

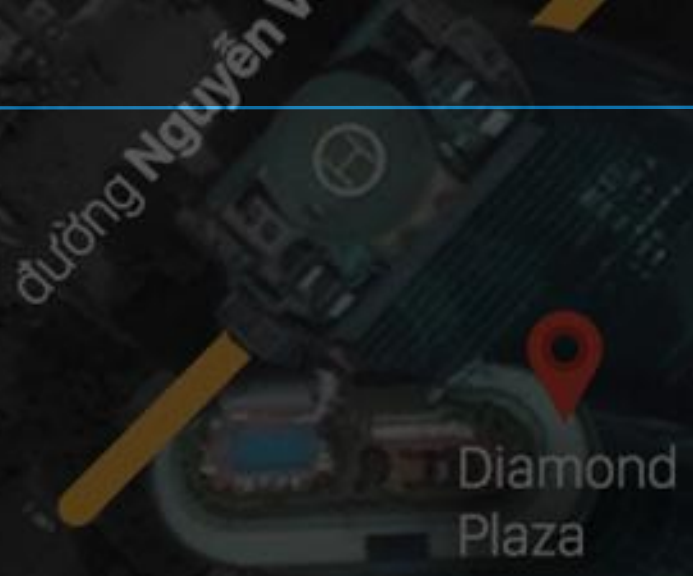
# Law & Development: M&A in Vietnam

L20: 31/12/2020

# 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 m<sup>2</sup> (08 Le Duan)  
1994: Lease to 3 SOEs: SGM, HMC, SMA



Shell Company: 1500 m<sup>2</sup> (12 Le Duan)  
1994: Lease to Vitaco (SOE)

# Lavenue Crown Project

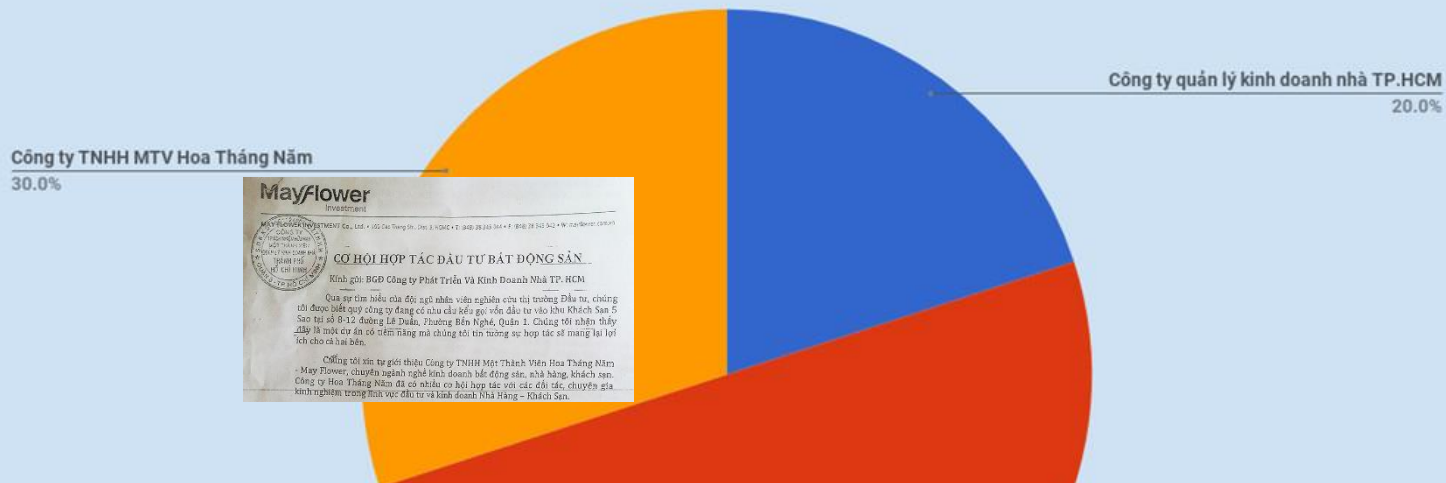


36 Floors: Five Star Hotel, Luxury  
Residences, Boutique Retail

- **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 m<sup>3</sup>; 3.5 Mill VND/year = 620 Bill
  - 1500 m<sup>3</sup> 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



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



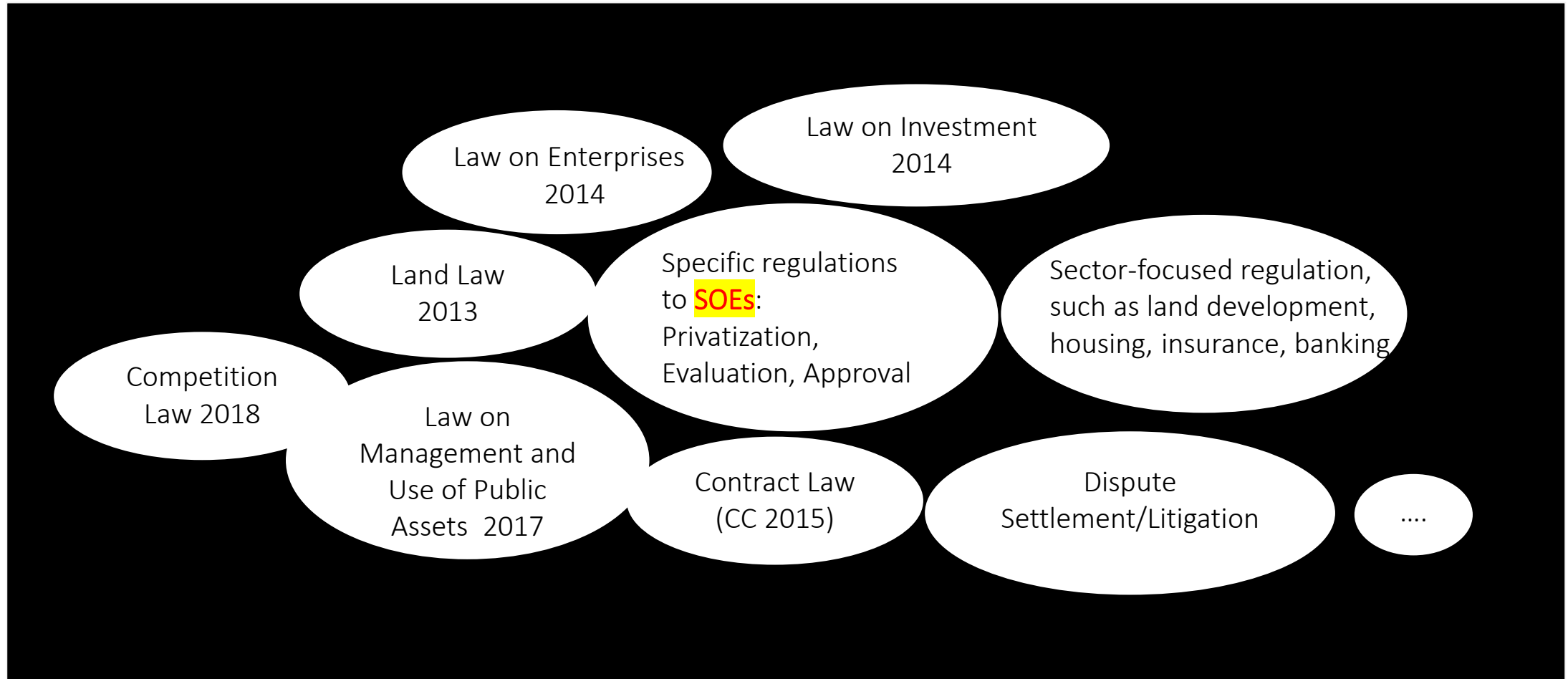
Công ty TNHH MTV Quản Lý Kinh Doanh Nhà TP.HCM  
HCMC Housing Management & Trading Company Limited



## 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)

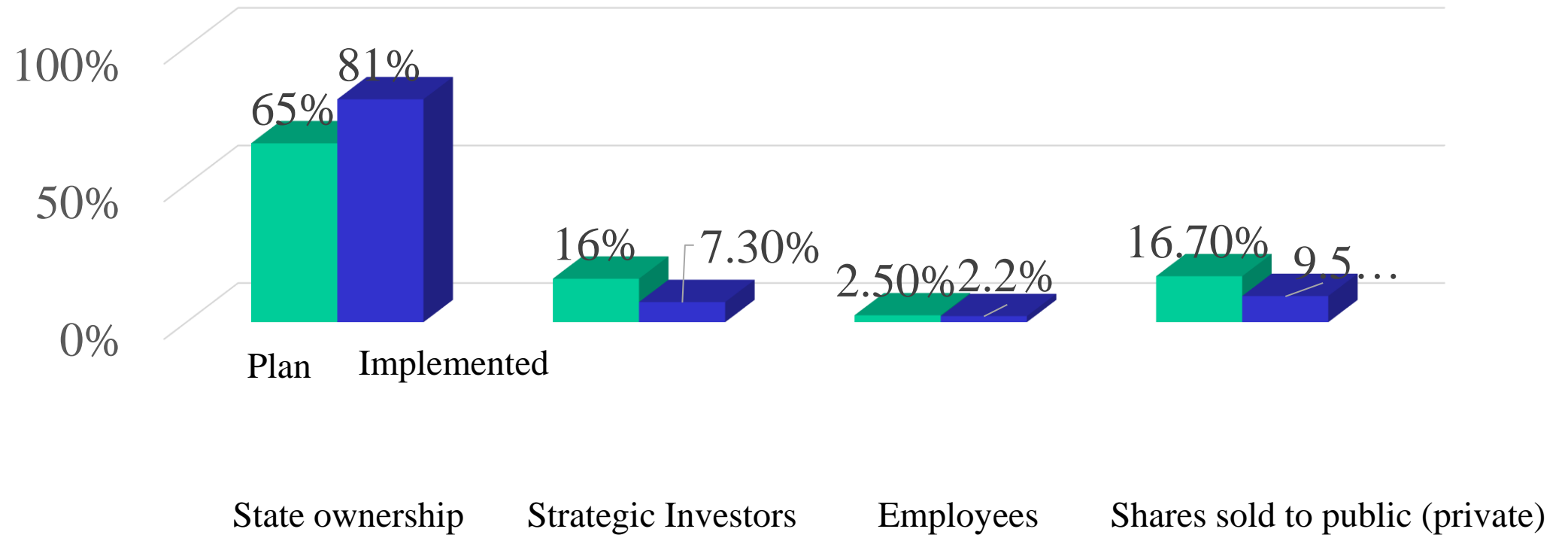
## Priorities of current SOEs Reform

- ❖ 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

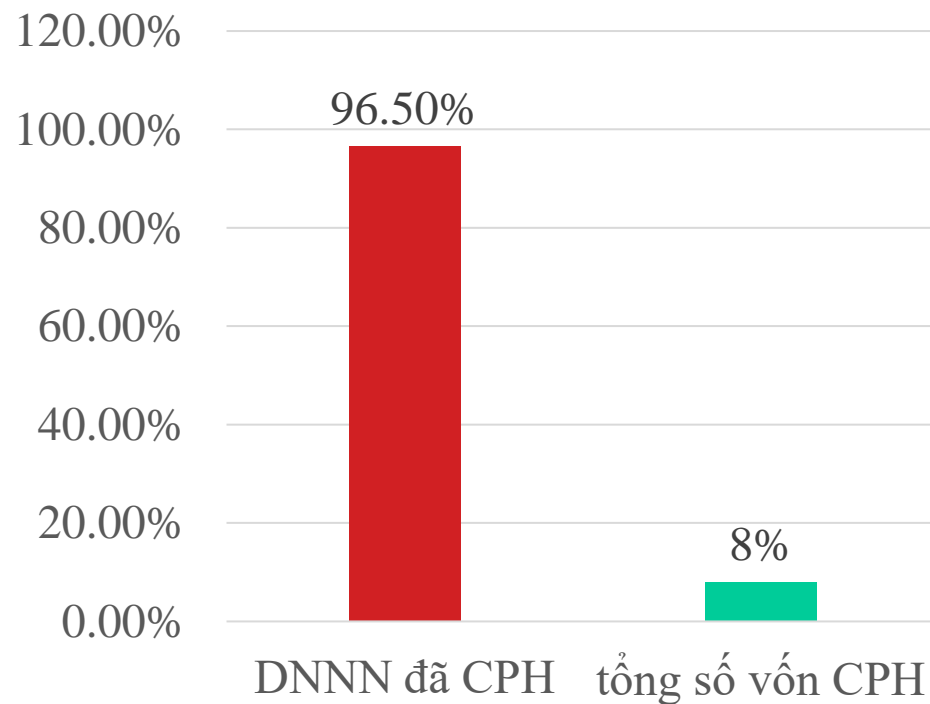
<i>Unit: billion Vietnamese Dong (VND)</i>	<b>2011-2015</b>		<b>2016</b>		<b>2017</b>	
Number of SOEs being equitized	508		56		45	
Total value estimated	760.774		34.017		213.747	
Value of State's ownership	188.274		24.390		88.390	
Shareholder's structure after equitization	197.217	100%	24.379	100%	93.888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

# Equitization 2011-2015: Shareholding Structure

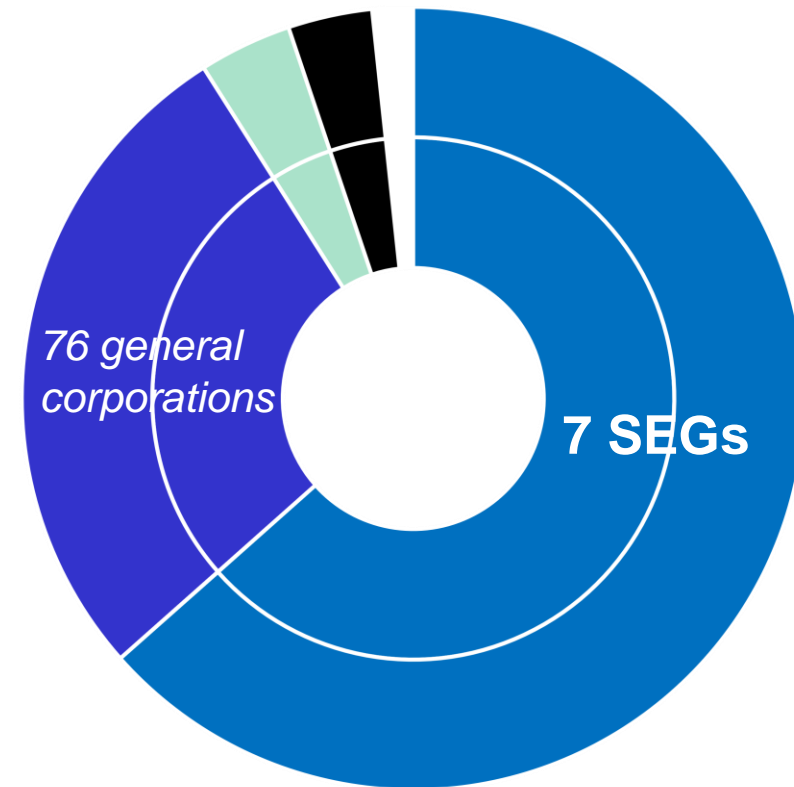


# Equitization: Total assets being privatized

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

