Equitisation and M&A of State-Owned Enterprises in Vietnam
Recent Trends and Corporate Governance

Manfred Otto
Registered Foreign Lawyer
Duane Morris Vietnam LLC
Duane Morris – one of the largest law firms worldwide

- 750 attorneys in 28 offices
- Regularly top-ranked by Chambers & Partners, Legal 500, ILFR1000
- First-of-its-kind deals requiring creative solutions in a complex legal landscape
Today’s Topic – Vietnam’s State-owned Enterprises

1. Background and Recent Trends
2. Corporate Governance
Objectives of Equitisation

- Economic Efficiency
- Harmony
- Transparency

Article 1, Decree 59/2011/ND-CP
Number of 100% state-owned enterprises

Sources: Created based on the information from CIEM and OECD
SOE – Different Definitions

• Definition under Vietnam’s Enterprise Law:
  Enterprise of which 100% of the charter capital is held by the State

• Definition for convenience and FTAs:
  Enterprise of which the State owns a majority stake and where the State can control strategic resolutions
Vietnam Airlines

Approx. USD 100 million

8,771% cổ phần = 2,431 tỷ đồng

Source: Zing.vn
Beer SOE

SABECO
Saigon Beer-Alcohol-Beverage JSC

Invested 5% in 2008
### SOE Equitisation Plan for 2016-2020

<table>
<thead>
<tr>
<th>State Shareholding</th>
<th>Types of Businesses</th>
</tr>
</thead>
<tbody>
<tr>
<td>100%</td>
<td>Mapping services for national defence and security, Manufacture and sale of industrial explosives, Lottery, Air traffic services, Maritime safety, Public postal services, Banking, Electricity distribution, etc.</td>
</tr>
<tr>
<td>65%+</td>
<td>Financial and Banking services, Airport Management, Large-scale mineral mining, Gas exploration, etc.</td>
</tr>
<tr>
<td>50 – 65%</td>
<td>Air transport services, Cigarette manufacture, Telecommunications services, Electricity retailing, Growth and processing of rubber and coffee, Enterprises which are able to satisfy the essential demand for material life of ethnic groups in the mountainous, isolated and remote areas, etc.</td>
</tr>
<tr>
<td>50% or less!</td>
<td>Construction, Tourism, Information and Communications, Environment, lighting and water supply and drainage, Oil, Electricity generation</td>
</tr>
</tbody>
</table>
Wholly State-owned (103 enterprises by 2020)

<table>
<thead>
<tr>
<th>Types of Businesses</th>
<th>Lists of enterprises</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air Traffic Services</td>
<td>• Vietnam Air Traffic Management Corp.</td>
</tr>
<tr>
<td>Management of railroad structure</td>
<td>• Vietnam Railways</td>
</tr>
<tr>
<td>Lottery</td>
<td>• Vietnam Lottery Company</td>
</tr>
<tr>
<td>Public postal services</td>
<td>• Vietnam Post Corp.</td>
</tr>
<tr>
<td>Banking</td>
<td>• Ocean Bank</td>
</tr>
<tr>
<td></td>
<td>• Vietnam Securities Depository</td>
</tr>
<tr>
<td></td>
<td>• The Vietnam Development Bank</td>
</tr>
<tr>
<td>Electricity distribution</td>
<td>• Vietnam Electricity (EVN) - Parent Company</td>
</tr>
<tr>
<td>“Others”</td>
<td>• Vietnam National Oil and Gas Group (Petro Vietnam) - Parent Company</td>
</tr>
</tbody>
</table>
65% or more State-owned (4 enterprises by 2020)

<table>
<thead>
<tr>
<th>Types of businesses</th>
<th>Lists of enterprises</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial and Banking services</td>
<td>· Vietnam Bank of Agriculture and Rural Development (Agribank)</td>
</tr>
<tr>
<td>Large-scale mineral mining</td>
<td>· Vietnam National Coal – Mineral Industries Holding Co., Ltd. (Vinacomin)</td>
</tr>
<tr>
<td></td>
<td>· Thua Thien Hue Minerals Co., Ltd</td>
</tr>
<tr>
<td>Gas exploration and extraction</td>
<td>· Petro Vietnam Exploration Production Corporation</td>
</tr>
</tbody>
</table>
50 – 65% State-owned (27 enterprises by 2020)

<table>
<thead>
<tr>
<th>Types of Businesses</th>
<th>Lists of enterprises</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telecommunications services</td>
<td>• Vietnam Mobile Telecom Services (Mobifone)</td>
</tr>
<tr>
<td></td>
<td>• Vietnam Posts and Telecommunications Group (VNPT)</td>
</tr>
<tr>
<td>Electricity retailing</td>
<td>• 5 regional subsidiaries of EVN</td>
</tr>
<tr>
<td>Cigarette manufacture</td>
<td>• Vietnam Tabaco Holding Company</td>
</tr>
</tbody>
</table>
50% or less State-owned (106 enterprises by 2020)

<table>
<thead>
<tr>
<th>Types of Businesses</th>
<th>Lists of enterprises</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction</td>
<td>• Song Da Corporation</td>
</tr>
<tr>
<td>Information and Communications</td>
<td>• Vietnam Cable Television (VTV cab)</td>
</tr>
<tr>
<td></td>
<td>• VTV Broadcom Co., Ltd</td>
</tr>
<tr>
<td>Environment, lighting and water supply and</td>
<td>• Hanoi Water Corporation (Hawaco)</td>
</tr>
<tr>
<td>drainage</td>
<td>• Saigon Water Corporation (Sawaco)</td>
</tr>
<tr>
<td></td>
<td>• other 51 subsidiaries</td>
</tr>
<tr>
<td>Tourism</td>
<td>• Saigontourist Holding Company</td>
</tr>
<tr>
<td>Oil</td>
<td>• Petro Vietnam Oil Corporation</td>
</tr>
<tr>
<td>Electricity production</td>
<td>• Petro Vietnam Power Corporation</td>
</tr>
<tr>
<td></td>
<td>• EVN GENC01, 2, 3</td>
</tr>
</tbody>
</table>
POST-INVESTMENT
CORPORATE GOVERNANCE
Vietnam Gov welcomes Strategic Investors

Requirements for “strategic investors” under the law

1. Adequate financial capacity

2. Long-term commitment → Obligation to hold purchased shares for 5 years

3. Post-equitisation obligations:
   → Transferring new technologies   → Managing the enterprise
   → Training human resources       → Supplying raw materials
   → Raising financial capability   → Sales development

Art. 6.3 of Decree 59/2011/ND-CP
Process from the perspective of strategic investors

Preparation
- Due Diligence
- Documentation
- Approval
- Enterprise Valuation

Implementation
- IPO OR Direct Agreement
- Sign Contract
- Investment and Enterprise Registration

Post-Closing
- Post-Merger Integration (PMI)
- Corporate Governance
- Listing
5 Top SOE M&A Due Diligence Issues

1. Foreign investment restrictions
2. Ownership issues
3. Debt
5. Transfer pricing
Business Structure

- Legal Representative
- Board of Directors
- Inspection Committee
- General Meeting of Shareholders
### General Meeting of Shareholders Voting Thresholds

<table>
<thead>
<tr>
<th>Threshold</th>
<th>Resolutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>65%</td>
<td>Special Resolutions:</td>
</tr>
<tr>
<td></td>
<td>• Restructuring or dissolution of the company</td>
</tr>
<tr>
<td></td>
<td>• Amendment and supplementation of the company's charter</td>
</tr>
<tr>
<td></td>
<td>• Investment or sale of assets with a value of 35% or more of the total</td>
</tr>
<tr>
<td></td>
<td>assets held by the company</td>
</tr>
<tr>
<td></td>
<td>• Types of shares and total amount of shares of each type</td>
</tr>
<tr>
<td>35%</td>
<td>Veto Right:</td>
</tr>
<tr>
<td>51%</td>
<td>Ordinary Resolutions:</td>
</tr>
<tr>
<td></td>
<td>• Ratify the company’s development orientation</td>
</tr>
<tr>
<td></td>
<td>• Ratify annual financial statements</td>
</tr>
<tr>
<td></td>
<td>• Elect Chair and members of the Board and Inspection Committee</td>
</tr>
</tbody>
</table>

* The above general thresholds may different depending on the company’s charter.
JSC – General Meeting of Shareholders

QUORUM

1st 51% (Old law: 65%)
2nd 33% (Old law: 51%)
3rd No limit

RESOLUTION

65% • Special Resolutions
Old law 75%
51% • Ordinary Resolutions
Old law 65%

RESOLUTION BY WRITTEN OPINION

51%
Old law 75%

MLLC – Members’ Council

QUORUM

1st 65% (Old law: 75%)
2nd 50%
3rd No limit

RESOLUTION

75% • Special Resolutions
65% • Ordinary Resolutions

RESOLUTION BY WRITTEN OPINION

65%
Old law 75%
Board of Management

- **Board Members**
  - Number: 3 – 11
  - Term: Max. 5 years

- **Quorum**
  - First meeting: at least $\frac{3}{4}$th of the Members
  - Second meeting: more than $\frac{1}{2}$ of the members

- **Resolutions**
  - General Rule: Majority of attending Members
  - Can be prescribed by the company’s charter (→ Reserved Matters!)
Board of Directors of Vietnam Airlines

Chairman:
Mr. Pham Ngoc Minh

Members of the Board
Mr. Duong Tri Thanh
Mr. Luu Van Hanh
Mr. Nguyen Xuan Minh
Mr. Ta Manh Hung
Mr. Koji Shibata

President & CEO:
Mr. Duong Tri Thanh

Executive Vice President:
Mr. Phan Xuan Duc
Mr. Dang Ngoc Hoa
Mr. Trinh Ngoc Thanh
Mr. Trinh Hong Quang
Mr. Nguyen Ngoc Trong
Mr. Le Hong Ha
Mr. Nguyen Minh Hai
Mr. Nguyen Thai Trung

Source: Website of Vietnam Airlines
Management control by minority shareholder?

- Required equity interest for Veto Right (Can be adjusted in charter)
- Reserved Matters?
- Voting Preference Shares?
- Restricting provision of technology, materials, and cash?
- Other measures?
Contacts

Duane Morris Vietnam LLC

Ho CHI MINH CITY
Suite 1503/04, Saigon Tower
29 Le Duan, District 1
Ho Chi Minh City
Vietnam

HANOI
Pacific Place, Unit V1307/1308
83B Ly Thuong Kiet Street
Hoan Kiem District, Hanoi
Vietnam

Manfred K. Otto
Registered Foreign Lawyer
Phone: +84 28 3824 0236
Email: MOtto@duanemorris.com