

LICENSING PROCEDURES IN M&A TRANSACTIONS IN VIETNAM

I. INTRODUCTION

The closing process of an M&A transaction in Vietnam often involves a series of licensing procedures to give effect to the outcomes of the transaction. This includes, but is not limited to, obtaining approvals from relevant authorities for the parties to conduct the transaction, notifying the buyer as a new member/shareholder in the target company, registering new management positions, and updating the corporate form or other corporate information of the target company. Failure to complete any of these licensing procedures could adversely affect the rights of the parties or the operation of the target company post-closing.

In this Client Alert, we have attempted to summarize various scenarios that may lead to typical licensing procedures when conducting M&A transactions in Vietnam. This aims to assist parties in better preparing the transaction's timeline and terms in advance. Please note that our list is not exhaustive, and every transaction is unique. Therefore, the applicable licensing procedures for each specific transaction must be considered on a case-by-case basis.¹

II. LEGAL BASIS

As of the date of this Client Alert, the main legal documents we refer to include:

- Law No. 61/2020/QH14 on Investment passed by the National Assembly on 17th June 2020;
- Law No. 59/2020/QH14 on Enterprise passed by the National Assembly on 17th June 2020;
- Law No. 23/2018/QH14 on Competition passed by the National Assembly on 12th June 2018;
- Decree No. 31/2021/ND-CP implementing the Investment Law issued by the Government on 26th March 2021;
- Decree No. 01/2021/ND-CP on enterprise registration issued by the Government on 04th January 2021;
- Decree No. 35/2020/ND-CP implementing the Competition Law issued by the Government on 24th March 2020.

¹ This document primarily addresses M&A procedures in Vietnam pertaining to regular companies and does not delve into the specific procedures and licensing requirements applicable to entities operating under specialized legal frameworks, such as banking or insurance institutions. For information on M&A processes involving these particular legal entities, it is advisable to refer to the relevant laws and regulations governing such specific sectors in Vietnam.

III. LICENSING PROCEDURES COMMONLY SEEN IN AN M&A TRANSACTION

No.	Licensing Procedures	Common Applicable Scenarios	Notes
A. Anti-competition Licensing Procedure			
1	<p>Notification of economic concentration ("Merger Filing")</p> <p><i>Authorities in charge:</i> Vietnam Competition Commission</p>	<p>If an M&A transaction categorized as an economic concentration possesses the following features:</p> <ul style="list-style-type: none"> ○ Total assets of the enterprises engaging in the transaction on the Vietnamese market worth VND 3,000 billion or more; ○ Total sales or purchase volume of the enterprises engaging in the transaction on the Vietnamese market worth VND 3,000 billion or more; ○ The transaction value of the economic concentration is worth at least VND 1,000 billion; ○ Combined market share of enterprises engaging in the transaction accounts for at least 20% of the total share of the relevant market. 	<p>M&A transactions of the following types are categorized as economic concentrations:</p> <ul style="list-style-type: none"> ○ Merger of enterprises; ○ Consolidation of enterprises; ○ Acquisition of enterprises; ○ Joint venture between/ among enterprises; and ○ Others as deemed by the authorities. <p>The enterprises engaging in economic concentration transactions include all parties to the transactions as well as the target company.</p>
B. Investment Licensing Procedures			
2	<p>Registration for capital contribution, purchase of shares or capital by foreign investors ("M&A Approval")</p> <p><i>Authorities in charge:</i> Provincial Department of Planning and Investment ("DPI")</p>	<ul style="list-style-type: none"> ○ If a foreign investor acquires equity interest in the target company that conducts conditional business lines, leading to an increase in the foreign ownership ratio of the target company; ○ If a foreign investor acquires equity interest in the target company, resulting in the foreign investors in the target company: <ul style="list-style-type: none"> • increasing their shareholding from less than or equal to 50% to over 50% of the charter capital; or 	<p>The scope of "foreign investors" subject to M&A Approval includes:</p> <ul style="list-style-type: none"> ○ individuals holding a foreign nationality; or ○ organizations established under foreign laws; or ○ foreign-invested enterprises that are owned 50% or more by a foreign entity(is), and/or other foreign-invested enterprise(s).

			<ul style="list-style-type: none"> • continuing to increase their shareholding, if they already held over 50% of the charter capital; and ○ If a foreign investor acquires equity interest in the target company, which holds a land use right on an island, a border or coastal commune, or another area that affects national defense and security. 	
3	<p>Adjustment of the investment project</p> <p><i>Authorities in charge:</i></p> <ul style="list-style-type: none"> ○ IPD Amendment: The National Assembly or the Prime Minister or the Provincial People's Committee. ○ IRC Amendment: DPI or the Management Board of Industrial Parks, Export Processing Zones, High-tech Zones, and Economic Zones 	<ul style="list-style-type: none"> ○ Amendment of the Investment Policy Decision ("IPD") 	<ul style="list-style-type: none"> ○ If the buyer becomes a new investor of an investment project approved under an IPD of the target company before the operation of the project, and if the IPD was issued together with the approval of the project's investor(s). 	<p>If the M&A transaction leads to other substantive changes to an investment project approved under an IPD, the amendment of the IPD will also be required. For example, changes such as a modification in investment objectives, an alteration in land area by 10% or more than 30 hectares, a shift in the investment location, an adjustment in total investment capital by 20% or more leading to a change in the scale of the investment project, a revision in the project implementation schedule or duration, or a modification in conditions applied to the investor.</p>

		<ul style="list-style-type: none"> Amendment of the Investment Registration Certificate (“IRC”) 	<ul style="list-style-type: none"> If the buyer becomes a new investor of an investment project registered under an IRC of the target company; and If the name of the target company as registered in the IRC is changed. 	If the M&A transaction leads to other changes to the information recorded under an IRC, amendment of the IRC will also be required. For example, changes such as the adjustment of the location and land area of the project; objectives and scale of the project; capital investment in the investment project, duration of the investment project and the execution schedule, and other contents in the IRC.
C. Enterprise Registration Procedures				
4	Amendment of the Enterprise Registration Certificate (“ERC”) <i>Authorities in charge: DPI</i>	<ul style="list-style-type: none"> Registration of the change of the enterprise’s name; 	<ul style="list-style-type: none"> If the target company changes its name because of the M&A transaction. 	
		<ul style="list-style-type: none"> Registration of the change of the legal representative(s) of limited liability companies (“LLC”) and joint-stock companies (“JSC”); 	<ul style="list-style-type: none"> If the target company changes or adds more legal representatives as nominated or appointed by the parties to the M&A transaction. 	
		<ul style="list-style-type: none"> Registration of an increase in the charter capital; 	<ul style="list-style-type: none"> If the target company increases its charter capital due to the buyer’s subscription of new shares (in case of a JSC), or due to the buyer’s contribution of additional charter capital (in case of an LLC). 	

		<ul style="list-style-type: none"> Registration of the change of the members and the capital holding ratio of the members in a multi-member LLC; 	<ul style="list-style-type: none"> If the buyer contributes additional capital to the target company being a multi-member LLC leading to the target company having new member; If the buyer purchases the equity interest from the existing member(s) of a multi-member LLC (without turning the target company to a single-member LLC). 	The authorized representative of the new member(s) being an organization will be registered at the same time.
		<ul style="list-style-type: none"> Registration of the change of the owner of a single-member LLC; 	<ul style="list-style-type: none"> If the buyer purchases the entire equity interest from the owner of a single-member LLC. 	If the buyer (the new owner) is an organization, the authorized representative of the new owner will be registered at the same time.
5	Registration of conversion of corporate form <i>Authorities in charge: DPI</i>		<ul style="list-style-type: none"> If the buyer invests additional charter capital or purchases part of the owner's charter capital in a single-member LLC, which turns the target company from a single-member LLC into a multi-member LLC; If the buyer purchases all the charter capital from all members of a multi-member LLC, which turns the target company from a multi-member LLC into a single-member LLC; If the target company is converted from an LLC into a JSC or vice versa according to the parties' agreement. 	
6	Notification of changes of foreign shareholders of an unlisted JSC <i>Authorities in charge: DPI</i>		<ul style="list-style-type: none"> If the target company being an unlisted JSC has a change in or addition of shareholders being foreign investors as the result of the M&A transaction. 	The authorized representative of the new shareholder being an organization will be registered at the same time.

				Regarding the scope of “foreign investors” subject to this procedure, please refer to the note at item 2 above.
7	Notification of changes in enterprise registration information <i>Authorities in charge: DPI</i>	○ Change or addition of business lines;	○ If the target company removes or adds certain business lines in its scope of business as required under the M&A transaction.	
		○ Change in tax registration information, including information of chief accountant, general director/director;	○ If the target company changes its chief accountant, and/ or general director/ director and other tax registration information as required under the M&A transaction.	
		○ Change of authorized representatives of (i) foreign shareholder(s) being organization(s) in a JSC; or (ii) the owner or members being organization(s) in an LLC.	○ If the target company has new foreign shareholder(s) or new owner or new member(s) that are organization(s) as a result of the M&A transaction, and such new foreign shareholder(s) or new owner or new member(s) appoint their authorized representative(s) to exercise their rights in the target company.	

**DNA VIETNAM LLC**

Unit 802, 8th Floor, IDMC Duy Tan Building, 21 Duy Tan Street Dich Vong Hau Ward, Cau Giay District, Hanoi, Vietnam

Website: www.dnalaw.com.vn Email: contact@dnalaw.com.vn

8	Registration of changes in branch/ representative office/ business location registration information <i>Authorities in charge:</i> DPI	<ul style="list-style-type: none">○ If upon the M&A transaction, the target company changes its name leading to the change in name of its branch(es)/ representative office(s)/ business location(s);○ If the target company is converted from an LLC into a JSC or vice versa upon the M&A transaction, its branch(es)/ representative office(s)/ business location(s) must follow this procedure to change the relevant registration information accordingly.	
---	---	--	--

* * *

Please feel free to contact us if you are interested in discussing any licensing procedures related to M&A transactions in Vietnam.

CONTACT:**Dang Thanh Son**

Managing Partner

Phone: (+84) 24 32018003 Ext. 104

Mobile: (+84) 98 449 9888

Email: son.dang@dnalaw.com.vn**Dang Chi Lieu**

Partner

Phone: (+84) 24 32018003 Ext. 108

Mobile: (+84) 91 218 6838

Email: lieu.dang@dnalaw.com.vn