FRASERS LAW COMPANY

Overview of Mergers and Acquisitions in Vietnam

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Introduction

1.1 Vietnam enjoys a vibrant and ever-expanding mergers and acquisitions (***M&A***) market, both in the public capital markets space and in the private equity space. Commencing with the Vietnamese Government's "open door" policy in the mid-1980s, Vietnam's economy and corporate landscape have steadily modernised and liberalised during the period between then and the present.

1.2 Vietnam's economy has been one of the world's stand-out success stories since international integration began towards the close of the last millennium. The remarkable growth rates which Vietnam has experienced, particularly since the turn of the millennium (averaging higher than 6% per annum) show no signs of abating. The key economic fundamentals of a large (more than 95,000,000) and young (median age 30.8 years) population, together with political stability and a cultural drive for prosperity and development, have formed the basis for sustained growth rates which have been on average far ahead of most economies worldwide during recent decades.

1.3 Vietnam's strong and sustained economic growth has occurred in parallel with the development and liberalisation of the legal and regulatory framework which underpins foreign direct and indirect investment in and in relation to Vietnam. From modest and highly restrictive beginnings, the legal and regulatory framework in Vietnam has steadily improved and liberalised, up to a point where foreign investors now enjoy a comparatively clear and consistent legal and regulatory platform within which to implement direct and indirect investment activities in and in relation to Vietnam.

1.4 Of particular note are two key events which have occurred during the first two decades of the new millennium, the first being Vietnam's accession to the WTO in January 2007, and the second being the entry into force in July 2015 of enhanced and modernised Laws on Enterprises and Investment. WTO accession in 2007 committed Vietnam to one of the developing world's most progressive and open market access liberalisation programmes, and the increases in foreign investment activity and economic growth which have followed have been impressive. In addition, the Law on Enterprises and Law on Investment which came into force in July 2015 (themselves being major improvements on their predecessor statutes) have been coupled with significant reforms and improvements in bureaucratic procedures and processing times, resulting not only in the law itself becoming comparatively more clear, consistent, and effective, but also in the application of the law by State authorities becoming comparatively more efficient, timely, and transparent.

1.5 As the second decade of the new millennium draws to a close, opportunities for foreign investors in the M&A market in Vietnam continue to become increasingly available, across the full spectrum of industry sectors and across both the public capital markets space and the private equity space. The Vietnamese Government appears to be committed to continuing to foster a vibrant M&A market in Vietnam, and continues to deliver on its promises to implement meaningful and effective legal, regulatory, administrative, and bureaucratic reforms, to the benefit of investors both foreign and domestic.

1.6 This Vietnam M&A Overview deals with transactions involving private companies as well as listed and unlisted public companies. Please note, however, that this Vietnam M&A Overview does not purport to focus primarily on public capital markets transactions and thus covers private equity transactions in somewhat greater detail. In addition, it should be noted that this Vietnam M&A Overview is prepared primarily from a legal and practical perspective and thus does not focus on financial, accounting, or commercial matters.

Taxation matters are touched upon in this Vietnam M&A Overview, but only from a high level and only from the perspective of the key taxes arising in connection M&A transactions involving Vietnam-domiciled Vietnam Targets (***Vietnam Targets***).

1.7 In Vietnam, there is a hierarchical structure of law-making and laws, under which the highest form of laws (aside from the Constitution) are made by the National Assembly of Vietnam and are referred to as ***Laws***.

1.8 Invariably, Laws have implementing and guiding legislation and quasi-legislation issued underneath them by various subordinate law-making bodies and officers, such as, for example:

(i) implementing Decrees (issued by the Office of the Government of Vietnam), which set out implementing and guiding provisions, to enhance detail for the application of Laws (in addition to setting out the terms of decisions being within the designated decision-making power of the Office of the Government);

(ii) implementing Circulars (issued by central Government Ministries), which set out implementing and guiding provisions, to enhance detail for the application of Decrees (in addition to setting out the terms of decisions being within the designated decision-making power of central Government Ministries); and

(iii) Official Decisions (issued by provincial or municipal People's Committees or their Departments), which set out implementing and guiding provisions, to enhance detail for the application of Circulars (in addition to setting out the terms of decisions being within the designated decision-making power of provincial or municipal People's Committees or their Departments).

1.9 In this Vietnam M&A Overview, any references to *"…Laws…"* should be read and understood as being references to *"…Laws and all of their implementing legislation, of all kinds and at all levels…"*. For example, where there is a reference in this Vietnam M&A Overview to *"…the Law on Enterprises…"*, this should be read and understood as being a reference to *"…the Law on Enterprises and all of its implementing legislation, of all kinds and at all levels…"*.

1.10 This Vietnam M&A Overview touches upon numerous different types of M&A transactions relating to Vietnam, including:

(i) sale and purchase transactions in respect of shares or contributed charter capital in Vietnam Targets (***Intra-Vietnam Equity Transfers***);

(ii) merger transactions involving two or more Vietnam Targets (***Intra-Vietnam Mergers***);

(iii) consolidation transactions involving two or more Vietnam Targets (***Intra-Vietnam Consolidations***); and

(iv) asset sale and purchase transactions involving the assets of Vietnam Targets (***Intra-Vietnam Asset Transfers***).

1.11 The primary focus of this Vietnam M&A Overview is, however, on Intra-Vietnam Equity Transfers, in light of the fact the majority of M&A transactions involving Vietnam Targets consist of Intra-Vietnam Equity Transfers. For this reason, this Vietnam M&A Overview deals with Intra-Vietnam Equity Transfers in greater detail than any other type of M&A transaction involving Vietnam Targets.

1.12 This Vietnam M&A Overview also touches upon sale and purchase transactions in respect of shares in companies which are domiciled outside of Vietnam and which hold subsidiaries or other equity interests in Vietnam-domiciled companies (in circumstances where the holding of such Vietnam-based subsidiaries or other equity interests is the primary or a major purpose of such foreign-domiciled companies) (***Foreign Holding Companies***). This Vietnam M&A Overview does not, however, purport to deal with any aspects of the sale and purchase of shares in Foreign Holding Companies which are regulated by the laws of any jurisdiction other than Vietnam (***Extra-Vietnam Equity Transfers***).

1.13 This Vietnam M&A Overview also touches upon equity capital raising transactions such as share subscription and issuance transactions and charter capital contribution transactions involving Vietnam Targets (***Intra-Vietnam Equity Capital Raisings***). Again, however, Intra-Vietnam Equity Capital Raisings are not the primary focus of this Vietnam M&A Overview and thus are not dealt with in any detail.

1.14 Finally, this Vietnam M&A Overview touches upon foreign direct investment activities such as the establishment by Foreign Investors of new subsidiaries in Vietnam and the entry by Foreign Investors into new, incorporated joint ventures with Domestic Investor or Deemed Domestic Investor partners in Vietnam (***Foreign Direct Investment Activities***). Again, however, such foreign direct investment activities are not the primary focus of this Vietnam M&A Overview and thus are not dealt with in any detail.

1.15 Annexed to this Vietnam M&A Overview in Schedule 1 is a glossary of capitalised and defined words and expressions. Wherever any such capitalised words or expressions are used in this Vietnam M&A Overview, those capitalised words or expressions have the meanings ascribed to them in Schedule 1 to this Vietnam M&A Overview.

2

The Key Laws

2.1 M&A transactions implemented in Vietnam relating to Vietnam Targets (***Vietnam M&A Transactions***) are regulated by three key bodies of legislation, namely:

(i) the Law on Enterprises (being the key body of law regulating the establishment, governance, management, and operation of companies and other forms of enterprises in Vietnam);

(ii) the Law on Investment (being the key body of law regulating many forms of investment activities in Vietnam, encompassing both domestic investment and foreign investment); and

(iii) the Law on Securities (being the key body of law regulating the public securities markets in Vietnam and which, in numerous key respects, prevails over the Law on Enterprises and Law on Investment in relation to listed and unlisted public companies in Vietnam).

2.2 In addition, in most cases, the implementation of M&A transactions in Vietnam also necessitates careful consideration of a number of other key bodies of legislation, including, for example:

(i) the Schedule of Specific Commitments in Services to the World Trade Organisation given by Vietnam in the context of its accession to the World Trade Organisation, dated 27 October 2006 (***the WTO Commitments***), which sets out crucially important market access principles giving rise to the key legal framework for matters such as allowable forms of foreign investment and foreign ownership percentages;

(ii) the Law on Competition (being the key body of competition or anti-trust law in Vietnam);

(iii) the Ordinance on Foreign Exchange Control (being the key body of law regulating the movement of foreign currency into and out of Vietnam and the deployment of foreign currency within Vietnam); and

(iv) the Civil Code (being the key body of law setting out, amongst many other matters, the fundamental principles of contract law in Vietnam).

2.3 Specific industry sectors in Vietnam are also often subject to certain industry-specific bodies of law which are of crucial importance in relation to any M&A transactions conducted within that sector. Key examples include:

(i) in relation to the banking sector, the Law on Credit Institutions;

(ii) in relation to the real estate and property development sectors, the Law on Real Estate Business, the Law on Residential Housing, and the Law on Land; and

(iii) in relation to the pharmaceutical sector, the Law on Pharmacy.

2.4 Naturally, each and every M&A transaction must be considered carefully and on its own specific merits. Vietnam law is complex, and there are many different State authorities at different levels (including central, provincial, municipal, and local government levels) with the power to issue binding legislative or quasi-legislative instruments.

2.5 Whilst the bodies of law summarised briefly in Sections 2.1 and 2.2 above will in many cases be the key bodies of law requiring careful consideration in connection with any Vietnam M&A Transaction, investors should never embark upon any Vietnam M&A Transaction without first having taken appropriate professional advice as to the existence and impact of any sector-specific legislation which applies to the relevant target sector(s) in addition to the key framework laws summarised in Sections 2.1 and 2.2 above.

3

Types of Vietnam Targets

3.1 All Vietnam-domiciled companies take one of three corporate forms, namely those summarised in Sections 3.2 to 3.4 below.

3.2 Limited liability company with one member

A limited liability company with one member (***an LLC1***) is the most simple and straightforward form of Vietnam-domiciled company, being a corporate form in relation to which the company:

(i) can have only a single equity owner (***Member***);

(ii) does not have its equity capital (referred to in Vietnam as ***Charter Capital***) divided into shares (and thus is unable to issue shares of any class);

(iii) has a comparatively simple and straightforward governance, management, and operational structure (for example, it is possible (but not compulsory) to structure an LLC1 such that key decision-making power is divided as appropriate between three key individuals, namely a sole President (or Chairman), a General Director (CEO), and a sole Inspector (supervisory officer); and

(iv) cannot become listed or registered for trading on the Ho Chi Minh City Stock Exchange (***the HOSE***), the Hanoi Stock Exchange (***the HNX***), or the Unlisted Public Company Market (***the UPCoM***).

3.3 Limited liability company with two or more members

A limited liability company with two or more members (***an LLC2***) is a comparatively simple and straightforward form of Vietnam-domiciled company, being a corporate form in relation to which the company:

(i) must have a minimum of two and may have up to 50 Members;

(ii) does not have its Charter Capital divided into shares (and thus is unable to issue shares of any class);

(iii) is controlled under an ownership and voting structure in which the proportion of the value of the registered and contributed (paid-up) Charter Capital actually contributed (paid-up) by each respective Member is the sole determining factor in respect of both equity ownership and voting power;

(iv) has a comparatively simple and straightforward governance, management, and operational structure (for example, there is no separate owner's body (such as a general meeting of shareholders) and separate governance body (such as a board of directors), but rather a single owners' governance and management body known as ***the Members' Council***, which is the ultimate decision-making body of the LLC2 and is comprised of all of the Members or their appointed "authorised representatives", with voting power apportioned purely on the basis of percentage of equity ownership); and

(v) cannot become listed or registered for trading on the HOSE, the HNX, or the UPCoM.

3.4 Joint stock company (or "shareholding company")

A joint stock company (also referred to as a "shareholding company") (***a JSC***) is a comparatively more sophisticated form of Vietnam-domiciled company, in which the Company:

(i) must have at least three equity owners (***Shareholders***);

(ii) has its Charter Capital divided into shares (and thus issues shares to its Shareholders and is able to issue various different classes of shares);

(iii) is able to issue other types of securities, in addition to shares;

(iv) is governed by a separate general meeting of shareholders (consisting of all of the holders of voting shares or their appointed "authorised representatives") and a separate board of directors (being elected by the general meeting of shareholders and referred to in Vietnam as ***the Board of Management***); and

(v) subject to satisfying the criteria for qualification as a public company (as specified in the Law on Securities), is capable of having its securities listed or registered for trading on the HOSE, the HNX, or the UPCoM.

3.5 In relation to JSCs, there are three separate and distinct types of JSCs, each of which has key distinguishing features, as summarised in Sections 3.6 to 3.9 below. Please note, however, that the descriptive terms adopted in Sections 3.6 to 3.9 below to describe the three key categories of JSCs are not terms specified in the applicable laws of Vietnam, but rather have been adopted in this Vietnam M&A Overview for the sake of convenience and ease of reference.

3.6 Private JSCs

Private JSCs (***Private JSCs***) are JSCs which:

(i) do not satisfy the criteria for public companies as specified in the Law on Securities;

(ii) are not registered with the State Securities Commission (***the SSC***) as being public companies; and

(iii) do not have their securities listed or registered for trading on any of the HOSE, the HNX, or the UPCoM.

3.7 Listed JSCs

Listed JSCs (***Listed JSCs***) are JSCs which:

(i) satisfy the criteria for public companies, as set out in the Law on Securities;

(ii) are registered with the SSC as being public companies; and

(iii) have their securities listed for trading on the HOSE or the HNX.

3.8 **Unlisted Public JSCs**

Unlisted public JSCs (***Unlisted Public JSCs***) are JSCs which:

(i) satisfy the criteria for public companies, as set out in the Law on Securities;

(ii) are registered with the SSC as being public companies;

(iii) do not have their securities listed for trading on the HOSE or the HNX; and

(iv) are required by law to have their securities registered for trading on the UPCoM.

3.9 A key threshold question in conducting any assessment of any proposed Vietnam M&A Transaction is whether the Vietnam Target takes the corporate form of an LLC1, an LLC2, a Private JSC, a Listed JSC, or an Unlisted Public JSC. The category of corporate form into which the Vietnam Target falls will invariably have a significant impact upon numerous key aspects of any proposed Vietnam M&A Transaction (including, for example, key structural and procedural considerations).

3.10 In relation to any Vietnam M&A Transaction in which the Vietnam Target is an LLC1, an LLC2, or a Private JSC (***a Private Company***);

(i) the Law on Enterprises and the Law on Investment, in conjunction with any relevant sector-specific laws, will invariably be of paramount importance;

(ii) the key State authorities which will be likely to be involved in the Vietnam M&A Transaction, in approval and/or registration capacities, will be:

(a) in many cases, the relevant provincial or municipal Department of Planning and Investment (***the DPI***) (in many cases being the key corporate licensing authority), in addition to any sector-specific State authorities having direct responsibility for regulating the relevant target sector(s); or

(b) in relation to Private Companies established within one of the numerous special economic zones located throughout Vietnam (such as industrial zones, high-tech zones, or import/export zones), the relevant provincial or municipal economic zones authority, in addition to any sector-specific State authorities having direct responsibility for regulating the relevant target sector(s), and

(iii) the Law on Securities, the SSC, and the Vietnam Securities Depository (***the VSD***) will have no relevance in relation to the transaction.

In the balance of this Vietnam M&A Overview, we use the term ***Corporate Licensing Authority*** to describe the key corporate licensing authority in the context of any Private Company, being the DPI or the relevant provincial or municipal economic zones authority as described in Item (ii) of this Section above.

3.11 In relation to any Vietnam M&A Transaction in which the Vietnam Target is a Listed JSC or an Unlisted Public JSC (***a Public Company***):

(i) the Law on Securities, in conjunction with any relevant sector-specific laws, will invariably be of paramount importance;

(ii) the Law on Enterprises and the Law on Investment will normally be of some relevance, but the Law on Securities will normally apply in precedence in most material respects;

(iii) the key State authorities which will be likely to be involved in the Vietnam M&A Transaction, in approval and/or registration capacities, will invariably be the SSC (being the key regulating authority of the public securities market in Vietnam) and the VSD (being the State authority responsible for the deposit, registration, transfer, and clearance of securities of Listed JSCs and Unlisted Public JSCs), in addition to any sector-specific State authorities having direct responsibility for regulating the relevant sector; and

(iv) the Corporate Licensing Authority will normally have no relevance in relation to the transaction, except to the extent that the Vietnam Target (being a Public Company) has subsidiaries which are Private Companies.

4

Buyer Characterisation

4.1 Please note that the observations set out in this Section 4 apply primarily to Intra-Vietnam Equity Transfers and Intra-Vietnam Equity Capital Raisings, as opposed to other types of Vietnam M&A Transactions. The basic principles set out in this Section 4 will, however, often have some degree of relevance (and in some cases a major impact) on other types of Vietnam M&A Transactions not being Intra-Vietnam Equity Transfers and Intra-Vietnam Equity Capital Raisings.

4.2 Before commencing any Vietnam M&A Transaction, a key threshold question which must always be answered is whether or not the person or entity that will acquire, or subscribe for or contribute, the relevant shares (in the case or not of Vietnam Targets being JSCs) or Charter Capital (in the case of Vietnam Targets being LLC1s or LLC2s) is to be categorised as a "foreign investor" or a "domestic investor".

4.3 Vietnam law distinguishes in many important respects between:

(i) on the one hand, "foreign investors" (***Foreign Investors***) (or investors being deemed by law to constitute Foreign Investors); and

(ii) on the other hand, "domestic investors" (***Domestic Investors***) (or investors being deemed by law to constitute Domestic Investors), and

(iii) these characterisations will often have a major impact on key aspects of a Vietnam M&A Transaction.

4.4 Similarly, the administrative and bureaucratic processes applicable to (on the one hand) Foreign Investors (or investors being deemed by law to constitute "foreign investors") and (on the other hand) Domestic Investors (or investors being deemed by law to constitute "domestic investors") can in many cases be materially different from one another. Although the distinctions are less stark than they were, for example, 20 years ago, they nevertheless remain of crucial importance and must always be considered at the outset of any Vietnam M&A Transaction.

4.5 Individuals being citizens of Vietnam are clearly categorised as Domestic Investors, whereas citizens of any foreign countries are clearly categorised as being Foreign Investors. The sole exception to this proposition is citizens of foreign countries who are of Vietnamese origin ("overseas Vietnamese", or "*Việt Kiều*"), in relation to whom Vietnamese law in some limited cases affords Domestic Investor status.

4.6 Vietnam-domiciled companies which are wholly owned by Domestic Investors are themselves clearly deemed to constitute Domestic Investors, when engaging in equity investment activities within Vietnam. Conversely, foreign-domiciled companies in all cases clearly constitute Foreign Investors.

4.7 Vietnam-domiciled companies which are less than 51% owned by Foreign Investors (and/or companies deemed by law to constitute Foreign Investors) (***Deemed Domestic Investors***) are deemed by law to constitute Domestic Investors, when implementing equity investment activities in Vietnam. Conversely, Vietnam-domiciled companies which are 51% or more owned by Foreign Investors (and/or companies deemed by law to constitute Foreign Investors) (***Deemed Foreign Investors***) are deemed by law to constitute Foreign Investors, when implementing equity investment activities in Vietnam.

4.8 Although the laws of Vietnam as they relate to Deemed Domestic Investors do open up exciting and advantageous investment structuring possibilities for foreign-domiciled companies and foreign individuals, caution does need to be exercised from the perspective of obtaining necessary approvals from State licensing authorities, who can sometimes be resistant to granting approvals in relation to investment structures which they perceive as being creative.

5

Target Sectors

5.1 From a foreign investment perspective, it is of paramount importance to understand that, in Vietnam, the allowable forms of foreign investment and allowable foreign ownership percentages are dictated on an industry sector-by-industry sector basis.

5.2 Each and every Vietnam-domiciled company must register with one or more relevant State authorities a "scope of permitted business activities", which sets out each of the lines of business in relation to which that company carries out revenue-generating business activities (***the Scope of Permitted Business Activities***).

5.3 Vietnam-domiciled companies are permitted to generate revenue from engaging in lines of business specifically registered in their Scope of Permitted Business Activities, but are not permitted to generate revenue from engaging in any other business activities.

5.4 When assessing any potential Vietnam M&A Transaction, the Scope of Permitted Business Activities of the Vietnam Target must be analysed on a sector-by-sector basis, with each and every registered line of business being considered on its own separate and distinct merits, from a foreign investment and ownership restrictions perspective.

5.5 Where there are different foreign investment rules and/or ownership restrictions applying to different lines of business within a Vietnam Target's Scope of Permitted Business Activities, it is the most restrictive of such rules and restrictions which will apply to determine the foreign investment rules and ownership restrictions for the entire Vietnam Target.

5.6 Take, for example, a proposed acquisition by a Foreign Investor involving a Vietnam Target having two registered lines of business within its Scope of Permitted Business Activities, where one of those lines of business is open for 100% foreign ownership (for example, wholesale distribution (trading) of non-alcoholic beverages) and the other is prohibited from foreign ownership altogether (for example, wholesale distribution (trading) of cigarettes). In this scenario, either:

(i) the line of business being prohibited from foreign ownership altogether must be deleted from the Scope of Permitted Business Activities before the acquisition proceeds; or

(ii) the acquisition cannot proceed.

5.7 It is also important to note that, in addition to sector-specific restrictions on foreign equity ownership, Vietnam law imposes specific conditions on and/or procedures applicable to foreign investment, also on a sector-by-sector basis.

5.8 Careful sector-by-sector analysis is therefore always of paramount importance for any Foreign Investor or Deemed Foreign Investor in assessing any potential Vietnam M&A Transaction, particularly in respect of Vietnam Targets which are wholly owned by Domestic Investors (such wholly-domestic companies often having been established with and continuing to have extensive Scopes of Permitted Business Activities).

5.9 A sector-by-sector analysis of the kind outlined above must always be conducted by Foreign Investors or Deemed Foreign Investors in relation to any proposed equity investment activity in Vietnam, not only in the context of Vietnam M&A Transactions (including Intra-Vietnam Equity Capital Raisings), but also in the context of Foreign Direct Investment Activities.

6

Foreign Ownership Restrictions

6.1 Although Vietnam's foreign investment laws have become highly liberalised in recent years (in comparison with many other Asia-Pacific jurisdictions and other developing jurisdictions worldwide), there are still significant restrictions which apply in some cases in relation to foreign equity ownership.

6.2 In relation to foreign ownership restrictions, different rules apply:

(i) on the one hand, to foreign ownership of Private Companies; and

(ii) on the other hand, to foreign ownership of Public Companies.

6.3 In relation to Private Companies, in most cases the key rules and restrictions relating to forms of foreign investment and allowable foreign ownership percentages are to be found in:

(i) the WTO Commitments; and/or

(ii) applicable sector-specific legislation.

6.4 Unlike the situation which prevailed in Vietnam prior to July 2015 (when the current Law on Enterprises and Law on Investment came into force), it is now relatively clear that, in the case of Private Companies operating in a particular industry sector, where there are no specific foreign ownership restrictions set out in the WTO Commitments or any sector-specific legislation in relation to that particular industry sector, as a matter of technical Vietnam law Foreign Investors are permitted to own up to 100% of the equity in Vietnam-domiciled companies operating in that particular industry sector. It is, however, important to note that:

(i) in practical terms, Vietnamese licensing authorities can and often do exercise discretion in determining whether or not to grant necessary State approvals for M&A transactions involving industry sectors which are not specifically set out in the WTO Commitments or otherwise specifically legislated as being open for a specified percentage of foreign equity ownership; and

(ii) in relation to industry sectors which are specified in the WTO Commitments as being "unbound", the Vietnamese Government remains free to introduce domestic legislation under which restrictions on foreign market access are imposed.

6.5 In relation to Private Companies, there are many key industry sectors in which 100% foreign ownership of Vietnam-domiciled companies is clearly permitted.

6.6 In the case of Public Companies, the rules as to foreign ownership restrictions are different and have recently undergone significant changes. Although the details can be problematic on a case-by-case basis, the foreign ownership rules as they apply to Public Companies may be broadly summarised as follows:

(i) Where any sector-specific legislation imposes any specific restrictions on foreign ownership in that sector (for example, in the banking sector), then those sector-specific restrictions will apply, in accordance with their terms, to Public Companies operating in that sector (and/or whose registered Scope of Permitted Business Activities includes any line of business falling within that sector).

(ii) Where any Vietnam law imposes any specific conditions on foreign investment in any particular sector (and the relevant sector constitutes a "conditional sector"), even if the applicable sector-specific legislation is silent on foreign ownership restrictions, then foreign ownership of any Public Company operating in that particular sector (and/or whose registered Scope of Permitted Business Activities includes any line of business falling within that sector) will be limited to 49% of issued voting share capital.

(iii) Where any Public Company does not operate in and does not have any registered lines of business which are subject to sector-specific foreign ownership caps or which constitutes "conditional sectors", it is possible for those Public Companies to increase their allowable foreign ownership percentage to up to 100%, subject to compliance with certain administrative procedures and (in practical terms) the support of the SSC.

(iv) As is the case with Private Companies, in relation to Public Companies it is always the registered line of business within the Scope of Permitted Business Activities giving rise to the most restrictive foreign ownership rules which will dictate the foreign ownership cap in respect of the entire Public Company.

6.7 Unlike in the past, it is now often relatively straightforward to determine the applicable foreign investment conditions and foreign ownership restrictions (if any) in relation to any Vietnam Target, which in turn provides a clear and solid platform for the implementation of Vietnam M&A Transactions.

7

Key State Approvals

7.1 In most cases, Vietnam M&A Transactions will require some form of State approval or consent. The specific approvals or consents required will vary depending on the particular characteristics of each particular Vietnam M&A Transaction.

7.2 Where the Vietnam Target is a Private Company, in most cases the key State approval which is required is an "acquisition approval" or "M&A approval", being a statutory approval, specified by the Law on Investment, which is necessary to obtain before any acquisition of any direct equity stake (being shares, in the case of a JSC, or contributed Charter Capital, in the case of an LLC1 or LLC2) (***Capital Share***) of any Private Company may be lawfully acquired by any Foreign Investor or Deemed Foreign Investor (***an Acquisition Approval***).

7.3 The application dossier which is required (in most cases involving Vietnam Targets being Private Companies) to be filed with the relevant Corporate Licensing Authority, seeking the issuance of an Acquisition Approval, is relatively straightforward and has a statutory approval time of 15 business days (counted as from the time of the Corporate Licensing Authority issuing an official receipt in respect of the application dossier). Compared with the State approval or consent processes that in most cases applied before the introduction of Acquisition Approvals (in July 2015), the process of applying for and obtaining Acquisition Approvals is generally clear, straightforward, and efficient.

7.4 It is now clear that Foreign Investors and Deemed Foreign Investors do not need to apply for registered foreign investment projects (evidenced by the issuance of Investment Registration Certificates (***IRCs***)) before acquiring Capital Shares in Private Companies (except for cases in which the acquisition will give rise to the Vietnam Target (being a Private Company) being 100% foreign-owned).

7.5 Foreign Investors and Deemed Foreign Investors should, however, be aware that, in addition to obtaining an Acquisition Approval as a condition precedent to completion of any acquisition of any Capital Share in any Private Company, there will often be additional State approval and/or registration steps which need to be attended to as a consequence of completion. Examples include those set out immediately below.

(i) In relation to any LLC1 or LLC2, the ERC will always need to be amended in order to register the name(s), particulars, and Charter Capital ownership details of any incoming Members.

(ii) Where any IRC already exists in relation to any Private Company, that IRC will in most cases need to be amended in order to register the name(s), particulars, and Charter Capital contribution details of any incoming Members or Shareholders.

(iii) It will often be necessary to amend the ERC and/or IRC of a Private Company in order to register other types of changes arising from any acquisition of any Capital Share in that Private Company, such as changes to the Legal Representative(s) of the Private Company, changes to the registered representative(s) of the Members or Shareholders of the Private Company, or other key investment project or corporate particulars.

(iv) The matter of whether ERC and/or IRC changes of the kind set out in Items (i) to (iii) immediately above are to be attended to as conditions precedent or conditions subsequent to completion of a Vietnam Acquisition is generally and in theory a matter for negotiation between the seller and the buyer. In reality, however, nowadays it is in many cases not possible to apply for such ERC and/or IRC amendments until after completion has occurred (due to certain legislative provisions which arguably require this, combined with the prevailing policies and procedures at many Corporate Licensing Authorities).

(v) In any event, Vietnam law requires the relevant Corporate Licensing Authority to be notified formally of various post-completion matters, whether or not any corresponding changes to the relevant ERC and/or IRC are required. Such post-completion notification obligations relate to matters such as:

(a) changes to the names, particulars, or equity holdings of the Members or founding Shareholders;

(b) changes to the names, particulars, or equity holdings of any Members or Shareholders being Foreign Investors or Deemed Foreign Investors;

(c) changes to the names or particulars of the key office-bearers of the Vietnam Target, including, as applicable, the authorised representatives of any Members or Shareholders, the individuals comprising the Member's Council, Board of Management, or Inspection Committee, the sole President or Chairman, the sole Inspector, the General Director, and/or the Legal Representative; and/or

(d) any other changes to the registered enterprise details of the Vietnam Target, whether or not recorded on the face of the ERC or IRC of the Vietnam Target.

7.6 In relation to Listed JSCs, where shares are acquired by way of "on-market" transactions (that is, acquisitions implemented via the HOSE or the HNX, in which the seller is unknown and no written sale and purchase agreement is directly entered into between the seller and the buyer), as a general proposition no specific State approvals or consents are required, except in certain cases such as:

(i) where a notification or other approval requirement arises under the Law on Competition (please refer to Sections 7.12 to 7.15 below); or

(ii) where the relevant acquisition will increase the buyer's total holding of voting shares (aggregated with the buyer's related persons) above 25% of issued voting share capital (or is another relevant type of acquisition by a shareholder or its related persons already holding ≥25% of voting share capital), in which case such acquisition must be implemented by way of a mandatory public offer process (in this regard, please refer to Section 15 below).

7.7 It is possible for buyers to enter into direct agreements with sellers to acquire shares in Listed JSCs, as opposed to simply purchasing such shares "on market" from anonymous sellers via the HOSE or HNX systems. Such "off-market" or "direct agreement" acquisitions are, however, subject to "trading band" restrictions, pursuant to which, if the purchase price to be paid falls outside of the allowable "trading band", specific SSC approval must be obtained in order for the transaction to be implemented.

7.8 In the case of the HOSE, the allowable "trading band" is plus or minus 7% above or below the closing price of the target shares on the HOSE on the immediately preceding trading day. In the case of the HNX, the allowable "trading band" is plus or minus 10% above or below the closing price of the relevant shares on the HOSE on the immediately preceding trading day.

7.9 Where any "off market" or "direct agreement" sale and purchase transaction in respect of shares in a Listed JSC is to be implemented at a purchase price falling within the allowable "trading band", then no SSC approval is required and the seller's and the buyer's respective securities brokers must implement the transaction as a "put through" transaction, using the normal electronic securities transfer and clearance systems administered by the VSD.

7.10 Where any "off market" or "direct agreement" sale and purchase transaction in respect of shares in a Listed JSC is to be implemented at a purchase price falling outside of the allowable "trading band":

(i) specific SSC approval is required as a condition precedent; and

(ii) subject to such approval being obtained, the seller's and the buyer's respective securities brokers may implement the transaction outside of the normal electronic transfer and clearance systems administered by the VSD (albeit that the VSD must still be involved in the transaction, from the perspective of registering the transfer of the shares in the VSD's electronic share registry system).

7.11 The key rules and procedures which apply in the context of Unlisted Public Companies are essentially a variation on the rules and procedures summarised above in relation to Listed JSCs (being similar, but not identical).

7.12 From a Law on Competition perspective, until 1 July 2019 (when the new Law on Competition passed by the National Assembly of Vietnam in June 2018 came into force), any Vietnam M&A Transaction which, if consummated, would give rise to any "economic concentration" in which the parties to the "economic concentration" together enjoy "combined market share" in any "relevant market" being equivalent to or greater than 50% of the "relevant market", the former Law on Competition prohibited the consummation of that Vietnam M&A Transaction. This rule applied equally to Private Companies and Public Companies, although generally tended to be more strictly applied and enforced in connection with Public Companies.

7.13 Until 1 July 2019, where the consummation of any Vietnam M&A Transaction would have given rise to any "economic concentration" in which the parties to the "economic concentration" together enjoyed "combined market share" in any "relevant market" being equivalent to or greater than 30% but less than 50% of the "relevant market", the former Law on Competition required a formal notification to the Vietnam Competition Authority (***the VCA***) to be made and for the transaction not to be consummated in the absence of official clearance from the VCA. This rule applied equally to Private Companies and Public Companies, although generally tended to be more strictly applied and enforced in connection with Public Companies.

7.14 Under the changes which came into force on 1 July 2019 in relation to the applicable merger control rules and procedures in Vietnam, merger control notification obligations and absolute prohibitions are no longer determined solely by reference to specific percentages of "combined market share" within "relevant markets", but also by reference to other specified factors. From an absolute prohibition perspective, an "economic concentration is now prohibited absolutely if it will "cause or possibly cause substantial effects in restraint of competition in any Vietnam market".

7.15 As at the time of publication of this Vietnam M&A Overview, the Government of Vietnam is in the process of finalising an implementing Decree (to be issued under and pursuant to the new Law on Competition, which came into force on 1 July 2019), which contemplates specific value thresholds in relation to the notification trigger categories applicable to Vietnam M&A Transactions. The draft of the Decree which is current at the time of this Vietnam M&A Overview being published specifies that if any one or more of the following thresholds are satisfied, a notification to the VCA is required:

(i) in relation to total asset value in the Vietnamese market: one or more of the parties has ≥VND1,000 billion (approximately USD22 million);

(ii) in relation to revenue generated in Vietnam (during the most recent financial year preceding the economic concentration): one of the parties generates ≥VND1,000 billion (approximately USD44 million);

(iii) in relation to the transaction value of the economic concentration: ≥VND500 billion (approximately USD22 million); or

(iv) in relation to the combined market shares (during the most recent financial year preceding the economic concentration): ≥30%.

7.16 The draft implementing Decree specifies that the notification trigger categories in items (i), (ii), and (iv) of Section 7.15 above will also apply to any "economic concentration" that occurs outside of Vietnam but involves relevant markets within Vietnam.

7.17 Common practice in Vietnam (both in the public capital markets space and in the private equity space) is for parties to make simple and informal submissions to the VCA, in order to seek the issuance of a "letter of comfort", in circumstances where the parties are uncertain as to whether or not the applicable facts give rise to a notifiable or prohibited "economic concentration". Where the VCA issues such a "letter of comfort", this is generally regarded as obviating any need to file a formal notification with the VCA.

7.18 Each and every Vietnam M&A Transaction must be considered on its own unique merits, in order to determine what are the specific State approvals or consents which it will be necessary to obtain in order for the proposed transaction to be consummated lawfully.

8

Foreign Exchange Control

8.1 Vietnam's foreign exchange control regulations are strict and will invariably impact upon any Vietnam M&A Transaction involving any seller and/or buyer being a Foreign Investor.

8.2 Before embarking upon any Vietnam M&A Transaction, it is crucial to determine whether the proposed Vietnam M&A Transaction is correctly to be categorised as being a "direct investment" transaction or an "indirect investment" transaction. The answer to this key question will determine the applicable rules for the flow of funds in relation to the relevant Vietnam M&A Transaction.

8.3 The tests for what is a "direct investment" transaction and what is an "indirect investment" transaction are unclear and are capable of varying interpretations. In practice, different banks (being, in practical terms, the "gatekeepers" of foreign currency inflows and outflows) form and apply different interpretations of what is a "direct investment" transaction and what is an "indirect investment" transaction. For this reason, during the very early stages of assessing any potential Vietnam M&A Transaction, Foreign Investors should (in addition to conducting due diligence and structuring analysis) always consult with their Vietnam bankers to obtain their guidance as to whether the proposed transaction is to be characterised as a "direct investment" or an "indirect investment" transaction. It is highly inadvisable not to leave this crucial foreign exchange control analysis until late in the transaction process, given that material transaction delays and obstacles can and often do arise from it.

8.4 It would be of great benefit to participants in Vietnam M&A Transactions if the State Bank of Vietnam was to introduce new legislation, to clarify the vexed question of "direct investment" and "indirect investment" transactions. The current legislative position, as outlined in this Section 8, causes considerable difficulties for many participants in Vietnam M&A Transactions.

8.5 Although the applicable regulations are not entirely clear and are open to varying interpretations, there are a few basic principles which are clear and which are crucial to understand, as summarised in Sections 8.6 to 8.13 below.

8.6 All acquisitions of shares in Public Companies are clearly "indirect investment" transactions. In order for any such "indirect investment" acquisition of shares in a Public Company to be implemented, any Foreign Investor must:

(i) apply to the VSD for and be issued with a "securities trading code";

(ii) open a statutory "indirect investment capital account" with a bank in Vietnam which is a "depository member" of the VSD (being a special type of VND bank account through which all funds must be routed in connection with the Foreign Investor's "indirect investment" activities, including purchase prices for securities, the proceeds of sales of securities, and the proceeds of any dividends paid to the Foreign Investor by any "indirect investment" Vietnam Target in Vietnam); and

(iii) open a "securities trading account" with a duly licensed Vietnam securities broker.

8.7 Normally, all of the requirements summarised in Section 8.6 above will be attended to on behalf of the Foreign Investor by its selected securities broker in Vietnam. Engagement of a duly licensed securities broker in Vietnam is an essential pre-requisite to participation by any Foreign Investor in any Vietnam M&A Transactions involving Vietnam Targets being Public Companies.

8.8 All Vietnam M&A Transactions involving securities in Public Companies must be implemented using the compulsory codes and accounts outlined in Section 8.6 above, failing which the purchase of foreign currency using the VND proceeds of dividend payments and securities divestment transactions – and the repatriation of that foreign currency – will not be possible.

8.9 On the other hand, many Vietnam M&A Transactions involving Private Companies will clearly constitute "direct investment" transactions. For example, where the Vietnam Target is a Private Company, an IRC exists in relation to that Private Company, and the buyer and/or the seller are actively involved in the day-to-day management of that Private Company, then the proposed Vietnam M&A Transaction will clearly be characterised as a "direct investment" transaction.

8.10 In relation to "direct investment" transactions, it is normally necessary for the purchase price to be paid in consideration of the relevant Capital Share to be:

(i) deposited by the buyer into the statutory "direct investment capital account" of the Vietnam Target, held by the Vietnam Target in its own name with a bank in Vietnam; and

(ii) after the Vietnam Target has attended to the compulsory tax clearance procedures and any tax payable on the Vietnam M&A Transaction has been remitted to the State Treasury, then transferred to the seller by the Vietnam Target.

8.11 To the great surprise of many Foreign Investors, the necessary "direct investment" funds flow procedures referred to in Section 8.10 above (arguably) apply even where the seller and the buyer are both Foreign Investors. In other words, it is not expressly permitted by Vietnam law for a foreign-domiciled buyer to transfer directly to a foreign-domiciled seller outside of Vietnam the purchase price to be paid in consideration of any Capital Share in any Vietnam-domiciled company. Vietnam M&A Transactions which are implemented by way of direct payments from buyers to sellers outside of Vietnam give rise to serious risks to the buyer, including defects in title in the acquired Capital Share and, in many cases, future difficulties in repatriating the proceeds of dividend payments and/or equity divestments.

8.12 In relation to some Private JSCs, it can sometimes be difficult to determine whether Vietnam M&A Transactions involving transfers of their Capital Shares are properly to be categorised as "direct investment" or "indirect investment" transactions, and different banks will sometimes formulate and apply differing opinions. For example, where a Private JSC was originally established as a wholly-domestic company and later had Foreign Investors acquire shares prior to the current Law on Enterprises and Law on Investment coming into force in July 2015, it can be difficult to determine with certainty whether that Private JSC should be treated as a "direct investment" company or an "indirect investment" company. Indeed, in some cases, banks which previously (pre-July 2015) deemed some Private JSC to be "indirect investment" companies will form and apply the opinion post-July 2015 that the same Private JSCs must now be treated as "direct investment" companies.

8.13 It is of paramount importance that Foreign Investors considering Vietnam M&A Transactions liaise with the relevant banks early in the transaction process, with a view to determining whether the proposed Vietnam M&A Transaction will proceed on an "indirect investment" or a "direct investment" basis. The relevant banks include the bankers within Vietnam of each of the buyer, the seller, and the Vietnam Target. Once a consensus amongst the parties and their bankers has been achieved as to the "direct investment" or "indirect investment" question, the parties can then prepare the definitive transaction documents to reflect the compulsory transaction funds flow process arising from this key characterisation exercise.

8.14 As a general rule of thumb, in the context of Private JSCs, most banks appear to incline towards the view that where any IRC exists in relation to the Vietnam Target, the correct characterisation is "direct investment", meaning that, when implementing the relevant Vietnam M&A Transaction (assuming that the buyer is a Foreign Investor and wishes to fund its purchase from foreign currency held in a bank account outside of Vietnam):

(i) the buyer must transfer the purchase price, in foreign currency, out of the buyer's foreign currency bank account held outside of Vietnam and into the "direct investment capital account" held by the Vietnam Target in its own name with a bank in Vietnam (noting that some banks will require such foreign currency to be converted into VND and deposited into a VND-denominated "direct investment capital account" of the Target Company);

(ii) the Vietnam Target must then attend to the compulsory "tax clearance" process, involving the making of the necessary declarations to the Vietnam tax authorities and the remittance to the State Treasury of such tax as may be imposed upon the transaction;

(iii) after the Vietnam Target has obtained the necessary tax clearances, the Vietnam Target must then transfer the purchase price (less any tax having been remitted to the State Treasury) to the seller, by way of:

(a) if the seller is foreign-domiciled, transferring foreign currency to the seller's foreign currency bank account held outside of Vietnam (after having purchased such foreign currency from the Vietnam Target's bank, where the purchase price funds have been deposited in VND and are held in a VND-denominated "direct investment capital account"); and

(b) if the seller is Vietnam-domiciled, transferring the remaining balance of the purchase price into the seller's VND-denominated bank account held with a bank in Vietnam (after having purchased VND from the Vietnam Target's bank, where the purchase price funds have been deposited in foreign currency and held in a foreign currency-denominated "direct investment capital account"), and

(iv) depending on the corporate form of the Vietnam target, normally the bank providing the "direct investment capital account" will require any necessary amendments to the applicable ERC and IRC to have been made, before the balance of the proceeds of the purchase price is released to the seller.

8.15 The process described in Section 8.14 above is the process which will always apply in the context of Vietnam Targets being wholly or partly foreign-owned LLC1s or LLC2s, due to the fact that these types of Vietnam-domiciled companies are always characterised as "direct investment" companies.

8.16 Other key foreign currency control rules relating to investment activities in Vietnam, which all participants in Vietnam M&A Transactions should bear in mind, include those set out in Items (i) to (v) immediately below.

(i) In relation to any type of commercial transaction which is to be entered into and/

or primarily performed in Vietnam (including any sale and purchase of any Capital Share), the transaction consideration:

(a) must be denominated and documented in pure VND terms only;

(b) must not be expressed in foreign currency equivalent terms (and the transaction documentation must not contain any foreign currency equivalent amounts nor currency conversion principles); and

(c) must not be expressed as being subject to any type of price adjustment mechanism which is based on or refers to foreign exchange rates or fluctuations thereof.

(ii) Entry into contracts which contravene the rules referred to in Item (i) immediately above gives rise to enforceability risks, difficulty in achieving registration with State authorities, and potential administrative penalties.

(iii) Foreign currency which is transferred into Vietnam other than in strict compliance with the applicable foreign exchange regulations will normally be extremely difficult if not impossible to transfer back out of Vietnam. Although it is relatively easy to transfer foreign currency into Vietnam, the same does not apply to transfers of foreign currency out of Vietnam. Transfers of foreign currency out of Vietnam can only be implemented upon a clear and valid "legal basis", with clear and definitive supporting documentation being required. If the compulsory rules applying to "direct investment" and "indirect investment" transactions are not followed when implementing Vietnam M&A Transactions, Foreign Investors will inevitably have great difficulties in repatriating the proceeds of dividend distributions and divestment transactions.

(iv) Strict rules also apply in relation to loan funding in Vietnam, where the lender is foreign-domiciled. For example, any loans made by foreign-domiciled lenders, where the loan has a term of 12 months or more, must be registered with the State Bank of Vietnam (and the same applies to foreign loans having a term of less than 12 months but which are not repaid in full within that initial term). Another example is that there is no express basis under Vietnam foreign currency control law for foreign-domiciled lenders to provide loans to borrowers in Vietnam being Vietnamese individual citizens. Loan funding transferred into Vietnam other than in strict compliance with the express provisions of Vietnam currency control laws gives rise to material enforcement and repatriation risks.

(v) Foreign-domiciled investors should always seek legal advice from appropriately qualified and experienced professionals in Vietnam before transferring foreign currency into Vietnam, so as to ensure strict compliance with Vietnam foreign currency control laws and thus avoiding repatriation difficulties in the future.

9

Taxation

9.1 The key taxation issue relating to Vietnam M&A Transactions is that of "capital transfer tax", which is imposed upon all transfers of Capital Shares in Vietnam-domiciled companies (***Capital Transfer Tax***). Capital Transfer Tax is not of itself a separate and distinct tax, but rather is a subset of corporate income tax (in the case of companies) or personal income tax (in the case of individuals).

9.2 It is also crucial to note that Vietnam law imposes Capital Transfer Tax on many Extra-Vietnam Equity Transfers, even where there is no change in the registered ownership of any Capital Share of the relevant target subsidiaries or investee entities within Vietnam. Where Vietnam law deems that the proceeds of any Extra-Vietnam Equity Transfer constitute *"income primarily derived from business activities conducted within Vietnam…regardless of the location of the business premises"* (***Taxable Offshore Equity Transfers***), Vietnam Capital Transfer Tax is imposed.

9.3 In the case of transfers of shares in Public Companies, Capital Transfer Tax is imposed at the rate of 0.1% of the total transfer consideration, with the generation or otherwise of capital gains being irrelevant. This applies to sellers being companies or individuals, whether or not resident in Vietnam.

9.4 In the case of transfers of Capital Shares in Private Companies, or in the case of Taxable Offshore Equity Transfers, Capital Transfer Tax is imposed at the rate of 20% of the capital gain realised by the seller on the transfer. The foregoing proposition applies to sellers being companies (whether or not resident in Vietnam) and individuals being resident in Vietnam. On the other hand, in the case of sellers being individuals not being resident in Vietnam, Capital Transfer Tax is imposed on sales of Capital Shares in Private Companies or Taxable Offshore Equity Transfers at the rate of 0.1% of the total transfer consideration (with the generation or otherwise of capital gains being irrelevant).

9.5 In the case of Taxable Offshore Equity Transfers, Vietnam law does not specify as to the rate at which Capital Transfer Tax is to be applied and the methodology by which taxable capital gains are to be calculated. In practice, municipal or provincial taxation authorities normally apply the rate of 20% taxable gain. Inconsistency in the methodologies applied to the calculation of taxable gain is not unusual, at municipal and provincial tax authority level.

9.6 Dividends distributed to Members or Shareholders being companies are not treated as being taxable income in Vietnam at all, provided that such dividends are declared and paid by the relevant Vietnam-domiciled company on a fully after-tax basis. In the case of Members or Shareholders being companies (whether or not resident in Vietnam), there is therefore no tax imposed upon dividends declared and paid to them by Vietnam-domiciled companies on a fully after-tax basis.

9.7 In the case of individuals, personal income tax is payable at the rate of 5% on dividends declared and paid by Vietnam-domiciled companies, including where such dividends are declared and paid on a fully after-tax basis. This 5% tax is paid by individuals not resident in Vietnam on a withholding basis.

9.8 In relation to interest income on loans, foreign-domiciled lenders are subject to Vietnam withholding tax at a rate of 5%.

9.9 This Vietnam M&A Overview does not purport to set out a comprehensive summary of Vietnam taxation, but merely sets out a brief and high-level summary of the key taxation issues which normally arise in the context of Vietnam M&A Transactions.

10

Structuring

10.1 There are many and varied structuring options available to Foreign Investors wishing to acquire interests in Vietnam-domiciled companies.

10.2 Structures involving Foreign Holding Companies are often used by Foreign Investors and have numerous advantages, including in particular the comparative ease of implementing transfers of shares in the capital of such Foreign Holding Companies (as compared with the relatively process-heavy and State-approval-dependent nature of many transfers of Capital Shares in Vietnam Targets).

10.3 It is, however, important for Foreign Investors to appreciate that the use of Foreign Holding Companies is not always as straightforward as it may first appear, and there are numerous pitfalls which often catch Foreign Investors by surprise, for example those set out in Items (i) to (v) immediately below.

(i) Vietnam corporate licensing authorities will often refuse approvals for acquisitions or capital injections by Foreign Investors in industry sectors which are specified in the WTO Commitments, where the proposed buyer, subscriber, or contributor is domiciled in a jurisdiction not itself being a member of the WTO.

(ii) Capital Transfer Tax in Vietnam is often payable on the transfer of shares in the capital of Foreign Holding Companies, even where the seller, the buyer, and the Foreign Holding Company are all domiciled outside of Vietnam and non-residents of Vietnam for tax purposes.

(iii) Even where the transfer of shares in Foreign Holding Companies does not give rise to any changes of registered Capital Share ownership in Vietnam, it will often be necessary to register changes to key investment project or enterprise registration details relating to the relevant Vietnam-domiciled subsidiary, as a result of the offshore change of ownership. Examples include the necessity to register changes to the Foreign Holding Company's registered legal and/or authorised representative in the applicable IRC, or changes to the registered Legal Representative of the Vietnam-domiciled subsidiary in the applicable ERC.

(iv) In the context of Taxable Offshore Share Transfers, if the seller defaults on its obligations to pay Capital Transfer Tax in Vietnam, the Vietnam tax authorities will often endeavour to recover such Capital Transfer Tax from the relevant Vietnam-domiciled subsidiary, and are often (in practical terms) successful in so doing. It is therefore crucial for buyers to protect themselves contractually against post-completion exposure arising from seller defaults on Capital Transfer Tax obligations.

(v) Foreign Investors into Vietnam are often required to file with Vietnam corporate licensing authorities consular legalised copies of their audited financial statements for the two most recently-ended financial years. Foreign Holding Companies which are unable to satisfy this requirement often encounter difficulty in obtaining necessary State approvals in Vietnam. It is therefore highly desirable for Foreign Investors to use Foreign Holding Companies which are companies of genuine substance and are able to produce audited financial statements for the two most recently-ended financial years and which show a healthy and profitable financial status.

10.4 Intra-Vietnam Asset Transfers are possible to implement in Vietnam, but should be approached with caution.

10.5 Intra-Vietnam Asset Transfers will in most cases require the buyer entity to be domiciled in Vietnam. In this regard, Foreign Investors must be aware of the fact that they cannot simply establish a special-purpose vehicle, or holding company, in Vietnam. Foreign Investors wishing to establish subsidiaries in Vietnam must firstly obtain approval to implement a registered "investment project with foreign capital", as evidenced by the issuance of an IRC.

10.6 Once a subsidiary of a Foreign Investor is established in Vietnam in order to implement an approved "investment project with foreign capital", it is then necessary for that subsidiary actually to implement the approved investment project and to generate actual revenue from so doing. In most cases, therefore, Intra-Vietnam Asset Transfers will normally only be desirable as an adjunct to an existing registered "investment project with foreign capital", as opposed to a means of initial entry into the Vietnam market.

10.7 Intra-Vietnam Asset Transfers are also often difficult and time-consuming to implement in practice, for a number of reasons including the fact that State approvals and licences are generally not transferrable in Vietnam. When implementing an Intra-Vietnam Asset Transfer, it is usually necessary for the transferee entity to apply afresh for the issuance of the various State approvals and consents forming part of the acquired assets, which in many cases will outweigh the benefits of implementing an Intra-Vietnam Asset Transfer as opposed to a Capital Share acquisition (subject of course to the status of the Vietnam Target from the perspective of actual and/or contingent liabilities).

10.8 In addition, Intra-Vietnam Asset Transfers are subject to the imposition of value-added tax (***VAT***), at the rate of 10%, on the transfer consideration.

10.9 Selection of the appropriate corporate form (whether an LLC1, LLC2, Private JSC, Listed JSC, or Unlisted Public JSC) is a key factor in Vietnam structuring analysis. It will often be desirable (and is usually possible) to convert the corporate form of the Vietnam Target from one corporate form to another as a condition precedent to completion of a Vietnam M&A Transaction.

10.10 De-listing and/or "privatisation" of Vietnam Targets being Public Companies can often be an advantageous pre-completion structuring initiative, but parties need to be aware that these processes are time-consuming and not straightforward. For example, it may be relatively easy to reduce the number of shareholders of a Public Company below the minimum of 100 (which is a condition under the Law on Securities for a company to qualify as a Public Company). On the other hand, de-registration as a Public Company requires an application to be lodged with the SSC, and there is a waiting period of 12 months before deregistration will be approved. Therefore, any pre-completion structuring benefits of "privatisation" of a Public Company cannot be exploited for a period of at least 12 months as from commencement of the "privatisation" process.

10.11 Of great significance from a structuring perspective is the fact that Vietnam law deems Vietnam-domiciled companies being less than 51% foreign owned to be Deemed Domestic Investors, when engaging in equity investment activities in Vietnam. Thus, initial entry into the Vietnam market by way of a joint venture with a Domestic Investor partner, in which the Domestic Investor partner holds greater than 49% of the equity capital (for example, 49.1%), can open up exciting possibilities for further market expansion as a result of such joint venture entity being deemed to constitute a Deemed Domestic Investor.

10.12 The Law on Enterprises also expressly recognises other specific types of Vietnam M&A Transactions and structuring devices, including those summarised in Sections 10.13 to 10.17 below.

10.13 **Mergers:** Being transactions in which one or more companies merge into an existing and remaining company, by way of the transfer of all assets, rights, obligations, and interests of the merging company(ies) to the remaining company, with the merging company(ies) ceasing to exist upon the completion of such asset transfer(s).

10.14 **Consolidations:** Being transactions in which two or more companies are consolidated into a single new company, with the company(ies) having been so consolidated ceasing to exist.

10.15 **Separations:** Being transactions in which part of the assets and/or rights and/or obligations of a company are separated from that company in order to form one or more new companies, with the company from which such assets and/or rights and/or obligations were separated continuing to exist.

10.16 **Divisions:** Being transactions in which companies split their Shareholders or Members and assets to establish two or more new companies, involving: (i) proportional parts of the equity capital of the company (together with proportional parts of the assets of the company) distributed to a number of new companies corresponding to the number of Shareholders or Members; (ii) all of the Capital Shares of one or more Members or Shareholders (together with proportionally corresponding assets) are transferred to one or more new companies; or (iii) a combination of (i) and (ii) described in the foregoing.

10.17 Mergers, consolidations, separations, and divisions are often overlooked by parties when structuring Vietnam M&A Transactions, but can often serve as useful structuring tools, particularly in the context of a jurisdiction in which standard asset transfer transactions can be difficult to implement in practice.

10.18 As is the case in most jurisdictions, each and every Vietnam M&A Transaction must have its structuring aspects carefully considered on its own unique merits. The structuring requirements of any two Vietnam M&A Transactions are rarely ever the same.

11

Intra-Vietnam Capital Raisings

11.1 Intra-Vietnam Capital Raisings are often an advantageous method for investors to obtain Capital Share in Vietnam Targets, whether as an adjunct or an alternative to Intra-Vietnam Equity Transfers.

11.2 In the case of an LLC1, it is not possible for any new Member to contribute to the Charter Capital of that LLC1, without that LLC1 first being converted into an LLC2 or a JSC.

11.3 In the case of an LLC2, existing Members are entitled to pre-emptive rights in relation to any proposed new contributions to the Charter Capital of such LLC2s. Dilutive contributions to the Charter Capital by any incoming new Members are only possible with the unanimous approval of the existing Members.

11.4 In the case of Private JSCs, the existing Shareholders are entitled to pre-emptive rights on any issuance of new shares. Dilutive issuances of new shares may only be implemented by Private JSCs subject to:

(i) the unanimous approval of the General Meeting of Shareholders; and

(ii) approval by the relevant Corporate Licensing Authority of a Private Placement Plan being compliant with the applicable regulations.

11.5 In addition, implementation of an Intra-Vietnam Capital Raising in the context of a private JSC will normally require an Acquisition Approval to be obtained, depending upon the prevailing policy position of the relevant Corporate Licensing Authority at the relevant time.

11.6 In the case of Listed JSCs and Unlisted Public JSCs, Shareholders are entitled to pre-emptive rights on any issuance of new shares, but dilutive issuances of new shares may be implemented subject to:

(i) approval of the General Meeting of Shareholders by way of special resolution (which will normally require a 65% majority); and

(ii) approval by the SSC of a Private Placement Plan being compliant with the applicable regulations.

11.7 In the case of JSCs (whether private or public), equity capital can be raised by the issuance of many different types and classes of shares and other securities, including, for example, dividend preference shares, redeemable preference shares, redeemable convertible preference shares, other classes of preference shares, convertible bonds, convertible loans, and other types of convertible instruments.

11.8 Although Vietnam law affords to JSCs a significant degree of flexibility as to the types of shares and other convertible or equity-tied securities they can issue, investors must always take great care to ensure that they only invest in securities of a kind which are consistent with applicable law, can actually be readily converted in practical terms, and are capable of due and proper enforcement if necessary.

11.9 Please note that equitisations of State Owned Enterprises and IPOs are outside of the scope of this Vietnam M&A Overview.

12

Governing Law, Dispute Resolution, and Language

12.1 Vietnam law expressly recognises the right of parties to select foreign governing law, in relation to any contracts having a "foreign element". Therefore, in theory, Capital Share sale and purchase agreements or other definitive M&A documents relating to Vietnam Targets may be governed by foreign law, provided that at least one of the seller or the buyer is a Foreign Investor or Deemed Foreign Investor.

12.2 In reality, however, where the transaction involves the transfer or issuance of Capital Shares in a Vietnam Target, in most cases Vietnam law will either be the necessary or the highly desirable choice of governing law. All Vietnam M&A Transactions must in any event be implemented in accordance with Vietnam law. Further, in the event of any inconsistency between Vietnam law and any foreign governing law, Vietnam law will generally prevail in practice. In addition, Vietnam corporate licensing authorities will often refuse to accept agreements governed by foreign law, even where foreign law is a technically valid choice.

12.3 In relation to transactions conducted outside of Vietnam (for example, Offshore Share Transfers), foreign governing law will obviously be appropriate in most cases, but will not relieve the seller from liability for Capital Transfer Tax in Vietnam.

12.4 In relation to some kinds of contracts in Vietnam, dispute resolution through the courts of Vietnam is compulsory (for example, contracts relating to transfers or other transactions involving land). In the context of Vietnam M&A Transactions, however, parties generally enjoy flexibility to determine their preferred dispute resolution forum.

12.5 Where one or more of the parties to a Vietnam M&A Transaction is a Foreign Investor, foreign arbitration is often the preferred (and is a valid) method of dispute resolution, with the Singapore International Arbitration Centre (***the SIAC***) and the Hong Kong International Arbitration Centre (***the HKIAC***) being particularly popular choices.

12.6 Vietnam has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and thus arbitral awards obtained from tribunals within fellow member jurisdictions are capable of recognition and enforcement in Vietnam. Foreign Investors must, however, bear in mind the fact that foreign arbitral awards are capable of recognition and enforcement in Vietnam only to the extent that they are "...not inconsistent with the basic principles of Vietnam law...". In practice, this means that foreign arbitral awards must be considered by the Vietnamese courts before recognition and enforcement will be permitted, which in many cases may involve (in practical terms) a re-trial of the merits of the award.

12.7 Arbitration in Vietnam is another option, with the Vietnam International Arbitration Centre (***the VIAC***) being the key administration body. The VIAC is an independent organisation which operates under arbitration rules being modelled on the SIAC arbitration rules. Although the VIAC is still developing in sophistication, it is nevertheless worthy of serious consideration by parties to Vietnam M&A Transactions, given that, unlike foreign arbitration:

(i) arbitral awards obtained from the VIAC are capable of being agreed between the parties to be final and binding (that is, they are not subject to an additional substantive reconsideration for the purposes of recognition and enforcement); and

(ii) it is possible to obtain interim relief (for example, injunctions) from Vietnamese courts in connection with arbitration proceedings in the VIAC, which is in many cases not possible to do in connection with foreign arbitration proceedings.

12.8 Foreign Investors usually prefer to avoid litigation through the courts of Vietnam for the resolution of disputes in connection with Vietnam M&A Transactions, for a number of reasons.

12.9 From a language perspective, in most cases the use of the Vietnamese language in drafting and executing M&A definitive transaction documents is not technically compulsory. In practice, however, it is invariably necessary (in practical terms) to use Vietnamese language or bi-lingual definitive transaction documents, due to the following facts:

(i) in order to be capable of being filed with any State authority or court in Vietnam, the original of a definitive transaction document must be prepared and executed in at least the Vietnamese language (with bi-lingual documents being acceptable);

(ii) where no Vietnamese language original of a document is available, that document must always be translated into Vietnamese and the Vietnamese translation notarised, before that document is capable of being filed with any State authority; and

(iii) as a result of the facts outlined in Items (i) and (ii) immediately above, it is invariably highly desirable to enter into all definitive M&A transaction documents relating to Vietnam Targets in at least the Vietnamese language and in most cases in the Vietnamese language and the most appropriate foreign language.

12.10 It is possible to provide in definitive M&A documents for the foreign language version to prevail in the event of any inconsistency. In reality, however, Vietnamese State authorities and courts will in practice usually have regard to the Vietnamese language version only. It is therefore always of paramount importance to ensure that the Vietnamese and foreign language versions of any definitive transaction documents are consistent with one another in legal meaning and effect and have been formally settled and signed off by fully-qualified Vietnamese lawyers.

13

Conducting due diligence in Vietnam

13.1 Vietnamese sellers and Vietnam Targets have in recent years become increasingly accustomed to the process of due diligence and the importance placed by buyers (particularly Foreign Investors) on the conduct of due diligence. Historically, Vietnamese sellers and Vietnam Targets were generally resistant to the concept of opening up their records to enable the conduct of due diligence, but this resistance has gradually dissipated as foreign investment in Vietnam has increased.

13.2 Public Companies in Vietnam do, however, in many cases continue to be resistant to the conduct of due diligence by potential buyers or subscribers, on the basis that the information on the public record should suffice. Given, however, that the standards of compliance by Public Companies with their public disclosure obligations in many cases leaves much to be desired, Foreign Investors often consider it to be necessary to conduct due diligence over and above the information available on the public record. When conducting due diligence on Public Companies in Vietnam, investors must always ensure that the due diligence process is managed in such a way as to avoid contraventions of the Vietnam law prohibitions against insider trading.

13.3 Vietnamese sellers and Vietnam Targets may be unfamiliar with the due diligence process and will often not be in a position to allocate adequate resources to facilitate the process. Foreign Investors need to be prepared to cope with situations of this kind and to be patient when conducting due diligence. Often, Vietnamese sellers and Vietnam Targets will be reluctant to incur expenses in engaging professional advisors to assist them in managing the due diligence process, but Foreign Investors should take a strong stance in requiring the involvement of professional advisors on the seller / Vietnam Target side, which will invariably give rise to a far more effective and efficient due diligence process.

13.4 Vietnamese sellers and Vietnam Targets will often refuse to facilitate online data rooms or to provide buyers or their advisors with electronic or hard copies of documents. Unfortunately, the norm in Vietnam continues to be the provision of physical data rooms, with no copies of any documents permitted to be taken. Open and transparent Q&A processes and management interviews can also in many cases be difficult to implement in Vietnam, and often key management personnel will not have a sufficient command of any foreign language to enable the conduct of management interviews in any foreign language. Foreign Investors need to be prepared to handle these cumbersome due diligence conditions in many cases when assessing Vietnam M&A Transactions.

13.5 Having facilitated due diligence investigations, Vietnamese sellers will often then be resistant to providing representations and warranties in definitive transaction documents, on the presumption that the due diligence conducted should provide the buyer with sufficient comfort as to whether or not to proceed with the proposed transaction and sufficient clarity as to the risks involved. Historically, the expectation of Vietnamese sellers had been that Capital Shares are sold on an "as is" basis. Although the general levels of understanding and sophistication in Vietnam are steadily increasing, it is still often necessary to go through a process of explaining to Vietnamese sellers why representations, warranties, and specific indemnities are fair and reasonable for inclusion in definitive transaction documents.

14

Other Jurisdiction-Specific Factors

14.1 In Vietnam, sellers frequently require an up-front deposit against the purchase price, before the commencement of any due diligence investigations by the buyer. Such deposit requests generally vary from 5% to 20% of purchase price. Although Vietnamese sellers are becoming increasingly accustomed to the use of escrow agents for the holding of deposits, it is still commonplace for Foreign Investors to encounter staunch resistance to the use of escrow services. This strong cultural preference for deposits is tied to the strong cultural resistance to due diligence which is a feature of the Vietnam M&A landscape (that is, Vietnamese sellers and Vietnam Targets often prefer to be very certain that the proposed investor is serious, before opening the books, and deposits are perceived as being the only genuine form of evidence that the buyer is serious).

14.2 Vietnamese sellers in many cases continue to expect that Capital Shares will be sold on an "as is" basis and that they will not be exposed to claims liability post-completion. Although the degree of understanding and acceptance of contractual protections in favour of the buyer is steadily increasing in parallel with the development of the Vietnam M&A market, Foreign Investors looking at Vietnam M&A transactions need to be prepared to encounter staunch resistance to robust contractual protections in Vietnam.

14.3 Vietnamese sellers, Vietnam Targets, and State authorities are generally resistant to lengthy or complicated definitive transaction documents. For this reason (in addition to the cumbersome nature of negotiating lengthy and complex legal documents in two languages), simple, clear, and succinct definitive transaction documents are generally preferable in connection with Vietnam M&A Transactions.

14.4 In connection with any necessary State approvals or consents in Vietnam, it is usually necessary for Foreign Investors to file with the relevant State authorities a number of supporting and/or identification documents, which must be "consular legalised" through (at least) a notary public, a relevant foreign affairs ministry (or equivalent), and the Vietnam embassy or consulate in the Foreign Investor's home jurisdiction. Such "consular legalised" documents must then be translated into Vietnamese (with the translations notarised in Vietnam), before those documents are capable of being filed with the relevant State authority in Vietnam. This process is invariably cumbersome and time-consuming, and Foreign Investors must always be sure to allocate sufficient time to accommodate such processes in any transaction timetables.

15

Public Company Specific Factors

15.1 In addition to the various specific features relating to Vietnam M&A Transactions involving Public Companies in Vietnam, as outlined above in the preceding sections of this Vietnam M&A Overview, there is a number of other key points which buyers of or subscribers for shares in Public Companies need to bear in mind.

15.2 Any person or entity who (together with all related persons or entities) acquires shares in a Public Company which take the aggregate holdings of that person or entity (together with all related persons or entities) up to 5% or more of issued voting share capital, must disclose to that Public Company , the SSC, and the relevant stock exchange (or securities trading centre) the fact of having become a "major shareholder" within seven days of having reached that ≥5% threshold.

15.3 Having become a "major shareholder" (≥5% aggregated with all related persons or entities), any future acquisitions or divestments taking that "major shareholder" (together with all related persons or entities) above or below any 1% increment must also be disclosed within seven days of completion.

15.4 Where any shareholder of a Public Company is represented on the Board of Management (board of directors) of that Public Company, any acquisition or disposal by that shareholder of any shares in that Public Company must be disclose three days before the trade is implemented, as though that shareholder were itself an "insider" individual of the public company.

15.5 Any acquisition of shares in a Public Company which, once completed, will take the total shareholding stake of the acquiring shareholder (together with all related persons or entities) up to ≥25% of issued voting share capital, must be implemented by way of a statutory "mandatory public offer" process (***MPO***) unless the General Meeting of Shareholders of that Public Company resolves to grant an exemption. The MPO process is time-consuming and cumbersome and requires specific SSC approval.

15.6 Similarly, once any shareholder (together with all related persons or entities) holds ≥25% of issued voting share capital in a Public Company, any future acquisition of any further ≥10% of issued voting share capital must be implemented by way of an MPO, unless the General Meeting of Shareholders of that Public Company resolves to grant an exemption.

15.7 During the one year following the completion by any shareholder of any acquisition pursuant to an MPO, any further acquisition by that shareholder (together with all related persons or entities) of any further ≥5% to <10% of issued voting share capital of the relevant Public Company must also be implemented by way of an MPO.

15.8 Investors examining potential Vietnam M&A Transactions involving Public Companies must always be aware of the prohibitions against insider trading and implement any valuation or due diligence processes carefully and so as to avoid any contravention of the insider trading rules.

16

Conclusion

16.1 Vietnam, having one of the most rapidly and successfully developing economies and M&A markets in the world, presents huge opportunities both for market access and capital gains, both in the public capital markets and in the private equity spaces.

16.2 Although the opportunities are huge, investing in Vietnam is not without legal and jurisdictional risk, and it is crucial that Foreign Investors are properly advised by experienced Vietnam M&A counsel before embarking upon any Vietnam M&A Transaction.

16.3 This Vietnam M&A Overview is prepared and published by Frasers Law Company subject to and on the basis of the important legal notices set out in Schedule 2 to this Vietnam M&A Overview.

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SCHEDULE 1

Glossary of Defined Terms

Defined Term	Definition
Acquisition Approval	Has the meaning ascribed to that term in Section 7.2 of this Vietnam M&A Overview.
Board of Management	Has the meaning ascribed to that term in Item (iv) of Section 3.4 of this Vietnam M&A Overview.
Capital Share	Has the meaning ascribed to that term in Section 7.2 of this Vietnam M&A Overview.
Capital Transfer Tax	Has the meaning ascribed to that term in Section 9.1 of this Vietnam M&A Overview.
Charter Capital	Has the meaning ascribed to that term in Item (ii) of Section 3.2 of this Vietnam M&A Overview.
Corporate Licensing Authority	Has the meaning ascribed to that term in Section 3.10 of this Vietnam M&A Overview.
Deemed Domestic Investor	Has the meaning ascribed to that term in Section 4.7 of this Vietnam M&A Overview.
Deemed Foreign Investor	Has the meaning ascribed to that term in Section 4.7 of this Vietnam M&A Overview.
Domestic Investor	Has the meaning ascribed to that term in Item (ii) of Section 4.3 of this Vietnam M&A Overview.
DPI	Has the meaning ascribed to that term in Item (ii) of Section 3.10 of this Vietnam M&A Overview.
ERC	Means an Enterprise Registration Certificate, being a type of official certificate issued by relevant Corporate Licensing Authority, evidencing the establishment, registration, and existence of a Vietnam-domiciled company or other form of recognised enterprise.
Extra-Vietnam Equity Transfers	Has the meaning ascribed to that term in Section 1.12 of this Vietnam M&A Overview.
Foreign Direct Investment Activities	Has the meaning ascribed to that term in Section 1.14 of this Vietnam M&A Overview.
Foreign Holding Companies	Has the meaning ascribed to that term in Section 1.12 of this Vietnam M&A Overview.
Foreign Investors	Has the meaning ascribed to that term in Item (i) of Section 4.3 of this Vietnam M&A Overview.

Defined Term	Definition
HKIAC	Has the meaning ascribed to that term in Section 12.5 of this Vietnam M&A Overview.
HNX	Has the meaning ascribed to that term in Item (iv) of Section 3.2 of this Vietnam M&A Overview.
HOSE	Has the meaning ascribed to that term in Item (iv) of Section 3.2 of this Vietnam M&A Overview.
Intra-Vietnam Asset Transfers	Has the meaning ascribed to that term in Item (iv) of Section 1.10 of this Vietnam M&A Overview.
Intra-Vietnam Equity Capital Raisings	Has the meaning ascribed to that term in Section 1.13 of this Vietnam M&A Overview.
Intra-Vietnam Consolidations	Has the meaning ascribed to that term in Item (iii) of Section 1.10 of this Vietnam M&A Overview, being *"...consolidation transactions involving two or more Vietnam Targets..."*.
Intra-Vietnam Equity Transfers	Has the meaning ascribed to that term in Item (i) of Section 1.10 of this Vietnam M&A Overview.
Intra-Vietnam Mergers	Has the meaning ascribed to that term in Item (ii) of Section 1.10 of this Vietnam M&A Overview.
IRC	Means an Investment Registration Certificate, being a form of official certificate issued by relevant State authorities (in most cases, provincial or municipal People's Committees or Corporate Licensing Authorities), evidencing the approval by the State for the implementation of a specified investment project.
JSC	Has the meaning ascribed to that term in Section 3.4 of this Vietnam M&A Overview.
Laws	Has the meaning ascribed to that term in Section 1.7 of this Vietnam M&A Overview.
Listed JSC	Has the meaning ascribed to that term in Section 3.7 of this Vietnam M&A Overview.
LLC1	Has the meaning ascribed to that term in Section 3.2 of this Vietnam M&A Overview.
LLC2	Has the meaning ascribed to that term in Section 3.3 of this Vietnam M&A Overview.
M&A	Has the meaning ascribed to that term in Section 1.1 of this Vietnam M&A Overview.

Defined Term	Definition
Member	Has the meaning ascribed to that term in Item (i) of Section 3.2 of this Vietnam M&A Overview.
Members' Council	Has the meaning ascribed to that term in Item (iv) of Section 3.3 of this Vietnam M&A Overview.
Private Company	Has the meaning ascribed to that term in Section 3.10 of this Vietnam M&A Overview.
Private JSC	Has the meaning ascribed to that term in Section 3.6 of this Vietnam M&A Overview.
Public Company	Has the meaning ascribed to that term in Section 3.11 of this Vietnam M&A Overview.
Scope of Permitted Business Activities	Has the meaning ascribed to that term in Section 5.2 of this Vietnam M&A Overview.
Shareholders	Has the meaning ascribed to that term in Item (i) of Section 3.4 of this Vietnam M&A Overview.
SIAC	Has the meaning ascribed to that term in Section 12.5 of this Vietnam M&A Overview.
SSC	Has the meaning ascribe to that term in Item (ii) of Section 3.6 of this Vietnam M&A Overview.
Taxable Offshore Equity Transfers	Has the meaning ascribed to that term in Section 9.2 of this Vietnam M&A Overview.
Unlisted Public JSC	Has the meaning ascribed to that term in Section 3.8 of this Vietnam M&A Overview.
UPCoM	Has the meaning ascribed to that term in Item (iv) of Section 3.2 of this Vietnam M&A Overview.
VAT	Has the meaning ascribed to that term in Section 10.8 of this Vietnam M&A Overview.
VCA	Has the meaning ascribed to that term in Section 7.13 of this Vietnam M&A Overview.
VIAC	Has the meaning ascribed to that term in Section 12.7 of this Vietnam M&A Overview.

Defined Term	Definition
Vietnam M&A Overview	Means this overview of the key legal and practical aspects of M&A transactions in and in relation to Vietnam, dated as of July 2019, written by Justin Gisz, Partner, Frasers Law Company, and published by Frasers Law Company subject to its copyright in relation to this document and all of its contents.
Vietnam M&A Transactions	Has the meaning ascribed to that term in Section 2.1 of this Vietnam M&A Overview.
Vietnam Targets	Has the meaning ascribed to that term in Section 1.6 of this Vietnam M&A Overview.
VSD	Has the meaning ascribed to that term in Item (iii) Section 3.10 of this Vietnam M&A Overview.
WTO Commitments	Has the meaning ascribed to that term in Section 2.2 of this Vietnam M&A Overview.

SCHEDULE 2

Important Legal Notices

S2.1 This Vietnam M&A Overview is intended to be a general and high-level guide only and is not intended to be a detailed or comprehensive treatment of the legal and practical aspects of conducting M&A transactions in and/or in connection with Vietnam.

S2.2 Any person or entity wishing to implement any type of M&A transaction in and/or in connection with Vietnam should always take appropriate and Vietnam-specific legal, financial, accounting, taxation, and other professional advice before so doing.

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S2.9 This Vietnam M&A Overview is prepared on the basis the laws of Vietnam and the practical experience of the author as at July 2019, any or all of which are subject to change at any time thereafter without notice.

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