX DECLARATION AND REMITTANCE IS LEVIED ON
Offshore company	Vietnamese company	The Buyer
Vietnamese company/Resident individual	Offshore company/Non-resident individual	The Seller
Offshore company	Offshore company	The Target Company
Non-resident individual	Vietnamese company/Resident individual	The Buyer

## TAX REPORTING OBLIGATIONS OF BUYER AND SELLER

# TAX CONSIDERATIONS FOR M&A DEALS IN GENERAL



Historical **tax compliance status** of the Target company



**Transfer pricing** issues – Determinate arm's length consideration



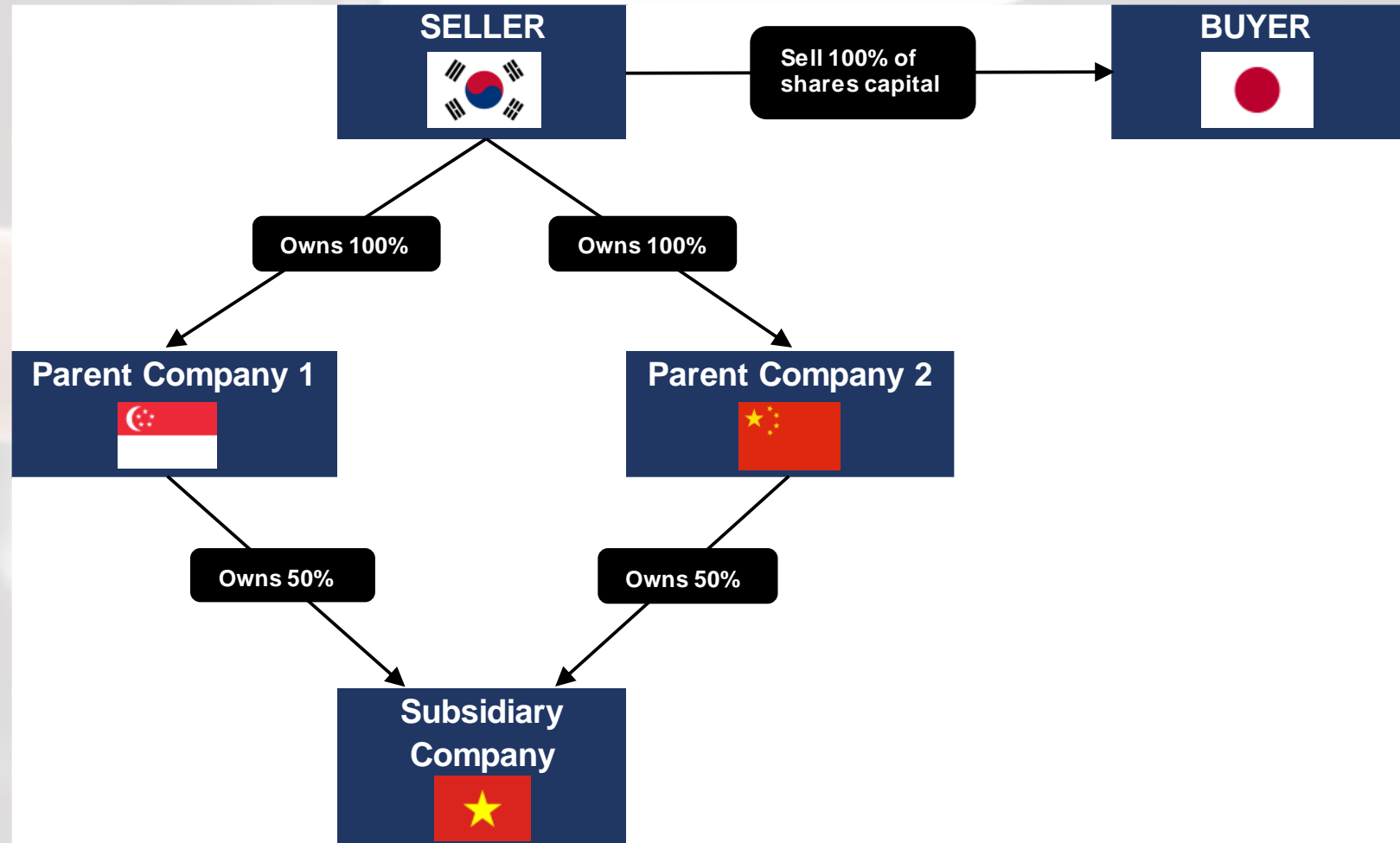
Indirect **offshore** acquisitions

# INDIRECT OFFSHORE ACQUISITIONS

The Korean ultimate parent company is selling 100% of its share ownership to a Japan-based entity.

The transaction is carried out completely offshore.

→ Any tax implications on the change of ownership of the ultimate parent company?



# INDIRECT OFFSHORE ACQUISITIONS (CONT')

- What is the big deal with indirect transfers of ownership?
- As stipulated by **Decree No. 12/2015/ND-CP** - An income deriving from a capital transfer of foreign investors in Vietnam would be regarded as a taxable income regardless of where the transaction takes place.

→ **Any specific guidance on taxing mechanism for offshore capital transfer?**



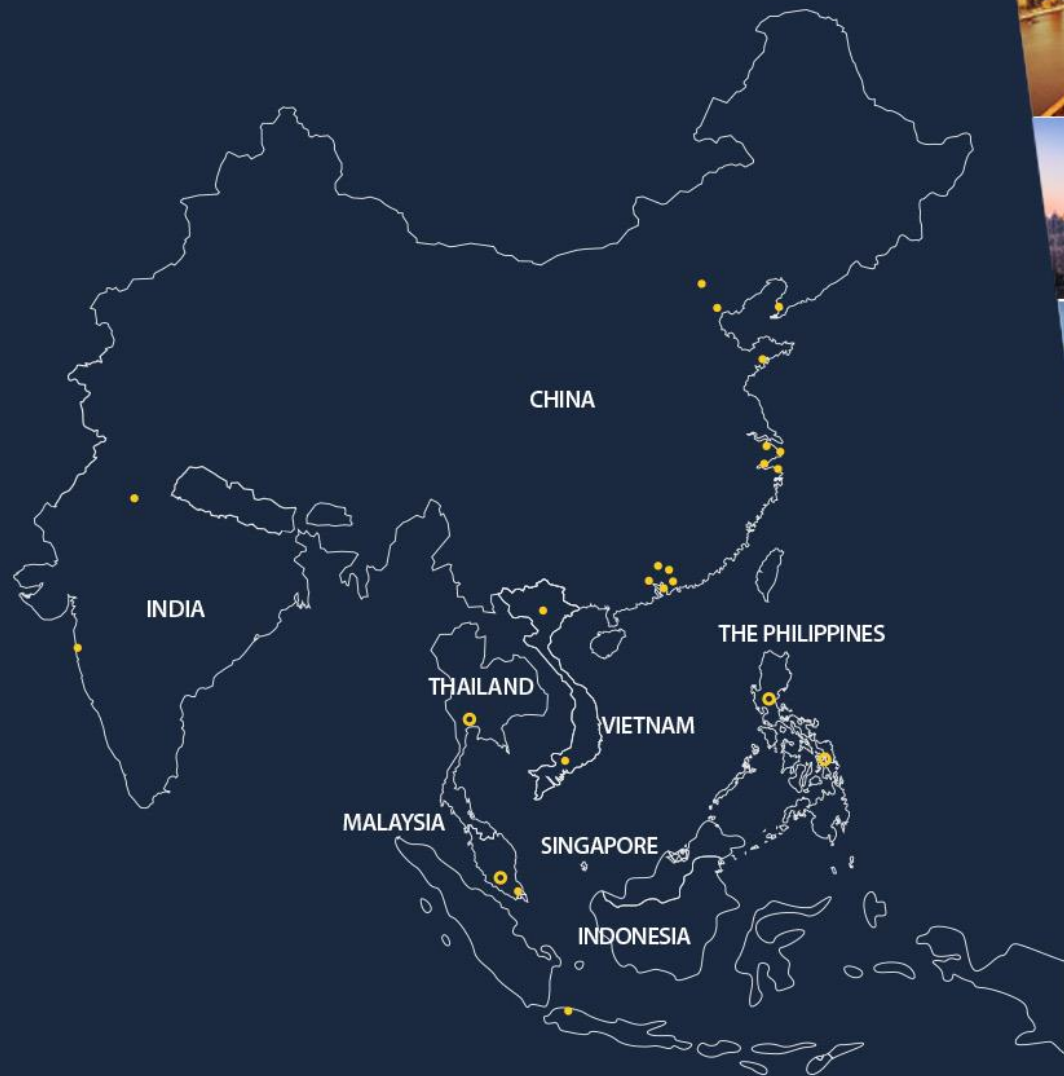
This Photo by Unknown Author is licensed under [CC BY-NC](#)

**How can we help you?**



# DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia



- Dezan Shira & Associates Offices
- Dezan Shira Asian Alliance Members

## Global Offices

### CHINA

Beijing  
beijing@dezshira.com

Hangzhou  
hangzhou@dezshira.com

Shenzhen  
shenzhen@dezshira.com

Dalian  
dalian@dezshira.com

Ningbo  
ningbo@dezshira.com

Suzhou  
suzhou@dezshira.com

Dongguan  
dongguan@dezshira.com

Qingdao  
qingdao@dezshira.com

Tianjin  
tianjin@dezshira.com

Guangzhou  
guangzhou@dezshira.com

Shanghai  
shanghai@dezshira.com

Zhongshan  
zhongshan@dezshira.com

### HONG KONG

hongkong@dezshira.com

### INDONESIA

indonesia@dezshira.com

### SINGAPORE

singapore@dezshira.com

### INDIA

Delhi  
delhi@dezshira.com

Mumbai  
mumbai@dezshira.com

### VIETNAM

Hanoi  
hanoi@dezshira.com

Ho Chi Minh City  
hcmc@dezshira.com

### DEZAN SHIRA ASIAN ALLIANCE MEMBERS

Malaysia  
malaysia@dezshira.com

The Philippines  
philippines@dezshira.com

Thailand  
thailand@dezshira.com

### DEZAN SHIRA LIAISON OFFICES

Germany  
germandesk@dezshira.com

Italy  
italiandesk@dezshira.com

United States  
usa@dezshira.com

For more information, please visit [www.dezshira.com](http://www.dezshira.com)



**DEZAN SHIRA & ASSOCIATES**

Your Partner for Growth in Asia



**Scan this QR code**

Visit our mobile page and  
get the latest updates investors  
news and resources with us