
CHAMBERS GLOBAL PRACTICE GUIDES

Healthcare M&A 2024

Definitive global law guides offering
comparative analysis from top-ranked lawyers

Vietnam: Law & Practice and Trends and Developments

Minh Duong, Phong Nguyen and
Justin Gisz

Asia Counsel Vietnam
Law Company Limited



VIETNAM

Law and Practice

Contributed by:

Minh Duong, Phong Nguyen and Justin Gisz
Asia Counsel Vietnam Law Company Limited



Contents

1. Market Trends p.6

- 1.1 Healthcare M&A Market p.6
- 1.2 Key Trends p.6

2. Establishing a New Company p.7

- 2.1 Establishing a New Company p.7
- 2.2 Type of Entity p.8
- 2.3 Early-Stage Financing p.8
- 2.4 Venture Capital p.9
- 2.5 Venture Capital Documentation p.9
- 2.6 Change of Corporate Form or Migration p.9

3. Initial Public Offering (IPO) as a Liquidity Event p.9

- 3.1 IPO v Sale p.9
- 3.2 Choice of Listing p.10
- 3.3 Impact of the Choice of Listing on Future M&A Transactions p.10

4. Sale as a Liquidity Event p.10

- 4.1 Liquidity Event: Sale Process p.10
- 4.2 Liquidity Event: Transaction Structure p.10
- 4.3 Liquidity Event: Form of Consideration p.10
- 4.4 Liquidity Event: Certain Transaction Terms p.11

5. Spin-Offs p.11

- 5.1 Trends: Spin-Offs p.11
- 5.2 Tax Consequences p.11
- 5.3 Spin-Off Followed by a Business Combination p.11
- 5.4 Timing and Tax Authority Ruling p.11

6. Acquisitions of Public (Exchange-Listed) Healthcare Companies p.12

- 6.1 Stakebuilding p.12
- 6.2 Mandatory Offer p.12
- 6.3 Transaction Structures p.12
- 6.4 Consideration; Minimum Price p.13
- 6.5 Common Conditions for a Takeover Offer/Tender Offer p.13
- 6.6 Deal Documentation p.13
- 6.7 Minimum Acceptance Conditions p.14
- 6.8 Squeeze-Out Mechanisms p.14

6.9 Requirement to Have Certain Funds/Financing to Launch a Takeover Offer p.15

6.10 Types of Deal Protection Measures p.15

6.11 Additional Governance Rights p.15

6.12 Irrevocable Commitments p.15

6.13 Securities Regulator's or Stock Exchange Process p.16

6.14 Timing of the Takeover Offer p.16

7. Overview of Regulatory Requirements p.17

7.1 Regulations Applicable to a Healthcare Company p.17

7.2 Primary Securities Market Regulators p.17

7.3 Restrictions on Foreign Investments p.18

7.4 National Security Review/Export Control p.18

7.5 Antitrust Regulations p.19

7.6 Labour Law Regulations p.19

7.7 Currency Control/Central Bank Approval p.20

8. Recent Legal Developments p.20

8.1 Significant Court Decisions or Legal Developments p.20

9. Due Diligence/Data Privacy p.21

9.1 Healthcare Company Due Diligence p.21

9.2 Data Privacy p.22

10. Disclosure p.23

10.1 Making a Bid Public p.23

10.2 Prospectus Requirements p.23

10.3 Producing Financial Statements p.23

10.4 Disclosure of Transaction Documents p.24

11. Duties of Directors p.24

11.1 Principal Directors' Duties p.24

11.2 Special or Ad Hoc Committees p.24

11.3 Board's Role p.25

11.4 Independent Outside Advice p.25

Asia Counsel Vietnam Law Company Limited is a well-established and highly regarded law firm with more than 20 Vietnamese and foreign lawyers. The firm assists multinational corporations, UK, US, European, Japanese, Chinese and other Asia-Pacific law firms, as well as global, regional and local investment funds, venture capital funds, private equity investors and financial institutions. It also serves an array of high-profile Vietnamese corporations with their full business life cycle in Vietnam – from market entry and M&A to daily operations and regional expansion. The firm's partners have extensive

experience in healthcare advisory, serving both sellers and buyers, with clients including CVC Capital Partners, GIC Private Limited, Warburg Pincus, Mekong Capital, and the owners of American International Hospital (AIH), Tam Tri Medical Joint Stock Company, and Singapore Medical Group Limited. Asia Counsel Vietnam's practice areas include the following: M&A and transactional work, banking and finance, capital markets and securities, corporate and commercial, employment, power, renewables and infrastructure, private equity, real estate and construction, and technology.

Authors



Minh Duong is the managing partner of Asia Counsel Vietnam. Minh is admitted as a lawyer in both the New South Wales Supreme Court and the High Court of Australia. He has more than 15 years of legal experience in Vietnam, and specialises in M&A, capital markets, banking and finance and corporate and commercial law. His clients include Sojitz Corporation, VinaCapital, Mekong Capital, American International Hospital (AIH), Tam Tri Medical Joint Stock Company, and Singapore Medical Group Limited and Cerberus Capital. Minh is ranked by Chambers and Partners in its Corporate/M&A rankings for Vietnam.



Phong Nguyen is a partner at Asia Counsel. Phong specialises in M&A, capital markets, banking and finance and corporate and commercial law. He has practised law in Vietnam since 2003 and has extensive experience in advising clients with their investment and acquisition projects in Vietnam. Prior to joining Asia Counsel, Phong was with leading international law firms where he led high-value M&A, project finance and arbitration matters. At Asia Counsel, Phong leverages his multi-disciplinary approach and understanding of both domestic and international practices to provide comprehensive advice. His clients include CVC Capital Partners, GIC Private Limited, Warburg Pincus, Mekong Capital, and the owners of American International Hospital (AIH).



Justin Gisz has more than 25 years of legal experience, 16+ years of which have been spent in Vietnam. At Asia Counsel, Justin practises primarily in M&A, corporate and commercial advisory, and banking and finance, but he also has considerable expertise in renewable energy, projects and infrastructure, capital markets, healthcare, technology, and real

estate. His extensive client list consists of numerous high-profile VC, PE, and institutional funds and managers, multinational and regional corporates, and high-net-worth individuals. Justin is highly ranked as a leading practitioner in Vietnam, by all of the most reputable international law firm guides, including Chambers and Partners, and is one of the Top 100 A-List lawyers in Vietnam.

Asia Counsel Vietnam Law Company Limited

Unit 9.10, Level 9, Deutsches Haus
33 Le Duan Boulevard
Ben Nghe Ward
District 1
Ho Chi Minh City
Vietnam

Tel: +84 28 38 22 77 67
Email: minh@asia-counsel.com
Web: www.asia-counsel.com



1. Market Trends

1.1 Healthcare M&A Market

Vietnam's strong healthcare deal activity in the last 12 months is consistent with strong global healthcare M&A activity. Hospital acquisitions in Vietnam led healthcare M&A activity. In 2023, the most significant M&A transaction was the acquisition of Ho Chi Minh City-based FV Hospital by Singapore's Thomson Medical Group for USD381.4 million. In addition, Raffles Medical Group, a listed Singapore-based healthcare provider, announced its acquisition of a majority stake in the American International Hospital in Ho Chi Minh City, Vietnam, and entry into a management service agreement to manage the 120-bed tertiary hospital.

US private equity firms have also acquired significant assets in Vietnam. Warburg Pincus announced its investment in Ho Chi Minh City-based Xuyen A Hospital, a major private general hospital group in southern Vietnam. KKR acquired a majority stake in Medical Saigon Group from Heliconia Capital, a Singapore based private equity fund. CVC Capital Partners acquired 60% of shares in Phuong Chau Group which operates a hospital chain in the Mekong Delta.

There is also activity in Vietnam's pharmaceutical sector. Dongwha Pharma, a Korean pharmaceuticals company, acquired a 51% stake in Vietnam's Trung Son Pharma. Furthermore, Poland's Adamed Pharma acquired a 100% stake in Dat Vi Phu Pharmaceuticals JSC.

According to the British Chamber of Commerce in the Vietnam Healthcare Report, there are 1,400 hospitals nationwide of which 17% are privately owned. That is significantly low to service a population of about 100 million. Hos-

pitals remain the primary healthcare provider in Vietnam. The per capita healthcare spending in 2017 was USD170 and is estimated to grow to USD400 in 2027. 90% of medical devices in Vietnam are imported. These statistics present a substantial opportunity for investment in the healthcare sector in Vietnam.

1.2 Key Trends

The digital healthcare sector in Vietnam has experienced significant growth, driven by a surge in organisations ranging from ICT services to medical equipment distributors and start-ups, all aimed at improving healthcare services through technological innovations. The Vietnamese market has seen many health-tech start-ups catering to various market segments, including telehealth (such as JioHealth, Med247, and eDoctor), medical insurance compensation support services (such as Insmart and South Asia Services), and online pharmacies (such as Buymed and POC Pharma).

There has also been significant interest in hospital investments in Vietnam from global investment funds. These funds have a longer-term investment horizon where they are working to build a platform of hospital and healthcare facilities. Warburg Pincus, KKR and CVC Capital Partners are recent examples of these strategies.

Recent regulatory developments:

- Law on Medical Examination and Treatment (effective from 1 January 2024):
 - (a) Stricter licensing – medical practitioners now face tougher licensing procedures, including practical skills testing. Licences are valid for five years with renewal requirements.
 - (b) Language requirement for foreign doc-

tors – foreign doctors treating Vietnamese patients long-term must demonstrate Vietnamese language proficiency (exceptions apply).

(c) Digitalisation – electronic prescriptions and medical records are mandated, integrating with a centralised information system for better service monitoring and communication between providers.

(d) IT Systems – healthcare providers must implement information technology systems connected to a central hub for efficient information exchange.

(e) Self-assessment – providers are required to conduct annual self-assessments based on MOH-issued quality standards and upload results to a central information system.

(f) Temporary clinics – private, multi-specialty clinics with temporary observation beds (max 72 hours) are now allowed in economically disadvantaged regions.

(g) Telemedicine – telemedicine services are explicitly permitted for non-critical chronic conditions, enhancing patient access to affordable care.

(h) Public–Private Partnerships – the law promotes investment in medical facilities through public–private partnerships (PPPs). An official circular from the Ministry of Health (MOH) regarding PPPs is expected in 2023.

(c) Drug and ingredient registration.

(d) Product recall procedures.

(e) Manufacturing standards and good practices.

(f) Management of drugs and ingredients.

(g) Export & import regulations.

(h) Drug advertising.

(i) Product testing.

(j) Drug price management.

(k) Increased business opportunities for foreign investors – the proposed amendments aim to attract foreign investment by granting Foreign-Invested Enterprises (FIEs) broader business rights:

- (i) Wholesaling, forwarding, and transportation of FIE-produced pharmaceutical products and ingredients.
- (ii) Business incentives for FIEs engaging in pharmaceutical activities in Vietnam.
- (iii) Advertising of pharmaceutical products following Vietnamese advertising laws.
- (iv) E-commerce and new business models – the draft amendments address regulations for e-commerce of pharmaceutical products, including seller responsibilities. They also aim to address new business models (eg, pharmacy chains) not yet covered by existing legislation.

Draft Amendments to the Law on Pharmacy (2016):

- The MOH is proposing amendments to the Law on Pharmacy, encompassing various aspects of the industry:
 - (a) Pharmaceutical industry development.
 - (b) Pharmaceutical distribution system restructuring.

2. Establishing a New Company

2.1 Establishing a New Company

New foreign invested start-ups in the healthcare sector typically use a Singapore holding company to establish the Vietnam subsidiary to operate the healthcare business in Vietnam. Singapore has promoted itself as the hub for the Southeast Asia operations. That said, holding companies in

Hong Kong, Cyprus, Delaware and Luxembourg also work as the direct parent company of the Vietnam subsidiary.

The incorporation process for a wholly Vietnamese owned company is an easy process with little regulatory hurdles and requires five to ten days. However, incorporating a foreign invested enterprise will require the foreign investor obtaining an investment registration certificate (IRC) which approves the investment project of the foreign investor in Vietnam. The foreign investor must file a range of documents to the local department of planning and investment (DPI) showing corporate authority and financial capability to implement the project which will include a project business plan. Once the IRC is issued, an application is then made by the foreign investor to the DPI to obtain an enterprise registration certificate (ERC) which incorporates the foreign invested entity in Vietnam. Generally obtaining the IRC and ERC should take 6–8 weeks. However, given business in the healthcare sector for a foreign investor has regulatory hurdles, the DPI may consult with the Ministry of Health when assessing the application for IRC which may push the timing to 3–6 months.

100% foreign ownership is permitted in the healthcare sector. However, there are minimum investment capital requirements. A foreign invested hospital requires a minimum investment capital of USD20 million. A foreign invested polyclinic requires a minimum investment capital of USD2 million. A foreign invested speciality health facility requires a minimum investment capital of USD200,000.

2.2 Type of Entity

A foreign-invested enterprise may use the following corporate forms:

- a single member limited liability company (SMLLC);
- a multiple member limited liability company (MMLC); or
- a joint stock company (JSC).

A SMLLC and MMLC do not issue shares and ownership in the entity is represented by the actual amount of capital contributed. A JSC can issue ordinary and other classes of shares and can potentially list on a Vietnam stock exchange. Entrepreneurs that want to provide an ESOP program for its employees and consultants would normally incorporate a JSC.

2.3 Early-Stage Financing

A start-up often raises seed investment through a variety of sources.

- Angel rounds – local investors often include angel investors or family offices. These investors normally deploy capital by subscribing to ordinary shares or providing a convertible loan.
- Foreign investors – foreign investors often contribute not only capital but also bring valuable expertise, international networks, and market access, which are crucial for start-ups looking to expand globally. The foreign investors come from angel funds or social impact funds that typically fund early stage investments. Foreign investors often require the start-up to establish an offshore holding company which will hold the Vietnam equity interests to the extent that Vietnam's regulatory rules allow. The foreign investor will then invest in the holding company through a SAFE or preference shares. Where the foreign investor invests directly into a Vietnamese entity then this is done by way of a convertible loan or straight equity either as ordinary shares or preference shares.

In early-stage financing the documentation is often less rigorous given the stage and size of the investment. The authors typically see the financing structured as a convertible loan agreement, share subscription agreement or a SAFE. The shareholder and governance arrangements are set out in the shareholders agreement and this will cover matters such as liquidation preference, next round financing and reserve matters.

2.4 Venture Capital

There is limited access to capital from local venture capital and government-sponsored funds. This is because establishing a local fund structure requires regulatory approval. The authors see venture capital from local investors being provided through an offshore fund structure rather than onshore.

Foreign venture capital firms are active in the Vietnam market and global venture capital firms have made investments in Vietnam such as Sequoia Capital, Jungle Ventures, IDG Ventures, Y Combinator and SoftBank Vision Fund.

2.5 Venture Capital Documentation

There are no standard venture capital documentation and standards in Vietnam. However, the Singapore Venture Capital and Private Capital Association together with the Singapore Academy of Law have developed Venture Capital Investment Model Agreements that include model term sheets, subscription agreement, convertible notes and shareholders agreement. These have been adopted in some transactions as a starting point for use in Vietnam.

2.6 Change of Corporate Form or Migration

Most start-ups in Vietnam will be established in the form of a joint stock company and, therefore, there is no need to migrate their corporate

forms. However, the authors do see that in VC financing, the VC investor may request that the Vietnam entity and shareholders undertake a redomiciliation to move the shareholding structure to a Singapore holding company with the Vietnam entity being a subsidiary of the Singapore holding company.

3. Initial Public Offering (IPO) as a Liquidity Event

3.1 IPO v Sale

Investors would tend to run a sale process rather than undertake an IPO. This is because there has only been a small number of successful IPOs of start-up businesses with the key one being MobileWorld Group's listing on the Ho Chi Minh City Stock Exchange in July 2014.

Although a listing on the local stock exchange is not normally a rigorous exercise and lawyers are not typically involved in the listing process, the local stock exchange is less liquid and Vietnam's stock exchange is still classified as a frontier market. There are plans to elevate the stock market to an emerging market status in 2025 which would allow Vietnam to access greater global capital.

An IPO and listing of a Vietnamese company in an offshore securities exchange is challenging. There are Vietnam FDI and foreign ownership regulatory issues. Further, the strict corporate governance, accounting and reporting rules may mean that many Vietnamese companies may automatically not qualify. In addition, for a Vietnamese company to list offshore, that requires approval from the State Securities Commission of Vietnam and there is also a requirement for the Vietnam stock exchange and the offshore stock

exchange to have entered into a co-operation agreement.

On that basis a trade sale is a more likely liquidity event for investors in a start-up. The start-up can engage an advisor for the sale process that can involve a competitive bidding process.

3.2 Choice of Listing

Vietnamese companies may find it more straightforward to list on the home country's stock exchanges like HOSE or HNX due to familiarity with local regulations and reporting standards, and this is a more common practice for Vietnamese companies. In comparison, listing on a foreign exchange or dual listing can provide access to the greater capital market, as discussed, but can be more challenging.

For a Vietnamese company that is already listed on a Vietnam stock exchange to list its shares overseas, it must seek an approval from the State Securities Commission of Vietnam (SSC). Vietnamese companies typically require two to three years to prepare for an overseas listing. This is primarily due to differences between international and Vietnamese accounting standards, as well as the high standards demanded for corporate governance.

In the case of dual listing, Vietnamese companies are required to meet certain obligations pertaining to both Vietnam and the country where their shares are listed. These obligations include, among others, complying with Vietnamese foreign exchange controls and disclosure requirements stipulated by both Vietnamese stock exchange and foreign stock exchange, as well as Vietnamese laws on foreign ownership room for listed companies.

There has been no Vietnamese company that has achieved any dual listing or a listing of a Vietnamese company's shares on an offshore stock exchange. VinFast is the first Vietnamese operated entity to have its offshore parent listed on a foreign stock exchange. However, while VinFast originated from Vietnam, it used a Singaporean entity to list on NASDAQ.

3.3 Impact of the Choice of Listing on Future M&A Transactions

The authors have discussed the difficulty in listing a Vietnamese company in an offshore jurisdiction. If the company does succeed with an offshore listing, then there will be issues with any squeeze-out from a Vietnamese law perspective. This is because Vietnam's securities law does not provide for any squeeze-out provisions for minority shareholders. Any acquisition of minority shares will need to be done by consent of the minority shareholder.

4. Sale as a Liquidity Event

4.1 Liquidity Event: Sale Process

A competitive auction or bidding process is typically chosen.

4.2 Liquidity Event: Transaction Structure

The typical transaction structure is for a sale of a controlling interest with the founder or sponsor retaining 20% of the shareholding which would be subject to an earn-out in three to five years following completion.

4.3 Liquidity Event: Form of Consideration

The consideration is typically on a cash basis.

4.4 Liquidity Event: Certain Transaction Terms

Founders are expected to stand behind customary representations and warranties though there are typical limitations of liability on the founders that relate to caps on liabilities (eg, 20–100% of purchase price depending on whether the warranty is fundamental or relates to tax or a general warranty), warranty claim period, double counting or double recovery, consequential loss and other customary limitations.

VC investors, unless they have a reasonable degree of management oversight, do not typically stand behind company warranties other than warranties relating to their ownership of the shares and warranties relating to power and authority and solvency of the VC investors.

A deposit or escrow arrangement are normally negotiated and agreed in healthcare transactions where the regulatory approval process and time-frame to satisfy the conditions precedent would be a lengthy one. The authors would typically see a deposit of 10–15% being paid after the signing of the transaction documents. A retention sum would normally be negotiated if there is a high likelihood that the completion and closing balance sheets would result in an adjustment to the purchase price in favour of the purchaser or if there is a concern about the future tax liability of the company following completion. The retention sum is typically around 5–10% of the purchase price.

Representation and Warranty Insurance are not commonly used in transactions, though the authors have seen an increasing number of PE firms using this insurance product for Vietnam M&A transactions.

5. Spin-Offs

5.1 Trends: Spin-Offs

Spin-offs or “company separation”, the better Vietnamese terminology, are not customary in Vietnam. This is because new healthcare licences and land title will need to be issued to the new entity following the spin-off which will be a lengthy process in Vietnam of 1–2 years. However, as a majority foreign owned company is not able to distribute pharmaceuticals on a retail/wholesale basis, the drug dispensing arm of a hospital or healthcare facility is normally carved out and restructured.

5.2 Tax Consequences

A company separation is a form of company reorganisation and generally does not give rise to any capital gains tax.

5.3 Spin-Off Followed by a Business Combination

A spin-off immediately followed by a business combination is possible in Vietnam.

The business combination would require a range of regulatory approvals. The local DPI will need to approve the business combination. The Ministry of Health will generally need to provide an opinion on the business combination. Further, the licence of any additional healthcare facilities will need to be obtained from the local department of health. Depending on the size of the transaction an economic concentration notification may need to be filed with the Vietnam Competition Commission (VCC).

5.4 Timing and Tax Authority Ruling

The timing for a spin-off is typically around two to three months. No tax ruling is required to be obtained.

6. Acquisitions of Public (Exchange-Listed) Healthcare Companies

6.1 Stakebuilding

There are no restrictions on acquiring shares before making a public tender offer in Vietnam. Investors may buy minority stakes as a “testing the waters” step.

Acquiring 5% or more of a company’s voting shares triggers disclosure obligations. The investor must report to the target company, SSC, and stock exchange within five business days. Similar reporting applies when selling shares that reduces ownership below 5% or by more than 1% (combined with affiliates).

While Vietnamese regulations do not explicitly require stating the acquisition’s purpose or future plans, the tender offer application to the SSC must include details such as funding source, acquisition rationale, and post-acquisition business plans. This indirectly addresses the purpose and plans.

Vietnam has no “put up or shut up” rule. The buyer does not need to make a formal offer or declare future intentions within a specific time-frame.

6.2 Mandatory Offer

Vietnam has a mandatory offer threshold for public company acquisitions. An investor and their affiliated entities must make a public tender offer if their combined ownership reaches certain thresholds of the target company’s voting shares:

- 25% or more – this is the initial mandatory offer threshold.

- Subsequent thresholds – additional mandatory offers are triggered if the investor’s ownership (combined with affiliates) reaches or exceeds each of these subsequent thresholds:
 - (a) 35%;
 - (b) 45%;
 - (c) 55%;
 - (d) 65%; and
 - (e) 75%,

of the total voting shares.

The mandatory tender offer may be exempted if the acquisition is approved by the General Meeting of Shareholders of the target company.

6.3 Transaction Structures

In Vietnam, acquisitions of public companies are typically in form of share acquisition.

Asset acquisition is not common due to limitations. Certain assets, like land-use rights, might not be freely transferable or require specific approvals. Foreign investors may need to establish a new Vietnamese company to acquire the target’s assets.

Mergers are not as frequently used for public company acquisitions in Vietnam compared to share acquisitions, because:

- Complexity – mergers involve legal and administrative procedures that can be more complex than share acquisitions.
- Shareholder approval – both companies’ shareholders need to approve the merger, potentially creating additional hurdles compared to acquiring shares directly from existing shareholders.
- Minority shareholder protection – mergers in Vietnam might require special procedures to

protect the rights of minority shareholders, adding another layer of complexity.

So, while mergers are technically possible, the relative ease and efficiency of share acquisitions generally make them the preferred option for public company takeovers in Vietnam.

6.4 Consideration; Minimum Price

Public company acquisitions in Vietnam's healthcare industry can be financed with either cash or shares. Cash remains the preferred method due to its simplicity and clarity for sellers. Stock-for-stock deals are less frequent, especially considering potential stock price volatility.

Vietnam implements a minimum price requirement specifically for cash tender offers. The offer price must not be lower than:

- the average reference price of the target company's shares over the 60 trading days preceding the tender offer filing; and
- the highest purchase price offered in a tender offer during this timeframe.

The investor cannot decrease the offer price during the tender offer period. However, increasing the offer price is allowed. Any price increase must be:

- published at least seven days before the last day of the offer period; and
- extended to all other shareholders participating in the tender offer.

Contingent value rights (CVRs) are not yet a common tool in Vietnamese M&A. However, alternative mechanisms like earn-outs may be considered to bridge valuation gaps, especially in deals with high growth potential or significant regulatory uncertainties.

6.5 Common Conditions for a Takeover Offer/Tender Offer

While takeover offers in Vietnam tend to be less conditional compared to some other jurisdictions, there are specific requirements that a tender offer must satisfy:

- Financial capability – the offer must demonstrate the investor's financial capability to complete the acquisition. This can be achieved through:
 - (a) Payment guarantee – a credit institution guarantee for the offer amount.
 - (b) Escrowed funds – depositing a sufficient amount of funds in escrow to cover the offer.
- Public offering agent – the offer must be conducted through a licensed securities company acting as the public offering agent.
- Competition law considerations – depending on the specific transaction and its impact on market competition, a competition law filing might be required.

Beyond the specific conditions, the overall emphasis in Vietnam's takeover offer process is on:

- Fairness to shareholders – the offer price and terms should be fair and reasonable for all shareholders of the target company.
- Information disclosure – offer documents must provide clear and comprehensive information to allow shareholders to make informed decisions.
- Shareholder autonomy – shareholders have the right to decide whether to accept or reject the offer.

6.6 Deal Documentation

The Vietnamese takeover process emphasises transparency and shareholder decision-making,

with less focus on pre-offer agreements and extensive representations and warranties from the target company.

Transaction Agreements in Vietnamese Takeovers

Unlike some other jurisdictions, Vietnam's takeover framework does not typically involve formal transaction agreements between the bidder and target company before a public tender offer.

The primary legal document governing the acquisition is the tender offer document itself. This document outlines the offer terms, conditions, and procedures for shareholder participation.

Target Company Involvement

While a formal agreement is not customary, the target company might be of assistance in the following aspects during the tender process:

- Co-operation – providing necessary information and facilitating due diligence within reasonable limits.
- Neutrality – maintaining neutrality during the offer period, avoiding actions that could unfairly influence shareholders' decisions.
- Disclosure – complying with ongoing disclosure obligations related to the offer and any material developments.

Board Recommendation

The target company's board typically issues a recommendation to shareholders regarding the offer. However, this recommendation is not a formal agreement binding the company.

Representations and Warranties

Public companies in Vietnam are less likely to provide extensive representations and warranties compared to some other legal systems.

The board of directors of the target company must act in the best interests of the company and its shareholders. Providing extensive warranties could potentially conflict with this fiduciary duty.

6.7 Minimum Acceptance Conditions

The tender offer can include a minimum threshold of shares the investor seeks to acquire. This threshold is determined by the investor's specific objectives, such as:

- Veto power – to gain veto rights over certain critical company decisions, the investor may aim for a minimum ownership stake. This minimum should be checked against the target company's voting requirements outlined in its governing documents. Typically, vetoing major decisions (like share classes, large transactions, restructuring, or dissolution) requires at least 36% ownership of voting shares (because the standard voting threshold for passing a shareholders' resolution on those matters is 65%).
- Passing resolutions – to have the power to pass specific resolutions at shareholder meetings, the investor will target a minimum ownership stake exceeding 50% of voting shares. This ensures control over decisions impacting general shareholders' matters.

6.8 Squeeze-Out Mechanisms

Vietnam's Law on Securities does not include a "squeeze-out" provision forcing remaining shareholders to sell after a tender offer. However, there's a mandatory buyback requirement if the investor successfully acquires more than 80% of the target company's shares through the tender offer. In this scenario, the investor must offer to purchase any remaining shares from willing sellers at the same price terms as the original ten-

der offer. This allows remaining shareholders a chance to exit but does not compel them to sell.

6.9 Requirement to Have Certain Funds/Financing to Launch a Takeover Offer

To launch a public tender offer in Vietnam, investors must prove they have sufficient funds. This is achieved by securing one of the following:

- Payment guarantee – a credit institution or escrowed guarantee for the offer amount.
- Escrowed funds – depositing a sufficient amount of the funds in escrow to cover the offer.

The investor must submit this financial evidence (payment guarantee or escrow certificate) to the SSC before the SSC confirms receipt of a complete tender offer dossier.

6.10 Types of Deal Protection Measures

In Vietnam, the legal framework for public tender offers is still developing, and deal protection measures commonly used in other jurisdictions are not as prevalent.

Limited deal protection measures – target companies in Vietnam have limited options compared to some other countries. Break-up fees, matching rights, and force-the-vote provisions in mergers are not typically used.

Non-solicitation provisions – there is some possibility of using non-solicitation provisions in confidentiality agreements during the initial stages of exploring a potential deal. These provisions might restrict the target company from soliciting or negotiating with other potential bidders for a set period. However, the enforceability of such provisions in court can be uncertain.

6.11 Additional Governance Rights

While failing to acquire 100% ownership of a target company limits control, Vietnamese law still offers some rights to significant minority shareholders (holding 10% or more of voting shares, or a lower threshold specified in the company's charter):

Board representation – these shareholders have the right to nominate individuals for the Board of Directors and Inspection Committee.

Voting rights – shareholder resolutions at general meetings can be passed with specific majority votes depending on the matter at hand:

- Normal matters – more than 50% of shareholder votes are required for approval.
- Special matters – a higher threshold of at least 65% shareholder votes is needed for approval on matters like business line changes, share classes, or organisational restructuring. The company's charter might even stipulate even higher thresholds for specific matters.

6.12 Irrevocable Commitments

Negotiating irrevocable commitments is uncommon in Vietnam, but not entirely absent. The enforceability of such agreements might be uncertain. In particular:

Limited use – Vietnamese regulations do not explicitly require or prohibit these commitments. However, they are not widely used due to a few factors:

- No disclosure requirement – Vietnamese regulations do not mandate the disclosure of such pre-bid agreements. This makes them less prevalent as there's no public record or pressure to utilise them.

- Enforcement – the legal enforceability of such pre-bid commitments in Vietnam has not been thoroughly tested.

Nature of undertakings (if used) – if such commitments are used, they would likely be structured as civil agreements between the bidder and the principal shareholders. These agreements might include:

- Promise to tender – the shareholder commits to tendering their shares at the offer price.
- Voting support – the shareholder agrees to vote in favour of the transaction at shareholder meetings.

“Out” Clauses – given the potential for competing bids, it is likely that any irrevocable commitment would include an “out” clause allowing the shareholder to exit the agreement if a superior offer emerges.

6.13 Securities Regulator's or Stock Exchange Process

Launching a public tender offer in Vietnam involves a multi-step process with specific deadlines for both the investor and the target company:

- Investor pre-filing – the investor must obtain confirmation from the SSC before officially launching the tender offer.
- Target company reporting – upon receiving the tender offer documentation, the target company has three working days to report its receipt to the stock exchange where its shares are listed.
- SSC review – the SSC has 15 working days to review the offer documents and issue a written confirmation of receipt.
- Public announcement – once the investor receives confirmation from the SSC

(within seven working days), it must publicly announce the tender offer.

- Minimum waiting period – the tender offer can only commence at least three days after the public announcement.
- Competing offers – if a competing offer emerges during the tender period, shareholders can withdraw their initial offer to sell to the first investor. This can impact the original tender offer's timeline.

6.14 Timing of the Takeover Offer

Minimum and maximum duration – public tender offers in Vietnam must last for a minimum of 30 trading days and cannot exceed 60 trading days.

Extensions – generally, extensions are not granted unless the investor is already obligated to continue the offer due to exceeding a specific ownership threshold. See below.

Mandatory extension at 80% ownership – if the investor acquires 80% or more of the target company's voting shares during the initial tender period, they are required by law to extend the offer and continue purchasing any remaining shares from willing sellers at the original offer price for an additional 30 days.

Antitrust approval – if the tender offer raises potential competition concerns, the investor needs clearance from VCC before submitting the application to the SSC. Obtaining competition clearance can take up to several months, potentially delaying the overall tender offer process.

7. Overview of Regulatory Requirements

7.1 Regulations Applicable to a Healthcare Company

Each sector of healthcare in Vietnam has distinct regulations. Understanding these is crucial for successful entry into the market. Among those sectors, attractive ones for foreign investors include: (i) healthcare services (hospitals, clinics and diagnostics); (ii) medical equipment; and (iii) pharmaceuticals.

Regulatory Landscape

The Ministry of Health (MOH) sets national healthcare policies and oversees technical guidelines. Local authorities manage health activities within their provinces. Key regulatory bodies include:

- Department of Medical Equipment and Construction (DMEC) under the MOH and provincial Departments of Health (DOH) – regulating medical equipment.
- Drug Administration of Vietnam (DAV) – overseeing pharmaceuticals and cosmetics.

Regulations by Sector

1. Healthcare Services:

- Law on Medical Examination and Treatment is the primary legislation.
- Institutional healthcare providers (hospitals and clinics) need an Operational Licence based on their size and services offered.
- Healthcare professionals (HCPs) require a Practising Licence specific to their expertise (doctors, nurses, etc).
- Both licences are issued by the MOH or provincial DOH.

2. Medical equipment:

- Classification – equipment is categorised by risk level (A–D) following the ASEAN Medical Device Directive (AMDD).
- Manufacturing – requires ISO 13485 compliance and a pre-manufacturing declaration.
- Circulation – companies need a circulation number to sell equipment. This can be:
 - (a) Declaration number (Class A & B) – confirmation of compliance with standards.
 - (b) Circulation registration certificate (Class C & D) – required for higher-risk equipment.
- Distribution – distributors need a declaration of eligibility before starting operations. Exemptions apply for Class B, C, and D equipment listed as regular goods by the MOH.
- Import – equipment with a circulation number can be imported freely. An import licence is needed only for items without a circulation number (eg, research purposes).

3. Pharmaceuticals:

- Law on Pharmacy classifies pharmaceuticals as drugs and medicinal ingredients.
- Foreign investors cannot distribute drugs in Vietnam.
- Companies require a Pharmaceutical Licence to operate in pharmaceuticals. The MOH or provincial DOH issues the licence.
- Specific job positions in pharmaceuticals require a pharmaceutical practising certificate issued by the DAV.

7.2 Primary Securities Market Regulators

The SSC is the primary regulator for mergers and acquisitions (M&A) involving listed companies in Vietnam. Operating under the Ministry of Finance (MOF), the SSC plays a crucial role in:

- Advising and assisting the MOF on state management of securities and stock markets.
- Directly managing and supervising activities related to the securities and stock markets.
- Overseeing service activities related to securities and stock markets, ensuring compliance with relevant legal regulations.

7.3 Restrictions on Foreign Investments

Vietnam's healthcare industry welcomes foreign investment, governed by national investment laws and international treaties like WTO agreements and Free Trade Agreements (FTAs) with various partners. The specific conditions for foreign investors depend on the treaty they rely on.

Open Sectors

Healthcare and medical equipment – foreign investors generally face no limitations in establishing wholly foreign-owned companies, joint ventures, or business co-operation contracts for hospitals, medical and dental services, and medical equipment businesses.

Restricted Sector

Pharmaceuticals – foreign investors are currently prohibited from distributing pharmaceuticals in Vietnam. However, they can invest in pharmaceutical manufacturing and other aspects of the industry.

Navigating Investment Treaties

A country can belong to multiple international agreements with similar coverage. Therefore, foreign investors should choose the FTA that offers the most favourable conditions for their specific investment in Vietnam.

Capital Requirements and Treaty Benefits

Vietnam's WTO commitments set minimum investment capital requirements for foreign hos-

pitals, clinics, and specialty establishments. See **2.1 Establishing a New Company**.

However, some FTAs, like the EU–Vietnam Free Trade Agreement (EVFTA), eliminate these capital requirements for member states, providing them with a competitive advantage.

Licences and Procedures

See **2.1 Establishing a New Company**.

7.4 National Security Review/Export Control

National Security Reviews

No Dedicated Process – Vietnam does not have a formal, centralised national security review process for all mergers and acquisitions. However, national defence and security considerations are still relevant in specific circumstances, particularly when:

- Land Use Rights – acquisitions involving target companies with land use rights in areas designated as crucial for national defence and security require approval from the provincial DPI with consultation from the national defence agencies.
- Sensitive Sectors – although not explicitly defined, acquisitions in certain sensitive sectors like telecommunications or defence might trigger additional scrutiny on a case-by-case basis.

Investor Restrictions Based on Nationality

Vietnam promotes foreign investment and generally does not have blanket restrictions based solely on investor nationality.

Foreign investors can leverage Free Trade Agreements (FTAs) with Vietnam for potentially more favourable conditions compared to WTO terms.

Export Control Regulations

Vietnam has export control regulations, which aim to control the export of goods, technologies, and services that could have potential military or security applications.

The Ministry of Industry and Trade (MOIT) is the primary authority responsible for export controls. Exporters are responsible for classifying their goods and obtaining any necessary licences before export.

The specific list of controlled goods is subject to change but can include items like weapons, ammunition, encryption software, and certain chemicals.

7.5 Antitrust Regulations

Vietnam's Merger Control Process

Vietnam's MOIT oversees merger control through VCC. A filing with the VCC is mandatory if a transaction involves a significant concentration of economic power in Vietnam, regardless of whether it is domestic or cross-border.

Economic concentration may be in form of (i) mergers; (ii) consolidations; (iii) acquisitions of shares or assets; and (iv) joint ventures.

When Is a Filing Required?

Filing is triggered if the transaction meets one of the following thresholds, with different thresholds applying to banking, insurance, and securities sectors:

- Total turnover in Vietnam – one party has a turnover of VND3 trillion (approximately USD125 million) or more.
- Total assets in Vietnam – one party has total assets of VND3 trillion (approximately USD125 million) or more.

- Transaction value (onshore only) – the transaction value is VND1 trillion (approximately USD40 million) or more.
- Combined market share – the combined market share of the parties in any relevant Vietnamese market is 20% or more.

Filing Process

The VCC conducts a two-step assessment:

- Preliminary assessment (3–4 months) – reviews transaction documents to identify potential competition concerns.
- Official assessment (up to 6 months) – in-depth investigation of the transaction's impact on competition.
- Silent approval – if the VCC does not issue a preliminary conclusion within 30 days of the initial filing, the transaction can proceed.

7.6 Labour Law Regulations

Employee Rights and Liabilities

Acquirers in Vietnamese M&A transactions should be aware of key labour law regulations concerning:

- Existing labour contracts of the target company (terms, conditions and compliance).
- Potential labour-related liabilities (unpaid wages, severance payments and social insurance contributions).
- Requirements for lawful termination of employment contracts (if workforce restructuring is involved).

Work Councils and Consultation

Vietnam does not mandate works councils. However, existing trade unions in the target company can play a role in employee representation and consultation during M&A, though their influence is limited.

Consulting with employee representatives or the trade union during the M&A process, especially if it involves workforce changes, is recommended for transparency and mitigating potential disputes.

Trade union opinions are not legally binding on the board of directors, who have ultimate decision-making authority.

Employee Transfer

The approach to employee transfers depends on the M&A transaction structure.

Asset transfer transactions

Employee transfers do not automatically occur with the asset transfer. Specific procedures will apply:

- Labour Use Plan (LUP) – the target company must develop an LUP outlining how employees will be employed post-transfer (who gets transferred, who gets terminated, and financial provisions). This is a lengthy process involving trade union consultation.
- Mutual Agreements – in practice, employee transfers often occur through mutual agreements:
 - (a) Employees, the target company, and the acquirer reach agreements.
 - (b) Target company terminates existing contracts and pays out entitlements.
 - (c) Acquirer enters new employment contracts with transferred employees.

This approach aims for a smoother transition and clearer expectations.

Share transfer transactions – employees generally continue their employment with the target company unchanged.

7.7 Currency Control/Central Bank Approval

Vietnam does have currency control regulations, but they generally do not require central bank approval for the entire M&A transaction itself.

Currency Control Regulations

Vietnam maintains some restrictions on foreign exchange transactions. These are overseen by the State Bank of Vietnam (SBV).

Foreign investors involved in M&A deals need to ensure they comply with these regulations when dealing with foreign currency. This will include using authorised channels for foreign currency exchange (including using the right specialised bank account for the payment of purchase price).

Central Bank Approval (Limited Cases)

In most M&A transactions, central bank approval for the overall deal is not required. However, there might be specific situations where SBV approval is necessary, such as acquisition of a bank or financial institution: The SBV regulates the banking and financial sector, and acquiring such an entity might require their approval.

8. Recent Legal Developments

8.1 Significant Court Decisions or Legal Developments

There have not been any major court decisions reported publicly in the past three years that specifically deal with healthcare M&A transactions in Vietnam. Legal developments in this area tend to be through legislative changes or policy pronouncements, rather than court rulings.

Vietnam Streamlines Foreign Investment in Healthcare M&A

The revised Law on Investment, effective January 2021, simplifies foreign investment in Vietnamese M&A transactions, particularly within the healthcare sector. Here is how.

Shift from conditional access

Previously, foreign investors faced specific conditions for entering conditionally open business lines in healthcare. These conditions were defined in a complex web of laws, decrees, and treaties.

Clearer path forward

The revised law introduces a streamlined approach. It establishes a definitive list of restricted sectors, while all others allow foreign investors on equal footing with domestic players. This transparency and consistency make the investment process more efficient and predictable.

Healthcare sector benefits

Emerging fields like digital healthcare and telehealth, previously not explicitly open to foreign investment, can now potentially attract international capital. This is also a trend reiterated in the new Law on Medical Examination and Treatment 2023. This paves the way for:

- Increased foreign investment – more foreign investment in innovative healthcare services.
- Industry growth – greater contribution to Vietnam's healthcare industry development and diversification.

Overall, the revised Law on Investment offers a more welcoming environment for foreign investors in the Vietnamese healthcare M&A landscape, potentially accelerating innovation and growth in the sector.

9. Due Diligence/Data Privacy

9.1 Healthcare Company Due Diligence Board's Authority and Insider Trading

The board of directors of the target public company ultimately decides:

- Timing of Information Disclosure – when to share information with potential bidders during due diligence.
- Extent of Information Disclosure – the level of detail and type of information provided.

Balancing Transparency and Confidentiality

The board must balance transparency for bidders with the need to protect confidential information. This might involve:

- Non-disclosure agreements (NDAs) – entering into NDAs with bidders to ensure confidentiality.
- Data room access – establishing a secure data room for controlled access to confidential information.
- Redacted documents – redacting sensitive information from shared documents.

Board Fiduciary Duty and Insider Trading Rules

Board members have a fiduciary duty to act in the best interests of the company and its shareholders. This includes:

- Allowing a reasonable level of healthcare due diligence by bidders.
- Complying with insider trading regulations that prohibit using insider knowledge for personal gain or manipulating the stock price.

Fairness and Transparency for Bidders

Public companies have a legal obligation to treat all bidders fairly and transparently throughout the M&A process. This includes:

- Providing the same level of publicly available information to all bidders.
- Establishing a clear and objective process for sharing confidential information, ensuring all qualified bidders have equal access.
- Disclosing information to bidders in a timely manner to allow for proper evaluation of the offer.

Level of Healthcare Due Diligence

The board's decision on the acceptable level of healthcare due diligence should consider:

- Nature of the transaction – the type of healthcare services or products involved.
- Company operations – the specific areas of the company's healthcare business.

The scope of due diligence might encompass:

- Compliance with healthcare regulations – reviewing relevant licensing, accreditation, and regulatory requirements.
- Financial performance of healthcare services – evaluating the financial performance of specific healthcare service lines or products.
- Intellectual property (IP) related to healthcare – assessing the company's IP portfolio related to healthcare innovations or technologies.
- Quality of care and patient safety practices – in some cases, depending on the specific healthcare services involved, the board might allow some level of due diligence into the company's quality of care and patient safety practices.

Public Offer Requirements and Information Disclosure

When making a public offer to acquire a public company, Vietnamese regulations require:

- Treating all shareholders equally.
- Providing sufficient information to all parties involved for them to properly evaluate the offer.

Therefore, the board will generally provide the same information to all qualified bidders to comply with these regulations and ensure a fair bidding process.

9.2 Data Privacy

Data Protection Regulations

Vietnam's regulations on personal data protection (in Decree 13/2023 and the Law on Medication Examination and Treatment 2023) govern data privacy and applies to the due diligence process in healthcare M&A transactions. Those regulations protect personal data, including sensitive information like patient health data.

Challenges for Due Diligence

The data privacy regulations generally require consent from the data subject (patient) before disclosing their personal data. Obtaining individual patient consent for all data involved in due diligence can be impractical.

Alternative approaches for data sharing:

- Data anonymisation – providing anonymised data that does not directly identify patients can still offer valuable insights.
- Pseudonymisation – replacing data with pseudonyms that cannot be easily traced back to individuals offers another option.
- Data sharing agreements – structured agreements outlining the specific data shared, pur-

pose, security measures, and data destruction after due diligence can be established.

Cross-Border Data Transfer Considerations

If the acquirer is a foreign entity, transferring Vietnamese citizen data requires additional steps:

- Impact assessment – the target company must prepare an assessment detailing the reasons, purposes, and data subject consents for the transfer.
- Data transfer agreement – a written agreement with the foreign recipient outlining data security practices must be established.
- Dossier and reporting – the target company must maintain records of the assessment and send a copy to the Ministry of Public Security within 60 days of data processing.

Current Gap for Non-Vietnamese Citizens' Data

There are currently no specific requirements for cross-border transfers of personal data for non-Vietnamese citizens residing in Vietnam. However, this is an evolving area, and regulations might change in the future.

10. Disclosure

10.1 Making a Bid Public

See 6.2 Mandatory Offer and 6.13 Securities Regulator's or Stock Exchange Process.

10.2 Prospectus Requirements

With respect to a stock-for-stock public tender offer, the offering party must submit a prospectus to the SSC, which needs to detail two key aspects:

- Ownership breakdown – the volume of shares, convertible bonds, warrants, and

options to purchase the target company that the offering party and its affiliates hold directly or indirectly through third parties.

- Transaction history – details of past or ongoing transactions and undertakings related to the target company's shares.

Listing requirement for foreign acquirers – for foreign offering parties involved in a stock-for-stock public tender offer with a Vietnamese target company, an additional step is required. Upon completion of the offer, the foreign acquirer's shares must be listed or registered for trading on a Vietnamese securities trading system.

10.3 Producing Financial Statements

The requirement for including financial statements in a public tender offer application depends on the type of offer:

Cash-Based Public Tender Offer

While not always mandatory, the SSC might request the foreign offering party's financial statements during their review of the tender offer application. This helps them assess the financial capacity of the acquirer to complete the cash purchase.

Stock-for-Stock Public Tender Offer

Since stock-for-stock tender offer are considered public offers in Vietnam, the foreign offering party must register the offer and provide financial statements.

Financial statement requirements:

- Annual statements – the offering party must submit their most recent annual financial statements, audited by an authorised auditing firm in their home country.
- Quarterly statements – the most recent quarterly financial statements are also required.

- Accounting standards – these financial statements do not need to comply with Vietnamese Accounting Standards (VAS). They can be prepared according to internationally recognised standards.

10.4 Disclosure of Transaction Documents

While the SSC does not require submitting the entire transaction agreement for a public tender offer, the application itself needs to disclose specific key terms and conditions, including:

- Transaction price – the specific price being offered for the target company's shares or assets.
- Transaction purpose – a clear explanation of the rationale behind the tender offer.
- Payment method – whether the offer is for cash or involves an exchange of shares (stock-for-stock).
- Target company's future plans – the intended business direction for the target company after the offer is completed.

By disclosing these essential details in the tender offer application, the SSC and target company shareholders have a clear understanding of the offer's terms.

11. Duties of Directors

11.1 Principal Directors' Duties

The Law on Enterprises outlines the core fiduciary duties of directors in Vietnam. These duties emphasise acting in the best interests of the company and its shareholders. In a business combination, this may translate to directors making decisions that maximise shareholder value, ensure the long-term sustainability of the

company, and comply with all applicable laws and regulations.

Directors have a duty to provide full and fair disclosure of all material information concerning the business combination to the company's shareholders. This information should allow shareholders to make informed decisions regarding the proposed transaction.

Directors must avoid conflicts of interest. They should not engage in any personal activities that could potentially harm the company or its shareholders. This is particularly important during business combinations where directors might have personal incentives that could influence their decisions.

11.2 Special or Ad Hoc Committees

It is not as common in Vietnam for boards of directors to establish special or ad hoc committees for business combinations. However, their use may be useful in larger or complex transactions. Here's a breakdown of the reasons for and against using special committees, as well as the role of conflicts of interest.

Reasons for Using Special Committees

- Enhanced expertise – special committees can be composed of independent directors with specific expertise in M&A transactions. This can provide valuable knowledge and guidance during the negotiation and decision-making process.
- Conflict of interest mitigation – if a significant number of directors have a potential conflict of interest related to the business combination, a special committee composed of independent directors can help ensure a more objective and fair evaluation of the transaction.

- Improved negotiation leverage – a dedicated committee with authority to negotiate can potentially streamline the process and improve the company's bargaining position.

Reasons Why Special Committees Might Not Be Used As Often

- Smaller transactions – many business combinations in Vietnam might be smaller in scale, where the cost and complexity of establishing a special committee might not be justified.
- Board composition – if the board already has a strong representation of independent directors with relevant experience, forming a separate committee might be less necessary.
- Regulatory requirements – Vietnamese regulations do not explicitly mandate the use of special committees for business combinations.

11.3 Board's Role

Once the board receives a tender offer application from the bidder(s), Vietnamese regulations require them to disclose this information to the company's shareholders within ten days. This disclosure should be accompanied by a written assessment and recommendation from the board itself.

The board's assessment and recommendation typically focus on two key aspects:

- Fairness – whether the offer provides a fair value to the company's shareholders compared to the current market price and other relevant factors.
- Shareholder's impact – the potential impact of the tender offer on the company's future prospects, employees, and other stakeholders.

In situations where the tender offer is considered "friendly" (meaning it is supported by the board), the offering entity or individual will typically engage in direct negotiations with the board. This allows for a more collaborative process and can help ensure the terms of the offer are mutually beneficial.

11.4 Independent Outside Advice

In Vietnamese business combinations and takeovers, directors typically rely on several forms of independent outside advice to make informed decisions. Here is a breakdown of the most common types.

Legal counsel – engaging experienced M&A lawyers is crucial. They advise the board on legal aspects of the transaction, ensure compliance with regulations, and help navigate potential conflicts of interest.

Financial advisors – financial advisors provide expertise in valuing the company and the target company (if applicable). They can also assist with:

- Negotiation strategy – developing a negotiation strategy to maximise shareholder value.
- Financial modelling – creating financial models to assess the financial implications of the transaction.
- Fairness opinion (optional) – while not mandatory in Vietnam, some boards might request a fairness opinion from the financial advisor. This can be helpful for the board in making its recommendation and can also enhance transparency for shareholders.

Tax advisors – tax advisors are essential for understanding the potential tax consequences of the transaction for both the company and its shareholders.

Trends and Developments

Contributed by:

Justin Gisz, Minh Duong and Phong Nguyen
Asia Counsel Vietnam Law Company Limited

Asia Counsel Vietnam Law Company Limited is a well-established and highly regarded law firm with more than 20 Vietnamese and foreign lawyers. The firm assists multinational corporations, UK, US, European, Japanese, Chinese and other Asia-Pacific law firms, as well as global, regional and local investment funds, venture capital funds, private equity investors and financial institutions. It also serves an array of high-profile Vietnamese corporations with their full business life cycle in Vietnam – from market entry and M&A to daily operations and regional expansion. The firm's partners have extensive

experience in healthcare advisory, serving both sellers and buyers, with clients including CVC Capital Partners, GIC Private Limited, Warburg Pincus, Mekong Capital, and the owners of American International Hospital (AIH), Tam Tri Medical Joint Stock Company, and Singapore Medical Group Limited. Asia Counsel Vietnam's practice areas include the following: M&A and transactional work, banking and finance, capital markets and securities, corporate and commercial, employment, power, renewables and infrastructure, private equity, real estate and construction, and technology.

Authors



Justin Gisz has more than 25 years of legal experience, 16+ years of which have been spent in Vietnam. At Asia Counsel, Justin practises primarily in M&A, corporate and commercial advisory, and banking and finance, but he also has considerable expertise in renewable energy, projects and infrastructure, capital markets, healthcare, technology, and real estate. His extensive client list consists of numerous high-profile VC, PE, and institutional funds and managers, multinational and regional corporates, and high-net-worth individuals. Justin is highly ranked as a leading practitioner in Vietnam, by all of the most reputable international law firm guides, including Chambers and Partners, and is one of the Top 100 A-List lawyers in Vietnam.



Minh Duong is the managing partner of Asia Counsel Vietnam. Minh is admitted as a lawyer in both the New South Wales Supreme Court and the High Court of Australia. He has more than 15 years of legal experience in Vietnam, and specialises in M&A, capital markets, banking and finance and corporate and commercial law. His clients include Sojitz Corporation, VinaCapital, Mekong Capital, American International Hospital (AIH), Tam Tri Medical Joint Stock Company, and Singapore Medical Group Limited and Cerberus Capital. Minh is ranked by Chambers and Partners in its Corporate/M&A rankings for Vietnam.



Phong Nguyen is a partner at Asia Counsel. Phong specialises in M&A, capital markets, banking and finance and corporate and commercial law. He has practised law in Vietnam since 2003 and has extensive experience in advising clients with their investment and acquisition projects in Vietnam. Prior to joining Asia Counsel, Phong was with leading

international law firms where he led high-value M&A, project finance and arbitration matters. At Asia Counsel, Phong leverages his multi-disciplinary approach and understanding of both domestic and international practices to provide comprehensive advice. His clients include CVC Capital Partners, GIC Private Limited, Warburg Pincus, Mekong Capital, and the owners of American International Hospital (AIH).

Asia Counsel Vietnam Law Company Limited

Unit 9.10, Level 9, Deutsches Haus
33 Le Duan Boulevard
Ben Nghe Ward
District 1
Ho Chi Minh City
Vietnam

Tel: +84 28 38 22 77 67
Email: minh@asia-counsel.com
Web: www.asia-counsel.com



The Healthcare Market in Vietnam

Demand

Vietnam has a population of approximately 100 million people and is currently classified by the World Bank as a lower-middle-income country. Vietnam's population growth rate has steadily fallen during the last 60 years, from 3.9% in 1960 to 1.14% in 2019 and 0.84% in 2023. This population growth rate is expected to continue to decline during the foreseeable future. The corollary of this decline in population growth rate is an ageing population.

Vietnam aims to be elevated to upper-middle-income country status by 2035 and to high-income country status by 2045. According to the Ministry of Labour, Invalids, and Social Affairs of Vietnam (the MOLISA), a middle class (defined on the basis of per-capita spending from USD11 to USD110 per day) is forming rapidly in the large cities of Vietnam and accounts for approximately 13% of the total population (with this percentage expected to increase to 26% by 2026). Vietnam has been ranked fifth in the list of nine Asian countries which are forecasted to have the largest number of people entering the middle class in 2024.

The number of foreign citizens living and working in Vietnam is also steadily increasing. At the end of 2023, the approximate number of foreign citizens living and working in Vietnam was 136,800 – a significant increase when compared with the estimated number of 101,550 at the end of 2021.

An ageing population, rapidly expanding middle class, and increasing numbers of foreign workers are all factors which exert strong and positive influence on the growth of demand for quality healthcare services in Vietnam.

In addition, many Vietnamese people's overall levels of health awareness have increased significantly as a result of the COVID-19 pandemic and its aftermath. This factor, combined with overcrowding within the public hospital system in Vietnam, have resulted in higher demand for general medical and long-term care services in Vietnam.

Healthcare market and state expenditure

Vietnam's healthcare system consists of both public and private healthcare providers, overseen from a regulatory perspective by the Ministry of Health (the MOH).

Public hospitals are classified into central, provincial, district, and community levels – by reference to the level within Vietnam's governmental hierarchy with which they are associated. Public hospitals currently play fundamentally important roles in the provision of healthcare services to people in Vietnam. For example, many Vietnamese people will present themselves at a public hospital in order to procure first-instance care – as opposed to the situation in many more developed countries, where people will in most cases consult with a private general practitioner at the local clinic before considering attendance at a hospital.

In 2023, there were approximately 1,500 registered hospitals in Vietnam, of which approximately 76.6% are public hospitals and approximately 23.4% were private hospitals. The majority of these hospitals are located in major urban areas such as Ho Chi Minh City, Hanoi and Danang.

In relation to healthcare expenditure in Vietnam, total expenditure appears to be divided between public and private expenditure in almost equal proportions. At the end of 2022, private sec-

tor expenditure accounted for approximately 47% of total healthcare expenditure in Vietnam, although only approximately 6% of the total number of hospital beds in Vietnam are provided by private operators. The Vietnamese government has stated in its key national healthcare network plans an intention to increase the proportion of private hospital beds (as compared with public hospital beds) up to 15% by 2030 and up to 25% by 2050.

Increasing demand for healthcare services has also driven significant increases in Vietnam's national healthcare spending. According to the British Chamber of Commerce in Vietnam, Vietnam's public healthcare spending has increased steadily and significantly during recent years, for example, per-capita public expenditure on healthcare services has increased from USD149 per capita per year in 2017 to USD164.9 per capita per year in 2022 – representing approximately a 2.5% increase per year. Projections through to 2032 anticipate that public healthcare spending will likely continue to increase at approximately 2.3% per year.

Regulation

Investment in the healthcare sector in Vietnam is regulated by two main legislative categories, namely:

- general regulations relating to investment and business activities in Vietnam; and
- specific regulations relating to the provision of healthcare services (including manufacture and/or distribution of pharmaceutical products) in Vietnam.

Investment laws

The laws which primarily regulate investment activities and the operation of enterprises in Vietnam are the Law on Investment (2020) and

the Law on Enterprises (2020) – together with their various respective implementing legislation – among others.

Under these key investment and related laws, there is no foreign ownership cap or other market access barriers which apply to foreign investors, in relation to the development, ownership, or operation of hospitals, except for certain requirements for minimum investment capital in relation to investment projects in the hospital sector. Nor are there any foreign ownership restrictions or market access barriers which apply in relation to the development, ownership, or operation of healthcare clinics.

On the other hand, whilst there are no foreign ownership restrictions or other market access barriers in relation to the manufacture of pharmaceutical products in Vietnam, foreign ownership in the pharmaceutical distribution sector is completely prohibited. Thus, although wholly or partly foreign owned companies may manufacture pharmaceutical products in Vietnam and/or import finished pharmaceutical products and/or manufacturing ingredients into Vietnam, only companies which are wholly owned by domestic investors may engage in wholesale or retail distribution of pharmaceutical products in Vietnam.

The private healthcare sector is eligible for investment incentives under the Law on Investment (2020). Eligible investors have the potential to enjoy a range of investment incentives, including the application of a lower corporate income tax rate, exemption from or reduction of import duties on certain types of imported goods, and/or exemption from or reduction of land use fees.

Healthcare laws

The provision of healthcare services in Vietnam is primarily governed by the Law on Medical

Examination and Treatment (2023) (the “Medical Law”) and its implementing legislation. The current Medical Law was adopted by the National Assembly of Vietnam in 2023. Decree No 96/2023/NĐ-CP dated 30 December 2023 has been issued under the Medical Law and provides general guidance as to its implementation. The MOH is, however, in the process of developing further implementing decrees and circulars, to guide the implementation of the Medical Law.

All private healthcare facilities in Vietnam are required to obtain an operational licence from the MOH or the relevant provincial or municipal Department of Health (the DOH), depending on the scale and scope of their operations. Medical practitioners must also obtain specific licences in order to be able lawfully to practise medicine in Vietnam.

In terms of pharmaceutical products, the Law on Pharmacy (2016) is the key regulating law, together with its implementing legislation. The MOH has been working on a draft amendment to the Law on Pharmacy (2016) to provide additional regulations in connection with the distribution of pharmaceutical products in Vietnam and the State’s management of the pharmaceutical distribution industry. These draft amendments are scheduled to be submitted for the approval of the National Assembly in November 2024.

Recent Regulatory Developments

The Medical Law

The Medical Law (which came into force on 1 January 2024) aims to ensure patients’ access to high-quality medical examination and treatment services in accordance with international practices. The Medical Law also encourages the socialisation of medical examination and treatment activities, diversification of types of medical services, and ensuring fairness between public

and private medical examination and treatment facilities.

Significant changes (as compared with the relevant predecessor legislation) which came into force along with the Medical Law on 1 January 2024 include the following.

- Tightening of the rules applicable to the licensing of medical practitioners – in addition to the historical practice of simply reviewing application dossiers submitted by applicants, licensing authorities will now administer practical skills and knowledge testing on applicants. Medical practising licences will remain valid for five years, with a requirement to renew based on updated medical knowledge and fulfilment of certain other conditions.
- Imposition of language requirements for foreign medical practitioners – medical practitioners who are foreign citizens and who practise medicine in Vietnam on a long-term basis and treat Vietnamese citizens are now required to demonstrate proficiency in using the Vietnamese language during medical procedures. There are, however, certain exceptions to this requirement, for example, in relation to certain types of collaborative arrangements such as exchange of experts, technology transfer arrangements, and training arrangements.
- Digital record-keeping – guidelines have been introduced for implementing electronic prescriptions and medical record-keeping, including the integration of such records into a centralised information system for management of healthcare activities. This initiative is intended to facilitate better control and monitoring of service quality by medical practitioners, as well as communication of examination and treatment results between healthcare providers.

- Information technology systems – healthcare providers are now required to adopt and implement information technology systems and to procure the connection of these to a centralised system, to enable efficient and effective exchange of information among providers. This initiative is intended not only to streamline patient care but also to facilitate effective solutions for managing the professional activities of healthcare providers.
- Mandatory self-assessment – healthcare providers are now required to conduct self-assessments of their services, in accordance with annual basic quality standards to be issued by the MOH. Healthcare providers are also required to upload the results of their self-assessments into a centralised information system, to ensure transparency in relation to the quality of healthcare services in Vietnam.
- Temporary clinics – healthcare providers are now permitted to establish private, multi-speciality clinics in regions which are subject to difficult economic and social conditions, including temporary beds for patient observation and treatment, for a maximum duration of 72 hours.
- Telemedicine – telemedicine services are now clearly permitted, to enhance patient access to high-quality and cost-effective healthcare services at any time and from any location, particularly in relation to non-critical, chronic conditions which necessitate ongoing and regular care. Previously, the telemedicine industry in Vietnam operated in something of a regulatory vacuum.

Significantly, the Medical Law sets out a number of high-level principles in connection with development of medical examination and treatment facilities in Vietnam, including, among others, investment in the form of public-private part-

nership (PPP). The MOH is expected to issue an official circular during 2024, in relation to PPP investment in the development of medical examination and treatment facilities.

Draft amendments to the Law on Pharmacy (2016)

The MOH has been working on draft amendments to the Law on Pharmacy (2016) (the “Draft LOP Amendments”) and has sought public opinion in relation to the Draft LOP Amendments. The Draft LOP Amendments encompass various key aspects of the pharmaceutical industry in Vietnam, including:

- development of the pharmaceutical industry;
- restructuring of the pharmaceutical distribution system;
- pharmaceutical and medicinal ingredient registration;
- recall procedures in relation to pharmaceutical products;
- implementation of pharmaceutical manufacturing standards and good practice;
- management of pharmaceutical and medicinal ingredients;
- export and import regulations;
- pharmaceutical product advertising;
- pharmaceutical and medicinal ingredient testing; and
- pharmaceutical product price management.

The Draft LOP Amendments extend to foreign-invested enterprises (FIEs) business engagement rights in relation to wholesaling, forwarding, and transportation of pharmaceutical and medicinal products and ingredients having been produced, processed, and/or transferred by them. This extension of business engagement rights aims to attract foreign investment in the pharmaceutical sector in Vietnam. FIEs will also be entitled to certain business incentives when engaging

in pharmaceutical business activities in Vietnam and be permitted to advertise pharmaceutical products in accordance with the applicable laws of Vietnam relating to advertising.

The Draft LOP Amendments also include provisions relating to conditions for conducting pharmaceutical business activities in the form of e-commerce, including the specific rights and responsibilities applicable to sellers of pharmaceutical products. The Draft LOP Amendments also address new types of business models which are not covered by the Law on Pharmacy (2016), such as pharmacy chain businesses, despite the fact that business models of this kind are already commonplace in the Vietnam market.

Healthcare Investment Trends

Attracting private investment in healthcare infrastructure

The COVID-19 crisis exposed shortcomings in Vietnam's grassroots healthcare system, with overcrowded hospitals struggling due to outdated infrastructure and obsolete medical equipment. Despite increased budget allocations to the health sector, funding remains insufficient to meet public demand. Acknowledging this situation, the Vietnamese government has been actively promoting private investment to strengthen healthcare infrastructure and services.

This governmental initiative is reflected in the recent enactment of the Medical Law, which outlines certain mechanisms to attract private investment in the healthcare sector. The Medical Law contemplates private investment being encouraged in the following areas:

- establishment of private medical facilities;

- formation of public–private partnerships for healthcare infrastructure development; and
- public hospitals leasing and purchasing medical equipment and ancillary services from the private sector.

To encourage participation, investors are offered incentives such as favourable land use fees, tax benefits (including in relation to corporate income tax and importation duties for medical equipment) and access to credit facilities. Further specific legislation in relation to PPP investment in the healthcare sector is expected to be issued before the end of 2024.

Establishment of pharmaceutical industrial parks

In Vietnam, industrial parks are generally concerned with the manufacture or production of industrial products and attract various types of investment and business incentives, including favourable tax treatment. As outlined in Decision No 376/QD-TTg dated 17 March 2021 of the Prime Minister, which approves a programme for development of the pharmaceutical industry and domestically produced pharmaceutical materials in Vietnam through to 2030 with a vision to 2045, plans have been formulated to allocate land for the establishment of pharmaceutical industrial parks. The aim of these special-purpose industrial parks would be to attract both domestic and foreign investors to manufacture patented pharmaceutical products, specialised medications, generic pharmaceutical products with advanced dosage forms, vaccines, and medical-biological products, to meet both domestic and export demands.

In alignment with this vision, the MOH has recently collaborated with the municipal and provincial authorities of Ho Chi Minh City and Thai Binh province to establish pharmaceutical

industrial parks in these regions. Ho Chi Minh City has designated Le Minh Xuan 2 Industrial Park (located in Binh Chanh district) for the development of a specialised medical and pharmaceutical industrial park spanning 338 hectares. This park will serve as a hub for research, development, and innovation in the medical and pharmaceutical fields. It will provide facilities for the production and trade of specialised medical and pharmaceutical products, focusing on the high-tech segment. Additionally, it will serve as a trading centre for specialised medical and pharmaceutical products and related items. Completion of the infrastructure for the Le Minh Xuan 2 Industrial Park is anticipated by 2030.

M&A in relation to hospitals and medical facilities

2023 and 2024 to date have been challenging periods for M&A transactions in Vietnam, mirroring worldwide trends. Despite these and other jurisdiction-specific headwinds, M&A activity in the healthcare sector remains robust. Several notable M&A transactions were completed in 2023, including Thomson Medical Group's acquisition of FV Hospital for USD381.4 million and CVC Capital's purchase of Phuong Chau International Hospital for USD116 million. Additionally, Raffles Medical Group (RMG) initiated a comprehensive strategic partnership with American International Hospital (AIH) in Ho Chi Minh City, with RMG commencing administrative and operational management activities at AIH from October 2023 and focusing on developing specialised services. In mid-April 2024, Warburg Pincus attracted attention by announcing its investment in the Xuyen A hospital system although details of this transaction had not yet come to light as at the date of publication of this article.

From a legal perspective, Vietnam's healthcare sector continues to welcome foreign investment, aligning with the country's commitments under its accession commitments to the WTO. Foreign investors have various options available to them for participation in the healthcare sector in Vietnam, including establishing wholly foreign-owned hospitals or clinics, forming joint ventures with Vietnamese partners, or entering into business co-operation contracts with local partners. The minimum investment capital required varies, depending upon the nature of an investment project in the healthcare sector, for example, USD20 million for hospitals, USD2 million for general clinics (polyclinics), and USD200,000 for specialised treatment facilities. These investment opportunities reflect Vietnam's commitment to fostering collaboration and innovation in healthcare delivery while facilitating international partnerships to enhance the sector's development and accessibility.

Medtech start-ups

Resolution 20-NQ/TW dated 25 October 2017 of the Communist Party of Vietnam on innovation, development, and enhancing collective economic efficiency, provided that medtech development is a key priority in Vietnam. This resolution underscores the importance of leveraging technology across various healthcare domains, spanning hospital management, health insurance assessment, electronic medical records, and remote diagnosis, testing, examination, and treatment. The market is proving this viewpoint to be accurate.

According to Statista data, Vietnam's digital health market is poised for substantial revenue growth, with projections indicating a rise to USD905.8 million by 2024. Furthermore, a steady annual growth rate of 7.71% (CAGR 2024–2028) is anticipated, leading to a projected market vol-

ume of USD1.219 billion by 2028. Key technology areas targeted for development in Vietnam include electronic health records, telemedicine, artificial intelligence for disease diagnosis, and smart wearable devices for health monitoring.

Some noteworthy investment deals in the medtech start-up space include Mekong Capital's USD21 million investment in Gene Solutions as part of its Series B round and BuyMed's receipt of USD33.5 million from UOB Venture Management and other investors. These investments underscore the growing confidence in Vietnam's medtech sector and its potential for innovation and growth.

While Vietnam lacks a clear legal framework specifically tailored to regulate medtech business, start-ups in this sector can navigate lawful business models within existing regulatory frameworks related to health, information technology, and personal data protection. Importantly, the government offers numerous incentives to support startups in science and technology, including tax breaks, financial assistance, and credit support. Medtech start-ups are well-positioned to capitalise on these incentives.

Outlook

Jurisdiction-specific factors such as changing demographics, deterioration of existing resources, increasing sophistication of patients, increases in chronic diseases and conditions, and the rapid development and adoption of technology, are expected to continue to drive strong market demand and M&A activity in the healthcare sector in Vietnam for the foreseeable future.

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Katie.Burrlington@chambers.com