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**Mergers and Acquisitions between Foreign Companies and
Vietnamese Companies:**
Drivers and Issues

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Abstract

The value and number of merger and acquisition deals in Vietnam have increased rapidly over the past decade. Foreign investors play an active role in this trend, especially after Vietnam's accession to the WTO. The aim of the research is to investigate what factors drive companies to engage in mergers and acquisition as well as the issues they have to deal with in the merger and acquisition process in Vietnam. A conceptual framework is carried out to review previous studies related to drivers and issues in mergers and acquisitions. Then drivers and issues in merger and acquisition activities in Vietnam are explored, based on secondary data and primary data from a Vietnamese securities company which involved in an M&A with a Japanese company. Beside the common drivers and issues discussed in literature, there are some unique features that arise specially in the Vietnamese business environment. Implications for a successful merger and acquisition in Vietnam and further research are also provided.

Key words: mergers and acquisitions (M&As), foreign companies, Vietnamese companies, drivers, issues.

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Abbreviations

ASEAN	Association of South East Asia Nations
APEC	Asia Pacific Economic Cooperation
BRC	Business Registration Certificate
BTA	Bilateral Trade Agreement
FDI	Foreign Direct Investment
FIEs	Foreign Invested Enterprises
GDP	Gross Domestic Product
HR	Human Resources
IFRS	International Financial Reporting Standards
JVs	Joint Ventures
M&As	Mergers and Acquisitions
PSI	PetroVietnam Securities Incorporated
PwC	PricewaterhouseCoopers
SMEs	Small- and Medium-sized Enterprises
SOEs	State-Owned Enterprises
UNCTAD	United Nations Conference on Trade and Development
USD	United States dollar
VND	Vietnamese dong
WIR	World Investment Report
WTO	World Trade Organization

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Chapter 1: Introduction

1.1 Background

Vietnam has been one of the fastest growing economies in the world over the past twenty years. The country is considered one of the Asian miracles thanks to its economic openness. Foreign investments have been increasingly directed to the country and play a vital role to support its economic development. Due to legal restrictions, mergers and acquisitions (M&As) as a foreign investment mode of entry was prohibited at first, but over the past ten years, M&As have become a feasible and favoured option for many foreign investors. The foreign M&As comprises one-third of total M&A deal volume but two-third of total value in Vietnam in 2011 (IMAA 2012).

The drivers for M&As discussed in the literature include synergies, speed, diversification, etc. And the issues that firms may face in the M&A process include, *inter alia*, selecting the right partner, cultural clash, human resources (HR) management. The aim of this study is to investigate whether the M&As between foreign companies and Vietnamese companies bring similar drivers and issues or not. The M&A activities in Vietnam may exhibit characteristics similar to other M&As worldwide. Nevertheless they may include some unique elements in the context of a developing country with distinct cultural, social, and economic conditions. Following the investigation of the drivers and issues, strategies for a successful M&A in Vietnam is provided for foreign acquirers and Vietnamese sellers as this is the most common form of M&As between foreign companies and Vietnamese companies.

1.2 Motivation

There are numerous reports about M&As in Vietnam by consultancy or securities companies, whereas the amount of academic research on the topic is limited. The academic papers, if available, investigate a particular aspect such as M&As in commercial banks, legal framework on M&As, etc. (see Appendix One). No academic research found discusses specifically why companies conduct M&As and which issues are discovered in M&As in Vietnam, while this is examined in numerous academic papers worldwide. Therefore, the study is expected to fill the lacunae in current literature about M&As in Vietnam by investigating the drivers and issues in M&As between foreign companies and Vietnamese companies. Practical advice for a successful M&A in Vietnam is also provided based on discussion of the drivers and issues.

1.3 Presenting the problem

The objective of this study is to examine the development of M&A activities in Vietnam. Particularly, it focuses on the drivers for companies involving in M&As and the issues they experienced in the M&As process. Therefore, the research question is:

What are the main drivers and issues in mergers and acquisitions between foreign companies and Vietnamese companies?

To have a comprehensive picture of the topic, two sub-questions must be answered:

a. What are the main factors that motivate companies to conduct M&As in Vietnam?

b. What are the main issues companies faced during the pre-merger and post-merger process?

The first sub-question analyses the main factors which drive both foreign companies and Vietnamese companies, in the role of the acquirers and the sellers, to involve in M&A activities. The current literature focuses on the acquirers' motivation and pays little attention to the sellers' drivers. Yet in fact, both the acquirers and the sellers have their own objectives to conduct an M&A. The second sub-question investigates the issues that the foreign companies as well as Vietnamese companies find out during the pre-merger and post-merger (integration) process. The issues are not presented separately for foreign companies and Vietnamese companies as they are mutual issues for both parties in a deal.

The study focuses on international M&As between foreign companies and Vietnamese companies. It covers inward and outward cross-border M&As and M&As between foreign invested enterprises (FIEs) in operation in Vietnam with local companies. The foreign companies could be the acquirers (most common) or the sellers, and the same applies to Vietnamese companies. However the data about the Vietnamese M&A market presented in Chapter Three will include domestic M&As between Vietnamese companies in order to also present a broad development picture.

1.4 Thesis disposition

The study starts with Chapter One presenting background, motivation, problem presentation, research methodology, and research limitations. Chapter Two explores the current literature about drivers and issues in M&As and some strategies for successful M&As. Chapter Three starts with

Vietnam's economic development recently, focusing on Foreign Direct Investment (FDI) and international trade as these are the premises for M&A development in Vietnam. Then the M&A activities in Vietnam are studied in general followed by the drivers and issues in M&As between foreign companies and Vietnamese companies. Practical advice for a successful M&A in Vietnam is also given to the foreign acquirers and Vietnamese sellers at the end of Chapter Three. The paper is concluded by Chapter Four with answers to the research question and implications for further research.

1.5 Research methodology

1.5.1 Research approach

The adductive approach is appropriate for this study as it deducts from theories to practice and then inducts from practice to new contributions to theories. The author uses quantitative methods to collect quantitative data as a foundation before answering the research question. The qualitative form of research has been chosen for investigating the drivers and issues in M&As in Vietnam. Qualitative data collection and analysis can give an opportunity to investigate a phenomenon in details and provide the researcher with insights into the minds of individuals under considerations (Walliman 2006). The author has access to the problem using an exploratory approach. According to Babbie (1989), exploratory studies are most typically done to satisfy the researcher's curiosity and desire for better understanding. This approach is typical when a researcher is examining a new interest or when the subject of study is itself relatively new and unstudied. These studies are also appropriate in the case of more persistent phenomena.

The author uses content analysis, a mode of observation, to analyse the drivers and issues. In content analysis, researchers examine a class of social artefacts, typically written documents, e.g. newspaper articles. The biggest advantage of content analysis over other research methods is unobtrusiveness as the written documents have been available before the study begins and no one can make changes to them. However, content analysis is limited to the examination of recorded communications (Babbie 1989). Therefore, a self-administered questionnaire, followed by an interview, was sent out to the respondents to collect insiders' view about the drivers and issues.

The author of this report starts by investigating the general drivers and issues based on companies' announcement or news and attempts to collect information and categorize the most common factors into groups. The author assumes that the companies provide the accurate

information. Nevertheless the public announcements do not provide comprehensive drivers and issues. Therefore the author tried to gain access to as many sources as possible. In addition, PetroVietnam Securities Inc. (PSI), who did an M&A with SMBC Nikko, Japan, provided insider's view about the drivers and issues.

1.5.2 Data collection

1.5.2.1 Secondary data

Secondary data related to the Vietnamese economy and M&A activities were collected, at the first stages, to obtain information and become familiar with the topic. Furthermore, it helps to generate ideas through different perspectives, then implement and refine these ideas for the further research using the primary data. The quantitative data on M&As are hard to collect, even in the developed countries. There are only a very few countries in the world, e.g. the U.K., which include M&A statistics within their official data collection and dissemination. Most of M&A data are compiled by private commercial data sources (IMF 2004). The M&A data in Vietnam are in the same situation as many deals are not reported publicly. If the deal is announced, the detailed value is not given, especially deals between local companies and failed transactions. The time of deal closing is also vague as many deals were counted in the first quarter of 2008, for instance, but it is said to be at the end of 2007 (PwC 2008c).

The quantitative data on cross-border M&As worldwide were taken from the World Investment Report (WIR) series published by the United Nations Conference on Trade And Development (UNCTAD). As the number of outward M&As by Vietnamese companies (M&A net purchases) is limited the author focuses on M&A sales data to analyse. According to UNCTAD (2011: 198), 'net cross-border M&A sales in a host economy = Sales of companies in the host economy to foreign TNCs (-) Sales of foreign affiliates in the host economy. The data cover only those deals that involved an acquisition of an equity stake of more than 10 per cent'. The quantitative data about M&As in Vietnam were derived from private commercial data sources such as PricewaterhouseCoopers (PwC)' or IMAA's reports. The author chose to source from PwC's reports because it is the only source for M&A data in Vietnam before 2009. In addition, PwC data stem from Thomson Reuters Finance, very reliable and comprehensive data about M&As in the world as UNCTAD chose Thomson Reuters Finance data about cross-border M&As to present in its WIR series. However, the PwC data only present a total number on deal value and

volume without detailed information about sectors, acquirers, etc. so other sources are utilized as complement.

Qualitative data about drivers and issues for M&As in Vietnam come from companies' announcements, news published about M&A deals, and previous relevant reports or research. The author searched for qualitative data first by identifying the M&As that have occurred between foreign companies and Vietnamese companies, and then investigating information about each deal to discover relevant features of the research problem.

1.5.2.2 Primary data

After gathering and analysing the secondary data, the stage of collecting primary data was undertaken. The objective of collecting primary data is to get direct insiders' opinion about why they involved in an M&A and what issues they came up against during the M&A process. A self-administered questionnaire was sent to the respondent, Ms. Thai Viet Anh, director of PSI's M&A division. The authors have sent emails to many companies conducting M&As in Vietnam to ask for their agreement of involving in primary data collection; but there is only one response based on personal acquaintance. The questionnaire could be found in Appendix Two. A short telephone interview of 15 minutes is conducted after receiving the answers to the questionnaire to get more details in unclear issues. The information provided by the respondent is to cross-check the findings in secondary data as well as to explore the new factors or issues which are not discussed in the secondary data.

1.5.3 Data analysis

The analysis of the data collected from the archival secondary data, the questionnaire, the interview, etc. is an on-going process carried out throughout the paper. Based on the secondary data sources mentioned above, the relevant data which show the development as well as the characteristics of the M&A activities in Vietnam are selected for presentation and analysis.

The qualitative data about the drivers and issues were triangulated to decide which source should be used. The information about each M&A is categorized into common drivers and issues. The primary data were utilized to cross-check the findings in secondary data and an insider's view about the drivers and issues. The primary data also provide new factors which are not discussed in secondary data. In addition, the pieces of advice developed by consultancy companies are

compared in relation with the drivers, issues and practice presented by the respondents to find the most appropriate strategies applied to the Vietnamese market.

1.6 Research limitations

The classic problem when conducting research in a given problem field, is the inherent lack of time and resources to analyse the persistent emergence of new and relevant data. The validity of the study is, to a large extent, highly dependent on the information available to the author. Though the author has tried to search for as much information as possible, companies, especially Vietnamese companies, rarely talk publicly about details of M&A deals, especially issues or failures, since these are related to business confidentiality and may affect their performance and stakeholders.

The outcomes of this study are applied for the current Vietnamese market situation and may change in the future due to the changing market condition. The analysis based on the author's subjective assessment of qualitative data so it is hard to avoid bias. Even though, to avoid bias, the author has cross-referenced many sources about a deal to justify the findings. In addition, the primary information provided by the respondent is utilized to cross-check the findings.

Chapter 2: The essence of mergers and acquisitions

2.1 Definitions of mergers and acquisitions

Acquisitions are listed as an equity mode in the hierarchical model of choice of entry modes, developed by Pan and Tse (2000) (see Appendix Three). In fact, acquisitions can be minority (foreign interest of 10 to 49 per cent of a firm's voting shares), majority (50 to 99 per cent), or full or outright acquisitions (100 per cent or wholly-owned subsidiary). The choice of acquisitions is preferable if the fixed costs are large. Cross-border M&A is considered a type of FDI yet it is quite difficult to distinguish it from a portfolio investment (UNCTAD 2000; Raff, Ryan & Stähler 2009).

According to Oxford Dictionaries, a merger is a combination of two things, especially companies, into one; while an acquisition is a purchase of one company by another, or the buying or obtaining of assets or objects (Oxford Dictionaries 2012). Encyclopaedia Britannica explains that a merger may be accomplished by one firm purchasing the other's assets or shares by cash or its securities (EB 2012). Similarly, Gaughan (2011: 12) defines that 'a merger is a combination of two corporations in which only one corporation survives and the merged corporation goes out of existence'. Epstein (2005) considers mergers a combination of two equal entities while acquisitions are a process of fitting a smaller company into the existing structure of a large one. Although mergers are supposedly between relatively equal partners, most are in fact acquisitions with one company controlling the other. The terms 'merger' and 'acquisition' are used together as merger and acquisition (M&A) or consolidation in some literatures that basically means 'acquisitions' (UNCTAD 2000; Gaughan 2011). According to Venema (2011), M&A is the most complex way of collaborating because the acquirer gets all the benefits as well as the risks and challenges inherited from the target.

2.2 Types of mergers and acquisitions

The types of mergers and acquisitions are usually classified into horizontal, vertical, and conglomerate M&As. The horizontal M&As are between competing firms in the same industry. The main aims of horizontal M&As are to achieve synergies or economies of scale as the value of combined assets exceeds the sum of assets separately; and to reduce competition by buying out competitors in order to gain greater market power. The later aim may let the M&A deal be

considered under antitrust law in the U.S. and Europe. Vertical M&As occur when firms try to move forward or backward in the value chain to reduce uncertainty and transaction costs; and to benefit from economy of scale and scope. This type of M&A may create a powerful company which could control the entire value chain. The conglomerate M&As are between companies in unrelated activities. The acquirer seeks to diversify risk and deepen economies of scope. In the conglomerate M&As, large companies buy smaller ones without any clear attempt to create synergies. They keep acquired companies separate to provide the advantages of decentralization and autonomy (UNCTAD 2000; Gaughan 2011)

However, due to the increase of M&As between Internet companies¹ or from the investment of financial institutions, it is difficult to clearly categorize the M&As into the above classifications. For instance, the Internet companies' M&A deals are not vertical because they are between companies in the same industry. They are not exactly horizontal or conglomerate as they could be in related businesses but in different segments. The aim of investment in this case is not 'control' *per se* but to create an economic network of like-minded companies (UNCTAD 2000).

M&As can also be classified as friendly and hostile M&As. In friendly M&As, the target firm agrees to the transaction; or they may be against it at first but then agree to it. Hostile M&As are undertaken even though the target firms reject the merger offers. The price premium in hostile M&As tends to be higher than in friendly transactions. The number of friendly M&As, both domestic and international, are significantly higher than that of hostile M&As. Target companies have developed various defence tactics to avoid becoming a target in hostile M&As (see Appendix Four) (UNCTAD 2000; Gaughan 2011; Mitchell & Mulherin 1996). The hostile transactions are associated with immediate substantial falls in output and employment, which are not present after friendly transactions (Conyon, Girma, Thompson, & Wright 2001).

2.3 Cross-border mergers and acquisitions

According to UNCTAD (2000:99) the cross-border merger creates a new legal entity with combined assets and operations of two firms belonging to two different countries. The country of the acquirer or purchaser is the 'home country' and the country of the target or acquired firm is

¹ High-tech companies such as dotcom companies, e.g. Google or software companies, e.g. Microsoft.

the ‘host country’. The headquarters of the new firm can be in both countries or in one. The data on M&As show that acquisitions outnumber mergers in cross-border M&As (UNCTAD 2000).

Since 1990, there have been two peaks in the world M&A deal value in 2000 and 2007 with USD 905 and USD 1,023 billion, respectively (see Figure 2.1). The total value of cross-border M&As worldwide declined from roughly USD 1,023 billion in 2007 to nearly USD 250 billion in 2009, and slowly recovered in 2010-2011. North America M&A sales shrunk from USD 266 billion in 2007 to USD 51 billion in 2009; while the same figure for Europe is USD 590 billion and USD 140 billion, respectively (UNCTAD 2011). The current economic downturn offers great opportunity for firms which want to acquire others because current market prices are 30 per cent or more below fair values. Firms that can identify the company-specific risks of an acquisition and quantify the valuation implications of these inherent risks are in a better position to choose appropriate targets (Pandian & Woodlock 2012).

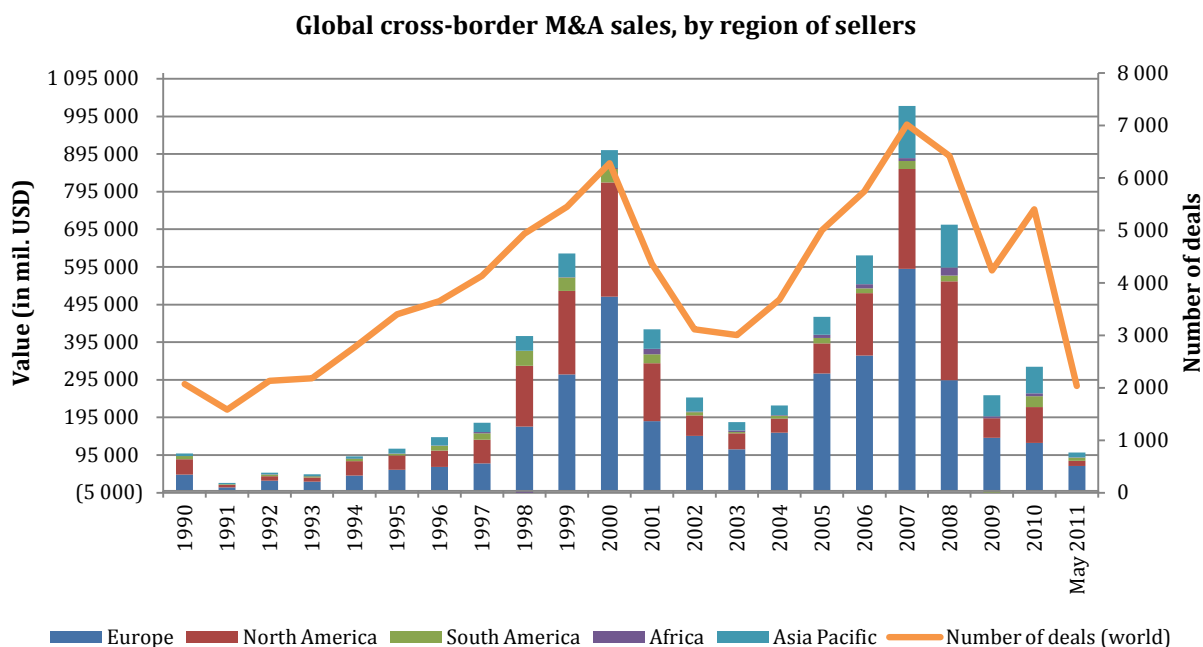


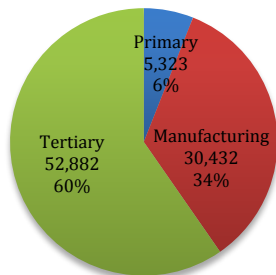
Figure 2.1: Global cross-border M&A sales, by region of sellers, 1990-May 2011.
Source: UNCTAD 2010, 2011.

Emerging markets such as China and India have exhibited large increases in the number of M&A deals, especially the number of “emerging-to-developed” acquisitions rising from the first half of 2009. They generated USD 806.3 billion in M&As in 2010, a 76.2 per cent increase over 2009, and accounted for 33 per cent of total deal value worldwide. This increase is thanks to attractive

valuations of company assets, strong earnings growth and robust economic fundamentals (such as market growth). Private equity firms in developing countries have become directly involved in the restructuring of companies going through consolidation (Sánchez, Seeber, & Goldberg 2011; UNCTAD 2011; Thomson Reuters 2012).

The tertiary sector outnumbered primary and manufacturing sectors in both M&A value and number in the period of 1990 to May 2011, as it accounted for 60 per cent of deal volume and 57 per cent of deal value (see Figure 2.2). All three sectors experienced an upward trend in value and volume before the current economic downturn. Manufacturing was significantly hit by the economic downturn as its value plunged from USD 336 billion in 2007 to USD 76 billion in 2009 (UNCTAD 2010 & 2011).

**Global cross-border M&A sales, by sector
(Number of deals)**



**Global cross-border M&A sales, by sector
(In bil. USD)**

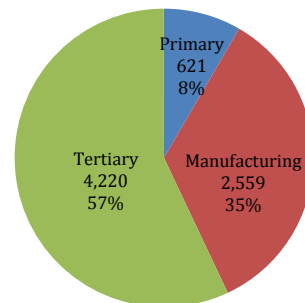


Figure 2.2: Global cross-border M&A sales, by sector, 1990-May 2011.
Source: UNCTAD 2010, 2011.

Many observers refer to economic integration as an important reason for the expansion of international M&As due to lower trade costs that make it easier for companies in expanding internationally (Bjorvatn 2004). The cross-border acquisitions may reduce certain types of costs, i.e. the transaction costs involved in entering new markets. They still must overcome the costs associated with the liability of foreignness in the host country; including knowledge about the different culture, area regulations, and the pervasive business norms of the location. The acquiring firm can capture local knowledge needed by making the acquisition (Hitt, et al. 2009).

Cross-border M&As typically involve changes in management and possibly a company restructuring, and may generate transfers of skills, know-how or technology (UNCTAD 2008). The acquirers may enjoy positive returns when they have acquired a target in a country where

they did not have operation in previously; the returns are negative when the acquirers already have operations in this country (Gaughan 2011). Acquiring firms are likely to create more value when the acquired firms are based in countries with lower risks. In particular, firms are better able to achieve synergy when the institutions of the host country are more similar to those of the home country. Obviously, integration is a critical element and is more complex and challenging when there is a great difference in the institutions between the home and host countries (Hitt, et al. 2009).

The M&A activity is expected to bring a stronger rise in the number of deals beginning in the second half of 2011 through 2013 due to the decline of target firms' prices and the convergence of buyer and seller expectations. The main motives for this consolidation are to develop more efficient supply chains and to achieve improved efficiency in other parts of the value chain, as well as to prepare for post-recession growth and expansion. Increased buying is expected from the Far East, because of the economic success experienced in the region. Although buying from Europe may increase, the euro's weakness is likely to be a chilling factor (Sánchez, et al. 2011).

2.4 Drivers for mergers and acquisitions

2.4.1 Speed

Investing through M&As is the fastest way to reach the desired goals when expanding domestically or internationally. Acquiring an existing firm with an established production and distribution network is far quicker than developing a new organization when firms want to enter a new market or a new industry. It is especially preferable when the time to market is vital. Due to the brisk development of technological advancements today, M&As can provide a way to catch up rapidly, respond quickly to opportunities in the economic environment. Speed - speed to market, speed to positioning, and speed to becoming a viable company - is absolutely essential in the current economy. The pressure of time and the feeling of urgency require planning and acting at once (Carey 2000; UNCTAD 2000).

2.4.2 Synergies

Synergies are discussed in the literature as the main driver of M&As. Synergies are gained when the sum of the parts is more productive and valuable than the sum of individual components. The value created by the combination may result from more efficient management, economies of

scale, improved production techniques, the combination of complementary resources, the redeployment of assets to more profitable uses, the exploitation of market power, etc. (Bradley, Desai, & Kim 1988; Gaughan 2011). The two main types of synergy are operational and financial synergy. The operational synergy refers to efficiency gains or economies of scale while financial synergy implies the possibility of lower cost of capital by combining one or more companies (Gaughan 1991).

Synergies can be static or dynamic in character. Static synergies are gained from revenue increases, greater bargaining power or market position, cost reduction due to economies of scale, efficiency in production thanks to the avoidance of duplication of production, R&D or other activities. Dynamic synergies may involve the matching of complementary resources and skills to enhance a firm's innovatory capabilities with long-term positive effects on sales, market shares and profits. Firms seek static synergies in industries characterized by increased competitive pressure, falling prices and excess capacity, such as in the automotive and defence industries. Meanwhile, dynamic synergies are sought in innovation-driven and fast technological change industries, such as in information technology and pharmaceuticals (UNCTAD 2000).

Both domestic and cross-border M&As experience the efficiency-gains-through-synergy yet the cross-border investments gain greater scope. The rationalization and improvement of company performance by achieving an international specialization of the value chain allow firms to locate different activities in places with appropriate mixes of locational advantages (UNCTAD 2000). However, synergies are hard to achieve as 70 per cent of M&A deals do not achieve the expected synergies (Galpin & Herndon 2000). Ollinger and Nguyen (2003) found empirical evidence of synergies in the U.S. food industry; nonetheless Bernad, Fuentelsaz, and Gómez (2010) found that only half of the M&As that took place during 1986 and 2004 in Spanish banking experienced productivity improvements. Fee and Thomas (2004) find that horizontal mergers' effects appear to be somewhat temporary in nature. Merging firm improvements in operating performance are strongest in the first year after the merger. Yet, the horizontal mergers did bring improved productive efficiency and buying power to firms.

2.4.3 Strategic assets

The pursuit of strategic assets is considered a main reason of the research for synergies. The strategic assets could be R&D or technical expertise, patents, brand names, the possession of

local permits and licences, and supplier or distribution networks, and rare natural resources, etc. Such assets may be crucial to firms' development but they are not available elsewhere in the market and/or take time to develop. They could create a firm's static advantages or strengthen its dynamic advantages (UNCTAD 2000). Firms could acquire the strategic assets at a discount then utilize them for development (Cooke 1986). For fast developing countries like China or India, the national natural resources are not sufficient to support economic development. Their companies are increasingly looking to acquire access to critical natural resources worldwide to secure the national supply (Morgan Stanley 2006).

2.4.4 New markets and market power

The search for domestic as well as international new markets and market power is a constant concern for firms, especially in saturated existing markets. Firms can quickly access new market opportunities and develop critical mass by acquiring an existing local network of suppliers, clients and skills. This is of particular importance for cross-border M&As due to the need for local knowledge. In the case of horizontal M&As, the motivation can well be the search for oligopolistic positions; in addition, consolidated market control may provide opportunities for anti-competitive practices and increased barriers to entry (UNCTAD 2000).

Leading companies in Southeast Asia, China and Hong Kong have been making acquisitions to access growth opportunities outside their home markets. Singapore Power's acquisition of TXU Australia, Lenovo's acquisition of IBM's PC business, Hutchison's (AS Watson's) acquisition of Marionnaud Perfumeries in Europe and Telekom Malaysia's acquisition of Excelcomindo in Indonesia are all expressions of this trend. Similarly, entering the major growth markets in Asia is the main driver for M&As from developed countries. Some of the most notable examples include Bank of America's purchase of strategic stakes in Chinese banks, Philip Morris's acquisition of Sampoerna, Indonesia, and Vodafone's acquisition of a strategic stake in Bharti, India's largest cellular company (Morgan Stanley 2006).

2.4.5 Diversification and greater size

An acquisition maybe part of a diversification program that allows the company to move into other lines of business as conglomerate M&As mentioned above. The diversification of product lines could enhance the value of the firms through economies of scale/scope, market power, risk reduction under antitrust laws. A primary reason for diversification is to increase the size of the

firms since by acquiring other firms, the acquirer could gain greater size without having to build it from the beginning (Hitt, Harrison, & Ireland 2001). The greater size can bring huge benefits, particularly in operations requiring economies of scale, large expenditures for R&D and the expansion of distribution networks. Size in itself has a protective function against hostile M&As as it is more difficult to be taken over. Large size can furthermore create financial, managerial and operational synergies that reduce the operational vulnerability of firms. An internal capital market is an outstanding advantage of greater size. There are economies of scale in fundraising so it means lower-cost access to investible funds. Internal financing can be used as a tool to distribute funds inside firms for strategic development. Another advantage of size is that larger firms with multiple operations across geographical locations and segments can have an advantage in the collection and adoption of new information and innovation. The size motive can apply to both domestic and cross-border M&As (UNCTAD 2000).

Studies show that the performance of diversification provides mixed results. Most studies show that conglomerate M&As tend to produce negative performance outcomes. Be that as it may, General Electric is a success example in diversification. Through acquisitions and divestitures, the firm has become a diversified conglomerate with operations in insurance, television stations, plastics, medical equipment, etc. (Gaughan 1991; Hitt, et al. 2001).

2.4.6 Risk reduction

Another driver behind M&As is the desire for risk reduction through product or geographical market diversification. The risks could be operational risks, foreign exchange risks, etc. which are associated with firms' activities domestically and internationally. The increasing globalization of trade and capital mobility encourages many firms to look outside their home country borders to find factors of production that could provide competitive advantages and reduce risks. By acquiring foreign companies, a firm may be able to circumvent tariff and non-tariff barriers and thereby lower the level of uncertainty. Geographical diversification plays a more important role than product diversification because firms now focus on their core activities (Vasconcellos & Kish 1998; UNCTAD 2000). For example, many non-European firms attempted to establish a presence in Europe before the barriers to entry intensified in the late 1980s and early 1990s. Consequently, by 1994 the U.S. FDI to the EU had increased by approximately 200 per cent from the early 1980s (Vasconcellos & Kish 1998).

2.4.7 Financial gains

An acquirer's financial analysis may reveal that the value of the target is significantly in excess of its market value. The acquirer such as a private equity firm may acquire the target and seek to sell it at a higher value (Gaughan 2011). Shleifer and Vishny (2003) explain that M&A decisions are driven by stock market price. Stock prices do not always reflect the true value of a firm. A potential acquirer can value a company's anticipated earnings stream higher than current shareholders do. Bad management of a firm, imperfections in the capital market and major exchange rate realignments may provide short-term capital gains to be made by acquiring an undervalued firm, or affect the timing of planned M&As. Such motivations are particularly important in the case of portfolio-type M&As and in economies with poorly developed capital markets or in a financial crisis (UNCTAD 2000). Vasconcellos and Kish (1998) find that stock prices are major factors that influence cross-border M&As in the U.S. and EU countries. Bond yields are major causal factors as they may be one of the final negotiating points in the decision to complete an acquisition.

2.4.8 Tax considerations

Tax benefits could be assets in establishing correct expenses that the acquirer pays in the deal. Part of the tax benefits is driven by tax synergy, where the tax shields of a partner can offset the income of the other. The tax benefits may stem from a market value of depreciable assets, which is higher than the booked value. The acquiring firms' ability to step up the basis of these assets in accordance with the purchase price may finally realize tax savings (Gaughan 1991). The tax policy does allow governments to favour or hinder M&A investment through the tax system. Tax-free status is a prerequisite of certain acquisition deals in the U.S. as the target may decline the deal if the transaction cannot gain the status. The capital gains tax policy triggers significant transaction costs which lead to a decrease in the number of M&A deals when that tax rate is relatively high (Gaughan 2011).

2.4.9 Behavioural explanation

The behavioural explanation argues that corporate managers pursue their own self-interest, especially where corporate governance is weak, the agency problem. They may seek expansion to enhance executives' power, prestige, job-security or remuneration, even when this is not technically efficient or in the interest of shareholders (Baumol 1967; Cooke 1986). They can also

be under the pressure of financial markets to show high growth and profit rates (Gaughan 2011). Individual managers may also overestimate their ability to manage acquisitions and think that they are especially well-equipped to make a deal work (UNCTAD 2000).

2.5 Issues in the merger and acquisition process

The M&A process is illustrated in the Watson Wyatt deal flow model (see Figure 2.3). The pre-merger phase includes formulating the ideas, locating the partner, investigating the partner or due diligence, and negotiation. The post-merger is integration to achieve the planned goals (see more detail in Appendix Five). The due diligence and integration have received much attention in the literature due to their importance to the success of an M&A deal (Galpin & Herndon 2000).

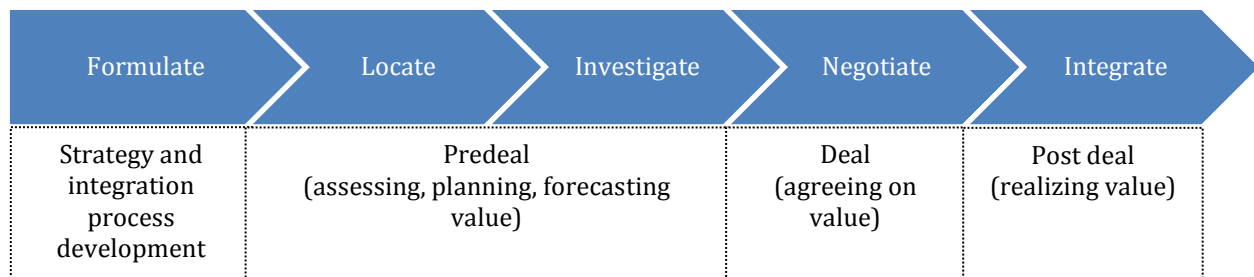


Figure 2.3: The Watson Wyatt deal flow model
Source: Galpin and Herndon 2000.

2.5.1 The pre-merger issues

The lack of a clear strategy showing the possible benefits and costs in the first stage will create troubles in the following stages because there will be no direction throughout the process. In the second stage, the possible success of the M&A is diminished by selection of the wrong partner or selection of the right partner without a well-thought plan for managing the rest of the M&A process. In addition, a clever and clear announcement of the merger could help to ease employees' anxiety and retain key talents; and selecting a dedicated senior executive to head the M&A process is crucial to M&A success (Galpin & Herndon 2000; Schuler & Jackson 2001).

The investigation phase relies on thorough due diligence to explore every possible facet of the target company. The due diligence must be exercised in the financial, operational, legal, environmental, cultural, personnel, IT and strategic arenas. Setting negotiating parameters, determining bid price, and initial integration implementation plan all are based on due diligence findings (Galpin & Herndon 2000). The challenge during the due diligence process is to collect and analyse a vast amount of data under highly confidential conditions and accelerated timetables

(Greenberg, Lane, & Bahde 2005). Firms are tempted to hurry the fact-finding process under time pressure, leading to inadequate due diligence. For example, after the deal closing, the acquirer finds out that the target has 'invested' net income in its financial report that makes the bid price higher than its actual price. Or due to cursory cultural due diligence, the acquirer finds it hard to integrate the target into its system because of differences in corporate culture (Galpin & Herndon 2000). In addition, insufficient information could affect the outcomes of due diligence. Due to confidentiality of business information, firms tend to keep their important information closed until the deal closing (Cartwright 1998; McGee & Byington 2009). Many merger problems can be traced back directly to insufficient information about acquired companies and to potential integration problems that were ignored or minimized until after the deal closed (Greenberg, et al. 2005). Furthermore, the 'soft' due diligence of HR and culture is hard to reach an exact conclusion about, so it is usually neglected at this stage (Schuler & Jackson 2001).

In the negotiation phase, the considerations include price, performance, people, legal protection, and governance. A particularly difficult aspect of many deals in this phase is the agreement on terms and conditions of transition services to bridge the pre- and post-merger process (Galpin & Herndon 2000). The factors affecting the negotiation outcomes include time pressure, culture, experience, and power-dependence relationship. Negotiation interaction particularly must be developed in secrecy to avoid any external pressure that might hinder the correct development of the process and achievement of an agreement. Third party participation is common because of the complexity of the process and mostly in international contexts. The third parties are paid with incentives based on reaching an agreement so they may put time pressure on the acquirer and the seller. Trust building between negotiators could facilitate commitments and reduce opportunistic behaviour (Saorín-Iborra 2008). Another important aspect in the pre-merger phases is the preparation for integration. Lack of integration planning is found in 80 per cent of the M&As that underperform (Hitt, et al. 2001; Schuler & Jackson 2001). Furthermore, an inadequate bridging between the pre-merger team and the integration team could lead to a huge loss for the acquirer in terms of time and expenses (Roberts 1994; Gates & Very 2003; Tang & Metwalli 2006).

Cross-border M&As are generally more difficult and riskier because acquisition issues are compounded by differences in national cultures, language, political influences and regulatory hurdles (Quah & Young 2005). The real problems often come from overestimating the benefits and underestimating the costs of an M&A and from not understanding the difficulties associated

with national and organizational cultures. These cultural differences may cause organizational members to become even more resistant to the changes that occur following a cross-border M&A (Greenberg, et al. 2005). Differences in national culture are perceived to have implications not only for the selection and negotiation of any cross-border combination but also for the joint formulation of future business strategies. For example, countries such as the U.K or Sweden would prefer to enter business partnerships with Northern European and American to Japanese and Southern European, i.e. Italian and Spanish. Or in negotiation, the Japanese companies make greater use of qualitative information in decision making than the U.S or the U.K organizations which place more emphasis on quantitative information (Cartwright 1998).

2.5.2 The post-merger issues

The integration phase is the actual process of planning and implementing objectives with the company's processes, people, technology and systems. Important questions which need to be raised include how fast to integrate, how much disruption will be created, how disruption can be minimized, how people can be of help to continue focusing on customers, safety, and day-to-day operations, and how best to communicate with all the stakeholder groups (Galpin & Herndon 2000; Quah & Young 2005). In cross-border M&As, there is likely greater uncertainty regarding the differences between the firms and how these differences will affect the new organization. The uncertainty, suspicion, and fear in employees, if not managed properly, can prevent information flow between the two organizations and can hinder the achievement of anticipated synergies (Greenberg, et al. 2005).

Cultural differences and HR are considered the most difficult challenges in integration. National and organizational culture has long been accepted as the key variable affecting integration efforts in cross-border M&As. The acquirers have greater difficulty achieving synergies from integration when targets are from countries that rate high on uncertainty avoidance and vice versa (Goulet & Schweiger 2006). Cultural misalignment was seen as the major trigger of a failed merger between German automaker, Daimler-Benz, and its American partner, Chrysler in 2007. The differences in national and corporate culture between Daimler-Benz and Chrysler did not catch sufficient attention at the pre-merger phases. As a result, the two companies found it hard to integrate their too different cultures that made the merger underperform and led to the disintegration in 2007 (Schuler & Jackson 2001; Buckley & Ghauri 2002).

The HR executives should be involved in the M&A process as soon as possible to prevent loss of key talent. As every employee knows full well, mergers tend to mean job losses. Unless employees learn quickly that the deal will give them opportunities rather than lay-offs, they will be gone, often taking valued knowledge and connections with them (Schuler & Jackson 2001; Buckley & Ghauri 2002). The propensity of the acquirer and the target may display the defensive behaviour toward one another. Acquirer's managers may want to help without knowing how, while target's managers may be afraid to admit what they do not know for fear of reprisal. An arrogant attitude of acquirers' managers toward targets could intensify the conflict (Goulet & Schweiger 2006). Managing the communication process is a valuable way to retain and motivate key employees. It also plays a critical role in the process of change and the entire stage of integration (Schuler & Jackson 2001). Another critical HR issue is the selection of a leader who will actually manage the new business combination. If an acquired business has unclear or absent leadership, the result will be crippling uncertainty, lack of direction, stalled new product development, and the postponement of important decisions. A final HR issue is the need to create policies and practices for learning and knowledge sharing and transfer, and the performance management and reward system (Schuler & Jackson 2001; BearingPoint 2008).

2.5.3 Strategies for a successful merger and acquisition

The following section is based on best practices summarized in academic literature and in consultancy reports. The latter was presented more due to its practical approach. Certainly not all M&As are alike (Bower 2001) and there is no same business or organization (Bernad, et al. 2010) so firms should choose and adapt the best practices to their practical situation.

First of all, the purposes of the M&As should be clear and fit with the strategic vision of both parties, as it will guide the two parties through the whole M&A process. The clear purpose enables the executives to act quickly and correctly. If the strategy is not clear, firms would find many difficulties during the whole M&A process (Bower 2001; Deloitte 2006; Epstein 2005). Strong leadership is essential to acquisition success - perhaps the single most important success factor. The two most important leaders are the deal owner, who takes general control of the whole M&A process, and the integration manager. The M&A team should be given adequate authority and receive support from the senior executives. The Board involvement in the M&A process should be high and consistent, especially between the pre-merger and the integration

phase (McKinsey 2008; PwC 2008b). Another important aspect is selecting the right partners based on the senior executives' experience and professional companies' introduction (Deloitte 2006). The negotiation team should not be limited to few key people but should include at least two or three separate negotiating groups, e.g. managers, lawyers, and perhaps investment bankers (Aiello & Watkins 2000).

Companies today know the importance of due diligence in M&As, this is used to explain the higher rate of M&A success. A deep due diligence to collect enough information to investigate the target's existing situation is crucial since it enables the acquirer to capture deal value during the integration, better achievement rates of their objectives such as revenue growth, and cost synergies or return on equity (ROI) (Epstein 2005; PwC 2008b). It is necessary to note that early planning of integration activities, early participation of HR executives, and effective communication decide the success of an M&A. It is advised that the integration plan should be prepared in the second stage, when firms locate the target. However, companies often destroy mergers during the integration process due to lack of attention, especially after the tough and hard works in the pre-merger phase (Epstein 2005; Deloitte 2006). The different approaches to integration - absorption, preservation, and symbiosis (see Appendix Six) - take into consideration the need for strategic interdependence and the need for autonomy for the acquired firms (Sudarsanam 1995; Gates & Very 2003). The implementation of integration programs should be immediate after the deal is closed, yet each party needs time to learn and understand each other. The measurement tools for tracking integration progress monitor strategic goals and set relevant key performance indicators (KPI)' will direct the organisation towards the designated business model (Gates & Very 2003; PwC 2008b). As stated above, the cultural and HR aspects need special attention in the integration process. In fact, cross-border M&As solve these matters better than domestic M&As because the former usually realizes and thus is well-prepared while the latter underestimates these problems (Stahl, Pucik, Evans, & Mendenhall 2004).

Chapter 3: Mergers and acquisitions in Vietnam

3.1 Economic development since the *doi moi* policy

3.1.1 The *doi moi* policy and economic performance

Due to heavy dependence on aid from the Soviet Union in the late 1970s and the increased tension between the Western and the Communist nations in the 1980s, Vietnam experienced severe shortages of food and basic consumer goods, a high budget deficit, high inflation, a growing external debt, and deteriorating living standards, etc. Therefore, in the Sixth National Party Congress in December 1986, the Vietnamese government initiated an overall economic renovation policy - popularly known as DOI MOI (McCullough 1998; van Arkadie & Mallon 2003; UNCTAD 2008). The policy officially abandoned the central planned system and shifted Vietnam to a market-oriented economy under a socialist orientation, aiming to restructure and modernize the economy and to encourage foreign investment. The main elements were the state's recognition of private ownership and multi-sector development, the liberalisation of foreign trade and FDI, and the implementation of the socio-political and economic reforms (des Lestrangé & Richet 1998; Mai, Bilbard, & Som 2009).

Since the adoption of *doi moi* policy, the pace of change has gradually accelerated (McCullough 1998). Inflation rate reduced sharply from 700 per cent in the late 1980s to around 20 per cent in the 1990s (van Arkadie & Mallon 2003). The whole economy has gained high development since

1990 after a great depression following 1986.

Vietnam gained a GDP growth rate of 9.5 and 9.3 in 1995 and 1996, respectively, before the Asian crisis (see Figure 3.1). The growth

continuously accelerated from 4.8 per cent in 1999 to 8.5 per cent in 2007 before

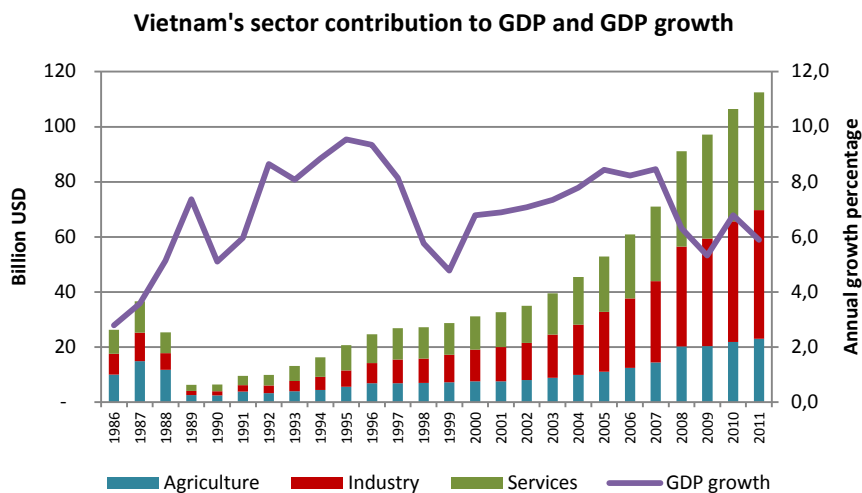


Figure 3.1: Vietnam's sector contributions to GDP and GDP growth, 1986-2011. Source: World Bank 2012; GSO 2012a.

the recent global economic crisis. The industrial sector grew by an annual average of around 9.8 per cent between 1990 and 2011, contributing 42 per cent of GDP in 2011. A large part of this growth can be attributed to FDI and, more recently, the local private sector development. The service and primary sector grew by an annual average of 7.4 and 3.8 per cent in the same period, respectively (WorldBank 2012; GSO 2012a). With agricultural modernization, Vietnam has turned from a food-importing country into one of the big three rice exporters, along with the U.S. and Thailand. The country has also gained successful performance in poverty alleviation and the living standard is increasingly better (van Arkadie & Mallon 2003).

The economic growth led to positive effects, e.g. macroeconomic stability, the private sector's development, FDI and trade liberalization, and the improvement of the country's standard of living. The achievements of Vietnam's economy were seen as an 'Asian miracle' after 20 years of its 'transition' process (Mai, et al. 2009). If Vietnam can continue to follow broadly growth-friendly policies, the country will fully realize its long-term economic potential as it could be in the top 20 largest economies in the world in 2050 (PwC 2011a).

3.1.2 International integration and trade liberalization

The international economic integration and trade liberalization in the *doi moi* policy started with slow and hesitant steps at the beginning but has accelerated since the 1990s. Vietnam has accessed to the world market by joining various economic and trade agreements. It became a member of the Association of South East Asian Nations (ASEAN) in 1995, the Asia-Pacific Economic Cooperation (APEC) in 1998, and WTO in 2007. Various bilateral trade agreements (BTAs) have also been ratified, including the BTA with the U.S. in 2001 (UNCTAD 2008).

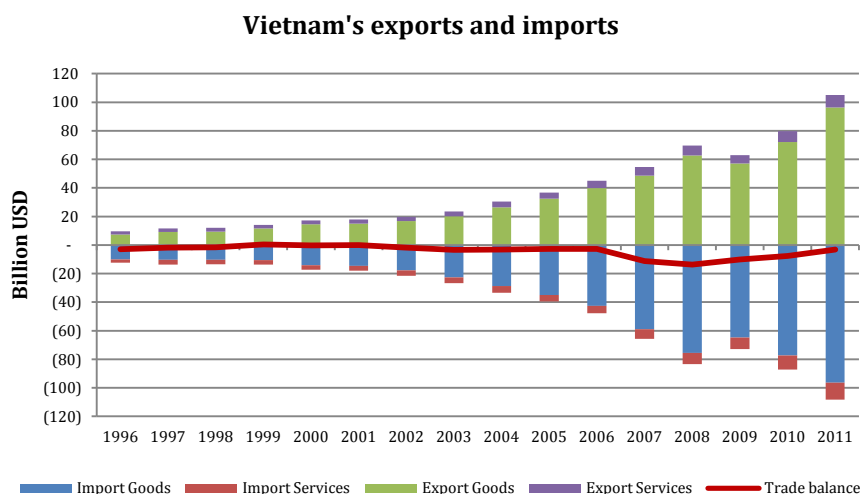


Figure 3.2: Vietnam's export and imports, 1996-2011.
Source: World Bank, 2012; GSO 2012b.

Vietnam has been aware of the new opportunities and huge benefits thanks to trade liberalization and international integration. The SOE, institutional, legal, banking, and financial reforms have been revitalized and

intensified to reduce the state protection in trade, to acknowledge private business rights, and to encourage foreigners' participation in trade. Instruments of import protection such as tariff rates and non-tariff barriers have been restructured or reviewed to ensure the trading company's interests in compliance with the national objectives (Mai, et al. 2009). As a result, Vietnam's exports increased continuously and reached USD 105 billion in 2011 (see Figure 3.2). However, as Vietnam is contributing the labour-intensive stages within complex global supply chains, a large part of Vietnamese manufacturing is processing imported materials for exports. Goods account for 88 per cent of exports and 87 per cent of imports between 1996 and 2011. The country has run trade deficit since 1996, except a minor surplus in 1999, as it needs to buy equipment and inputs for its growing industry; but it should pay attention to utilize foreign short-term portfolio flows to finance the imports (Pincus & Vu 2008; GSO 2012b; World Bank 2012).

3.1.3 Foreign direct investment

Immediately following the launch of the *doi moi* reform, the Vietnamese government approved the Foreign Investment Law and opened most economic sectors to foreign investors in 1987 (Nguyen & Xing 2008). The neighbouring countries like South Korea, Singapore, Taiwan, Japan, and Hong Kong are the biggest investors in terms of capital and project numbers; of which Singapore is the largest foreign investor with total registered capital of USD 24 billion in 2011. Even in the current economic downturn Vietnam's FDI inflows have been stable at nearly USD 10 billion since 2008 (see Figure 3.3). The country's attractiveness to FDI has been thanks to its economic performance and stability, a better business environment, wider international integration, low labour costs, a qualified workforce, high potential in consumption, and investment incentives (Mai, et al. 2009; FIA 2012; UNTADStat 2012).

Although foreign investments were directed toward the oil and gas sector at first, the industrial sector rapidly became the main magnet for FDI. The manufacturing sector accounted for more than 60 per cent of all registered capital between 2001 and 2007 and 54 per cent of 13,667 running projects in Vietnam in 2011. This predominance of the manufacturing sector highlights that foreign investors have chosen Vietnam mainly as a centre of production for globally traded goods (UNCTAD 2008; FIA 2012). The FDI growth is one of the major factors driving rapid export growth, especially to FDI source countries. In particular, a one per cent increase in FDI inflows will be expected to give rise to a 0.13 per cent increase in Vietnam's exports to these

countries (Nguyen & Xing 2008). FIEs contributed 59 per cent of total exports in 2011 (FIA 2012).

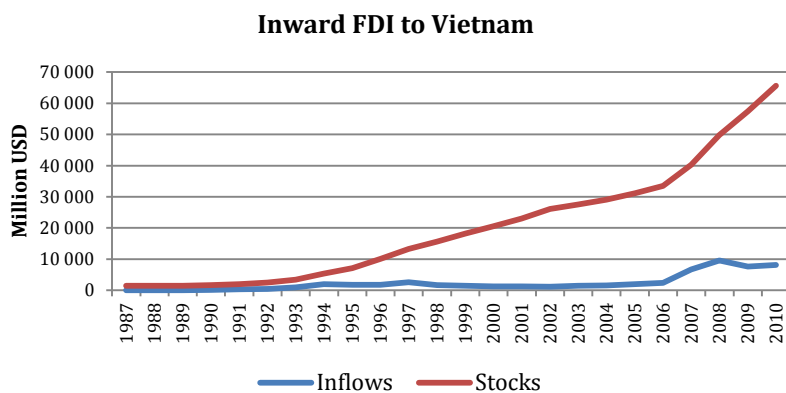


Figure 3.3: Inward FDI to Vietnam, 1987-2010.
Source: UNCTADStat, 2012.

More recently, manufacturing investments have progressively become more technologically advanced with higher domestic value added. Goods manufactured for exports are no longer restricted to apparel and footwear, and increasingly include consumer electronics

and electronic assembly. With such a predominance of FDI in the export-oriented manufacturing sector, Vietnam has attracted little market-seeking FDI in the non-tradable and services sectors, except for real estate, tourism, and construction. The main reason is that the government had chosen to keep most services sectors closed to foreign investors. Much of this is going to change according to Vietnam’s commitments to WTO accession (UNCTAD 2008).

3.2 Merger and acquisition activities in Vietnam

3.2.1 Legal framework

Regulations on mergers, acquisitions, and consolidation in Vietnam are presented dispersedly in laws including the Civil Code 2005, the Enterprise Law 2005, the Competition Law 2004, and the Investment Law 2005; decrees; decisions; or circular with little connection and guidance for implementation between these legal documents (see Appendix Seven)¹.

3.2.1.1 Mergers and acquisitions concepts in laws

The Civil Code provides the basic definitions of mergers and consolidations in Article 94 and 95, which are developed in the Enterprise Law. According to Article 152 of the Enterprise Law ‘two or more companies of the same type may be consolidated to form a new company by transferring all legal assets, rights, obligations and interests to the consolidating company simultaneously with

¹ The Vietnam’s commitments upon WTO’s accession could be found at WTO website: <http://www.wto.org/>

the termination of the existence of the consolidated companies'. Article 153 states that 'one or more companies of the same type may be merged into another company by transferring all legal assets, rights, obligations and interests to the merging company simultaneously with the termination of the existence of the merged company'. As such, the concepts of merger and acquisition in Vietnamese laws differ from the definitions mentioned in Chapter Two because 'consolidations' mean mergers and 'mergers' mean acquisitions. The consolidation or merger resulting in a company having a market share of between 30 per cent and 50 per cent in the relevant market shall report to the competition management agency before undertaking the consolidation or merger. The consolidation or merger is prohibited in case of resulting market share above 50 per cent (Article 152, 153) (MOJ 2012b).

Article 16 of the Competition Law states that mergers, consolidation, and acquisition of enterprises are acts of economic concentration. Under Article 17 (1), 'merger of enterprises means an act whereby one or several enterprises transfer all of its/their property, rights, obligations and legitimate interests to another enterprise and at the same time terminate the existence of the merged enterprise(s)'. Article 17 (2) defines that 'consolidation of enterprises means an act whereby two or more enterprises transfer all of their property, rights, obligations and legitimate interests to form a new enterprise and, at the same time, terminate the existence of the consolidated enterprises'. As in Article 17 (3) 'acquisition of enterprises mean an act whereby an enterprise acquires the whole or part of property of another enterprise sufficient to control or dominate all or one of the trades of the acquired enterprise' (MOJ 2012c).

Article 21(6) of the Investment Law lists mergers and acquisitions as a form of FDI to Vietnam. Article 25 asserts the foreign investors' right to merge or acquire companies or branches with the conditions complied with the provisions of the Investment Law, the Competition Law and relevant provisions of other laws. According to Article 26 investors shall make indirect investment in Vietnam through purchase of shares, share certificates, bonds, or other valuable papers; or through securities investment funds (MOJ 2012d).

3.2.1.2 Types of transactions

A foreign investor undertakes acquisitions of Vietnamese companies by buying or transferring some or all of the charter capital or shares from the original investor. Asset acquisitions are also possible in cases where the investor wants to subsume new assets into an already licensed entity.

Regardless of the mode, some special considerations should be taken into account when acquiring an interest in an established company in Vietnam (Baker & McKenzie 2010a).

Decree No. 139/2007/ND-CP provides a general principle that business entities and individuals, irrespective of nationality, are entitled to make capital contributions and purchase shares without any limitation in all enterprises in Vietnam. The regulation is exempted for listed companies, privatised companies and companies in conditional sectors where foreign participation is restricted (Baker & McKenzie 2010a). Furthermore, under Decision No. 55/2009/QD-TTg, foreign investors are able to buy up to 49 per cent of all public shareholding companies, including both listed and unlisted public companies (Baker & McKenzie 2010a). Particularly in the banking sector, according to Article 4 of Decree No. 69/2007/ND-CP, the maximum shareholding percentage for foreign investors (including existing foreign shareholders) and their affiliated persons is 30 per cent of the charter capital of a Vietnamese commercial bank. The figure for a foreign strategic investor, a foreign credit institution, and a foreign investor rather than a foreign credit institution is 15 per cent, 10 per cent, and five per cent, respectively (MOJ 2012e). Beside the above regulations, the maximum shareholding percentage of foreign investors will be in accordance with regulations of the Government, specialised laws and commitments of Vietnam in international treaties (Baker & McKenzie 2010a).

3.2.1.3 Current issues

There are several issues related to provisions of current laws and regulations as well as the enforcement of these laws regarding the M&A activities in Vietnam. Firstly, there are still restrictions such as maximum shareholding percentages as mentioned above, and monopoly in areas such as electricity and press business. Secondly, the regulations concerning M&As are spread throughout many different legal documents along with various regulations on banking, finance, and insurance. Those legal documents sometimes create different rules with diverging applications that can contradict one another (Tran 2010). A transaction having participation of a foreign investor is considered foreign investment thus must undergo either registration or evaluation. The evaluation is time-consuming and subject to the licensing authorities' discretion on whether or not the investor meets the required investment criteria (Bui 2011).

Thirdly, the current inconsistent and unclear laws create the duplication of provisions prescribing the same behaviours and more than one agency is responsible for enforcing these laws. These

overlaps lead to the waste of time and resources of business entities and indirectly affect the competitiveness of enterprises (Vu 2011). Some state agencies or local Departments of Planning and Investment (DPI) still refuse or delay to license foreign investors who contribute capital or purchase shares in Vietnamese companies due to unclear rights of foreign investors in Vietnamese laws and its international commitments. The application of laws is inconsistent across localities, or even in different cases of the same locality (Eurocham 2010; Nguyen 2011). A central registration body of M&A transactions and their details would shed light on the Vietnam M&A market and provide a base for foreign investors to make decisions about entering the Vietnamese market through an acquisition (Eurocham 2010).

Fourthly, regarding the implementation of the Competition Law, there is no legal regulation detailing how to calculate the enterprises' market shares (Tran 2010). Additionally, there are no common databases about market volume and the existing firms in the market among state agencies. So it is very difficult for the Vietnam Competition Authority (VCA) to gather accurate market share data and other information to assess the market power of parties involved in the M&As (Vu 2011; VCA 2011). There is no connection between the Competition Law and the Enterprise Law and Decree No.43/2010/ND-CP on enterprise registration. Furthermore, there is no clear regulation on cooperation between other governmental agencies and VCA (VCA 2009).

3.2.2 Merger and acquisition activities

There are M&As among Vietnamese companies, e.g. Ha Tien 1 and Ha Tien 2; between foreign and Vietnamese companies (this study's focus), e.g. Coca Cola and Chuong Duong beverage or Kinh Do and Unilever; or among foreign companies currently in operation in Vietnam, e.g. Savills Vietnam and Chesterton Petty in the real estate sector. The M&A activities could be undertaken in the securities market, where the acquirer tries to collect the target's shares for short-term financial gains or for taking control (VCA 2009). The current shares' market prices are very cheap with hundred shares under face value; this calls for more M&As in the securities exchange market as investors pay less to gain a high equity rate (Bach Huong 2011a).

There were 65 deals with Vietnamese targets worth USD 834 million, and 34 deals valued USD 295 million of Vietnamese acquirers between 1990 and 2004 (Tang and Metwalli 2006)¹. The

¹ Deals exceed USD 1 million

total deal volumes plunged from 41 deals in 2003 to 23 deals in 2004 and further to 22 deals in 2005 (see Figure 3.4). The number of deals recovered in 2006 onwards and reached 413 deals in 2011. The deal value decreased in 2004 and 2008 but then grew rapidly to gain USD 3.67 billion in 2011 (PwC 2009, 2010, 2011b; IMAA 2012). The Vietnam M&A deal value in the first quarter of 2012 was USD 1.5 billion, grew by 270 per cent compared to the same period last year and ranked 8th in deal value in Asia Pacific (Cafef 2012). The majority of transactions are categorized as small and medium size (below USD 5 million: 30-35 per cent of total deal volume; from USD 5 to 20 million: 50-55 per cent) (Vu 2011).

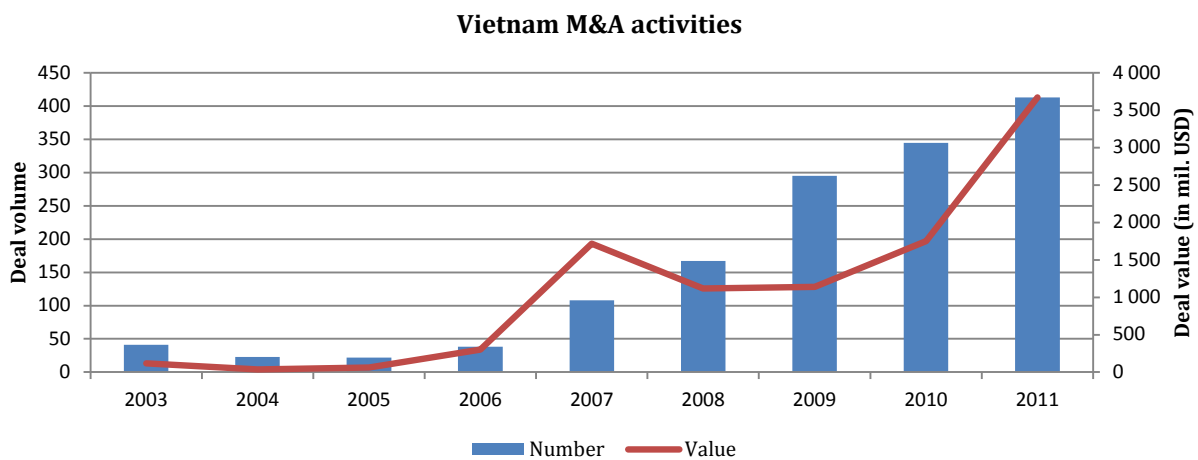


Figure 3.4: Vietnam M&A activities, 2003-2011
Source: PwC 2009, 2010, 2011b; IMAA 2012.

The volume and value of deals in Vietnam has increased continuously in recent years mostly due to high buyout opportunities and high demand from investors (Vu 2011). The economic integration as well as the liberalization in trade and FDI have opened the Vietnamese market for foreign investors. Foreign investors could acquire a part then the whole company to take control. In addition, more than 90 per cent of companies in Vietnam are small- and medium-sized enterprises (SMEs). The SMEs may have low competitive advantage, small scale, low technology, poor management skill, etc., which make them become the target in industry restructuring in Vietnam. Due to the economic downturn many companies faced difficulties in operation and capital access so they were forced to be bankrupt or sell to others. Most of the deals with notable value include participation of foreign investors. The foreign investors are more active because they have strong financial support and management experience in M&As (VCA

2009). Foreign investors including MNCs and private equity firms, hedge funds, or sovereign wealth funds plan an increasingly important role in Vietnam M&A activities (Vu 2011).

The FDI in Vietnam has focused on manufacturing sector for exports mentioned above, yet the M&As in Vietnam, especially M&As between foreign companies and Vietnamese companies, have concentrated in service sector aimed at domestic markets. In the period between 2001 and 2010, the financial sector had the highest contribution to M&A deal value, 25 per cent (see Figure 3.5). The consumer staples, products and services (consumer goods in the Figure 3.5) made up 16 per cent of total deal value. Energy, industry, and real estate sectors comprised 12, seven, and six per cent of total deal value, respectively (AsiaInvest 2011). The industrials sector accounted for the highest number of deals but not too high in value as it constituted 23 per cent of total deals but only 12 per cent in total value 2010. The disclosed value in consumer staples, products and services reached 33 per cent of total deal value and 17 per cent of deal volume in 2010. Of which, the food and beverages sector represented 60 per cent of deal volume (Pickering

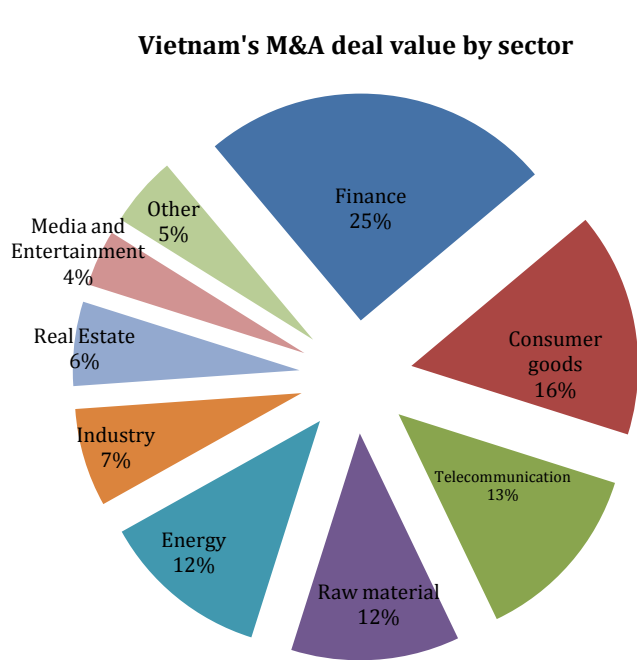


Figure 3.5: Vietnam's M&A deal value by sector, 2001-2010
Source: AsiaInvest 2011.

Pacific 2011). The sector continued to gain investors' attention in 2011 due to its high growth potential as it accounted for 18 per cent of total deal volume and 16 per cent of total deal value (IMAA 2012). The share of real estate sector was low in deal volume but relatively high in deal value. It is estimated that the value of M&A deals in this sector was USD 250 million in 2011, yet there are many unpublicized deals. The energy and power, the media and entertainment sector and telecommunications also had high contribution to M&A deals (Avalue Vietnam 2010; Pickering

Pacific 2011; IMAA 2012; Anh Minh 2012).

The M&A activities in Vietnam will increase fast in the next few years due to restructuring and capital seeking after the economic downturn in 2008-2009 and high inflation in 2011. More and

more foreign investors may enter the Vietnamese market through M&As. The consulting firms and professional brokers would take a more important role in linking the transactions. Some private equity funds plan to divest in Vietnam that creates opportunities for other companies. The M&A deals within the threshold of notification and prohibition are starting to happen and tend to increase (AsiaInvest 2011; Vu 2011).

3.2.3 Types of mergers and acquisitions

Most of the M&As in Vietnam are horizontal M&As as the investors seek companies in the same industry to expand their operation and increase market power. The target must be companies with a stable market share, potential growth, and a good distribution network and management system (Hai Ly 2008). The vertical mergers have emerged since 2010 in order to control the sources of the raw materials supply or to restructure the enterprises with the aim of focusing on core business area (Vu 2011). Most of the deals in Vietnam are friendly but the hostile takeovers have been conducted as in the case of Coca Cola and Chuong Duong Beverage (VCA 2009; Vu 2011).

According to Avalue Vietnam (2010), the M&A deals between Vietnamese companies (domestic deals) contributed 40 per cent of deal volume and the remaining 60 per cent was foreign-related deals in 2009, of which Vietnamese companies' acquisitions of foreign companies comprised only five per cent (Avalue Vietnam 2010; Vu 2011). In 2011, there were 290 national deals valued at USD 1.2 billion, the highest number so far. The share of national deals in total deal volume was 77 per cent but the share in value was roughly one third (34 per cent). Foreign acquisitions play a major role in deal value as they accounted for two thirds (66 per cent) of total deal value in 2011 (IMAA 2012).

3.2.4 Origins of foreign acquirers

Recently, Japanese companies have increasingly sought M&As in Vietnam. There were 19 announced deals of USD 596 million from Japanese companies in 2011. Their attention was paid in consumer goods and finance. They also seemed generous as they bought shares with higher premium than market prices. For example, Mizuho bank bought 15 per cent of Vietcombank's share in 2012 with the price of VND 34.000 per share, 30 per cent higher than the market price. They tend to acquire companies in the same industry as they have profound knowledge in the industry trends and professional experience and capabilities (see Appendix Eight) (Cafebiz 2012a & 2012b; Anh Minh 2012; IMAA 2012). Based on the acquiring rate of stakes, only about 25 per

cent of Japanese acquisitions is to take control in local companies. Chinese investors contributed USD 749 million in Vietnam M&As in 2011, but their transactions were recorded by other nationalities such as Thailand or by Vietnamese of ethnic Chinese origins. Chinese companies usually invest to become controlling shareholders and then control the local market. For example, C.P (Thailand but actually the branch in China) bought 70.82 per cent of the shares in C.P Vietnam to gain 77 per cent of the market share in the pig feed market and 30 per cent in the poultry feed market (Thanh Trung 2012).

Table 3.1: Top ten investing countries through M&As in Vietnam in 2011

Deal volume				Deal value			
No.	Countries	Number of deals	Value of deals (in mil. USD)	No.	Countries	Value of deals (in mil. USD)	Number of deals
1	Japan	19	596	1	Japan	596	19
2	Singapore	10	54	2	Netherlands	502	3
3	South Korea	9	461	3	South Korea	461	9
4	United States	5	259	4	United States	259	5
5	Netherlands	3	502	5	Thailand	208	2
6	Thailand	2	208	6	Germany	110	2
7	Germany	2	110	7	Denmark	86	1
8	India	2	64	8	India	64	2
9	Australia	2	55	9	Australia	55	2
10	Hong Kong	2	25	10	Singapore	54	10

Source: IMAA 2012.

Singaporean companies had six deals¹ worth total of USD 101 million in Vietnam between 1990 and 2004 (Tang & Metwalli 2006). Along with increased FDI to Vietnam, the number of Singaporean companies' acquisitions aimed at Vietnamese targets has increased. There were 10 deals between Singaporean and Vietnamese companies in 2011 with the value of USD 54 million. The companies from Netherlands paid USD 502 million in three acquisitions in Vietnam in the same year. Denmark appeared in the top ten thanks to the deal between Carlsberg and Hue People's Committee in Hue Brewery (see Table 3.1) (IMAA 2012).

¹ Deals exceed USD 1 million.

3.3 Drivers for mergers and acquisitions in Vietnam

3.3.1 Foreign companies

3.3.1.1 Speed

Along with joint ventures (JVs), M&As are considered the fastest way to enter the Vietnamese market. For example, WPP and Omnicom Group has established many JVs and undertaken M&As to enter the media market. The tactics are utilized by the two big names in the world media market to enter Asian markets for many years (Minh Thien 2009). Yet it is quicker for foreign investors to enter the Vietnamese market through M&As than taking a long time to establish a new foreign company due to a complicated procedure. By acquiring shares in Vietnamese companies, foreign investors can shorten the preparation time and save 20 per cent of investment expense (Bao Bac 2012). The foreign investors could gain access to their partners' existing distribution network, customers, human resources and gain local knowledge and connections with local authority, which take times to build (KPMG 2011). For instance, by buying out Bao Minh CMG, Daichi (Japan) gets immediately three per cent of the market share in life insurance which took Bao Minh seven years to gain (VNeconomy 2008). Or by acquiring Cotec, a cement mill, Holcim quickly reached its expectation to expand production and increase its market share while the Vietnamese government has postponed giving certificates to cement projects in the South of Vietnam (Hai Ly 2008).

3.3.1.2 Market access

Vietnam is an attractive market due to its economic development, consumerism of 26 million urban-dwellers (30 per cent of population) and fast-rising incomes. The new consumers have new tastes and expectations (VinaCapital 2010a). However, there are some restrictions to access the local market in that foreign companies have to buy shares in local companies to provide products or services. For example, Quantas Airlines acquired 30 per cent equity in Pacific Airlines in 2008. This move let Quantas take part in local commercial aviation in Vietnam, which is prohibited for foreign companies. Similarly, AirAsia Berhad had planned to establish a JV with Vinashin to provide passenger transportation service in Vietnam, yet the deal failed (VCA 2009).

The foreign companies aim at local companies with well-known brands, leading market share, or nationwide distribution network as in the cases of Japanese companies' acquisitions such as

Unicharm, Kirin Holdings and Ezaki Glico (Vu 2012). In the real estate sector, expanding to new markets or accessing distressed assets with appropriate prices may drive foreign investors in M&As into Vietnam. Another reason is that the investor could benefit from complete compensation with ready infrastructure of real estate projects (Savills 2011).

Foreign banks have faced many difficulties in establishing 100 per cent branches or JVs in Vietnam, e.g. procedure, regulations on minimum charter capital, assets and financial verification, etc. Even if they can establish a branch, they have limited knowledge about customers' habits and local markets so it is hard to get customers, especially individuals. Expanding networks by opening more sub-branches in Vietnam provinces is not easy in gaining market shares from local banks, which have a vast existing network. So investing in existing local commercial banks is a feasible option for foreign banks (VCA 2009). This could also let foreign banks get insights into the way local banks undertake business, as in the case of ANZ's investment in Sacombank (KPMG 2011). In addition, investments in the local banks or securities companies are a bridge for foreign companies to access more deeply the financial market as well as to invest in other sectors (Pham 2008).

3.3.1.3 Flexible control

Foreign partners in the JVs in Vietnam buy out their local partners' shares to get the full control of the companies (Savills 2011). For instance, in the announcement of acquiring Vinamilk's shares, SABMiller said that 'this transaction will allow us increased flexibility to implement various business initiatives in Vietnam' (SABMiller 2009). Shultz, Speece, and Pecotich (2000) found that control, capital, personnel management, and technology transfer are the key sources of conflict in JVs in Vietnam. The control problems lie in slow decision-making of Vietnamese partners, conflict in expanding product lines, or the Vietnamese's veto rights to 'nearly everything'. The control system is like 'two captains for the same boat' because the Vietnamese first deputy manager and the general manager both report directly to the Board. Hence by becoming the only owner, the foreign investors could implement what they plan more easily.

3.3.1.4 Restructuring

The divestiture of foreign investors in existing FIEs, JVs, and management or capital funds in Vietnam creates opportunities for both foreign investors and local firms. A number of around 300 FIEs might choose to divest over the next few years. This lets the new investors facilitate the

management team in taking over the operations (VinaCapital 2010b). For example, Tate&Lyle sold a sugar factory to TH Milk in a strategic adjustment attempt to divest from sugar processing and move to foods material processing. The sugar factory in Vietnam is the last one of this group worldwide (Anh Minh 2011).

Another well-known example in this trend is the Kinh Do's acquisition of Unilever Wall's ice cream that closed in 2003. Unilever sold the factory with fixed assets, sale channels, logistics system, well-trained staff, and the right to use Wall's brand name for 18 months. Unilever committed not to return to the Vietnamese market for five years (Kinh Do 2010). For Unilever, the deal is a part of its reshaped and enhanced portfolio plan through acquisitions and the sale of 87 businesses without acceptable growth or margin potential in 2002 (Unilever 2012).

3.3.2 Vietnamese companies

3.3.2.1 Knowledge access

In almost all of the announcements about M&As with foreign partners, Vietnamese companies expect to get access to their partners' skills, experience, and knowledge to enhance the companies' capabilities. Thanks to the foreign partners' participation in the business operation through M&As, the Vietnamese companies may diversify their products, and get support in personnel, experience, IT, etc. from the system of big companies in the world (Minh Thien 2009). For example, when acquiring shares in Saigon Paper, Daio Paper (Japan) committed that it will not only invest capital but also send senior managers as well as technicians to help Saigon Paper run a new factory. Additionally, BridgeHead Fund and Daio Paper will help Saigon Paper to manage the financial strategy and transfer technology through training (SaigonPaper 2012).

For local commercial banks, by signing strategic partner agreements with foreign banks, they could improve their brand names, provide new products which are transferred from their partners, learning and using skills and experience of their partners' experts. The foreign banks have expertise in management, e.g. risk management, cost accounting and product pricing, performance analysis and strategy build-up and roll-out, etc. They could transfer these skills, which are disadvantages of the Vietnamese banks. IT transfer including core solutions, products (i.e. modern banking products with high level of technology) is very important in the financial sector to modernize the system and provide more products as well as comply with the international developments (VCA 2009; VietinBank 2009).

As in the case of PSI, it anticipates SMBC Nikko's support in a research platform to increase its capability in service providing. The company also expects to learn and adapt the SMBC Nikko's risk management system to be fitted with the Vietnamese market and its operation. As such, PSI seeks knowledge access to enhance its capability. The strategic assets for PSI's search are intangible assets including its partner's knowledge and customer databases (Thai 2012).

3.3.2.2 Capital access

The Vietnamese companies conduct M&As as it is difficult to borrow capital from banks because of high interest rate (nearly 20 per cent in 2010-2011). Due to slow progress of projects, especially in investing more, companies may be revoked the investment certificates so they turn to M&As to seek more capital (Savills 2011). The Decree No. 141/2006/ND-CP requires local commercial banks to increase minimum chartered capital to VND 3 trillion. This forces many local banks to seek foreign partners who are ready to invest (PwC 2008a). Another reason is that firms need capital to pay dividend to the investors (Savills 2011). The price per share in deals with foreign partners is usually higher than the market value in the Vietnam securities exchange, as in the cases with Japanese partners mentioned above. The disparity between market price and selling price could be considered a financial gain to the sellers (StoxPlus 2011b). For example, by issuing new shares to SMBC Nikko with the price of VND 15,000 per share, which was higher than its market price, PSI could fund its proprietary trading/investment and brokerage expansion (Thai 2012).

As mentioned above, capital is one of the sources of conflict in JVs because the Vietnamese party usually lacks cash to invest in the JV development. They expect the foreign partners to put up more cash whereas two parties have to have the same rights and liabilities (Shultz, et al. 2000). If the Vietnamese party cannot afford to invest more, they would divest by selling their shares to the foreign partners. This was the case in Carlsberg's acquisition of Hue Brewery. Hue People's Committee cannot afford to invest more for the company development, so it decided to withdraw and sell its entire stakes to Carlsberg. The money gained from selling stakes could be used for the city's development (Phong Hien 2012).

3.3.2.3 Restructuring

Restructuring the SOEs is an important plan of the *doi moi* policy mentioned above and this task has been undertaking continuously. There had been 3,944 SOEs going through equitization up to

2010. The equitization is expected to speed up in the five-year plan between 2011 and 2015. Even though there are still restrictions in some sectors such as electricity, telecommunications, etc. Vietnam has opened, encouraged, and appreciated foreign investors to take part in the SOEs' equitization (Kelvin Chia Partnership 2011). VietinBank and Vietcombank, two leading state commercial banks, have selected foreign partners in restructuring. While the deal between Vietcombank and Mizuho (Japan) is done, VietinBank is looking for a foreign strategic partner (StoxPlus 2011b).

Companies also do M&As to restructure the investment portfolio. They may divest in some investment to focus on core business or reduce stakes to raise cash for core businesses (Savills 2011). For example, Vinamilk explained the decision to divest in the JV with SABMiller 'to restructure our business operation by focussing on our core business areas in order to enhance our position of strength and maximize the interests of Vinamilk's shareholders' (SABMiller, 2009). Restructuring in a way to enhance competitive capabilities is the major trend for Vietnamese companies (VCSC 2010).

3.3.2.4 Increased competitive advantages

Vietnamese companies are under pressure to enhance their competitive advantage before opening up the local markets according to international commitments. To prepare for the upcoming competition, Vietnamese companies, mostly SMEs, have been striving for capital increase and performance consolidation as well as technology and knowledge transfer, overseas market access. Vietnamese companies prefer to be partners with big and well-known brand names as this may help to improve their brand position in the local market. Besides, the Vietnamese companies are eager to engage in an M&A when their competitors have joined with foreign partners and gained success in this partnership previously (Minh Thien 2009; VietinBank 2009).

3.3.2.5 Growth and market access

The Vietnamese parties wish for companies' growth when they decide to sell shares to foreign partners or divest from a JV. Diana, a very well-developed paper company, sold its shares to Unicharm (Japan) with the hope that the brand name Diana will grow to be an international brand originated from Vietnam. Diana's CEO said that the company is well-developed in Vietnam, but expanding to the world market is something it cannot afford by itself without support from an international company. Minh Phu sold 10 per cent equity to Temasek, Singapore, with the

expectation that through Temasek, the company can distribute its products to the world market (VNeconomy 2008). Hue People's Committee decided to sell its stakes in Hue Brewery to its partner, Carlsberg A/S, with Carlsberg's commitment to invest more to increase the company production capacity and its market share (Vu 2012).

The deal between PSI and SMBC Nikko offers mutual benefits for the two parties. PSI will refer its customers (Vietnamese companies, mostly Vietnam Oils and Gas Group (PVN)'s members and projects) to Japanese investors. At the same time, SMBC Nikko introduces new investors from Japan and other countries to invest in Vietnamese companies through PSI. So the new market for PSI is the Japanese market first, and then the world market through SMBC Nikko's current network. The company also expects to increase its market share and reputation in Vietnam in locating foreign partners for local firms (Thai 2012).

Another example is a rare acquisition in the hotel industry as Thien Minh Group, a Vietnamese company, acquired Victoria Hotels and Resorts from EEM Victoria Hong Kong. Thien Minh expects that the acquisition will boost its revenue by 150 per cent within one year. This horizontal acquisition adds business to Thien Minh's portfolio and supplements its existing business so it can provide full services for customers including booking tickets, accommodation and travel services. The acquisition also gives it access international management experience in hotels and resorts (Thien Minh 2011).

3.4 Issues in mergers and acquisitions in Vietnam

3.4.1 The pre-merger issues

Lack of strategic vision to engage in an M&A is the usual mistake for many Vietnamese companies in public offering due to deficiency of M&A experience and knowledge and the simple objective of fund raising. The initial planning of an M&A in Vietnam is quite different from other countries since before anything else, the two parties have to gain confirmation that the proposed foreign investment is feasible legally. The possibility of the case being delayed or rejected due to restrictions on foreign investment is not unfeasible. If the acquisition cannot result into a successful business registration, all efforts and resources invested in other steps of the process could be rendered futile (Bui 2011; VCSC 2011).

Foreign investors find it difficult to locate a quality target in Vietnam because Vietnamese companies are small and little information about company operations is published. Vietnamese companies still do not know how to advertise themselves to the foreign investors. Annual reports only talk about operation and little about financial transactions or shareholders. In addition, it is thought that only companies which have difficulty in operation engage in M&A and not so many precedents take place so Vietnamese firms are reluctant to 'be acquired or merged'. They are afraid of selecting the wrong partners and the possibility of not achieving the expected outcomes (GLS 2008; VCSC 2010; Bach Huong 2011b; KPMG 2011). Vietnamese sellers are passive in M&As because they are not familiar with M&A procedure and process, they just respond to foreign acquirers' requirements. They pay attention only to pre-M&As until the deal closing and few thought about post-M&A issues (Nguyen 2008; Dragon Capital 2009). For a Vietnamese company like PSI to locate a partner, the challenge is building trust to foreign investors. The foreign investors only trust the foreign advisors who they do business with, so PSI had to work with foreign advisors to introduce it to the foreign market. SMBC Nikko had approached PSI for the deal based on reference of foreign advisors (Thai 2012).

Pricing is a big issue in M&As between Vietnamese firms and foreign investors as Vietnamese entrepreneurs think that the foreigners could accept a higher price than domestic investors. The price is not appropriate with the potential development because Vietnamese entrepreneurs decide price based on investment costs and their expectation rather than on market value or cash flow. The negotiation of price is like bargaining as the sellers gradually decrease their price until the acquirers agree. In case that the prices calculated by different methods such as cost and cash flow are too different, it is very hard to reach an agreement on price. Vietnamese firms could agree to use independent appraisers but they do not want to bear the costs. The pricing of intangible assets could also trigger conflicts because of the Vietnamese firms' lack of knowledge about intangible assets' value and intellectual property rights (Nguyen 2008; KPMG 2011; Le 2011).

The middle market for M&As is immature compared to that in developed countries, like the U.S. Banks have had little participation in M&A consultation and financial intermediaries have not provided any significant amount of capital for M&A deals. The fee to pay for the consultancy team is relatively high (15 per cent for transactions under USD 10 million) so that the Vietnamese party do not want to pay this fee. There are M&A business brokers but they are

untrained, not specialized in M&As, and have little experience (GLS 2008; Le 2011; VCSC 2011).

There are many issues in due diligence in Vietnam. The first issue is the possibility to collect adequate information. It is difficult to access information in Vietnam, especially financial information which is not sufficient and comprehensive. There is no clear separation between finance and accounting in Vietnamese companies. Structure and types of investment in big corporations are too large and not clear. The Vietnamese accounting standards are different from international financial recording system (IFRS) so foreign companies have to translate and convert data to international standards. Lack of customer databases in Vietnamese companies makes it hard for foreign investors to identify the companies' potential. The lack of information also makes it hard to project expenses for the deal. Access to information about enterprises in national agencies is slow and hard to come by (PwC 2008c; Dragon Capital 2009; Tran 2009; Horizon 2009; Baker & McKenzie 2010b; KPMG 2011; Thai 2012). The amount of information that the foreign partner required is huge yet the M&A team in Vietnamese companies, which is a gathering of employees from different divisions with little or no support from divisions' senior executives, is solely in charge of collecting information. Therefore, the M&A team faces pressure of collecting information in a short time and showing the companies' potential to the partners (Thai 2012).

The second issue in due diligence is the reliability or transparency of the information. Many companies have two systems of documenting and accounting that make it difficult for foreign investors to know which system is more reliable. Many financial reports are 'created' with unreal numbers, this make it difficult to see the firms' current situation. Debts and liabilities are hidden, assets are exaggerated, tax and certificates (land use rights) are not clear. The lack of transparency could even make the firms' prices lower than the actual value (VNeconomy 2008; Le 2011). The third issue is the sellers' lack of knowledge about the due diligence process. Skills and competence of leaders in private companies are weak, while foreign investors lack knowledge about local corporate culture. Hence the due diligence could take more time and expenses to come to a definitive conclusion (PwC 2008c; Baker & McKenzie 2010b).

Negotiation is a sensitive stage and the Vietnamese entrepreneurs make important decisions based on personal sense, the relationship between the acquirers and the sellers (avoid using the

word 'be acquired'), and personal benefits (Le 2011). This is the cultural issues discussed in Chapter Two. Furthermore, the inability to reach an agreement inside the local companies could make the transaction fail. There was a case where a husband had reached an agreement with a foreign partner but his wife who had veto right and was against the transactions appeared and rejected the acquirer (VNeconomy 2008; Dragon Capital 2009). Added requirements from the Bank of Nova Scotia triggered the failure of the M&A with VietinBank. Nova Scotia asked for more benefits, e.g. dividend payment for 2011 and some capital surplus, which reduced the share price from the previously agreed price of VND 22,000 to VND 19,000 per share. The new price was lower than Vietinbank's expectation so it refused and plans to find a new partner (Intellasia 2012).

After the two parties have signed an agreement, Vietnam's business registration authority needs evidence of 'completed' payment in order to issue new business registration certificates (BRC). Such evidence can be in the form of a letter of acknowledgement or a confirmation from the bank, etc. However, given the risk of being delayed or rejected by the licensing authority, it is too risky for a buyer to fully 'complete' its payment obligation before the BRC is granted. Hence using an escrow account, an intermediate, is a viable option for foreign companies. In addition, using onshore, rather than offshore, a bank account could ensure the recognition of the licensing authority. Payment by Vietnamese dong or foreign currency is regulated differently in Vietnamese laws (Vilaf 2009; Bui 2011; Thai 2012). Lastly, the guarantee or penalty of violating contracts is not clear for enforcement (PwC 2008c).

3.4.2 The post-merger issues

Due to restrictions in foreign ownership in Vietnamese companies, the foreign partner does not have full control in decision-making even after the acquisition. The foreign partner has to deal with further expenses needed to train the skill of the local partner's employees and handle pressure to use existing low-skilled employees. There will be benefit conflicts, cultural clashes, and differences in priorities, management styles and business practices (KPMG 2011). The difference in ways to solve a problem is a headache to both foreign and Vietnamese parties that results from the factors mentioned above. Certainly, there is no absolute right or wrong but the attitude of each party to solving problems could raise serious issues at this stage (BaoViet 2011). It is not easy for persons in the two companies to cooperate as smoothly as in the same company.

There are conflicts between managers and managers, between employees and employees, and between personal benefits. In horizontal M&As, the conflicts between market share and brand name of the two parties' products could raise problems that need to be solved (Le 2011).

As in the case of PSI and SMBC Nikko, the real problem is in cultural differences or different standard ways and attitude towards work. Vietnamese people, PSI's staff in this case, act fast and grab the chance in the short term whereas it takes a longer time for the Japanese people to process the information and get back 'so somehow PSI's employees get annoyed at how slow they are'. It is difficult to start a relationship with the Japanese but 'once the Japanese trust someone; they can easily follow up and work with that partner'. Hence trust building is very important to work with the Japanese and SMBC Nikko is the bridge between PSI and Japanese businessmen (Thai 2012).

Particularly in the banking system, there are four potential risks in post-M&As. The first risk is operational risk as the merged banks' systems have to become a unified system. The second risk is personnel risk because there will be redundancy so the banks need to be careful in judging who to keep. The third risk is technology as the IT systems of the merged banks need to be integrated. The fourth risk is communication because employees and customers need to know what the merging bank does after M&As in order to be sure who to work and make transactions with (VIR 2012).

The opacity of the Vietnamese party in an M&A could trigger huge problems for foreign investors in post-M&As. Some Vietnamese companies sell their companies but keep their brand name; it means that after the M&A, they continue to produce their products under this brand name. For example, a foreign company bought a local cement company but the local company stocked up a package and after the acquisition, it continued to market products under the previous brand and package. Or there was a case that after selling an enterprise, the previous owner helps his relatives to establish a new company to compete with the company that was sold. This caused the acquirer a huge loss in the next few years after the acquisition (Le 2011; Giang Thanh 2012).

3.5 Strategies for a successful merger and acquisition in Vietnam

The followings present strategies for foreign acquirers and Vietnamese sellers as this is most common in the M&As between foreign companies and Vietnamese companies. Vietnamese acquirers may adapt the strategies for foreign acquirers to their specific cases; this also applies to the foreign sellers.

3.5.1 Foreign acquirers

Foreign firms must have a clear strategy when doing M&As in Vietnam, just like any successful M&A worldwide discussed in Chapter Two. This strategy should be based on understanding the Vietnamese culture and market. They could seek reliable advice from their trusted local partners in locating quality targets and further in integration with the targets. The acquirer's investment plan with clarified objectives and long-term benefits should be suitable with the target based on understanding the target's drivers to do M&A and its existing situation (PwC 2008b; Dragon Capital 2009; Bao Viet 2010 & 2011; KPMG 2011; VietinBank 2011). The M&A process in Vietnam could take from one to a few years and be carried out in privacy. So they should be prepared carefully, be patient, and understand the legal frameworks. The investors could have to compete to buy a valued target which is currently well-developed and well-positioned in the Vietnamese market (Pham 2008).

There are many issues in the investigation mentioned above so foreign companies should pay special attention to doing deep due diligence to justify their owned objectives and possible benefits, the quality of information provided, the local partner's reputation, and risks. The due diligence could take longer time than expected if it is necessary to ensure that they understand the local target before giving offers (PwC 2008b; KPMG 2011). The investigation team should be skilled and experienced with Vietnamese standards. A third party involvement is needed if the acquirers are not familiar with due diligence in Vietnam (VietinBank 2011). The negotiation team should be flexible and clever to deal with the target's requirements and reach an appropriate price. A friendly and less formal environment is preferable to Vietnamese in negotiation. The two parties should also prepare for legal registration at this stage (Dragon Capital 2009; VietinBank 2011).

The integration plan should have a training plan and, importantly, a divesture plan (PwC 2008b; KPMG 2011). The acquirers should avoid changing things too quickly. Momentum in target business and core business growth should be maintained. The organizational change should be managed effectively through thorough communication and cultural assimilation to retain key employees and avoid disruption. The acquirer's representative should be in the target's top executives to define new direction (Dragon Capital 2009; SBB Securities 2010). Expatriate sent to the target should be enthusiastic and knowledgeable to effectively bridge the gap between the

target and the acquirer. She/he should be friendly and adapted well to the local business environment (Thai 2012). ‘Perseverance, patience, politeness, and persistency’ are the key words for a successful integration in Vietnam (SBB Securities 2010).

3.5.2 Vietnamese sellers

The support and clear commitments from top executives with their active personal involvement are essential for the M&A success. Learning from previous cases; understanding the M&A process, legal framework and tax issues in cross-border M&As; and building a selling strategy are the initial steps that Vietnamese companies must do before engaging in an M&A. They should identify clear objectives to select the right partners and to let the partners understand what they expect. A feasible and potential business plan should be included in the offering documents. Additionally they should actively search for potential acquirers rather than waiting for them to come (PwC 2008b; Bao Viet 2010 & 2011; VietinBank 2011).

Vietnamese companies should carefully select the right partners who are really committed to the companies’ long-term development. They should also give appropriate price based on their situation and potential as well as the partner’s competency. Clever use of internal and external persons in the M&A process, especially support from professional M&A consultants, could help to ease the process. Negotiation should be based on knowledge about partners and current market situation to get the best price. The Vietnamese companies should do careful checks before signing a contract or an agreement. The final agreement should be clear and detailed with simple and easy-to-follow conditions (PwC 2008b; Kinh Do 2010; KPMG 2011; VietinBank 2011). Vietnamese companies should have early preparation for integration with detailed implementation. They should allocate rational resources for effective knowledge transfer from the foreign partners. There should be the willing attitude in accepting, learning, and adapting changeable issues based on the partners’ recommendations. The Vietnamese companies should also know differences in culture and business culture to build reliable partnerships with their foreign partners (PwC 2008b; BaoViet 2010 & 2011; KPMG 2011).

Chapter 4: Conclusions

4.1 Implications for the current literature

4.1.1 The drivers of mergers and acquisitions

The drivers of the acquirers and the sellers in M&As in Vietnam are somewhat different. For foreign investors, speed is one of the main drivers to involve in M&As in Vietnam. By buying out or acquiring shares in local companies, they could utilize their partners' reputation or market position and distribution network that the local companies have taken time to build. Another important reason is market access as there are many restrictions to enter the Vietnamese market. Even if the foreign companies have established FIEs in Vietnam, they still invest in local companies to get insight and learn local knowledge to apply to their own FIEs, as in the case of ANZ's acquisition of Sacombank. Foreign companies also do M&As to gain flexible control or to restructure their business portfolios. They could divest all business or a part of their business in Vietnam due to restructuring policy from the mother companies.

For a developing country like Vietnam, the main factors that drive local firms to conduct M&As with foreign partners include synergies, financial gains/capital access, increased competitiveness, market access, and further growth. Of which, synergies are the most important driver. The synergy is presented in the knowledge access as Vietnamese companies understand their limitations in knowledge and technology. Due to the pressure of market openness according to WTO and bilateral commitments, they are urged to enhance their knowledge then increase competitiveness by seeking M&A partners from developed countries such as Japan, the U.S. or Europe. They expect to learn management skills, e.g. financial management, risk and personnel management, and knowledge about product development and technology from foreign partners then adapt the knowledge to practical situations in Vietnam.

Beside knowledge, Vietnamese companies need capital from foreign partners for further growth. They usually expect to get a higher premium from foreign partners than from domestic ones as in the deals with Japanese firms mentioned above. The capital gained from the M&As with foreign partners is to enhance local companies' capability in production for manufacturing companies or in service providing for service companies. The capital is also utilized for core business investments in case that company withdraws from non-core business to focus on core activities.

As such, Vietnamese companies seek both operational and financial synergy in M&As with foreign partners. They tend to look for dynamic synergy rather than static synergy as they focus on the matching of complementary resources and skills to enhance their long-term positive effects on sales, market shares, and profits.

Some Vietnamese companies such as Viettel (in Bangladesh or Haiti), BIDV (in Cambodia) have involved in M&As overseas to access new markets. Others have done M&As with foreign partners hoping that they could distribute their products through partners' networks (Minh Phu and Tamasek) or get more customers from the partner' clients (PSI and SMBC Nikko).

Table 4.1: Drivers for M&As between foreign and Vietnamese companies

Drivers discussed in the literature	Foreign companies	Vietnamese companies
Speed	Very important to quickly launch business in local market	No
Synergies	Little information about this driver. Only in PSI and SMBC Nikko's case as PSI commits to refer its customers to SMBC Nikko.	The most important drivers, in the form of knowledge (operational synergies) and capital (financial synergies). Dynamic synergy is sought rather than static synergy to increase competitiveness and for further growth.
Strategic assets	No	Knowledge
New market and market power	Important driver due to the attractiveness of local market and legal restrictions	Expectation of foreign markets' access through foreign partners' networks or doing outward M&A.
Diversification and greater size	No	No
Risk reduction	No	No
Financial gains	No	In the form of higher premium got from foreign partners
Tax considerations	No	No
Behavioural explanation	No	Little information, only referred to in the case of PSI
	Flexible control by buying out the local partner's shares	
	Restructuring by selling operations in local countries	Restructuring, mostly for capital

Source: Compiled by the author.

In general, to answer the first sub-research question, synergies in the form of knowledge and capital access are the most important drivers for Vietnamese companies. Other drivers such as restructuring, increased competitiveness, or market access and growth are in relation with the

synergies. Speed and market access are the main motivations for foreign companies entering the Vietnamese market through M&As; whereas flexible control and restructuring are associated to FIEs currently in operation in Vietnam. The last two motivations, flexible control and restructuring, are not discussed in the literature as the current literature pays attention to cross-border M&As or domestic M&As instead of M&As between FIEs in operation in local countries and local companies (see Table 4.1).

4.1.2 The issues in mergers and acquisitions

The main issues that companies face during the M&A process in Vietnam are similar to the issues discussed in Chapter Two, e.g. not having a clear strategy, not selecting the right partner, insufficient information and non-transparency in due diligence, culture and HR issues in integration, etc. However, the unique issues in Vietnam stem from its complicated legal framework. The inconsistency in regulations and the low enforcement create much trouble for companies as discussed above.

Unlike the usual process in M&As, the parties involved in M&As in Vietnam have to seek confirmation that the foreign investment is legally feasible first. This step is to avoid that the BRC will not be rejected and that all efforts in the previous stage before seeking a BRC are not futile. The Vietnamese licensing authority requires fully completed payment evidence as a document in application for a BRC, so the investors have to refer to an escrow account (an immediate) to reduce risk in case the BRC is delayed or rejected.

Other issues such as inexperience and inadequate knowledge about M&As, pricing, immature middle market and opacity in the post-merger process are derived from a developing economy with low development level and little knowledge about sustainability in development. Even though there are many conferences and materials about M&As, Vietnamese companies usually have little preparation as the M&A decision is made from the top executives and other employees do not know about the deal until a potential partner appears, as in the case of PSI. They do also have little confidence in the third party so they avoid using it. These issues could only be solved by enhancing the companies' knowledge and attitude to make them understand the risks associated with the issues.

4.2 Implications for further research

The drivers for firms to do M&As are illustrated in particular goals which are measurable. Yet it is not usually for firms to go directly from deal closing to the goals. They could have to change direction at some points in the process but keep the original goals or they even have to change the goals due to subjective as well as objective factors. The new goals could be totally different from the previous ones or smaller/bigger than the original goals. So ‘which kind of goals are affected, at which level (slightly or considerably), and by which issues?’ is the new research question proposed. This problem could differ from big companies to SMEs.

The more samples the better so it is recommended doing research for SMEs first and then big companies. The research should be by case studies with in-depth interviews with top executives, e.g. CEOs, CFOs, and the possibility to access companies’ data to review their goals’ assessment. In addition, the research question is related to the integration process so the investigated deals should be at integration stage or after this stage at most two years because it is easier to access data and people’s memories in this short-time period.

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Appendices

Appendix 1: Examples of academic research about M&As in Vietnam, 2008-2011

STT	Title	Author(s)	Type	Year
1	Human and cultural integration in mergers and acquisitions: A study of Andersen acquisition by KPMG in Vietnam	Karol Duda Hong Y Pham	Master thesis	2009
2	Mergers and acquisitions: A comparative study on Vietnam and the United Kingdom legal regulation	Tran Van Khanh	Master thesis	2009
3	Mergers and acquisitions strategy in Vietnam's pharmaceutical industry: A case study of Vien Dong Pharma and Hataphar	Hai Hoang Nguyen	Master thesis	2011
4	Giai phap cho he thong ngan hang thuong mai Vietnam truoc xu the sap nhap, hop nhat va mua lai [Solutions for the Vietnamese commercial bank system in the trend of mergers, consolidation, and acquisitions]	Le Thi Ai Linh	Master thesis	2009
5	Su phat trien cua thi truong M&A - Xu huong moi cho Vietnam [The M&A market's development - a new direction for Vietnam]	Nguyen Manh Thai	Master thesis	2009
6	Mua ban, sap nhap doanh nghiep duoi goc nhin tai chinh [Mergers and acquisitions in financial view]	Huynh Thi Cam Ha	Master thesis	2008
7	M&A o Vietnam: Thuc trang va giai phap co ban [M&A in Vietnam: Reality and fundamental solutions]	Nguyen Hoa Nhan	Article	2009
8	Mergers and acquisitions in Vietnam's emerging market economy, 1990-2009 (CEB Working Paper No 09/045)	Vuong Quan Hoang Tran Tri Dung Nguyen Thi Chau Ha	Paper	2009
9	Tap trung kinh te o Viet Nam: Thuc trang va du bao [Economic concentration in Vietnam: Current situation and projection]	Vietnam Competition Authority	Report	2009

Source: Compiled by the author.

Note: Excluding the undergraduate theses and consultancy companies' reports

Appendix 2: The questionnaire for PSI

Question 1: Which party initiated the deal, PSI or SMBC Nikko?

Question 2: What were the drivers for PSI to undertake the M&A activity?

- | | |
|---|---|
| <input type="checkbox"/> Speed (please specify): | <input type="checkbox"/> Risk reduction (please specify): |
| <input type="checkbox"/> Synergies (please specify): | <input type="checkbox"/> Financial gains (please specify): |
| <input type="checkbox"/> Strategic assets (please specify): | <input type="checkbox"/> Tax considerations (please specify): |
| <input type="checkbox"/> New market and market power (please specify) | <input type="checkbox"/> Leader's will (please specify): |
| <input type="checkbox"/> Diversification (please specify) | <input type="checkbox"/> Others (please specify): |
| <input type="checkbox"/> Greater size (please specify): | |

Question 3: Could PSI rank the above drivers on a scale of 1 to 5, as 1 is the most important driver and 5 is the least important driver?

Drivers	1 (most important)	2	3	4	5 (least important)
Speed					
Synergies					
Strategic assets					
New market and market power					
Diversification					
Greater size					
Risk reduction					
Financial gains					
Tax considerations					
Others:					

Question 4: Could PSI please describe the deal, e.g. time, content, payment method?

Question 5: Did PSI find any issues in the M&A process, namely locating partner, investigation (due diligence), and negotiation?

In locating partner (please specify):

In investigation or due diligence (please specify):

In negotiation (please specify):

Question 6: Did PSI have an integration plan? If yes, when did PSI draw it, before or after the deal closed?

Question 7: What actions did PSI undertake in the integration process post-M&A?

Training (please specify)

Personnel arrangement (please specify):

Others (please specify)

Question 8: Did PSI find any issues in the integration process post-M&A? If yes, what kinds of the following issues?

Cultural difference issues (please specify or give example if possible):

Personnel issues (please specify or give example if possible):

Others (please specify or give example if possible):

Question 9: How does PSI assess the M&A outcomes? If criteria are used, which kind of the followings?

Financial indicators (please specify):

Strategic goals (please specify):

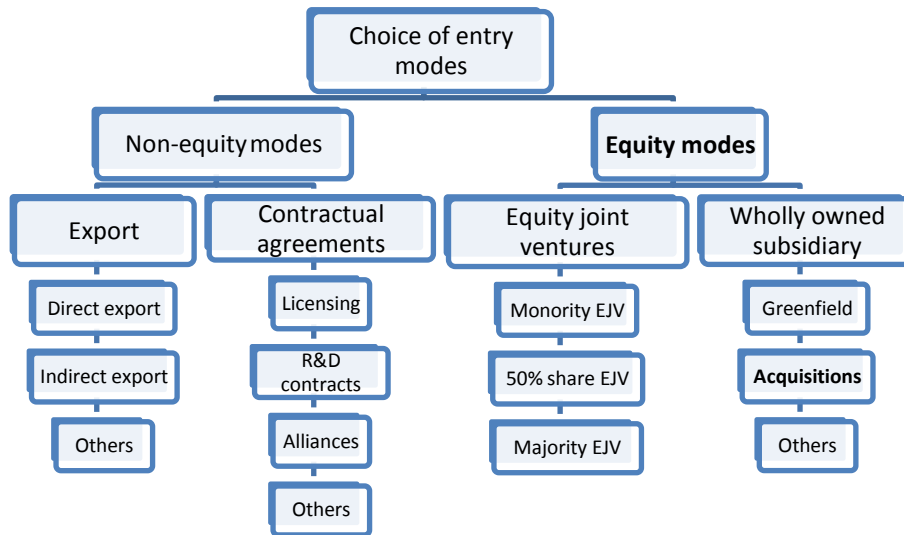
Question 10: In the opinion of PSI, what are the factors that investors need to pay attention to for a success in M&As in Vietnam?

Legal aspects (please specify):

Partnership issues (please specify):

Others (please specify):

Appendix 3: A hierarchical model of choice of entry modes



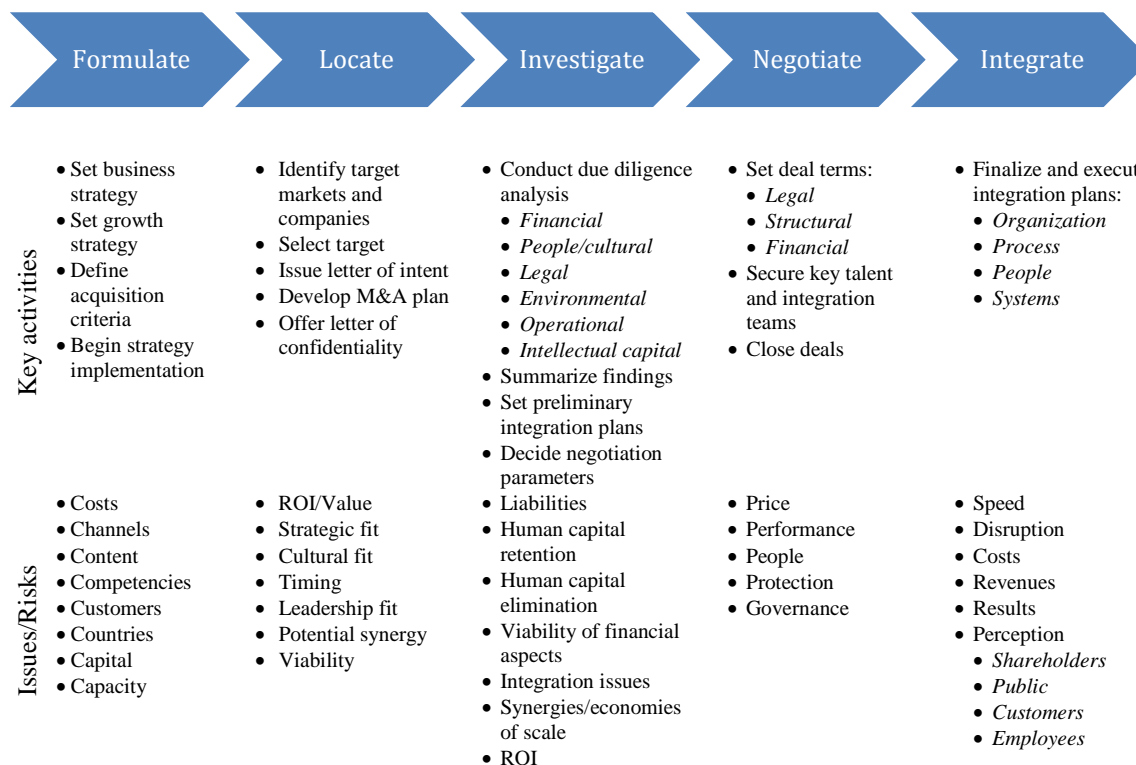
Source: Pan & Tse 2000.

Appendix 4: Tactical defence strategies against a takeover

No.	Tactics	Content
1	White knights	A bidder who steps in when the target is trying to avert a takeover by a hostile suitor. If a small premium is offered over the current price, there is a stronger chance of a white knight coming to rescue the target. If a substantial premium is offered, the costs to white knights become correspondingly higher and the chance of rescue diminishes.
2	Crown jewels	A highly valued asset of the firm that the acquirer wishes for. It may be useful to sell to leave the rest of the firm intact. The 'crown jewels' could be mortgaged or sold to the acquirer or another undertaking.
3	Golden parachute	Termination compensation package for senior executives and is sometimes used to protect directors from the consequences of a takeover, although they inevitably make it more expensive for the acquirer.
4	Poison pills	Strategy involves the issue of convertible securities which may be converted into shares of the company owning it at the time of the conversion. Such conversions would have the effect of diluting the bidder's shares and perhaps deterring an acquisition.
5	Employee stock option programmes	A strategy is assuming that employees with stock options are less likely to tender shares to an offer because of loyalty to their existing employers.

Source: Cooke 1986

Appendix 5: The Watson Wyatt deal flow model



Source: Galpin and Herndon 2000:9.

Appendix 6: The integration approaches

No.	Integration approaches	Content
1	Absorption (strong need for interdependence, low need for autonomy)	Full consolidation of the operations, organization and culture of both firms over time.
2	Preservation (low need for interdependence, strong need for autonomy)	The acquirer keeps the target intact and nurture it.
3	Symbiosis (strong need for interdependence, strong need for autonomy)	Both organizations first coexist but gradually become increasingly independent.

Source: Sudarsanam 1995; Gates and Very 2003.

Appendix 7: Current laws and regulations on mergers and acquisitions in Vietnam

No	Laws and regulations	Article	Year
1	The Competition Law	16 -24, 29	2004
2	The Civil Code	94, 95	2005
3	The Enterprise Law	13, 44, 84 (5), 89, 150, 151, 152, 153	2005
4	The Investment Law	9(1), 21, 25, 26, 29, 51	2005
5	The Law on Securities	29, 32, 69	2006
6	The Law on Credit Institutions		2010
7	Decree No. 116/2005/ND-CP of the Government dated 15 September 2005 on Implementation of the Competition Law	34	2005
8	Decree No. 120/2005/ND-CP of the Government dated 30 September 2005 on Violation Settlement in Competition		2005
9	Decision No. 238/2005/QĐ-TTg of the Prime Minister dated 29 September 2005 on Foreign Participation in Vietnamese Securities Market.		2005
10	Decision No. 921/QĐ-NHNN dated 27 June 2005 of the State Bank of Vietnam amending Decision No. 337/1998/QĐ-NHNN of the State Bank of Vietnam on Bringing Foreign Currencies and Vietnamese Dong in Cash When Entering and Exiting the Country.		2005
11	Decree No. 101/2006/ND-CP Regulating Foreign Invested Enterprises to Re-register, Convert, and Exchange for Investment Certificates in accordance with the Enterprise Law and the Investment Law	9, 14, 20	2006
12	Decree No. 108/2006/ND-CP of the Government on Implementation of the Investment Law	10, 56	2006
13	Decree No. 69/2007/ND-CP of the Government dated 20 April 2007 on foreign investors' purchase of shares of Vietnamese commercial banks		2007
14	Decree No. 139/2007/ND-CP of the Government dated 5 September 2007 on Implementation of the Enterprise Law		2007
15	Circular No. 130/2008/TT-BTC of the Ministry of Finance Providing Guidelines for the Implementation of the Enterprise Income Tax Law and Decree No. 124/2008/ND-CP dated 26 December 2008		2008
16	Circular No. 134/2008/TT-BTC Providing Guidelines on Tax Obligations Applicable To Foreign Organisations and Individuals Who Conduct Business in Vietnam or Have Income in Vietnam.		2008
17	Decree No. 124/2008/ND-CP of the Government dated 11 December 2008 on Providing guidelines for the Implementation of the Enterprise Income Tax Law		2008
18	Decision No. 55/2009/QĐ-TTg dated 15 April 2009 on Percentage of Participation of Foreign Investors in Securities Market of Vietnam		2009
19	Circular No. 04/2010/TT-NHNN of State Bank of Vietnam dated 11 February 2010 on Consolidation, Merger, and Acquisition financial institutions.		2010
20	Decree No. 43/2010/ND-CP of the Government dated 15 April 2010 on Enterprise Registration		2010
21	Other laws and regulations on personal income tax, labour, social insurance, etc.		

Source: Compiled by the author from VAC 2009; Baker & Mc Kenzie 2010; and MOJ 2012a, 2012b, 2012c, 2012d; 2012e.

Appendix 8: Examples of Japanese acquisitions in recent years

No	Industry	Acquirers	Targets	Shareholding rate (%)	Year
1	Finance	Mizuho	Vietcombank	15	2012
2	Foods	Ezaki Glico	Kinh Do	10.5	2012
3	Health care	DI Asian Industrial Fund	JVC	31	2012
4	Foods	Nichirei Foods	Cholomex Foods	19	2012
5	Industrials	Unicharm	Diana	95	2011
6	Foods	Kirin Holdings	Interfoods	57	2011
7	Industrials	Daio Paper and BridgeHead Fund	Saigon Paper	38	2011
8	Finance	SBI securities	FPT Securities	20	2011
9	Finance	SMBC Nikko	PSI	14.9	2011
10	Media	NTT Docomo	VMG Media	25	2011
11	Finance	NTT Data	VietUnion	40	2011
12	Real Estate	Tama Global Investment	CotecLand	20	2011
13	Foods	DI Asian Industrial Fund	Nutifood	25	2011
14	Media	CyberAgent	NCT corp.	-	2011
15	Foods	Itochu Co.	Phu Thai Group	15	2011
16	Industrials	Japan Pile	Phan Vu Investment Corp.	5	2010
17	Foods	Acecook Vietnam	Marubeni Corp.	20	2010
18	Finance	Sumitomo Mitsui Banking Corp.	Eximbank	15	2007

Source: Compiled by the author from PSI 2011; Cafebiz 2012a & 2012b; and companies' announcements.