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Vietnam
Trends and Developments
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Trends and Developments

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Introduction

Vietnam has, over the last decade, shown tremendous growth in a few key indicators. GDP grew by an annual average of 6.22% from 2009-2019, whilst GDP per capita rose by an annual average of 5.15% during the same period. Socially, the country has made great strides and in 2019 achieved a human development index of 0.704 (placing 117 out of 189 countries). The standard of living and quality of life of Vietnamese people have risen dramatically during this period and, apart from doing obvious social good, have together with rising income levels also fostered a growing consumer base. Therefore, the overall social and economic picture shows a positive trend. This is well-known, and Vietnam has been touted as an example for other developing countries to follow.

Whilst the above paints an overall picture of broad prevailing trends, this article will proceed to describe aspects specific to M&A and will make particular reference to the year 2020 and the impact of the COVID-19 pandemic. Unfortunately, unlike in other markets, statistical data is not as easily available and certain observations in this article are based on the firm's experience and conversations with clients, other advisors (including lawyers) and local knowledge.

2020: Lessons for 2021 and Beyond

The COVID-19 pandemic, beginning in 2019 and leading into all of 2020, is an infamous outlier event that all are well aware of along with the severe socio-economic disruption it caused. Vietnam has not been spared and experienced a sharp decline in M&A activity during 2020, though showed some recovery towards the end of the year. This recovery was in large part due to the country's much lauded management of the pandemic. These efforts went beyond ensuring extremely low virus infection rates and included broader interventions. Among these, the State provided a stimulus package – aimed at enterprises – which included tax relief in the form of tax breaks, delayed tax payments and a reduction in land lease fees. Relief was also extended in the form of household support and monetary policy aimed at maintaining liquidity in the banking sector. The Vietnamese economy, with the momentum of a decade of high growth rates, remained fairly resilient and mustered GDP growth of 2.91% year on year (whilst global GDP declined).

Although the pandemic did place a strain on the marketplace, certain noticeable trends can be observed – many of which can be expected to carry through 2021. One of these is that foreign direct investment (FDI) has played, and continues to play, a massive role in Vietnam. Total foreign direct investment during 2020 was USD28.5 billion out of a total USD93 billion of investment. Importantly, of the FDI received, USD6.4 billion was in existing projects, highlighting existing foreign investors' continued confidence in Vietnam. It is anticipated that FDI should recover in 2021, move towards the USD38.2 billion record high achieved during 2019 and possibly exceed this.

The year 2020 reached a record trade surplus of USD19.1 billion. This is expected to decrease with greater imports, including in respect of newly registered FDI projects.

Notwithstanding the depressed environment, 2020 did not see the distressed sales as were the case elsewhere, largely owing to the fact that the economy did not contract but grew (albeit at a low rate). Carve-out transactions were, however, more common than previously. As a whole, although Vietnam did exhibit features of a buyer-friendly market, this was not extreme and the market was not as friendly to buyers as may have been the case elsewhere. Given the high growth rates experienced in Vietnam over recent history, and the forecasted growth for 2021, it is not anticipated that distressed sales will feature prominently in the near future.

Amongst the lessons of 2020, private equity continued to play an increasing role in Vietnam. This was best illustrated by way of the investment by a KKR-led consortium, for an amount of USD650 million, into Vinhomes, the flagship real estate subsidiary of Vingroup (the largest Vietnamese conglomerate listed on the Ho Chi Minh City Stock Exchange). The consortium led by the US private equity giant acquired an approximate 6% (minority) stake. The deal, in which YKVN acted as local counsel for Vingroup, displayed a few characteristics that are anticipated to continue as trends into 2021 and beyond, namely:

- foreign investors being happy to make large investments into minority positions in large Vietnamese companies;
- foreign investors having a positive view of management of large Vietnamese companies; and
- increased private equity investment values.

The latter trend has, of course, been the case for some time. Early indications are that this pattern will continue, shown by the fact that during January and February 2021 most foreign investment arrived from Japan, Singapore and China. South East Asian nations (and not only Singapore) continue to be an important source of investment (in addition to greater Asia). Thailand, as a source of FDI, registered twice as many investment projects in Vietnam in 2020 as compared to 2019. Indeed, YKVN has recently been involved in a notable transaction where the local subsidiary of a Thai cement producer, Siam Cement Public Company Limited, acquired a 70% stake of Duy Tan Plastics Manufacturing Corporation.

A growing trend is for large Vietnamese companies to enter into transactions with one another. M&A activity from pure domestic activity is growing. In earlier years, significant local transactions had often been associated with State-owned enterprises and equitisation programmes. The fact that M&A activity is now being driven by domestic players likely signals development and a growing maturity of the local market. An example of a mega-deal arising from domestic players is the 2020 acquisition by Masan Group of Vincommerce and VinEco, the retail and agricultural businesses of Vingroup. Vingroup remained in a minority position. This transaction, in which YKVN also played a significant advisor role, involved a series of complex equity swap and corporate restructuring transactions. The complex nature of this deal shows a trend of domestic deals becoming increasingly technical in nature, again an indicator of the development of the marketplace.

Transactional Terms

Generally, the COVID-19 pandemic did not impact transactional terms and deal terms did not deviate much from previous years. Foreign investors usually make use of ordinary shares, convertible loans and convertible bonds while use of preference shares is less common. Due to foreign exchange regulations, instruments are considered when making investments in VND rather than foreign currency. Convertible loans are more commonly denominated in foreign currency than convertible bonds. An investor's choice in use of convertible loans, convertible bonds and preference shares is driven by the equity/debt classification of the instrument. As investors usually benchmark against USD, foreign exchange indemnities are becoming more common.

Material adverse change (MAC) clauses were, in 2020, more carefully negotiated to deal with risks associated with the pandemic. Sellers typically wanted to include the COVID-19 pandemic as an exception in the MAC clauses to exclude the impact of the pandemic. In a number of instances, risks were shifted from closing to signing to avoid walk-aways. Signing and closing occurred almost simultaneously or the time gap between signing and closing was relatively short with less conditions precedent. These trends continue to be the case early in 2021.

Most non-legal market participants are interested in transactional terms around price and the trend has been, at a high level, that the locked box purchase price mechanism remains used more often in the acquisition of a majority business stake while completion accounts tend to apply in respect of a minority stake. Earn-outs and other forms of deferred payments are not popular. Most transactions are on a cash basis without, for example, part payment in shares.

It is not unusual, where a foreign party is involved, for purchase agreements to be governed by Vietnamese law and referred to the Vietnam International Arbitration Center. For a high value or complex deal, this is usually accompanied by a foreign choice of dispute forum – in particular foreign arbitration. The typical combination is Vietnamese law and the Vietnam International Arbitration Center or the Singapore International Arbitration Centre. Vietnam is a member of the New York Convention and Vietnamese courts are becoming more open to enforcement of foreign arbitral awards and judgments.

Environmental, Social and Corporate Governance

Vietnam has recently (in 2019) adopted the Vietnam Corporate Governance Code of Best Practices (the Code). The Code is itself indicative of a desire to follow best practices with key reference materials in developing the Code being the 2015 G20/OECD Principles of Corporate Governance and the 2017 ASEAN Corporate Governance Scorecard. Achieving ESG goals should be seen as part of a greater trend around governance in Vietnam. Both the State and participants in the marketplace have been making great strides in this area and this is likely a reason why foreign investors are displaying a greater willingness to participate as minorities in Vietnamese-led companies.

Shareholder activism is not as widespread in Vietnam as it is elsewhere. However, as a result of recent changes in Vietnamese law which facilitate shareholder activism, there has been a demand from shareholders for greater corporate governance and they have become increasingly active in pursuing this. There have, for example, been incidences of shareholders banding together to remove board members. We have also seen shareholders make use of the direct derivative suit against management. It is anticipated that the existing legal toolbox will see greater use as market participants become savvier, more diverse and eager to demand accountability and governance compliance.

Although environmental and social issues do not feature prominently in corporate governance and, historically, sellers usually avoid ESG related obligations, there is a growing trend in relation to this, owing partially to investor requirements and broader social consciousness regarding these matters. It is expected that the marketplace will place greater emphasis on these issues, especially as supply chain-related investment may attach importance to this. Public sentiment and increasing education around environmental issues is expected to play a pivotal role.

It should be noted that the recent iteration of the Law on Investment (with effect from 1 January 2021) restricts the extension of investments for existing projects that use outdated technology causing environmental pollution or an overuse of resources. Furthermore, disclosure laws require listed companies to report on environmental, social and corporate governance issues in their annual report. The Code also, for public companies, makes recommendations that the board of directors report key non-financial information including environmental and social matters. This can be viewed as the intention of both lawmakers and market participants to achieve sustainable growth.

From a gender equality perspective, Vietnam has a high participation of women in the business world. A legacy of the socialist system has been the equal treatment of women in the workplace and Vietnam has made great strides towards achieving this. Almost half of all small businesses in Vietnam are owned by women. Vietnam has passed laws that assist with maternity and childcare which have facilitated the process of achieving gender equality. However, as is the case in most other markets, progress still needs to be made concerning the inclusion of women at board and management level in the corporate world. It is worth noting that the Code recommends that a company's board be composed of at least two women or that at least 30% of the board be composed of women.

Outlook (2021)

Commentators are largely of the view that Vietnam will experience significant growth in 2021. The State's targeted growth for GDP in 2021 is 6.5%, which is actually lower than some market commentator's expectations of the number being as high as 7.8%. While there may be some disagreement as to what growth will actually be, most observers are in unison in considering that Vietnam will experience good growth in 2021.

The Communist Party of Vietnam recently held its 13th National Congress which essentially maintained pre-existing policies. The National Congress affirmed the country's commitment to stability and economic growth through the adoption of stable policies with there being a smooth transition in government. Vietnam has not only created a facilitative trade and investment environment, but also provided political and economic certainty. During the 13th National Congress, the Communist Party announced its determination to achieve a GDP growth of between 6.5 to 7% from 2021 to 2025 while making Vietnam an upper-middle income country by 2030, and a developed country with high income by 2045. The country has enhanced its reputation due to its handling of the Covid-19 pandemic. Whilst the world has been experiencing socio-economic upheavals due to the pandemic, Vietnam has maintained stability. This has shown the governance capability of the State, assuring investors of the safety in placing capital in Vietnam.

Vietnam has concluded significant free trade deals in 2020, namely the EU-Vietnam Free Trade Agreement and the Regional Comprehensive Economic Partnership. Apart from these new trade deals, Vietnam holds and maintains good historical trade relations with China which is one of the countries (along with Vietnam) predicted to experience good growth rates into 2021. Vietnam is expected to benefit from China's growth. Recent geopolitical events have resulted in supply chains moving to Vietnam (the so called "China plus one" policy). Therefore, the country is expected to benefit from this as well, being viewed as an ideal alternative to China. Vietnam, critically, continues to hold a competitive labour cost advantage combined with an increasingly skilled labour force. The net effect of all of the above is an increased attractiveness of Vietnam as an investment destination and M&A activity should mirror overall growth.

The banking and real estate sectors showed good M&A activity during 2020. Other sectors showing positive growth (not necessarily in connection with M&A activity) include industry and construction, services and agriculture, forestry and fishery. As can be expected, tourism was severely impacted. Growth in 2021 is expected to be driven by the manufacturing and processing sectors. Additionally, there is focus on the following sectors: real estate (a traditional high growth sector), renewable energy (which is a priority for the government, especially as Vietnam needs to expand available capacity as its economy grows notwithstanding the country already having a high level of installed renewable capacity of 54, 880 MW in 2019), logistics (expected to grow by 16% by 2022), and technology (especially startups in retail and services).

The digital economy (technology sector) should be highlighted as an interesting growth point and this could expand into a USD43 billion sector by 2025. As this sector would largely be driven by consumer demand it should prove a useful gauge of how Vietnamese consumers help grow the economy. It is anticipated that domestic consumption will generally be a key driver of growth in years to come with disposable income levels having risen consistently in recent years (though with a wobble during 2020). It would not be surprising if Vietnam unearths a few more “tech unicorns” in the next few years. The country has a young population (with the majority of the population under 35 years old) who are digitally savvy and connected through this medium.

It should be mentioned that, despite the economy shedding over one million jobs in 2020 due to the pandemic, the unemployment rate of 2.48% (a decade high) is low on a country comparative basis (with many other developed and developing economies reeling off higher rates). Of importance, despite this job shedding, retail spending had rebound during the latter part of 2020 with total spend for the year at US$172 billion, reflecting an annual 7% increase (albeit lower than previously). This bodes well in so far as predications around consumer driven growth are concerned. It is expected that the economy will, in 2021, absorb more labour and continue the trend, prior to 2020, of adding around 600,000 jobs a year to the economy (from 2010 to 2019).

Interestingly both of the major players in recent global trade disputes, the United States and China, have been Vietnam’s biggest trading partners. This is expected to remain the case. Although some commentators have referred to Vietnam having to walk a “tight rope”, this is likely over-emphasised and there is no reason why trade with, and investment by, both nations should not continue. With regard to China, it should be remembered that Vietnam is already integrated into regional supply chains and shares a long border with its larger neighbour — trade and investment with China would thus seem practically inevitable. Indeed, Chinese investment into Vietnam has actually increased since the trade dispute with the United States, likely a result of Chinese firms seeking to recalibrate. With regard to the United States, this nation has been a significant source of FDI in recent years and this investment should increase rather than abate, especially given geopolitical changes. In addition to these major partners, over 100 other nations have invested in Vietnam and FDI is expected to grow. Nations that are members to recent free trade agreements with Vietnam are expected to have greater participation in Vietnam.

Whilst M&A activity during 2020 was depressed in contrast to prior years, investment through both public and private M&A in 2021 is expected to be strong and should align with economic growth. It is also anticipated that 2021 will fare better for IPOs. This may be driven by partial disinvestment by the State in the banking sector (placed on hold during 2020 due to the pandemic). It is also expected that there will be further investment into established large Vietnamese corporations.

In short, the future of the M&A market is optimistic.

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YKVN LLC is widely recognised as the leading Vietnam-based law firm. Established in 1999, YKVN has since grown to become an independent law firm with over 90 legal professionals through a unique platform combining three offices in Hanoi, Ho Chi Minh City, and Singapore. M&A is one of the key practice areas that helps to define YKVN's market-leading position. It has built a practice that covers a broad range of matters, including privatisation, public M&A, private M&A and PE transactions and is widely recognised as a tier-one law firm in these areas. It has worked on most, if not all, key privatisation deals (Vietcombank, Vietinbank, Vietnam Airlines and Petrolimex) and landmark public and private M&A deals (including SK's USD1 billion investment in Vingroup, GIC's USD1.3 billion investment in Vinhome, the merger between Masan's consumer business and Vingroup's retail business, and Shinhan Bank's acquisition of the retail business of ANZ Vietnam).

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