



Vietnam M&A Strategy: Legal Perspectives on Market Entry and Exit via Equity Transfer

1. Introduction

Equity transfer is regarded as a highly practical means both for entering into and withdrawing from the Vietnamese market. For instance, when establishing a new legal entity in Vietnam, obtaining the requisite licenses may take considerable time depending on the industry. By contrast, by acquiring equity from a company already operating locally, an investor can bypass the licensing process and thereby enter the market in a relatively smooth manner. In addition, the use of equity transfers allows investors to gradually increase their ownership ratios, thereby diversifying risks through phased investment.

Equity transfer also serves as a useful mechanism for market exit. In general, the dissolution of a company in Vietnam requires significant time and effort. However, by utilizing equity transfers, an investor can achieve withdrawal from the Vietnamese market in a comparatively simple and efficient manner.

In this article, drawing on our experience from actual cases we have handled and taking into account the latest legislative developments¹, we will focus specifically on Vietnam-specific legal issues relating to the equity transfers in limited liability companies with two or more members².

2. Regulations specific to Vietnam

(1) Right of First Refusal

In the case of an equity transfer by a member of a limited liability company with two or more members, other members are granted Right of First Refusal (Article 52(1) of the Law on Enterprise, No. 59/2020/QH14). Specifically, a member wishing to transfer his or her equity interest must first offer to sell such equity to each of the other members, on the same terms and conditions, in proportion to their respective ownership ratios. If the non-transferring members fail to purchase all or any portion of the offered equity within 30 days following the date of the offer, the transferring member may then transfer such equity to a non-member under the same conditions as offered to the remaining members.

¹ Please note that this article does not purport to cover all issues that may arise in connection with the transfer of equity in Vietnam. For an overview of M&A procedures in Vietnam as a whole, please refer to our newsletter, available at the following link: https://www.aplawjapan.com/application/files/6016/4032/1484/Newsletter_VNM_032.pdf

² In Vietnam, in addition to limited liability companies with two or more members, other business forms such as single-member limited liability companies, joint-stock companies, and representative offices exist. However, since most foreign-invested enterprises in Vietnam adopt the limited liability company structure, this paper focuses specifically on equity transfers in limited liability companies with two or more members, which are the typical subject of such transfers.

(2) M&A Approval

Where the transferee of the equity is a foreign investor and any of the following conditions are met, the transferee is required to obtain approval from the competent authority for the equity transfer (commonly referred to as “M&A Approval”) pursuant to Article 26(2) of the Law on Investment (No. 61/2020/QH14):

- ① If the equity transfer results in an increase of the foreign investor’s ownership ratio in a company engaged in a sector or trade in which foreign investors are subject to conditional market access³;
- ② If, as a result of the equity transfer, the foreign investor’s charter capital ownership ratio exceeds 50% from a position of 50% or less, or increases further where the ownership ratio already exceeds 50%;
or
- ③ If the foreign investor contributes capital to, or acquires equity in, a company holding a land use right certificate for land located in an island area, a border area, a coastal area, or other areas affecting national defense and security.

(3) Effective Time of Equity Transfer

Under Vietnamese law, the effective time of an equity transfer in a limited liability company with two or more members is the time when the registration of the transferee in the register of members is completed (Article 52(2) of the Law on Enterprise). Accordingly, even if the transferee has already paid the transfer price, unless and until the transferee is duly registered in the register of members, the transferee cannot assert members’ rights (such as voting rights at the members’ council or entitlement to distributions corresponding to the equity) against the transferor.

The transferee shall be issued capital contribution certificate to confirm its ownership in a limited liability company with two or more members (Article 47(5) of the Law on Enterprise). The transferor should be required to return its capital contribution certificate in respect of the transferred equity in order to prevent any misunderstanding or its misuse by third parties.

(4) Compliance with Competition Law

Under the Law on Competition (No. 23/2018/QH14), if a company conducting an equity transfer falls within certain notification thresholds, it is required to submit a notification dossier (i.e., an economic concentration notification) to the Vietnamese authorities (Article 33 of the Law on Competition). Based on the authority’s review, if the relevant economic concentration is determined to give rise to, or potentially give rise to, a “significant competition restraining impact” such economic concentration will be prohibited (Article 30 of the Law on Competition)⁴.

In the event of a violation of these provisions, an administrative fine of up to 5% of the total turnover of the preceding financial year of the violator may be imposed (Article 111(2) of the Law on Competition). In addition, an illegal economic concentration in Vietnam may face certain remedial measures, including, among others, a forced divestiture of assets, separation of the companies to reverse the anti-competitive effects, revocation of the business license of the new entities formed as result of the concentration (Article 110 of Law on Competition and Article 3 of Decree 75/2019/ND-CP).

(5) Charter

Under Vietnamese law, in a limited liability company with two or more members, the method of equity transfer may also be stipulated in the company’s Charter (Article 49(1)(e) of the Law on Enterprise). Accordingly, when a member intends to transfer its equity interest, it is also necessary to review the

³ The sectors or trades in which foreign investors are subject to conditional market access are specified in the Decree providing guidelines for the Law on Investment (No. 31/2021/ND-CP).

⁴ For the specific criteria, see “[Current Situation of Vietnamese Competition Law - Focusing on the Enforcement of Merger Control \(Economic Concentration Regulation\)](#)”.

provisions of the Charter. The specific contents vary from company to company; for example, transfer restriction provisions or put option provisions may be included.

(6) Amendment Procedures for Investment Registration Certificate and Enterprise Registration Certificate

Where a transfer of equity results in changes to the composition of foreign investors or the ownership ratio of foreign investors, the company concerned is required to carry out procedures for amendment of its Investment Registration Certificate (IRC) and/or Enterprise Registration Certificate (ERC)⁵. For the amendment of the ERC, the equity transfer agreement or documents evidencing the completion of the equity transfer are required to be submitted to the relevant authorities.

Notably, Decree No. 168/2025/ND-CP, which came into effect on 1 July 2025, enumerates, for the first time—unlike the previous Decree No. 01/2021/ND-CP—the types of documents evidencing completion of an equity transfer, as follows:

- ① A copy or extract of the register of members;
- ② A copy or original of the contract closing statement/memorandum;
- ③ Bank payment confirmation; and
- ④ Other legally sufficient documents.

(7) Limitations on methods of remittance

The consideration for the transfer must be made through either a Direct Investment Capital Account (“DICA”) opened by the relevant Vietnamese enterprise or an Indirect Investment Account (“IIA”), depending on the aggregate ownership ratio of all the foreign investors (Article 4(2) and Article 11(3)(a) of Circular No. 03/2025/TT-NHNN; Article 3(2) and Article 5(1) of Circular No. 06/2019/TT-NHNN). However, this requirement does not apply in the case of transactions between two Vietnamese residents or between two non-residents (in each case whether Vietnamese nationals or not), in which case the transferee may remit the proceeds directly to the transferor’s account (Article 10(1) of Circular No. 06/2019/TT-NHNN).

Valuations and payments for the equity transfer shall be made in Vietnamese Dong, except that transactions between among non-residents may be settled in a foreign currency (Article 10(3)b of Circular No. 06/2019/TT-NHNN).

3. Key Considerations When Preparing an Equity Transfer Agreement

(1) Preparation of a Simplified Agreement

When applying for an amendment to an Enterprise Registration Certificate or making tax filings⁶, it is necessary to submit the equity transfer agreement to the competent authority. However, if a contract containing complex provisions is submitted it may cause unnecessary misunderstandings on the part of the officer in charge and could result in the rejection of the application.

To avoid such situations, in addition to the formal equity transfer agreement, a simplified agreement may be prepared specifically for submission to the authorities. The simplified agreement typically includes the transfer price, the basic rights and obligations of each party, the governing law, and the method of dispute resolution, while excluding provisions that may be deemed to complicate the licensing

⁵ See Article 45(2)(c) of Decree No. 168/2025/ND-CP. In practice, the competent authority may require the submission of both the equity transfer agreement and documents evidencing the completion of the transfer, so it is necessary to respond flexibly on a case-by-case basis.

⁶ See Chapter 7, Section 7(3) of Appendix I to Decree No. 126/2020/ND-CP.

procedures, such as representations and warranties, conditions precedent, covenants, and various optional clauses.

In such cases, the formal agreement generally sets out the preparation of the simplified agreement and specifies their priority relationship.

(2) Allocation of Risk of Rejection by the Authorities

An unavoidable issue in equity transfers in Vietnam is the allocation of the risk of rejection of the application by the authorities. From the transferee's perspective, in order to avoid such risk, it can be expected that a payment schedule will be proposed whereby the transfer price is paid only after completion of the application procedures with the authorities. On the other hand, from the transferor's perspective, it is natural to seek to proceed with the application only after receipt of the transfer price, taking into account the risk of non-payment. Accordingly, it is necessary to reconcile the interests of both parties.

As a compromise, methods such as payment of the transfer price in installments or the use of an escrow account may be considered, both of which are legally feasible measures under Vietnamese law.

4. Key Tax Considerations

Under current law, where a foreign company transfers equity in a limited liability company with two or more members, the capital gain arising from such transfer is subject to a 20% tax (so-called "capital gains tax") (Articles 14 and 11 of Circular No. 78/2014/TT-BTC). However, with the amended Corporate Income Tax Law (No. 67/2025/QH15) and its implementing decree coming into effect on 1 October 2025, this tax rate may be subject to change, and careful attention is required⁷.

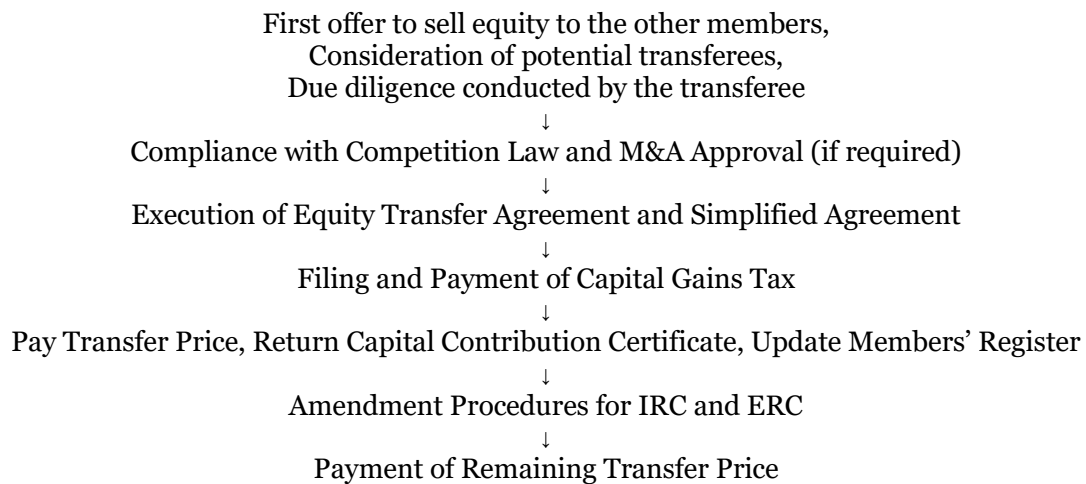
The capital gains tax must be paid within 10 days from the date on which the tax liability arises (Article 44(3) of No. 38/2019/QH14). However, the law does not clearly specify the precise date on which the tax liability arises, so it is necessary to determine this on a case-by-case basis, for example through prior consultation with the tax authorities.

As to the taxpayer and filing obligations, if the transferor is a foreign company without a presence in Vietnam, the transferee is responsible for filing and paying the capital gains tax on behalf of the transferor. Where both the transferor and transferee are foreign companies without a presence in Vietnam, the target company itself assumes the responsibility for filing and paying the tax (Article 14(2)(c) of Circular No. 78/2014/TT-BTC).

5. Proposed Schedule

Based on the foregoing, an illustrative schedule for the transfer of equity by a limited liability company with two or more members is set out below (assuming that the tax liability arises on the date of execution of the equity transfer agreement and that the transfer price is paid in installments).

⁷ Regarding the tax rate on equity transfers, as of 24 September 2025, a draft decree has been published for public comment (<https://www.moj.gov.vn/qt/tintuc/Pages/chi-dao-dieu-hanh.aspx?ItemID=5293>).



6. Conclusion

As outlined above, this article has focused on some of the distinctive legal issues surrounding equity transfers in Vietnam. While equity transfers can serve as an effective investment strategy, they also entail diverse regulatory requirements and the risk of rejection by the authorities, which must be carefully considered. In addition, close attention should be paid to the impact of recent legislative amendments on the practical implementation of equity transfers.

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