

LAW ON BUSINESS VALUATION IN BUSINESS ACQUISITION AND MERGER IN VIETNAM

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Abstract: *Business valuation activities in business mergers and acquisitions (M&A) transactions are complex activities, requiring high accuracy and coordination of relevant parties. This activity is regulated by the legal system prescribed by the State. The legal framework and regulatory documents on valuation activities in general in Vietnam have been built relatively completely. However, with the complexity of M&A activities and the rapid development of economics and finance, while the legal system on valuation in M&A has not yet kept up with that complexity and development, leading to a number of inadequacies and limitations in this activity. To address those limitations and inadequacies, there needs to be appropriate solutions to improve the legal system to improve the quality of business valuation in M&A of businesses providing business valuation services. industry and the number of successful M&A transactions in Vietnam.*

• Keywords: law, business, business valuation; M&A.

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The role of business valuation in M&A?

Valuation in M&A is considered the first step in the entire M&A process. This activity plays a huge role for all stakeholders such as business owners (buyers, sellers, investors); suppliers, state management agencies, businesses providing price appraisal services.

First of all, business valuation in M&A helps parties involved in the transaction determine the fair value of the business. For business owners (sellers), appraising the price of their business before conducting M&A will help them see the current value as well as the possibility of increasing/decreasing value in the near future, avoiding losses. For investors (buyers), it helps to accurately determine the total current and near future value of the business, evaluate the appropriate price and investment level, and avoid buying at too high a price, causing waste. financial fees. From there, we can verify the legality of the business, determine its feasibility as well as minimize risks when making financial investments in M&A projects. Based on the results of valuation with different valuation methods (at least two valuation methods are used, unless otherwise prescribed by law), both buyers and sellers will have a solid basis. to offer prices consistent with the value of the business, reducing disputes and disagreements about prices.

The process of performing business valuation activities in M&A is influenced by many factors such as: Database system on business mergers and

acquisitions; Legal system and legal environment on valuation; Transparency and stability of the M&A market; Professional capacity and professional ethics of the appraiser; Applied business valuation method in M&A; State management of enterprise valuation activities in M&A; Organization of price appraisal activities.

This factor is expressed in two aspects: the ability to choose and build a mechanism or model to organize the activities of a business valuation company and the ability to organize and build a business valuation process in M&A. scientific way.

The need to adjust the law in M&A valuation?

Business valuation in M&A is an objective activity in the market economy. To harmoniously resolve the interest relationships between those entities, the Government and relevant competent agencies are the agents that must regulate business valuation activities in general and business valuation activities. in M&A in particular by law.

Besides, commodity prices are formed and move under the influence of the objective rules of the market economy, but it is also the spontaneous movement of market prices that can have an impact. negatively affect activities in the socio-economy, To prevent, suppress and minimize the spontaneous impacts of market rules, contributing to encouraging investment , develop production and export, protect the legitimate interests of

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the parties, the State must manage enterprise valuation activities in M&A by law

On the other hand, stemming from the unique properties of law (universal normativity, strict formal determination, and state-guaranteed nature), the State has used law as a tool. Adjust valuation activities in M&A. Therefore, the law needs to specifically stipulate the purposes, principles, valuation methods, valuation process, implementing entities and procedures, and legal value of the project. The results are given,... and institutionalized by laws and regulations to regulate business valuation activities in M&A.

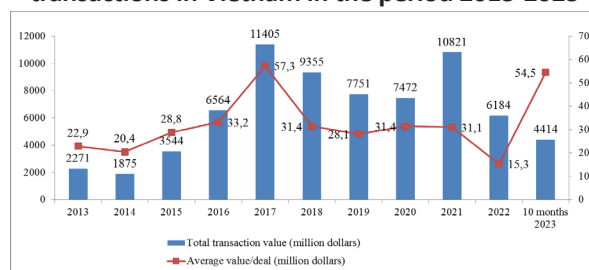
Current status of M&A and business valuation in Vietnam?

In recent years, mergers and acquisitions (M&A) activities have become an important part of business activities in Vietnam in recent years and have grown significantly. M&A is carried out for businesses in fields such as real estate, banking, information technology, pharmaceuticals, manufacturing and services. Vietnam has a rapidly growing economy, growth potential and large consumer market, which creates attractive opportunities for investors in M&A activities. The number and value of M&A deals have increased, especially in sectors such as banking, real estate, energy, food and beverages.

Since the economic transformation until now, Vietnam's M&A market has grown very strongly, demonstrated by many successful large M&A deals and transactions, such as in 2016, Thailand's Central Group acquired Big C Supermarket for 1.14 billion USD, in 2017, Thai Beverage Group acquired Sabeco for 4.8 billion USD, or in 2019 there was a 1 billion USD investment deal in Vingroup of Korean SK Group, the deal merger and share swap between VinCommerce and VinEco with Masan Consumer (Masan Group), KEB Hana Bank (Korea) acquired 15% of charter capital (878 million USD) of BIDV; KKR&Temasek acquired shares of Vinhomes with a value of 652 million USD... or deals related to large Vietnamese corporations, typically Masan, Thaco, Gelex, Vinamilk; REE, PAN Group... Accordingly, the average value/transaction also increases over the years, such as from 22.9 million USD in 2013 to 54.5 million USD/transaction in the first 10 months of 2023. The peak of the average deal value fell in 2017, with 57.3 million USD/transaction (Capital IQ, VIR, KPMG, Kirin Capital, 2023).

The performance results of the M&A market in Vietnam in recent years are shown in the chart below.

Figure 1: Total value and average value of M&A transactions in Vietnam in the period 2013-2023

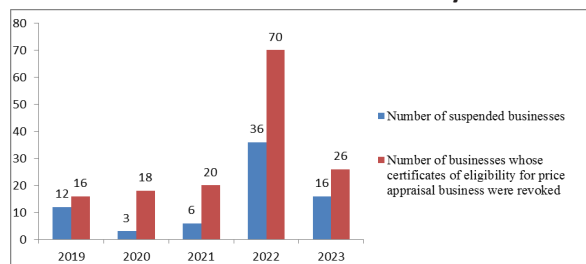


Source: Research by Capital IQ, VIR, KPMG, Kirin Capital

In recent times, Vietnam's M&A market has recorded remarkable changes, from a new field, M&A has become a tactic applied by many investors to grow. Along with that, consulting and business valuation activities also participate and develop more strongly to accompany M&A activities, contributing to facilitating successful and effective M&A transactions. Therefore, in recent times, the field of valuation in general and business valuation services in particular have developed quite quickly and complicatedly, reflected in the number of valuation enterprises and appraisers growing and developing. expand rapidly. Since the Price Law took effect and Project 623 on "Improving the capacity of Vietnam's SA activities in the period 2013-2020" (Decision 623/QD-BTC dated March 28, 2014 of the Ministry of Finance) was approved. promulgated, the valuation industry has developed "explosively" in the number of valuation enterprises granted business eligibility certificates and the number of appraisers granted practice cards. However, the rapid development of economic and financial activities, including M&A activities, also leads to the "hot" development of the field of valuation. Specifically, the number of valuation businesses increased by an average of 15.6% in the period 2013-2022, with some years reaching a rate of over 20%/year such as the period 2015-2017 and 2020 with 298 businesses, equivalent to 298 businesses. equivalent to an increase of 31.5% compared to the previous year. The number of appraiser cards issued also increased rapidly. To date, the Ministry of Finance has issued 2,352 price appraiser cards, twice as many as in 2013. Regarding the number of appraisers qualified to practice, in 2022 there will be 1,464 appraisers qualified to practice appraisal. price. Thus, after about 13 years, the number of valuation businesses granted certificates of eligibility for valuation business and the number of appraiser cards has increased many times (Ministry of Finance, 2022). This also shows that valuation activities have undergone a strong transformation, forming professional valuation businesses and a team of competent and qualified price appraisers to serve the needs of asset valuation. products in many different

fields. Thanks to the appearance and increase of the force of companies providing appraisal services and consulting on business valuation in M&A activities, there have been many successful M&A transactions, contributing to increasing the total M&A transaction value for the economy in Vietnam.

Figure 2: Number of businesses suspended operations and withholding certificates of eligibility for business valuation over the years



Source: Price Management Department (Ministry of Finance)

From the above situation, it can be seen that the role of consultants, appraisers, and valuation service businesses in M&A is very important, being the agent that connects and supports businesses (customers) successfully carried out M&A.

Current status of the law on business valuation in M&A in Vietnam?

As mentioned above, M&A activities are also a complex process, containing many risks and challenges, while business valuation activities in M&A are affected by many factors such as M&A data system; legal system and legal environment; Valuation methods used by businesses; organization; information system; In particular, legal factors are important factors that have a significant impact on the success or failure of M&A transactions. This factor's impact is reflected in two main aspects: (i) the legal system promulgated to regulate business valuation activities in M&A; (ii) the process by which consulting and valuation businesses and their teams of consultants and appraisers apply the legal system to perform business valuation in M&A.

To create favorable conditions for M&A activities in Vietnam, especially for international M&A deals, Vietnam has also signed free trade agreements and investment protection with many countries. Other countries and territories, such as:

- Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP): This is a multilateral free trade agreement that Vietnam has signed with 10 CPTPP member countries, including Australia, Brunei, Canada, and Chile. , Japan, Malaysia, Mexico, New Zealand, Peru and Singapore. CPTPP expands markets, reduces taxes and creates favorable conditions for M&A activities with member countries.

- Comprehensive Economic Agreement with the European Union (EVFTA): This is a free trade agreement between Vietnam and the European Union (EU). EVFTA has expanded the scale and scope of the market, reduced taxes and promoted M&A activities between the two sides.

- Vietnam - Korea Free Trade Agreement (VKFTA), Vietnam - Japan Free Trade Agreement (VJEPA): These agreements have created favorable conditions for M&A activities between countries and promoted economic cooperation, economic relations, trade and investment.

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- Other free trade and investment protection agreements with other countries and territories such as the US, Australia, New Zealand, Canada, Chile, ASEAN, and countries in the BRICS bloc (Brazil, Russia, India , China and South Africa).

For business valuation activities, there is also regulation by legal documents such as Price Law No. 32/2023/QH15 dated June 19, 2023 regulating price appraisal services; Decree No. 89/2013/ND-CP dated August 6, 2013 of the Government regulating Vietnam's valuation standard system; Circular No. 122/2017/TT-BTC dated November 15, 2017 regulating Valuation Standard No. 12 on Enterprise Valuation; Circular No. 36/2024/TT-BTC dated May 16, 2024 regulating valuation standards on enterprise valuation,... The legal system of valuation is issued including regulations and standards providing complete professional guidance for valuation services of diverse types of assets such as real estate, movable property, businesses, and assets. Intangibility, brand, etc. In particular, the Valuation industry is also interested in developing through the promulgation and implementation of Project 623 on "Improving the capacity of Vietnam's valuation activities in the period 2013-2020".

In general, The legal framework system related to business valuation activities is increasingly improving, contributing to meeting practical needs in business valuation in general and in the field of M&A in particular. However, besides that, the legal system on business valuation in M&A still has certain limitations, specifically:

- Vietnam does not have a separate law on M&A and business valuation in M&A; The legal framework is still incomplete. Regulations related to M&A activities of enterprises in general only stop at establishing the form of M&A activities. There is no clear, specific document guiding procedures and processes for business valuation in M&A, while legal documents have different regulations, making M&A difficult to establish transactions. , status of each buyer and seller, management consequences after purchase...

- The system of legal documents on M&A and valuation in corporate M&A is not centralized and unified on a common law but is also scattered in many documents. In fact, an M&A transaction with a business in Vietnam is governed by many different laws and regulatory documents, such as: Civil Law, Enterprise Law, Investment Law, Competition Law, Securities Law. Securities, Environmental Law, Price Law, Real Estate Law; Intellectual property law; The system of asset valuation standards, ... not to mention circulars and decrees that can be issued at any time to supplement the above laws and regulations. Specifically:

+ + The Securities Law 2019 only regulates forms of division, separation, merger, and consolidation of securities companies and fund management companies without mentioning division, separation, merger, and consolidation in the fields other area. (Article 35, Securities Law 2019).

+ Although the 2020 Enterprise Law does not provide a specific definition of enterprise M&A, there are some quite specific regulations on M&A for each type of enterprise, mentioning many regulatory regulations. Social relationships arise related to M&A. These regulations have been effective in creating a safe legal corridor for M&A transactions to develop. However, the business information element is not strictly regulated, so searching for information about target businesses in the Vietnamese market is very limited and there are no useful search tools with reliable data sources. reliable so investors can collect information. Meanwhile, companies that want to be merged or sold often hide unfavorable business information, debts or disputes and lawsuits, causing investors to face many risks when they do not know the information from the side. company in which they intend to invest.

+ The Investment Law 2020 mentions two forms of M&A: merger and acquisition of businesses. Corporate M&A activities are considered one of the forms of direct investment. According to the provisions of this Law, business acquisition can be carried out in the form of partial or complete acquisition of an enterprise

or branch. Accordingly, investors have the right to contribute capital, buy shares, and contribute capital to economic organizations (Article 24. Investment Law 2020); Foreign investors can invest in the form of capital contribution, purchase of shares, or capital contribution to economic organizations (Article 25, Article 26 of the Investment Law 2020).

+ Regarding enterprise brand valuation, although there is a legal corridor for the brand, there are still many problems, from conflicts between documents to illegalities. within current regulations. This causes many difficulties for individuals and organizations directly implementing such as: According to the provisions of Accounting Standard No. 04, only some objects of Intellectual Property rights are considered Assets. Intangible fixed assets such as inventions, copyrights, trademarks (in cases where the trademark is not created within the enterprise such as being acquired, contributed capital, etc.). But Circular 45/2013/TT-BTC in Clause 2, Article 4 stipulates that all objects of Intellectual Property rights are considered intangible fixed assets and that is the basis for valuation and calculation. value of the business. Point b, Clause 1, Article 6 of Circular 45/2013/TT-BTC considers "geographical indications" to be a type of intangible fixed asset of an enterprise, which conflicts with the provisions of Clause 4, Article 121 of the Department of Law. Intellectual property: "The owner of Vietnam's geographical indications is the State".....

- The above legal documents regulate social relationships that arise during the process of the parties conducting M&A activities. In addition, although they are based on the majority of international commitments that Vietnam has participated in, some provisions in international conventions and treaties regulating M&A can also create unpredictable impacts on the completion of M&A. an M&A transaction.

- Many issues directly related to business valuation in M&A that Vietnamese law has not yet specifically regulated such as auditing, valuation, taxes, consulting, brokerage, security, information, mechanisms Dispute resolution... Meanwhile, M&A is a commercial and financial transaction, requiring specific regulations and a market mechanism to offer and buy businesses, prices, and provide information. information, transfer and establishment of ownership, transfer of legal status, shares, stocks, financial obligations, employees, brands...

- Currently, there are no specific regulations or instructions on business valuation in M&A. Enterprise valuation in general is being guided in a number of legal documents on valuation such as Price Law No. 32/2023/QH15 dated June 19, 2023 regulating valuation

services; Decree No. 89/2013/ND-CP dated August 6, 2013 of the Government regulating Vietnam's valuation standard system; Circular No. 122/2017/TT-BTC dated November 15, 2017 regulating Valuation Standard No. 12 on Enterprise Valuation; Circular No. 36/2024/TT-BTC dated May 16, 2024 regulating valuation standards on enterprise valuation, ... However, currently, there is no separate legal document regulating Decision on business valuation in M&A. M&A deals take place mainly because the parties involved agree on price, so the price set is often subjective and inaccurate.

In addition, some appraisers still lack experience in valuation and do not have a deep understanding of the appraised assets and the market of the appraised assets, so they do not have the necessary assessments and arguments in the process. Appraisal to reach appropriate conclusions about the value of the appraised asset. In addition, consultants and appraisers lack professional support, such as: comparative data sources and lack of updated knowledge and skills, as well as lack of sharing of practical experience.

From the above limitations, in order to improve the quality of business valuation and develop M&A activities, Vietnam needs to build a unified legal corridor system for this activity, thereby creating peace of mind for investors. related parties in the process of implementing M&A deals.

Recommendations and proposed solutions to improve the law on business valuation in M&A in Vietnam?

On the part of the Government

- Build and complete the legal framework and support from the Government on business M&A activities and business valuation in M&A.

Accordingly, it is necessary to establish an agency to manage or monitor the unified law enforcement of M&A activities, as well as be responsible for providing unified professional guidance for M&A activities.

- It is necessary to unify regulations on M&A activities in legal documents. In the Investment Law, M&A activities are considered a form of direct investment by foreign investors. However, when performing M&A in the form of buying and selling shares, this activity is regulated by the Securities Law and documents related to the securities sector. This can cause conflicts in law enforcement for the same investor's activities. The Investment Law is the premise for determining the legal rights and obligations of investors in M&A deals; However, the conduct, implementation method, and operating mechanism of the M&A market should be governed by securities law.

- There should be policies to support legal, administrative and tax procedures for M&A related activities that need to be applied. State conditions and policies need to be reformed in the direction of reducing capital barriers, simplifying administrative procedures, and creating openness in investment mechanisms and policies; Apply tax incentives for research and development activities, encouraging innovation in businesses.

- The Government needs to improve the investment environment with a transparent and competitive orientation; improve investment policies through a combination of various market liberalization measures, such as reducing conditional business lines and removing requirements for duplicate approvals and licenses Assembling each other is causing many difficulties.

- Promote administrative procedure reform and modernization in the financial sector, with a focus on taxes, customs, and the State treasury, contributing to improving the business environment and encouraging startups; At the same time, improve the competitiveness of the economy through organizing the implementation of the Government's resolutions on administrative reform, improving the business environment, and developing businesses in the direction of expanding the application of information technology. information, modernize management methods, expand the scope of electronic tax refunds, electronic invoices and electronic customs systems.

- There needs to be specific and unified regulations on business valuation methods in M&A; There needs to be a unified guiding document on enterprise valuation to serve the M&A process, avoiding the situation of self-negotiation on enterprise value as at present. Regulations on business valuation must ensure the correct determination of business value according to Accounting Law and the brand value of the business. From there, ensuring the transparency of the M&A market, avoiding abuse of power by managers and executives of businesses participating in M&A.

- It is necessary to supplement legal regulations in the direction of improving the conditions for being granted a certificate of eligibility to conduct business in price appraisal services for organizations and individuals providing price appraisal services; Regulations on classifying valuation businesses and appraisers according to areas of expertise in valuation service business activities such as: appraisal of real estate prices, machinery and equipment and common goods and services. normal and appraisal of business prices, financial assets, intangible assets; regulations on capital ratios ensure the ability to control the enterprise

for capital contributing members who are price appraisers practicing at the enterprise; The provisions from the Decree on standards for appraisers who are legal representatives, directors or general directors of valuation enterprises... need to be raised into Law.

- Need to strengthen the role of State management; The management of valuation enterprises is based on respecting the business autonomy of enterprises and respecting the principles of independence, objectivity, and honesty in the practice of appraisers. Strengthen management, inspection, supervision, and timely correction to ensure that valuation activities comply with the law, improve service quality and utility, and better meet appraisal needs. prices in general and business valuation in M&A in particular for customers. In addition, focus on strengthening control over the activities of foreign valuation organizations in Vietnam.

- It is necessary to review, supplement, amend and complete the legal system on valuation in accordance with Vietnamese practice and international practice (according to signed agreements).

- It is necessary to continue to monitor and publish the results of assessing the quality of valuation activities of M&A valuation enterprises, contributing to motivating valuation enterprises to make efforts to improve service quality.

- It is necessary to build an information control channel and transparency in M&A activities in general, and business valuation activities in M&A in particular, because information such as price, brand, market, Parts, management... are very necessary for parties involved in M&A transactions (buyers, sellers, consultants, appraisers, state management agencies, ...). If information is not controlled and transparent, it can cause a lot of damage to all parties, and at the same time greatly affect other markets such as commodities, stocks, and banks.

On the part of businesses providing consulting and business valuation services

- Need to focus on being better equipped on legal issues, mastering regulations in M&A activities and business valuation in M&A.

M&A is a complex process, containing many risks and challenges. Consulting parties need to clearly understand their rights to participate in businesses. M&A can be conducted in many different forms: repurchasing shares, capital contributions, capital transfers, not to mention the participation of foreign organizations. governed by other legal regulations.. Therefore, consultants need to clearly understand the legal regulations and procedures when conducting business M&A

- Improve the capacity of the team of appraisers and consultants in valuation in general and M&A enterprise valuation in particular, to meet the requirements of business valuation services, through Organize classes to foster knowledge and skills in valuation; Send appraisers to study and receive advanced training at home and abroad.

- There needs to be a more comprehensive and proactive survey strategy to access information from the seller. At the same time, during the negotiation process, the parties must have clear regulations on the issue of providing information during the transaction process so that survey and appraisal can be carried out in the most convenient way, helping M&A transactions take place. as quickly as the parties had expected.

- Need to improve competitiveness through building and branding position in the marketplace, building trust in customers, and constantly improving service quality. Limit unfair competition, do not compete for customers in the form of preventing, threatening, manipulating, bribing, colluding with customers and other unfair competitive acts.

Conclude

Global corporate M&A activities in general and Vietnam's M&A market in particular have had a very strong growth rate in recent times in both quantity and value. Along with that, business valuation activities in M&A will also be equally exciting in the coming time. With the situations analyzed above, having a legal system as well as applying it to business valuation activities in M&A is not a simple and easy process in a short time. This requires the coordination of all parties from the Government, valuation businesses, teams of consultants, experts and appraisers; seller and buyer; Investors; The State management agency in charge of this activity, related entities, etc. are united and determined to synchronously implement the above solutions to improve quality, promote and develop valuation activities. valuation in further M&A in Vietnam.

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