**CROSS OWNERSHIP BETWEEN PARENT-SUBSIDIARY COMPANIES IN VIETNAM –**

**LEGAL AND REGULATORY NOTES**

**How to determine the relationship of parent-subsidiary companies**

According to the current provisions of the Law on Enterprises 59/2020/QH14 (“**Law on Enterprises 2020**”),[[1]](#footnote-1) a company is considered as the parent company of another company if it falls into **one of the following cases**:

1. It owns more than fifty (50) per cent of the charter capital or the total number of ordinary shares of such [another] company;
2. It has the right to directly or indirectly make decisions on appointment of the majority or all members of the Board of Management, the director or general director of such [another] company;
3. It has the right to make decisions on amendment of and addition to the charter of such [another] company.

**Cross ownership concept and requirements of the law of Vietnam**

The concept of cross ownership between two enterprises is specified in Decree No. 96/2015/ND-CP guiding the implementation of the Law on Enterprises 2014,[[2]](#footnote-2) namely: “Cross ownership is the simultaneous situation of two enterprises owning each other’s contributed capital or shares.” However, Decree No. 47/2021/ND-CP guiding the implementation of the Law on Enterprises 2020 from April 1, 2021, has omitted this concept.

It is worth noting that the Law on Enterprises 2020[[3]](#footnote-3) requires that: “*Subsidiary companies are not permitted to invest in contribution of capital to or purchase of shares of the parent company. Subsidiary companies of the same parent company are not permitted to jointly contribute capital or purchase shares in order to have mutual cross ownership*.”

**Penalties for the occurrence of cross ownership between the parent company and its subsidiaries[[4]](#footnote-4)**

In the case of (i) a subsidiary investing, contributing capital, or buying shares of the parent company; and/or (ii) subsidiaries of the same parent company contribute capital or buy shares to cross-own each other, these companies may be subject to administrative penalties of up to VND 20 million and be forced to remedy by divestment or withdrawal of shares from the parent company or other subsidiaries.

In case subsidiaries of the same parent company having at least 65% state capital contributed capital to establish a company, these companies may be subject to administrative sanctions of up to VND 20 million and be forced to remedy by divestment from established companies.

**Options to eliminate cross ownership**

**Option 1**: The parent company will transfer its shares/capital contribution in the subsidiary to a third party (the “**Buyer**”), so that the parent company is no longer considered as the parent company of the subsidiary. In addition, this option is similar to the option for subsidiaries to restructure their charter capital so that the ownership ratio of the parent company will be diluted under the level that the parent company is considered to be the parent company of subsidiaries; or

**Option 2:** The subsidiaries will transfer the shares issued by the parent company that these subsidiaries hold to the Buyer so that the subsidiaries will no longer own the shares of the parent company (the procedure is similar with the below procedures which the parent company should do).

**The capital transfer process consists of three following steps:**

1. **Step 1: Approving the transfer of capital contribution and disclosure of information**

* For the parent company

Accordingly, depending on the provisions of the Charter of the parent company and depending on the value of the capital transfer transaction in relation to the total value of assets according to the latest financial statements of the parent company, such proposed capital transfer transaction must be approved by the General Meeting of Shareholders or the Board of Management of the parent company.

* For the Buyer

If the Buyer is an enterprise, depending on the type of business, the Buyer’s charter and the value of capital transfer transaction in relation to the Buyer’s total asset value in the latest financial statement, there must be a resolution of the General Meeting of Shareholders or the Board of Management or Members’ Council or a decision of the Chairman of the company to approve the transfer of contributed capital in the subsidiary company from the parent company.

1. **Step 2: Signing the capital transfer contract**

* The capital transfer contract between the parent company and the Buyer must be signed by the legal representative of the parent company and the Buyer.[[5]](#footnote-5) In case the person who signs the capital transfer contract is not the legal representative of the parent company and the Buyer, a power of attorney of the legal representative for the signatory is required.
* The capital transfer contract between the parent company and the Buyer must contain at least the following basic contents: information of the parent company and the Buyer, the number and value of contributed capital in the transferred subsidiary company; method and time of payment, rights and obligations of the parties, contract termination, dispute resolution, etc.
* The parent company is responsible for determining and declaring corporate income tax from the transfer of capital in the subsidiary to the tax authority.

1. **Step 3: Registration of capital transfer and post-licensing procedures**

* After the parent company transfers its contributed capital in the subsidiary company to the Buyer, the subsidiary must carry out the procedures for registration of amendment of the Enterprise Registration Certificate (“**ERC**”)/notice of changing enterprise information with the local Department of Planning and Investment.
* Post-licensing procedures:

After the subsidiary is issued an amended ERC recording the transfer of capital contribution, the subsidiary company must carry out the following licensing procedures:

* Making a register of members/shareholders; issue the certificate of capital contribution to the Buyer; and
* Report the change on the National Business Registration Portal within 30 days from the date of issuance of the amended ERC.

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1. Article 195.1 Law on Enterprises 2020 [↑](#footnote-ref-1)
2. Article 16.2 Decree No. 96/2015/ND-CP [↑](#footnote-ref-2)
3. Article 195.(2) Law on Enterprises 2020 [↑](#footnote-ref-3)
4. Article 39 Decree No. 50/2016/ND-CP [↑](#footnote-ref-4)
5. Article 86.3 and Article 144 of the Civil Code [↑](#footnote-ref-5)