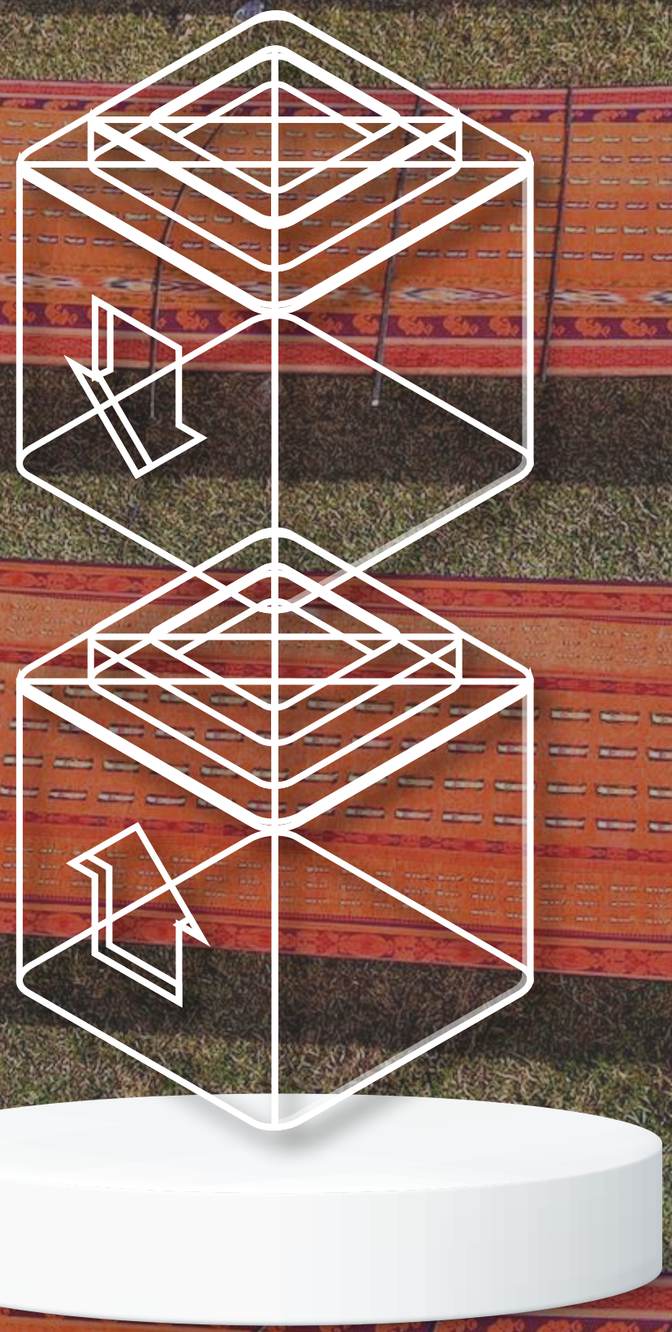
APOLAT
LEGAL

HANDBOOK
MERGERS & ACQUISITIONS



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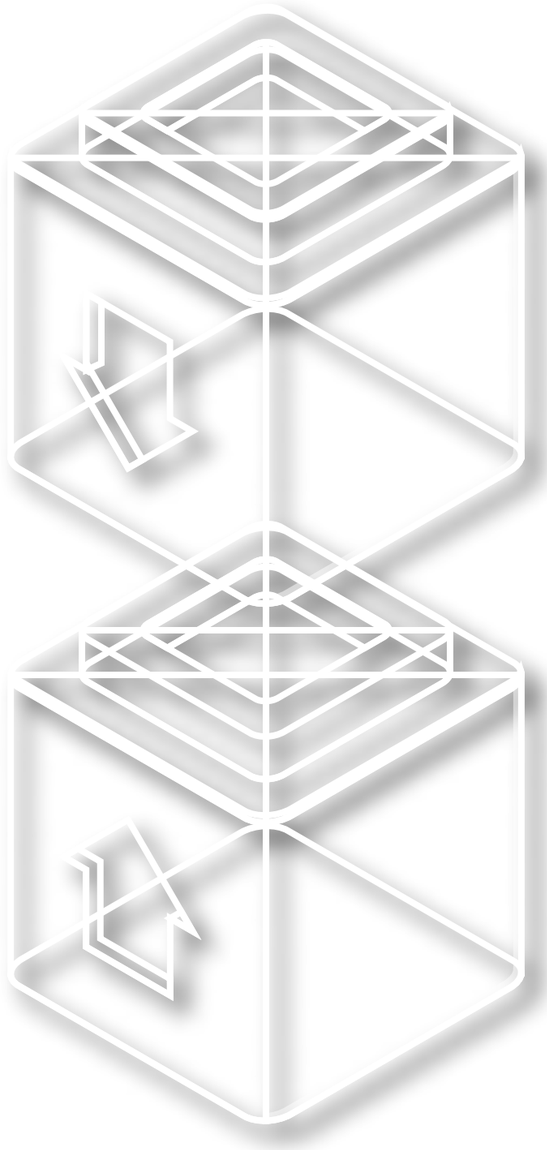

FOREWORD

Mergers & Acquisitions (“**M&A**”) are increasingly seen as an effective tool to increase market competition and promote the development of companies. Around the world, the fact that large and small companies spend trillions of US dollars on M&A proves the importance of this activity in modern business strategy. In Vietnam, domestic M&A transactions’ value has reached billions of US dollars with more than 500 deals annually in recent years. Vietnam's economic environment is increasingly open, and along with the process of joining new trade pacts and agreements, Vietnam will soon become a fertile land for the explosive growth of M&A activities.

Any company conducting M&A in Vietnam must clearly understand the law to ensure success. Therefore, Apolat Legal has compiled this handbook, based on our extensive experience in handling complex M&A deals, to provide our Clients with an overview of Vietnam's current regulations on M&A and more.

CHAPTER 1

OVERVIEW

MERGERS & ACQUISITIONS

MERGERS

ACQUISITIONS

Definition

Under current legislation, the merger is the practice of two or more companies ("**Merger Companies**") to form an entirely new company ("**Merged Company**"), and simultaneously disincorporate the Merger Companies. After being incorporated, the Merged Company will inherit all rights, obligations and interests of the Merger Companies. The merger of companies can be understood by a simple formula as follows:

Company A + Company B = Company AB

Some outstanding mergers in Vietnam include the merger between the two credit institutions Western Bank and PVFC into PVCombank; the merger between three commercial banks including First Joint Stock Commercial Bank (FicomBank), Vietnam Tin Nghia Joint Stock Commercial Bank (TinNghiaBank) and Sai Gon Joint Stock Commercial Bank (SCB) into a new bank bearing the same name as Sai Gon Joint Stock Commercial Bank (SCB).

Acquisitions in accordance with corporate law means one or several companies ("**Acquiree Companies**") get absorbed into another company ("**Acquirer Company**") by transferring all property, rights, obligations and legitimate interests to the Acquirer Company, and at the same time terminate the existence of the Acquiree Companies. Acquisitions of companies can be understood by the simple formula as follows:

Company A + Company B = Company B+

Notable acquisitions in Vietnam include the acquisition of Smartlink Card Services Joint Stock Company into Vietnam National Financial Switching Joint Stock Company (Banknet-vn) in 2014; The Joint Stock Commercial Bank for Investment and Development of Vietnam (BIDV) acquired The Housing Development Bank of Mekong Delta (MHB) in 2015.

Similarities

Both Mergers and Acquisitions produce the same economic results. After M&A the process, the total financial, technology, and human resources, etc., of the Merger & Acquiree Companies ("**Pre-M&A Companies**") will all belong to one business legal entity. Under competition laws, both Mergers & Acquisitions are considered forms of economic concentration. In many studies on business, economic concentration usually has three main directions:

a. Horizontal

Horizontal means the economic concentration between companies in the same industry, offering the same goods or services, usually between competitors. Horizontal M&A often occurs in industries with a small number of companies, with very high intra-industry competition. The strategy of horizontal M&A is mainly to enhance competitiveness in the market.

b. Vertical

Vertical means the economic concentration between companies with a symbiotic relationship, possessing related activities at different stages in the production and business process, such as the M&A between supplier and distributor. Vertical economic concentration will help reduce production, operation, transaction and other costs through unified management of different stages in the value chain.

c. Diversification

Diversification means the economic concentration between companies that are not partners or competitors but companies operating in different fields. The main purpose of diversification is to expand the market with two main types: concentric and conglomerate. Which, concentric diversification is the expansion into industries related to existing activities, while conglomerate diversification is the expansion into completely new industries.

Differences

The following differences exist between Mergers and Acquisitions:

a. Business entity after completion of M&A

After the merger process, all Merger Companies will cease to exist. Instead, a new company will be established and inherit all the assets, rights, obligations and interests of such Merger Companies. For acquisitions, only one of the companies participating in this process will continue to operate while the other companies will be terminated, the company that continues to operate that is the Acquirer Company that will inherit the rights and obligations of companies that cease to exist.

b. The right to choose the management structure

A merger is often seen as the consolidation between equal companies. During the merger process, the Merger Companies must jointly elect the management and executive positions of the Merged Company. In contrast, the Acquiree Company will not have the right to determine the management structure of the Acquirer Company, reflecting the unequal position between the parties in the acquisition.

c. Legal procedures

Although the law requires that companies wishing to participate in M&A go through some identical processes. However, current regulations set forth different procedures between the merger and acquisition of companies. A clear example is that a new company must be incorporated during the merger process, while the parties of the acquisition do not need to go through this procedure.

Advantages

A merger is largely an equal combination of companies of similar standing. Therefore, a merger can be seen as providing tremendous growth, a springboard to enter a higher market segment. Furthermore, the heads of the Merger Companies will in fact, often take up critical positions on the Board of Directors of the Merged Company. Thus, the merger will benefit not only the parties involved but also the company's potential.

The Merged Company will most likely inherit the advantages and retain the identity of the Merger Companies. As a result, customers already loyal to a Merger Company will continue to accept the new company's products. Investors will also see investment values skyrocket as a result of the merger. The Merged Company will usually receive a positive response from the market.

The essence of an acquisition is that one company takes over the assets, rights and obligations of one or more companies and disincorporates them. Therefore, the parties will not need to negotiate much on post-acquisition management. Moreover, acquisitions often occur between large and small companies, and convincing a small company to be acquired by a large company is relatively easy. It can be said that the acquisition negotiation process will be shorter and more convenient compared to mergers.

Since the management structure of the Acquirer Company will not change, it is relatively easy to manage new resources from the Acquiree Companies. Not only that, the Acquirer Company retains its old customers while obtaining new customers from the Acquiree Companies. The Acquirer Company can rapidly increase its position in the market in the near future.

Disadvantages

Since mergers are mainly proposed only between companies of equal strength, negotiating a successful merger is difficult and expensive, and the risk of failure is high. The companies planning to merge all have their growth strategies, and most of the time there exists no need to merge. In addition, the heads of such companies may think that the merger will negatively affect their interests and that the termination of the existing company is unacceptable.

The Merged Company has a high risk of dissolution. For successful merger negotiations, the parties in reality often agree that the management board of the Merged Company shall be composed of the heads of the Merger Companies. However, this easily leads to inconsistency in the company's strategy and development direction, and sometimes conflicts of interest. The lack of smooth operation of the management board is unlikely to create a good future for the Merged Company.

The Acquirer Company may not receive the expected benefits, such as customers loyal to the Acquiree Company switching to buy products at another company; investors may not accept the asset conversion conditions after the acquisition, leading to a massive withdrawal of capital; and employees of the Acquiree Company may not want to work for the Merger Company.

The Acquirer Company will have to inherit all obligations of the Acquiree Company, such as debt repayment, salary payment, etc. If the benefits from the acquisition are not as expected, these obligations can cause great harm and even create the risk of bankruptcy for the Acquirer Company.

CHAPTER 2

PURPOSE

MERGERS & ACQUISITIONS

Mergers & Acquisitions are two methods of reorganizing companies that have a clear legal framework as well as activities encouraged by the Vietnamese government, especially among small and medium-sized companies, to improve the competitiveness of domestic firms in the international market. There are countless short and long-term benefits that M&A brings to the company some of the prominent benefits include the following:

GROWTH

When a company grows slowly by using internal resources, competitors can react quickly and capture market share. A fast-growing solution might be to engage in M&A with another company. Not only that, when companies become increasingly stereotyped, stagnant and then fall into recession, an M&A can help restore the vitality of the company.

EXPANSION INTO NEW MARKETS

M&A is also seen as a cost-effective method to expand into new markets rather than building the business independently. The company entering a new field inherits from the company operating in a new market the necessary foundations to succeed in that market through M&A activity.

PERSONAL REASONS

Company executives may engage in M&A with other companies for personal reasons such as increasing power, prestige, assets and control, believing they will have a better position while running the merged, acquirer company (the “Post-M&A Company”) than their current one. The decision to conduct M&A can also be attributed to the fear of losing their jobs, as executives always face growth pressure.

SYNERGY

This is perhaps the most important reason and benefit of M&A. “Synergy”, derived from the Greek word “synergos”, means “to work together”. In business, synergy refers to the ability of two or more units or companies to create greater value collectively than they can individually, or simply 1 + 1 > 2. The synergies that M&A can bring include reduced threats, increased market power, cost savings, increased financial strength and leverage and more.

CHAPTER 3

PROCESS MERGERS & ACQUISITIONS

THE LEGAL PROCESS OF CONDUCTING MERGERS & ACQUISITION

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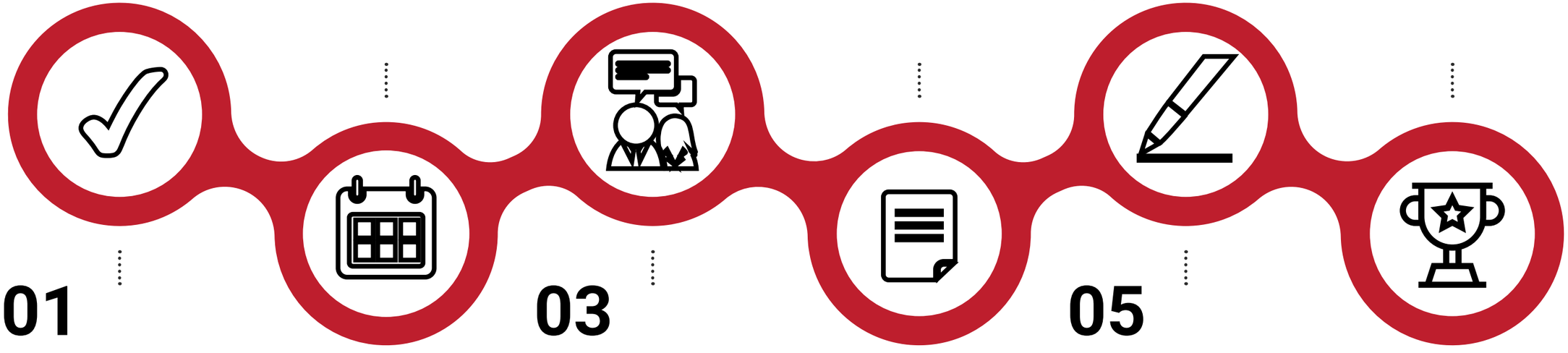


01

Legal Due Diligence of the Pre-M&A Companies

Before carrying out M&A, companies need to carry out comprehensive due diligence of the Pre-M&A Companies; depending on each case, the parties will require legal, financial, technical, market due diligence, etc.

The legal due diligence of the Pre-M&A Companies is to summarize and comprehensively evaluate the company's legal activities, and standardize the company's legal documents, documents and records. In particular, the main issues to pay attention to when carrying out the legal due diligence of the Pre-M&A Companies are as follows:

1. About the legal documents of the Pre-M&A Company

The Post-M&A Company needs to prepare a list of the Pre-M&A Companies' legal documents based on the requirement to store fundamental legal documents at the company's headquarters following the provisions of the Law on Enterprises, the Law on Accounting, the Tax Code and business lines of the companies to determine the specialized licenses and approvals issued by the competent state agency to the Pre-M&A Companies.

2. About the assets of the Consolidated Company

The assets of the Pre-M&A Companies shall be transferred to the Post-M&A Company. Therefore, during the legal due diligence process, the parties need to list the assets of the Pre-M&A Companies, including movable and immovable property or other registered ownership rights; At the same time, the Post-M&A Company also needs to evaluate the rate, percentage of depreciation of the movables and the ability to transfer the land use rights/ownership that must be registered from the Pre-M&A Companies.

In practice, the Pre-M&A Companies when performing the M&A need to perform the main tasks regarding assets as follows:

a Asset inventory of the Pre-M&A Companies. Specifically, the inventory should determine the assets' quantity, quality and value. After compiling, recording the quality and value of all assets of the Pre-M&A Companies, it is necessary to classify them according to the following criteria:
(i) Damaged assets, largely depreciated, low value, low quality; (ii) Property insured and compensated for loss or damages; (iii) Assets of high value, low depreciation, in good quality, reusable; etc. The inventory of assets should be recorded and made into an inventory record before conducting M&A.

b. Make a list of debts: before carrying out M&A, the Pre-M&A Companies need to make a detailed list of creditors, and debtors, compare, confirm and classify debts receivables and payables, creating a detailed checklist for each type of debt. Which debts are divided into two (02) main categories: (i) Receivables: including recoverable debts and irrecoverable debts; (ii) Payables: including payables within the due date, overdue payables, and payables that are offset or written off without having to be paid.

c. The processing of assets for the M&A should be done before the M&A procedure is carried out. The processing of assets needs to be conducted openly, transparently and clearly by making a record of asset inventory, a plan for asset processing and signed by the relevant persons as well as being notified to all companies.

3. About labor issues

The M&A will lead to the legal consequence that there shall only be the Post-M&A Company left, and the Pre-M&A Companies will cease to operate. Accordingly, the Post-M&A Company needs to accept employees of the Pre-M&A Companies or have a labor restructuring plan after the M&A following the laws on labor. Thus, through the legal due diligence process, the Post-M&A Company identifies important personnel positions, terms of labor contracts of these positions, and compliance with labor laws of Pre-M&A Companies in the process of human resource management. Specifically, the legal due diligence process needs to consider: the validity and duration of the labor contracts, the obligation to pay social insurance, health and unemployment insurance, and the job positions of the above -mentioned personnel. The result of this legal due diligence of labor is to help the Post-M&A Company evaluate and plan for personnel; at the same time, it is also the basis for the provisions regarding labor issues in the M&A Agreement.

4. About important contracts of the Pre-M&A Companies

Important contracts considered during the legal due diligence process when implementing the M&A include contracts, agreements, and commitments with customers and suppliers of the Pre-M&A Companies. Due to the large number of these contracts, agreements and commitments, when carrying out legal due diligence, the Pre-M&A Companies need to determine which contracts, agreements and commitments are considered essential and may be considered essential, this could be based on: transaction value, the severeness of legal consequences of commitment, potentiality or importance of customers, suppliers, etc. After the legal due diligence, the Pre-M&A Companies must have identified risks, legal consequences, the potentiality of contracts, agreements, commitments. From there, come up with a plan to liquidate or transfer rights and obligations to continue performing the contracts, agreements and commitments.

5. About the legal compliance of the Pre-M&A Companies

In addition to the above-mentioned vital issues, depending on each industry, specific field of operation, as well as company type, the organizational structure of the Pre-M&A Companies and Post-M&A Company, the legal due diligence process should identify the internal approvals, approvals, and licenses required by law that are necessary to the Pre-M&A Companies to do business. From there, the Post-M&A Company determines the internal management tasks that must be performed and the legal procedures to transfer the license from the Pre-M&A Companies to the Post-M&A Company after conducting M&A..

At the same time, the process should identify the obligations arising from administrative sanctions of the Pre-M&A Companies for activities that violate or have not complied with the law. From which, the Post-M&A Company can plan to pay fines and take remedial measures during the M&A process.

02

Plan the M&A

From the legal due diligence report for the Pre-M&A Companies, the Post-M&A Company can make an assessment of the legal situation of the Pre-M&A Companies and lay out the M&A plan. Specifically, the Post-M&A Company needs to perform the following tasks during the M&A planning step:

a. Build the transaction structure for the M&A ;

b. From the transaction structure, determine the obligations and work to be done by the Pre-M&A Companies before implementing the steps of the M&A;

c. Prepare necessary work to transfer rights, obligations, assets, etc., from the Pre-M&A Companies to the Post-M&A Company;

d. Prepare necessary matters for the Post-M&A Company in terms of finance, legal, labor, etc., when it comes into operation as the sole surviving legal entity.

At this planning step, the Post-M&A Company needs to determine the practical steps and plan according to the time period prescribed by law. In particular, the practical steps may include negotiating and working with customers, partners, and suppliers on the roadmap for transferring rights and obligations from the Pre-M&A Companies to the Post-M&A Company; The time-based plan may include the obligation to notify and register the Post-M&A Company to the business registration agency about the implementation of the M&A within a certain period according to the law.

03

Internal approval

The internal approval is an important document in the implementation of M&A. In practice, the Pre-M&A Companies conduct the internal approval in two directions:

The first direction: The Pre-M&A Companies make two internal approvals: the internal approval in practice and the internal approval to submit to state agencies. In particular, the internal approval in practice raises the issues that the parties agree to internally within the Pre-M&A Companies, but these issues may not be specified clearly and expressly as required by law; meanwhile, the Pre-M&A Companies tend to put clear and specific regulations in accordance with the law into the internal approval to submit to state agencies. This helps the Pre-M&A Companies manage their internal affairs in their own fashion while still complying with the law.

The second direction: Each Pre-M&A Companies only make one internal approval, which includes both separate agreements specific to the operational reality of the Pre-M&A Companies and other matters required by law. The weakness of this internal approval type is that the state agency may reject or request the removal of the contents related to the company's operational reality but are not required by law. As a result, the Pre-M&A Companies may not be able to achieve their management goals.

In addition, the internal approval also needs to be based on the M&A plan in Step 2 so that the implementation steps have a basis for establishing and complying with the issue of internal approval and authority under the law.

04

Negotiate the M&A Agreement and the Charter of the Post-M&A Company

1. About the M&A Agreement

The M&A Agreement is an essential legal basis for the parties to carry out the M&A process. The drafting of the M&A Agreement takes place after the Pre-M&A Companies and the Post-M&A Company have completed due diligence, planned the M&A, and confirmed the main prerequisites, tasks, obligations to be performed and internal approvals necessary to include in the content of the M&A Agreement. According to the Law on Enterprises 2020, the content of an M&A Agreement should have the following main points:

a. For a merger contract, there must be the name and head office address of the merger company; name and head office address of the merged company; procedures and conditions for the merger; labor use plan; deadlines, procedures and conditions for converting assets, and converting capital contributions, shares and bonds of the merger company into contributed capital, shares and bonds of the merged company; and merger deadlines.

b. For an acquisition contract, there must be the name and head office address of the acquirer company; name and head office address of the acquiree company; acquisition procedures and conditions; labor use plan; methods, procedures, deadlines and conditions for converting assets, capital contributions, shares and bonds of the acquiree company into contributed capital, shares and bonds of the acquirer company; and acquisition deadlines.

Based on the contents required by the enterprise laws mentioned above, the Post-M&A Company should pay attention to the following contents when preparing the M&A Agreement:

a. The preconditions identified during the legal due diligence process should be clearly defined and included in the M&A Agreement together with legal procedures to achieve them, such as Pre-M&A Companies need to fulfill their obligations regarding tax and under contracts, agreements and commitments before carrying out M&A procedures as well as legal procedures to prove the fulfillment of tax obligations (Confirmation of fulfillment of tax obligations) or fulfillment of obligations under contracts, agreements and commitments (Minutes of liquidation of contracts, agreements or Confirmation of completion of obligations);

b. Converting contributed capital and shares of the Pre-M&A Companies into the Post-M&A Company. The time of conversion of contributed capital and shares depends on the type of the Post-M&A Company as prescribed by the law on enterprises. However, in the M&A Agreement, the Pre-M&A Company needs to determine the necessary internal approvals for converting contributed capital and shares by the authority and order under the law. At the same time, the content of the M&A Agreement should also clearly stipulate the obligation to carry out business registration procedures at the business registration agency;

c. Regarding corporate governance issues, the M&A Agreement should specify which company executives from the Pre-M&A Companies will hold key positions in the Post-M&A Company depending on the selected company type. However, such issue is not a mandatory content of the M&A Agreement under the Law on Enterprises, the parties may consider including it in the M&A Agreement or internal approvals (in the form of governance practices) to align with the agreed M&A plan;

d. Regarding the employment plan, the M&A Agreement should stipulate the direction of employment for senior and key personnel positions as well as for junior and lower level personnel positions; the plan to liquidate the labor contracts of labor positions that have expired or have no need for the Post-M&A Company; matters related to labor obligations of the Pre-M&A Companies before carrying out the M&A procedures such as social insurance contributions, health insurance, unemployment insurance, the duty of withholding and declaring personal income tax of employees, annual reporting obligations as prescribed by law; administrative violations regarding labor;

e. Regarding the assets of the Pre-M&A Companies, it is necessary to determine the value of the assets of the Pre-M&A Companies in the M&A Agreement, which specifies the party obligated to transfer the registered rights to the assets and the deadline for transferring such assets according to the agreed M&A plan. In case the transfer of rights is outside of the plan, or there are problems regarding the law or in practice, the parties also need to determine the handling plan and responsibilities of each party in the implementation of the transfer of rights of such assets;

f. Regarding the M&A deadline: The deadline is usually chosen at the time when the Pre-M&A Companies and the Post-M&A Companies complete their obligations and work according to the M&A plan, which is agreed upon both in practice and in accordance with the law.

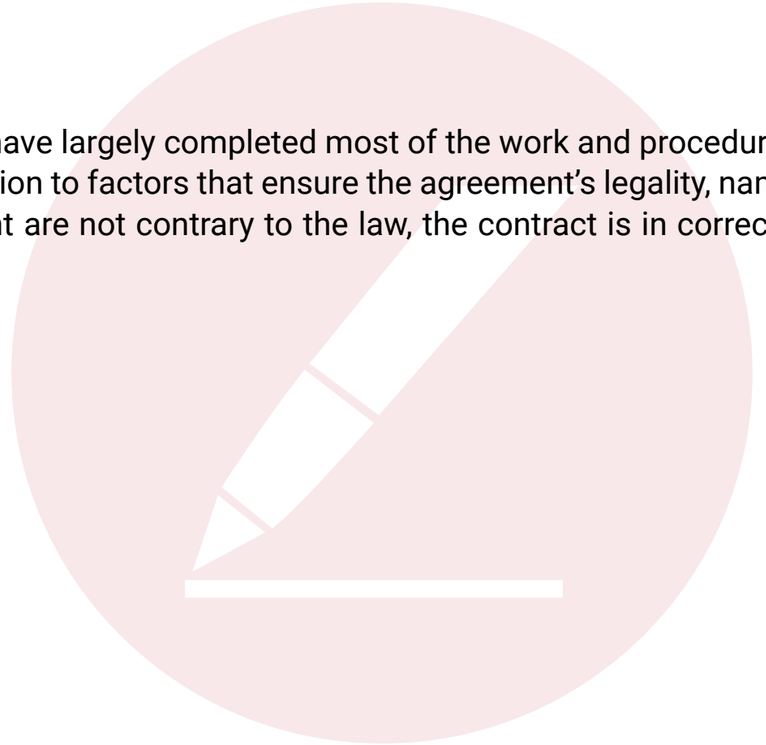
The M&A Agreement may have other contents depending on the results of the legal due diligence of the Pre-M&A Companies, the operational reality and the M&A plan of the companies.

2. About the Charter of the Post-M&A Company

The Charter of the Post-M&A Company is similar to the charter of newly established enterprises, so the required contents of the Charter must comply with the law on enterprises. Accordingly, when the parties have agreed on the matters of the M&A Agreement, those agreed matters will be in the Charter. For issues outside the framework of the Charter under the law on enterprises, the parties may further stipulate in other documents such as the Shareholder Agreement to strictly comply with the M&A Agreement.

05

Sign the M&A Agreement and notify creditors



At this M&A Agreement signing step, the parties have largely completed most of the work and procedures of the M&A process. Accordingly, when signing an M&A Agreement, the parties need to pay attention to factors that ensure the agreement's legality, namely: The signatory must have the authority to sign the contract. The contents of the M&A Agreement are not contrary to the law, the contract is in correct format, and the parties voluntarily enter into the agreement.

06

Perform the M&A

After signing the M&A Agreement, the Pre-M&A Companies must notify the M&A and its terms with the companies'creditors to publicly and transparently perform the M&A and comply with the obligations of the Pre-M&A Companies in accordance with the law.

M&A may involve many parties, such as partners, customers, creditors, authorized state agencies, etc. At the same time, problems and obligations from the M&A Agreement may arise which the parties did not anticipate at the time of making the agreement. As a result, the M&A plan may change in terms of time, expected progress, and additional work and problems in the implementation process. Accordingly, the Post-M&A Company and Pre-M&A Companies need to coordinate, work closely with related parties, and monitor the progress so that the M&A is carried out as planned.

CHAPTER 4

FACTORS FOR A SUCCESSFUL MERGERS & ACQUISITIONS TRANSACTION

EMOTIONS

Executives often think in two directions when deciding to engage in M&A: first is two conduct M&A as soon as an opportunity arises due to fear of missing the opportunity, and the second is to carry out M&A as part of a business strategy. Strategic M&A always has a higher chance of success. Participants need to objectively assess all aspects and not be influenced by fear or emotions in the decision-making process.

CRITERIA

The company must establish clear and specific criteria for the M&A. This helps the company find the target companies more easily as well as reduces emotions and impulsiveness in the related process and procedures. Every company must establish two criteria:the cost of M&A and strategic compatibility.

The cost of M&A: a company must accurately assess the market value of every company participating in the M&A process in order to come up with a reasonable negotiation price, as well as quantify the costs which may arise and prepare for risks.

Strategic compatibility: The more similar the strategies and advantages two companies engaging in M&A have or complement each other, the more benefits and growth potential will be attained. Therefore, strategic compatibility is a criterion that cannot be ignored.

HUMAN FACTOR

Individuals in charge of human resources of the companies intending to conduct M&A should participate in the negotiation process as soon as possible. Their understanding of human factors such as employee motivation, personality, and response to the M&A as well as the working process and result evaluation will help the parties understand the internal situation of the companies and thereby come up with the best negotiating terms. Moreover, allowing these individuals to participate in negotiations will help employees better understand the situation and easily help others adapt to the new working environment.

CULTURAL AND ORGANIZATIONAL DIFFERENCES

Many academics and entrepreneurs agree that culture and organization play a vital role in negotiating and building the integration process into the Post-M&A Company. The vast difference in culture and organization between companies is a significant barrier to reach a consensus on all negotiated issues. Furthermore, a company made up of personnel with significant cultural differences can quickly breed internal conflicts, operate inefficiently and have a massive risk of disintegration. Therefore, it is advisable to engage in M&A with companies with similar or complementary cultures.

AMBIGUITY

Companies conducting M&A often do not have the complete and accurate information needed to take the proper steps. These ambiguities will cause unexpected misunderstandings and harm to all relevant parties. To resolve all ambiguities and gather enough information, companies should conduct due diligence on aspects such as legal, financial, technical, etc., to comprehensively understand the situation, thereby building a successful M&A roadmap.

CHAPTER 5

NOTABLE LEGAL ISSUES

IN MERGERS & ACQUISITIONS PROCESS

Compliance With Competition Laws

The State prohibits M&A between companies that are likely to create significant restrictions on competition in the market. Therefore, competition laws require notification to the National Competition Commission before proceeding with the M&A. Failure to do so may result in fines ranging from 01% to 05% of the total market revenue of the previous year. However, only companies that meet the following conditions shallmake a notice of M&A.

1.1 Total market assets

When the total market assets in the Vietnamese market of a company or group of affiliated companies of which that company is a member reaches VND 3,000 billion or more, a notification must be made. If the company is an insurance or securities company, it is from VND 15,000 billion or more. Particularly for credit institutions (banks, financial leasing companies, etc.), this level is 20% or more of the total assets of the system of credit institutions on the Vietnamese market in the year immediately preceding the planned M&A year.

1.2 Total sales or purchases

A company must notify when it or a group of affiliated companies of which it is a member has total sales or purchases of the year immediately preceding the expected year of M&A of VND 3,000 billion or more (for an insurance company, it is VND 10,000 billion). Credit institutions must only notify when reaching 20% or more of the total revenue of the system of credit institutions in the fiscal year immediately preceding the expected year of M&A.

1.3 Transaction value of the M&A

The law requires companies to notify if the transaction value is VND 1,000 billion or more (VND 3,000 billion for insurance and securities companies). In M&A, the transaction value is based on the companies' charter capital. For example, The M&A between Company A (charter capital worth VND 2,000 billion) and Company B (charter capital worth VND 1,000 billion) must be notified to the State. For the M&A of credit institutions, the threshold value of the M&A transaction is 20% or more of the total charter capital of the system of credit institutions in the preceding fiscal year.

1.4 Market share of companies participating in M&A

Companies and credit institutions will be obliged to notify the State when the combined market share of companies intending to participate in an economic concentration is 20% or more in the relevant market in the fiscal year preceding the expected year of M&A.

From the conditions mentioned above, it can be deduced that the State only pays attention to the M&A between companies with significant resources and markets. The State now favors economic concentration among small and medium-sized companies; In practice, this notification is very rare.

According to the Law on Competition, the State does not prohibit M&A in the following cases:

a. Combined market share of companies intending to participate in M&A is less than 20% in the relevant market;

b. Combined market share of companies intending to participate in the M&A is 20% or more in the relevant market and the sum of squares of the market share of the companies after the M&A in the market related lower than 1,800;

c. Combined market share of companies participating in the M&A is 20% or more in the relevant market, the sum of the squares of the market shares of the companies participating in the M&A in the relevant market is above 1,800, and the total sum of squares increase in market share of companies in the relevant market before and after the M&A is less than 100;

d. The companies participating in the M&A have a relationship with each other in the production, distribution and supply chain for a specific type of goods or services or the business lines of the companies that are providing input or supporting products or services for each other have a market share of less than 20% in each relevant market.

A company that wishes to conduct M&A with another company should first conduct a brief assessment and review of the positions of both companies in the market. Suppose it is determined that the M&A is unlikely to be approved by the State. In that case, this will help companies avoid going through a cumbersome and expensive notification process without achieving the desired results.

Converting contributed capital, shares of the Pre-M&A Companies into contributed capital, shares and bonds of the Post-M&A Company

The conversion must be performed to determine the ownership ratio of the Contributing Members and Shareholders of the Pre-M&A Companies and assess how much of the contributed capital and shares of the Post-M&A Company they will own.

Corporate laws do not provide how to convert contributed capital and shares from the Pre-M&A Companies to the Post-M&A Company. Therefore, the conversion will be done according to the agreement of the Pre-M&A Companies. One of the most common conversion methods is to determine the value of each Pre-M&A Company and infer the value of the Post-M&A Company upon completion of the M&A. Based on the value of the companies, the contributing members and shareholders convert each contributed capital or share unit of the Pre-M&A Companies to the corresponding contributed capital and share amount of the Post-M&A Company.

In addition, if the Pre-M&A Companies own each other's contributed capital or shares, this conversion should be carefully considered to comply with the law. For example, in the case the parent company owns 100% of the subsidiary's capital; if they engage in M&A, the conversion of the contributed capital and shares will not be considered.

Transfer of assets from the Pre-M&A Companies to the Post-M&A Company

According to the law, the Post-M&A Company has the right and obligation to receive all assets of the Pre-M&A Companies. It is necessary to classify these assets to determine how to transfer them by the law.

Assets with registered ownership: assets that are required by law to register ownership rights such as real estate, vehicles, etc., or property that are not legally required to register ownership, but the Pre-M&A Companies have registered ownership rights such as trademarks, industrial designs, etc. The Post-M&A Company registers with the competent state agency to record the change of ownership information on the ownership certificates. The transfer of assets with ownership registration is considered complete when the Post-M&A Company fulfills its registration obligation with the competent state agency and is granted certificates of ownership.

Assets without registration of ownership: assets that are not required by law to register ownership rights such as machinery, equipment, customer data, business secrets, etc., or assets that are not required to register by law such as trademarks, industrial designs, etc. The Post-M&A Company receives them through the handover of the assets.

Regarding investment projects of the Pre-M&A Companies, the Post-M&A Company is also obliged to continue implementing them and to register with the relevant state agencies in accordance with the law.

Rights and obligations toward State authorities

Regarding the enterprise management authority, the Pre-M&A Companies register for M&A to be granted a new Enterprise Registration Certificate for the Post-M&A Company and at the same time disincorporate themselves and their branches, representative offices, and business locations. Next, the Post-M&A Company registers the establishment of branches, representative offices and business locations in accordance with business requirements and in compliance with the law.

Regarding tax authorities, after the Post-M&A Company is granted the Enterprise Registration Certificate, the Pre-M&A Companies are obliged to undertake tax finalization to determine their obligations to the State and transfer all of these obligations to the Post-M&A Company.

Regarding the social insurance management authority, the Pre-M&A Companies shall make a dossier of notification of reduction (stopping) of participation in social insurance and pay full social insurance contributions up to the time of M&A for the social insurance management authority to certify the social insurance books for employees. After that, the Post-M&A Company prepares a dossier for registration (increase) to participate in social insurance for employees from the time the Pre-M&A Companies stop participating.

Regarding specialized management authorities, the Post-M&A Company applies for permits, approvals and certificates in accordance with the law depending on its business activities.

Regarding courts and arbitration agencies, the Post-M&A Company assumes the rights and obligations in its role as plaintiff, respondent, stakeholder or other roles undertaken by the Pre-M&A Companies.

In addition, in case the Pre-M&A Companies are being inspected and sanctioned for administrative violations, etc., the Post-M&A Company is obliged to continue working with competent state agencies to complete all such inspection and sanctioning of administrative violations, etc

Rights and obligations toward employees

The Pre-M&A Companies need to develop a labor use plan in accordance with labor laws to identify employees who will and will not continue to work at the Post-M&A Company. When creating a labor use plan, the Pre-M&A Companies must consult with the employees' representative organization at the grassroots level if there is such an organization. The labor use plan must be publicly notified to employees within 15 days of approval.

For the employees who will continue working, the Post-M&A Company can choose to terminate the old labor contracts and sign new ones or amend and supplement the old labor contracts. For employees who will not continue working (laid off), the Pre-M&A Companies or the Post-M&A Company is obliged to pay an unemployment allowance to the employees who have worked for the Pre-M&A Company regularly for at least full 12 months, with 01 month's salary paid for each working year but at least 02 months' salary.

Rights and obligations toward customers, partners, suppliers

On the principle of receiving all legal rights, obligations and interests of the Pre-M&A Companies toward customers, partners and suppliers, the Post-M&A Company becomes a party to the ongoing transactions. Especially for creditors, the Pre-M&A Companies or Post-M&A Companies must send the M&A Agreement to creditors within 15 days from the date of approval to protect their interests.

ENDWORD

Apolat Legal hopes that the above information will help Clients have a comprehensive insight into M&A under Vietnamese laws as well as other relevant aspects so the Clients can have a proper roadmap when engaging in such activities. Apolat Legal sincerely thanks you for your interest in this publication, we hope that this handbook will be your companion on your path to success.

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