

Law & Development: M&A in Vietnam

L10: 17/12/2020

Outlines

1. Lavenue Crown: A Case Study
2. Looking to broader picture: M&A and the SOEs Privatization Trend
3. Working toward a Strategy for Risk Management in M&A Transactions in Vietnam

Lavenue Crown: A Story from Saigon downtown



1975: Esso and Shell, and afterward



Esso Eastern Company: 3500 m2 (08 Le Duan)
1994: Lease to 3 SOEs: SGM, HMC, SMA



Shell Company: 1500 m2 (12 Le Duan)
1994: Lease to Vitaco (SOE)

Lavenue Crown Project



36 Floors: Five Star Hotel, Luxury
Residences, Boutique Retail

- Nov 2007 Project Proposal approved
- Sep 2010 Lavenue Investment registered
 - HMTC: 50%
 - 04 SOEs (MIT): 50%
- Acquisition: August-Sep 2010
 - HMTC => May Flower
 - 04 SOEs => Kido
- Dec 2010 Lavenue Biz Registration amended
 - HMTC: 20%
 - May Flower: 30%
 - Kido: 50%
- Jan 2011 Grant & Lease of land to Lavenue
 - 50 years lease
 - 3500 m²; 3.5 Mill VND/year = 620 Bill
 - 1500 m² Grant, annual payment
- Nov 2011 Land use right certificate issued
 - 700 Bill land rental paid
- Aug 2013 Inspection Report I
- May 2018 Inspection Report III
- Dec 2018 Project revoked
 - Land Use Right Certificate revoked
 - 04 SOEs have to return 100 Bill VND
 - Accusation (Arrest of former officials)

Lavenue Investment Company: Acquisition

CƠ CẤU CỔ ĐÔNG CỦA CÔNG TY CỔ PHẦN ĐẦU TƯ LAVENUE

Công ty TNHH MTV Hoa Tháng Năm
30.0%



Công ty quản lý kinh doanh nhà TP.HCM
20.0%



04 SOEs under MIT Supervision: SG Machino, HMC, SMA, VITACO



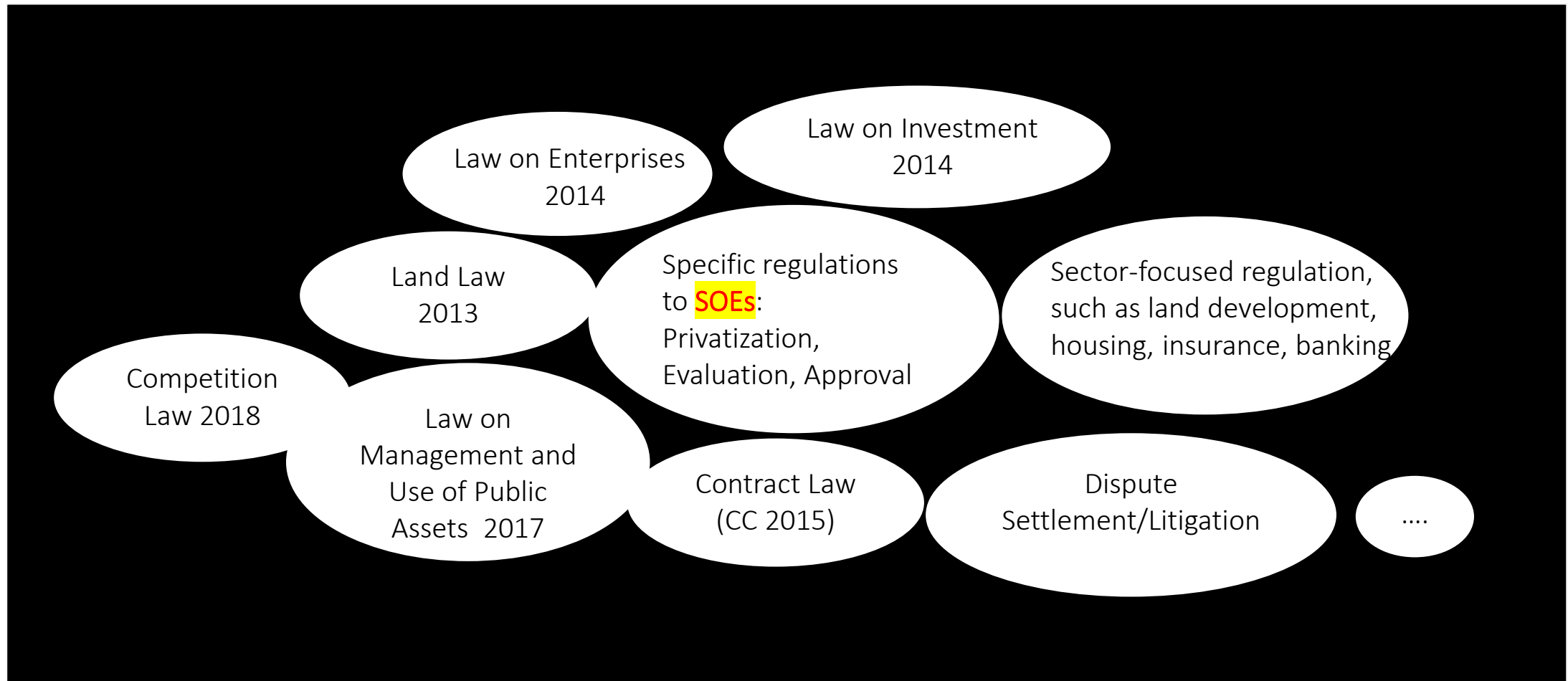
Công ty TNHH MTV Quản Lý Kinh Doanh Nhà TP.HCM
HCMC Housing Management & Trading Company Limited



Some Legal Issues, which may arise from the Lavenue Case

- ❖ Was the acquisition (purchases of shares by Kido/Mayflower) legally?
- ❖ Was the right to develop the land plots (8-12 Le Duan Dist 1) legally granted to Lavenue Company? => Review of approval process of the Lavenue Crown Project.
- ❖ Is the grant *and* lease of the *two land plots* for 50 years, the Land Use Right (LUR) certificate issued to Lavenue Company valid?
- ❖ In case, HCM had revoked the LUR certificate and withdrawn the approval of Lavenue Crown Project, how to settle financial consequences, particularly to recover losses of investor?

Legal due diligence for M&A Transaction



2. Broader Picture: M&A in the context of SOEs Reform in Vietnam

❖ Corporatization:

- Transforming SOEs from *quasi* public administration units into commercial entities: SOEs take legal form of LLC or JSC;
- Consolidation of small-fragmented units into larger companies;
- S.E.Gs and general corporations

❖ Diversification of ownership

- Equitization: Offering shares to private investors, managers, and employees;
- Lease & Transfer of (small) SOEs to the collective of employees,
- Selling small SOEs to private investors;

❖ Level Playing Field Perspective

- Disciplining SOEs under Market Rules: Transparency, Competition, Corporate Governance

Role of SOEs in Vietnam Economy

❖ Vietnam's SOEs (2017):

- 2,700 SOEs, employing 1.5 million people (15% of total employment)
- SOEs make up to 30% Vietnam's GDP
- Use 60% of the bank loan

❖ Central SOEs:

- 07 State Economic Groups (S.E.Gs) supervised directly by the Prime Minister;
- 76 general corporations supervised by 22 line-ministries;

❖ Sub-central SOEs:

- 1,500 sub-central SOEs directly supervised by 63 provinces (most are SMEs, averaging 260 employees)

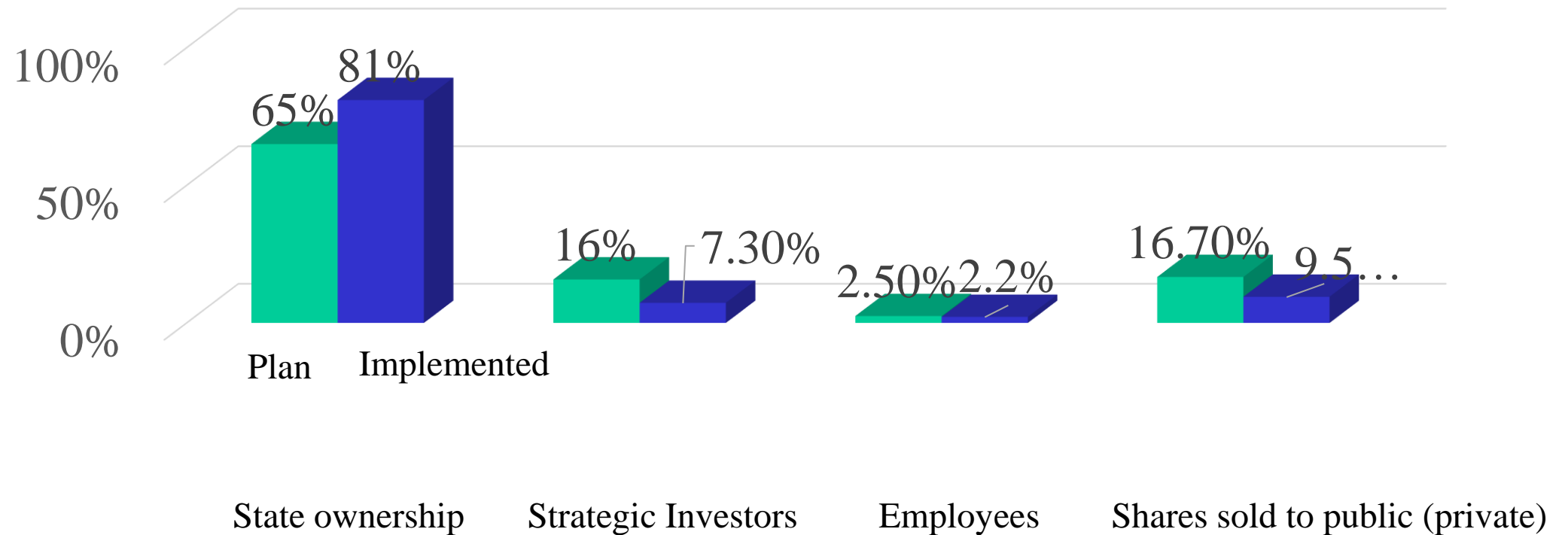
Priorities of current SOEs Reform

- ❖ Government Ownership Plan
 - Remaining 240 out of 2,700 wholly owned SOEs
- ❖ Equitization Plan:
 - IPO of larger SOEs: 07 SEGs and 76 general corporations
 - Strategic investors may purchase majority of shares
- ❖ Implementing SOE Disclosure Rules
 - Enforce discipline on disclosure of SOEs and subordinated authorities
- ❖ Improving SOE corporate governance
 - Creating a State super-holding (Government Committee on State Assets)

Equitization: Projects approved by Government

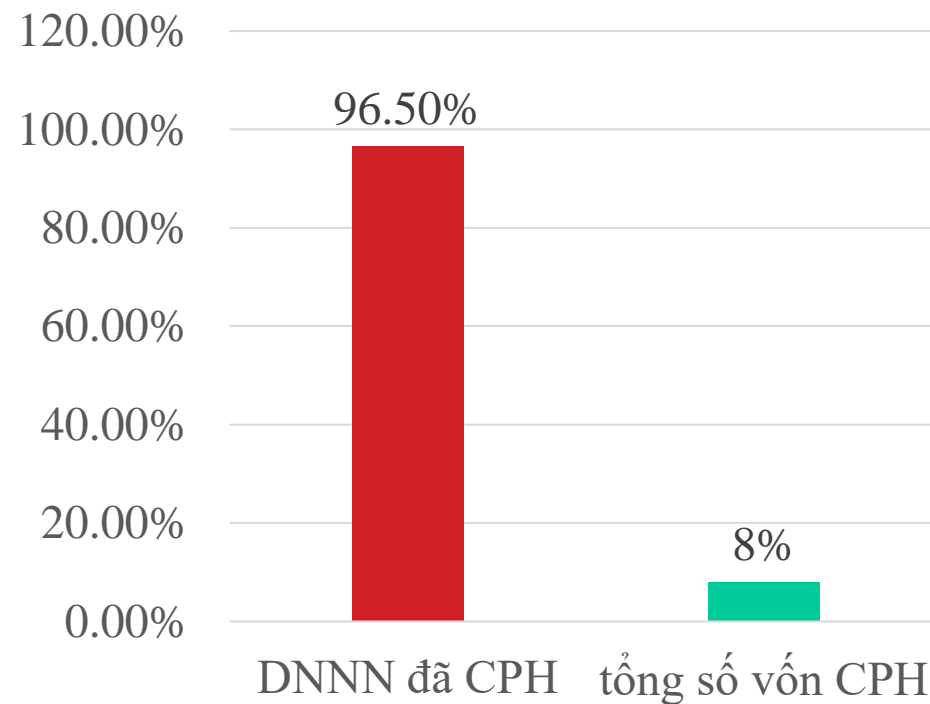
<i>Unit: billion Vietnamese Dong (VND)</i>	2011-2015		2016		2017	
Number of SOEs being equitized	508		56		45	
Total value estimated	760.774		34.017		213.747	
Value of State's ownership	188.274		24.390		88.390	
Shareholder's structure after equitization	197.217	100%	24.379	100%	93.888	100%
❑ State Agencies	128.031	65%	11.937	48.96%	42.007	44.74%
❑ Strategic shareholder	31.065	15.8%	7.670	31.46%	36.346	38.71%
❑ Employees	4.402	2.2%	388	1.59%	354	0.38%
❑ Trade Union	1.124	0.6%	8	0.03%	20	0.02%
❑ IPO (selling shares to the public)	32.931	16.7%	4.374	17.94%	15.159	16.15%

Equitization 2011-2015: Shareholding Structure

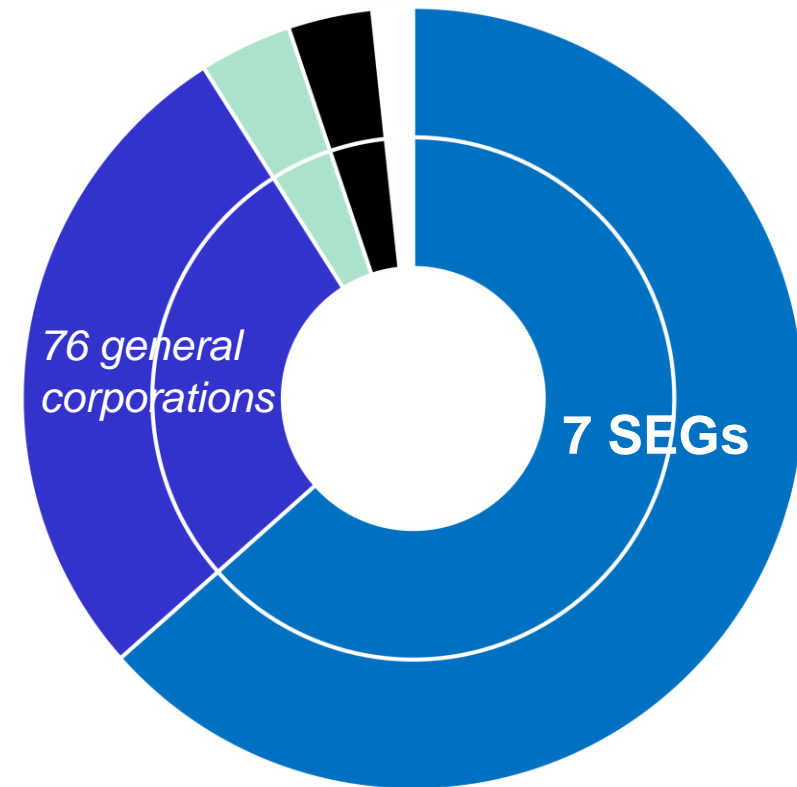


Equitization: Total assets being privatized

Number of SOEs equitized and
Capital privatized



Total assets owned by large SOEs



SOEs Transparency: Chapter 17 CP-TPP

- ❖ Within 3 years from entry into force of the CP-TPP, Vietnam must publish full list of SOEs with revenue of over \$ 700 million;
- ❖ Within 5 years from entry into force of the CP-TPP, Vietnam must publish full list of SOEs with revenue of over \$ 280 million;
- ❖ Providing a host of information upon a CP-TPP member request, for instance on designed monopolies or SOEs with information on revenue, managers, board members, immunities, financial reports.
- ❖ Providing information on policies on subsidies, legal basis, loan interest upon request of a CP-TPP member (written request, including explanation of how the policy may affect trade or investment between the TPP Parties).

3. Working toward a Risk Management Strategy for M&A Transaction

