

LEGAL BRIEFING

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MANAGE M&A PROJECTS: CLOSE YOUR DEAL REMOTELY

How to timely close an M&A transaction when the parties are under lockdowns, or just prefer closing their deal remotely?

Pandemic restrictions such as travel lockdown, short staffing, quarantine or logistical disruptions have thrown a massive curveball to closing M&A transactions. During the lockdowns, parties cannot meet each other to examine piles of hard copies and physically execute required documents for closing.

From LNT & Partners' recent M&A practice, technology and efficient project management have helped overcome challenges brought by the pandemic, saving a lot of time in closing M&A deals. Below is a roundup of key practice notes from our recent experience to help M&A participants close their deal remotely and efficiently.

Timeline: pandemic restrictions should be anticipated when deal-scheduling

Parties should take into account possible delays caused by the pandemic restrictions when planning the deal timeline and proactively take advantage of technology to minimize such disruptions. For instance, parties should consider setting forth a specific type of electronic signatures suitable to their case, and be prepared to implement CPs or conduct closing virtually. If time is of the essence, digital execution of transactional documents in the mutually agreed manner would be a significant time-saving tool, or as the last resort the parties may further agree to a post-closing obligation.

Form of documents: digital over physical

Vietnamese laws allow transactional documents and other related documents to be either in hard copies (i.e. information from a computer that is printed out onto papers, or the printed papers themselves) or soft copies (i.e. information created, transmitted, received and stored by electronic means¹, which is recognized as data message²). Accordingly, the contracting parties may consider which form should be chosen for each of the documents bearing in

¹ “Electronic means” is a means that operates based on electric, electronic, digital, magnetic, wireless, optical, electro-magnetic technologies or similar technologies (Article 4.10, Law on Electronic Transaction 2005).

² Article 4.12, Law on Electronic Transaction 2005.

mind timing concerns and other requirements.

For example, physical documents and wet-ink signatures should be preferred if required by the licensing authorities, the notary public or any relevant third parties. One advantage of physical documents is that it is easier to check the documents. If using physical documents and wet-ink signatures, signing arrangements should be prepared in advance to help avoid delay in results issuance and delivery. Such arrangements are very challenging if not impossible amidst the pandemic.

Digital documents are not new, but their popularity has been propelled as transaction parties are becoming more open to and even more comfortable with virtual transactions during the pandemic. For instance, companies may be allowed to make statutory filings entirely online without any further hard copy submission for the authorities' final approval. Parties may also flexibly apply the electronic form to their transactional documents (such as shares purchase agreement, shareholders' agreement or even the target's internal documents if so allowed by the target's company charter).

Use of digital signatures

It is noteworthy that e-documents should also be signed by electronic signatures. Instead of getting stuck in facilitating wet-ink execution, parties can utilize electronic signatures to surmount the hurdle.

Although regulations on e-signature have been adopted in Vietnam for over 15 years, the application of e-signature may still be questionable. The main reasons are lack of guidance on how to check the reliability of the e-signature and the identification of the person who signed the documents (in some cases, e-signature cannot be deemed reliable if it does not meet the prescribed security conditions).

In practice, the most commonly accepted e-signature in Vietnam is "digital signatures" (*in Vietnamese: chữ ký số*). This is because, under Vietnamese laws, "digital signatures" provided by a recognized legal entity are deemed to have automatically satisfied all validity requirements applicable to e-signatures.

The list of the recognized legal entities providing digital signature certification can be found [here](#).

Virtual data room for storing digital documents

E-documents need to be organized and filed for the final step of the deal. A virtual data room storing all of the soft materials is thus requisite. Due to the volume, importance and sensitivity of the documents required for closing, the virtual data room should be hosted by a highly secured platform as per the parties' agreement and managed by the respective core project teams. There should also be a time limit on the availability of the e-documents in the data room.³

In short, pandemic restrictions are causing delays, but this situation invites innovation: M&A

³ According to Article 15 of the Law on Electronic Transactions 2005 and Article 17.2 of the Law on Archive 2011, the time limit for document storage shall not exceed 70 years.

deals can still be run and closed timely by proper project management assisted by effective use of technology. From our recent practice, technology has gradually become instrumental in allowing transactional parties to overcome pandemic restrictions to close their deal timely. Remote closing not only saves time and cost, but also helps investors seize business opportunities that may only surface during the pandemic. Safe, fast and cost efficient - would remote deal closing become the norm post pandemic?

OTHER LEGAL UPDATES

Several important legal instruments have also come into force in August and September 2021.

1. **Update on the list of market access conditions applicable to foreign investors on the national portal for investment:** On 31 August 2021, the Ministry of Planning and Investment of Vietnam published the list of market access conditions applicable to foreign investors on the national portal for investment.

The publication covers 59 industries and trades and a wide range of international treaties, including Vietnam's WTO Commitments, ASEAN Framework Agreement on Services (AFAS), ASEAN Comprehensive Investment Agreement (ACIA), Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), Vietnam Japan Economic Partnership Agreement (VJEPA), Vietnam-Korea Free Trade Agreement (VKFTA) and European Union - Vietnam Free Trade Agreement (EVFTA).

Details of the conditions can be accessed via vietnaminvest.gov.vn.

2. **Decree No. 70/2021/NĐ-CP** amends Decree 181/2013/NĐ-CP on the authorities' duties and the provision of cross-border advertising services in Vietnam (*effective from 15 September 2021*)

Notably, foreign entities or foreign individuals conducting cross-border advertising services must comply with the Law on Advertising and Taxation, regulations on cybersecurity and management, provision and use of internet services and online information. They must also pay tax in accordance with tax regulations. Specifically, foreign cross-border advertising service providers must notify their contact information to the Ministry of Information and Communications instead of the Ministry of Culture, Sports and Tourism.

Last but not least, Decree 70 widens the obligations of advertisers and advertisement publishers. In particular, the advertisers and advertisement publishers must require advertising service providers (including cross-border providers) not to place advertising products that breach Vietnamese laws and have technical solutions for the advertisers and advertisement publishers to control and remove such advertising products.

3. **Decree No. 58/2021/NĐ-CP** regulates provision of credit information services (*replacing Decree 10/2010/NĐ-CP, Decree 57/2016/NĐ-CP, Decree 16/2019/NĐ-CP and effective from 15 August 2021*)

Notably, a credit information company shall be granted the Certificate of eligibility for providing credit information service (**Certificate**) if it meets the following conditions, among others: (1) having a minimum charter capital of VND 30 billion, (2) having a business plan to ensure that it only provides credit information services, (3) having at least 15 credit institutions and foreign bank branches as providers of credit information, and (4) satisfying the conditions on the information infrastructure system.

Significantly, a certified credit information company must launch the service within 12 months from the Certificate's issuance date and send a written notice to the State Bank within 5 working days from the date it commences operation. If the credit information company does not open within 12 months, the Certificate will be revoked.

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ABOUT US

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