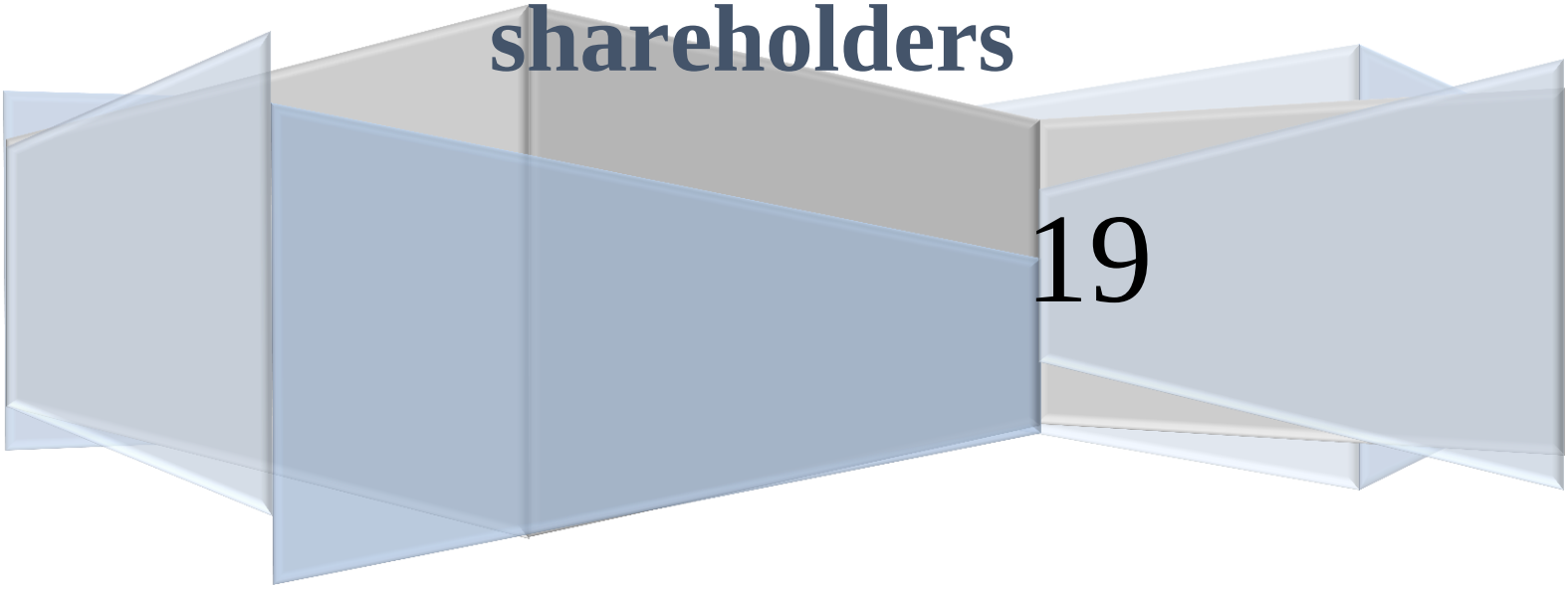
Promote and facilitate market entry: Problems and solutions to improve Starting a business and Protecting minority shareholders



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1.1 The role and significance of improving the business environment and promoting market entry

1.1.1 Starting a business

Starting a business is the first basic step that an investor must take to do business: establish a company and put it into operation. Some studies have been conducted to analyze the role of business regulations, including the start-up stage to the growth and investment of each country.

A study of World Bank[1] using panel data for 10 years across more than 180 countries analyzes the link between business regulation, firm creation, and growth. Accordingly, a reasonable overall business regulatory system will have a positive impact on increasing the number of newly registered businesses. In addition, the improvement of business regulations also has a significantly impact on the annual per capita growth.

Another study of World Bank[2] also analyzes the impact of business environment reforms on new firm registration. Accordingly, the authors find that the costs, days and procedures required to start a business are important predictors of the number of new firm registrations. The reform of legal regulations on market entry is associated with the development of the number of newly registered firms. The study also shows that countries with a less competitive business environment, cumbersome and overlapping legal frameworks will limit the development of the formal economic sector, increasing the informal sector.

A fast, simple, cost-effective market entry process is an important factor to promote the formalization of business operations[3]. In addition, reforms in business start-up regulations can play a critical role in enhancing the complementarity between foreign and domestic investment and thereby increase entrepreneurship and economic growth in low-income countries[4].

Thus, formal business registration matter is not only important for businesses but also for the economy.

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[1] Divanbeigi, Raian; Ramalho, Rita, "Business regulations and growth". World Bank Group, Policy Research Working Paper 7299 (2015).
[2] Leora Klapper and Inessa Love, "The Impact of Business Environment Reforms on New Firm Registration". World Bank Policy Research Working Paper 5493.
[3] Klapper, Leora, Anat Lewin và Juan Manuel Quesada Delgado. 2009, "The Impact of the Business Environment on the Business Creation Process". World Bank Group, Policy Research Working Paper 4937
[4] Jonathan Munemo, "Business start-up regulations and the complementarity between foreign and domestic investment". Review of World Economics, Volume 150, Issue 4, Pages 745-761, November 2014.

For the company: when firms formally register, they secure more gains in profits, investments and productivity. Formally registered companies have access to services and institutions from courts to banks as well as to new markets. Employees can also benefit from protections provided by the law.

For the economy: simpler start-up procedures are associated with a greater number of legally registered companies and greater employment opportunities in the formal sector. Lower costs for business registration encourage entrepreneurship and enhance firm productivity.

1.1.2 Protecting Minority Investors

If Starting a Business measure the ease of establishing a company and market entry, investor protection play an important role throughout business operation and is a significant factor that determine the enterprises' ability to grow and expand.

A good investor protection mechanism is crucial for companies, the financial market and business environment of the economy. For businesses, good investor protection can help companies focus on maximizing profits, limit company's conflicts of interest, thereby increasing company value and enhancing ability to raise capital from external sources. For the economy, good investor protection can help to develop size and quality of financial market, ensuring a fair and transparent business environment. In additions, by being quantified through the Protecting Minority Investors Index in World Bank's Doing Business Report, foreign investors can have an effective reference source to select countries to invest. Thus, good investor protections can help to attract more investment from abroad.

Theoretically, an effective investor protection mechanism can ensure the rights of shareholders, especially minority shareholders, avoiding conflicts within the company. Provisions on anti self-dealing transactions can prevent "private benefit of control" of major shareholders and company's managers causing direct damage to the company, minority shareholders and can drive the company away from profit maximization purpose. Many empirical studies have proved this argument. Shleifer and Vishny (1997) have demonstrated that major shareholders can take advantage of controlling power to pursue personal interests, make suboptimal decisions that can damage the company and other shareholders benefits. Research by John et al. (2007) also shows that good investor protection mechanism can make companies willing to invest, face more risks and have higher growth rates. La Porta et al. (2002) studied 539 businesses in 27 economies and the results show that countries with good investor protection mechanisms have higher market value of enterprises than countries with poor investors protection rules.

In addition, a good investor protection mechanism will help external investors feel more secure when investing in the company, reducing the cost of capital, making

it easier for the company to attract external resources. Himmelberg et al. (2002) used corporate data from 38 countries and provided evidence that a weak shareholder protection mechanism can make ownership structure more concentrated, which in turn can make company be more difficult to raise capital from outside (underinvestment and higher cost of capital).

Regarding effects on the financial market and the economy, Dyck and Zingales (2002) have demonstrated that private benefit of control of controlling shareholders can lead to an underdeveloped financial market and glacial equitization process. Djankov et al. (2008) when developing an investor protection index, also conducted empirical research showing that countries with higher scores for investor protection index have more developed financial and securities markets.

The introduction of the Doing Business Report with the Protecting Minority Investors Index further confirms the importance of investor protection for businesses. Investors, especially foreign investors, can use the Doing Business Report and this index to compare regulations between countries, thereby considering investment decisions. Getting a good score in this Index can help countries to better attract foreign investment. More importantly, policy makers can also rely on this Index to realize the status of their country's investor protection regulations, to compare and analyze strengths and weakness of their investor protection mechanism with countries around the world.

1.1.3 Objectives of the report

The report was conducted to analyze in detail 2 components of World Bank's Doing Business report: Starting a Business and Protecting Minority Investors. Specifically:

- Introducing, analyzing in detail the methodology, measurement method and meaning of the index and its components of Starting a Business and Protecting Minority Investors Index. Pointing out the benefits and drawbacks of applying these index in Vietnamese context.

- Review legal provisions related to the Starting a Business and Protecting Minority Investors Index. From there, propose reform directions and specific recommendations to improve these two indicators corresponding to improving the market entry and investor protection of Vietnam

1.2 Starting a Business and Protecting Minority Investors from the World Bank's perspective

1.2.1 Starting a business

The The World Bank's Doing Business Report consists of 10 indicators designed according to the life cycle of enterprises, including from business

registration to dissolution and bankruptcy. Starting a business is the first step to start a business. Starting a business indicator records all procedures officially required, or commonly done in practice for an entrepreneur to start up and formally operate an industrial or commercial business, as well as the time and cost to complete these procedures. The purpose of this section is to introduce theory and methodology of World Bank's Starting a Business Indicator and its components, as well as the advantages and disadvantages of this approach.

a. Starting a business methodology

The World Bank's Starting a business indicator is based on Djankov et al. (2002) on the regulation of entry of start-up firms in the world.

Djankov et al. (2002) analyzed the entry regulations based on the data of start-up frims in 85 countries that span a wide range of income levels and political systems in 1999. The data cover the number of procedures, official time, and official cost that a start-up must bear before it can operate legally. Research by Djankov and colleagues want to verify two opposing views on entry regulations of enterprises.

The first view holds that state intervention by regulations to ensure that new companies meet minimum standards to provide high quality products or services for consumers[5]. In view of this, the stricter regulation of entry will ensure socially inefficient. On the contrary, the second view holds that entry regulations are ineffective and only bring benefits to existing companies in the market[6]. The entry regulations will hinder competition, providing exclusive location and direct benefits for companies simultaneously causing damage to consumers. In addition, a view that entry regulation is pursued for the benefit of politicians and bureaucrats through policy advocacy or even corruption and bribery[7]. Shleifer and Vishny (1988) argue that many of these permits and regulations exist is probably to give officials the power to deny them and to collect bribes in return for providing the permits. This not only does not create benefits even causing direct damage to society.

Descriptive statistics for the collected data showed enormous variation in entry regulation across countries (the number of procedures, time and costs). The total number of procedures ranges from lowest 2 procedures to highest 21 procedures, the shortest time is from 2 days to 152 working days and costs from 0.5% of GDP per capita to 47% of GDP per capita. Very few entry regulations cover tax and labor issues (average of 1.94 and 2.02 procedures). Procedures involving environmental issues and safety and health matters are even rarer (average of 0.14 and 0.34 procedures).

[5] Pigou's (1938) theory of public interest
[6] Stigler's (1971) theory of public choice
[7] Shleifer và Vishny (1988)

More importantly, empirical evidence showed that there is no correlation between the lighter regulation and higher quality of products/services, less pollution or better competition. In contrast, heavier regulation of entry is generally associated with higher corruption and a larger unofficial economy. Overall, it does not support deep interventions nor strict regulations of goverment during market entry.

Another noteworthy point of the study is how to do research. The study was carried out to develop an indicator to assess the current status of market entry of countries. However, entry regulations vary across countries, even within a country, there are also differences across regions, industries and firm size. Therefore, in order to build a common indicator, a "standardized" firm must be presented in such a way that it must be representative of the majority of the nation's businesses. Some assumptions are: a domestically owned limited liability company; operating in general industrial or commercial activities; have an operating location in the largest city; no activities of in foreign trade or trading in goods that are subject to excise taxes (e.g., liquor, tobacco, …).

Three measures of entry regulation, including: the number of procedures, the official time required to complete the process, and its official cost.

- The procedures: every activity that it requires the entrepreneur to interact with outside entities (state and local government offices, lawyers, auditors, notaries, …) in the start-up process is counted as "a procedure". The procedures that the enterprise can perform by itself are not related to the outside or can be can be performed after business commences shall be ignored. Also, when obtaining a document requires several separate procedures involving different agencies, it will be counted each as a procedure.

- The time: time is calculated in business days that it takes to complete each procedure, ignore the time to gather information. The study sets the minimum time to do a procedure and if the procedures are taken simultaneously, it will assume that enterprises carry out procedures at the same time and do not include the time of each procedure.

- The cost: the cost of entry regulation is calculated by the% GNI per capita, including all official expenses (such as fees, costs of procedures and forms, photocopies, fiscal stamps, legal and notary charges, ….), excluding informal charges.

Assumptions and measurement of entry regulations based on the number of procedures, time and costs as above will meet the requirements for a clear and transparent indicator that can be applied to every country. However, this measurement will also generate some limitations that will be analyzed in the next section.

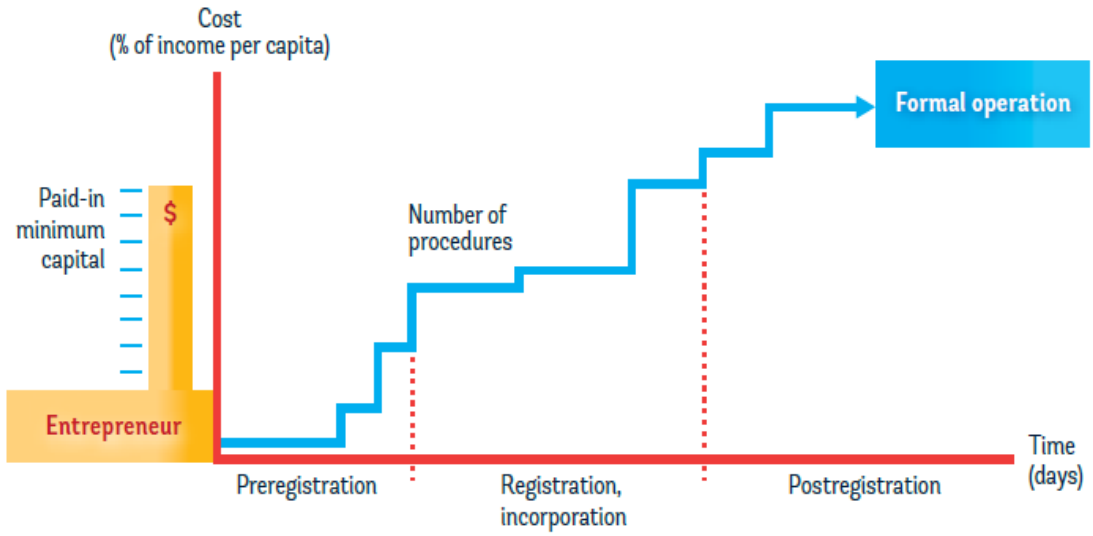
Based on the above research methodology, the World Bank has expanded the scope of interviews with many law firms to assess in detail the regulations of starting

a business of each country. The World Bank's starting a business indicator adds the paid-in minimum capital to set up a limited liability company (divided by male / female gender of the applicant). Analysis of the World Bank's component indicators will be presented in the next section.

b. The component index of starting a Business indicator

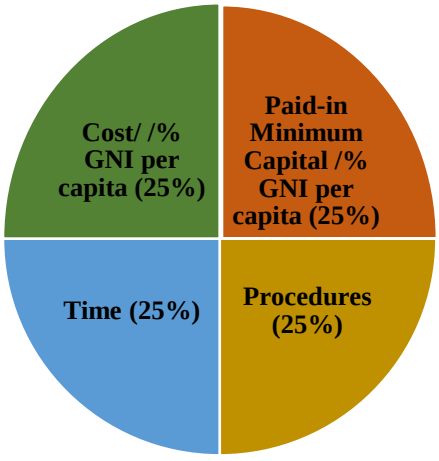
Starting a business indicator records all procedures officially required, or commonly done in practice, for an entrepreneur to start up and formally operate an industrial or commercial business, as well as the time and cost to complete these procedures and the paid-in minimum capital requirement (Figure 1).

Figure 1: What Starting a Business measures



Source: Doing Business database

Figure 2: The four components of the starting a business



The four components of starting a business indicatos include: (i) procedures; (ii) time; (iii) cost; and (iv) paid-in minimum capital to set up a limited liability

company (divided by male / female gender of the applicant). The results of scoring and ranking are based on the four above mentioned components and the percentage of each component is 25% (Figure 2).

In order for the data to be comparable across the economies, the "sample" enterprise assumptions were made similarly in the study of Djankov et al (2002). Table 1 lists the specific assumptions.

Table 1: Starting a Business: The Case Study Assumptions

Type of Limited liability Company	- Private Limited Liability Company - The Business has 5 owners and is 100% domestically owned
Location	In the largest business city in the country
Company Size	- Start up capital of 10 times the income per capita - Annual Sales (turnover) of 100 times the income per capital - 10-50 employees (within 1 month of commencement of operations). All of them domestic nationals
Activities	- The business conducts general industrial or commercial activities - The business does not qualify for investment incentives or any special benefits - The business does not perform foreign trade activities and does not handle products subject to a special tax regime
Assets	- The business does not own real estate (leases the commercial plant or office) - An annual lease for the office space equivalent to one income per capita - An office space of approximately 929 square meters
Company deed	10 pages long

The ranking of economies on this indicator is determined by ranking each country's score to start a business. These scores are a simple average of scores for each component index.

After researching the laws, regulations and publicly available information about starting a business, the World Bank will develop a detailed list of procedures, along with time and cost to comply with each procedure and paid-in minimum capital requirements. Local lawyers, notaries and government officials will be interviewed and verified for data. The World Bank also assumes that any necessary information is available and entrepreneurs will not have to pay unofficial cost. If the answers of the experts are different, the World Bank will continue to collate and interview.

(i) The number of procedures to start a business

- The Starting a business indicator records all procedures (before, during and after business registration) officially required, or commonly done in practice.

- Founders are assumed to complete all procedures themselves, unless the use of a third party is mandated by law, or solicited by the majority of entrepreneurs. If the services of professionals are required, procedures conducted by such professionals on behalf of the company are counted as separate procedures

- A procedure is defined as any interaction of the company founders with external parties (for example, government agencies, lawyers, auditors or notaries) or spouses (if legally required). Interactions between company founders or company officers and employees are not counted as procedures.

- Procedures that must be completed in the same building but in different offices or counters are counted separately.

- If founders have to visit the same office several times for different sequential procedures, each is counted separately.

- Each electronic procedure is counted separately. If 2 procedures can be completed through the same website but require separate filings, they are counted as 2 separate procedures.

- Approvals from spouses to own a business or leave the home are considered procedures if required by law or if by failing to obtain such approval the spouse will suffer consequences under the law.

- Procedures required for official correspondence or transactions with public agencies are also included. For example, if a company seal or stamp is required on official documents, such as tax declarations, obtaining the seal or stamp is counted

- Industry-specific procedures are excluded (only procedures required for all businesses are included). For example, procedures to comply with environmental regulations are included only when they apply to all businesses conducting general commercial or industrial activities. Procedures that the company undergoes to connect to electricity, water, gas and waste disposal services are not included in the starting a business indicator.

Table 2: The procedures to start a business

Pre-registration
○ Checking the availability of the proposed company name ○ Having a notary draft and notarize statutes ○ Depositing minimum capital in a bank account
Registration
○ Application for incorporation ○ Payment of fees ○ Other procedures under the mandate of the commercial registry
Post-registration
○ Registering with tax authorities ○ Obtaining a business license ○ Enrolling employees in Social Security ○ Buying and legalizing company books ○ Obtaining a company seal

(ii) The time to complete a procedure

- Time is recorded in calendar days. The measure captures the median duration that incorporation lawyers or notaries indicate is necessary in practice to complete a procedure with minimum follow-up with government agencies and no unofficial payments.

- The minimum time required for each procedure is 1 day.

- For procedures that can be fully completed online, the minimum time recorded is half a day.

- A procedure is considered completed once the company receives the final incorporation document.

- If a procedure can be accelerated for an additional cost, the fastest procedure is chosen if that option is more beneficial to the economy's ranking.

- It is assumed that the entrepreneur is aware of all entry requirements and completes them without delay.

(iii) The cost (% GNI per capita) of a procedure

- Cost is recorded as a percentage of the economy's income per capita. It includes all official fees and fees for legal or professional services if such services are required by law or commonly used in practice. Fees for purchasing and legalizing company books are included if these transactions are required by law. Although value

added tax registration can be counted as a separate procedure, value added tax is not part of the incorporation cost.

- The company law, the commercial code and specific regulations and fee schedules are used as sources for calculating costs. In the absence of fee schedules, a government officer's estimate is taken as an official source. In the absence of a government officer's estimate, estimates by incorporation experts are used. If several incorporation experts provide different estimates, the median reported value is applied.

- In all cases, the cost excludes bribes.

(iv) Paid-in Minimum Capital (% GNI per capita)

- The paid-in minimum capital requirement reflects the amount that an entrepreneur needs to deposit in a bank or with a notary before registration and up to 3 months following incorporation.

- Some economies require minimum capital but allow businesses to pay only a part of it before registration, with the rest to be paid after or within the first year of operation.

The following table recap how to measure the starting a business indicator

Table 3: How to measure the starting a business indicator

The procedure must be done to a business start business activity (number of procedures)
Pre-registration (for example: identify company name, notaries, ...)
Registration
Post-registration (for example: social insurance registration, seal, ...)
Received the certificate of business registration
The gender specific documents are applied
Time (calendar day)
Not including the time to collect information, make records
Each procedure starts from the next day (two procedures are not carried out on the same day). Online application procedure is an exception, in ½ days.
From filing until receiving results
There is no connection with enforcement officials
Cost (% GNI pc)
Only official costs (excluding informal costs)
Do not use intermediary fees or services
Paid-in Minimum Capital (% GNI per capita)
Capital requirements (before and after business registration)

1.2.2 Protecting Minority Investors

The Protecting Minority Investors Index is one of the 10 indicators of the World Bank's Doing Business Report, which aims to measure the protection of minority investors against self-dealing transactions from controlling shareholder and managers. The purpose of this section is to introduce theory and methodology of World Bank's Protecting Minority Investor Index and its components, as well as the advantages and disadvantages of this approach.

a. Protecting Minority Investors from the World Bank's perspective

The World Bank's Protecting Minority Investors Index is based on Djankov et al. (2008) on self-dealing transactions/related party transactions.

Self-dealing transaction means that major/controlling shareholders use their rights and control power to conduct transactions that only benefit themselves, not for common interests of all shareholders or company. For example, a controlling shareholder uses his/her control power to nominate himself or appoint his close associates to become members of the Board of Directors (BOD). Through the BOD, controlling shareholder, then, can propose a transaction between the company and his/her relatives or with companies under controlling shareholder's control. The controlling shareholder can influence the BOD to approve the above transactions. The price of this transaction is often at a price higher than the market price which means that controlling shareholders and his relatives can gain benefits at the expense of the company and other shareholders. This is a common way for a controlling shareholder to gain private benefit of control at the costs of the company.

Djankov et al. (2008) focused on addressing legal regulations to protect minority shareholders and investors from such self-dealing transactions. An important highlight of the study is the way it is conducted. First, the study introduced a hypothetical self-dealing transaction between two companies. Both companies have the majority of shares being owned by a shareholder (Mr. James). The study then built a questionnaire and interviewed an international law firm with branches in more than 100 countries, asking them to present and explain each countries specific regulations to prevent the hypothetical transaction. All regulations from the interviews are summarized and classified in order to build an index called the Anti-Self-Dealing Index. This index consists of 2 main components:

(i) Ex ante private control of self-dealing: approval by disinterested shareholders, disclosures, independent review…

(ii) Ex post private control of self-dealing: ease of suing the controlling shareholder, holding controlling shareholders liable, access to evidence, and disclosure of periodic filling…

Djankov et al. (2008) then examined the impact of this index on the development of the stock market. The results after running econometric models have confirmed that countries with better score in the index have more developed stock and financial market. The above-mentioned methodology not only has created a set of practical-based indicators that can be applied to all countries, but also has a solid academic base compared with former investor protection indicators.

Based on this methodology, the World Bank has expanded the scale and scope of the research by interviewing a large number of law firms and businesses in each country to evaluate investor protection regulations. The World Bank's investors protection index has three main pillars:

(i) Extent of disclosure index

(ii) Extent of director liability index

(ii) Ease of shareholders suit index.

Each pillar includes 10 questions to check whether a country's legal documents have a certain investor protection regulation, and the degree to which investors are protected. For example, one question in the Extent of disclosure index is: "Whose decision is sufficient to approve the Buyer-Seller transaction?". If a country regulates that BOD excluding interested members has this authority, this country will get 2 points. On the other hand, if the General Shareholder Meeting has this authority, this country will get 3 points. The score of each country is the average of the three pillars.

Since 2015, the World Bank has made significant changes of this index. The above three main pillars have been combined into 1 sub-index called "Extent of Conflict of Interest Regulation Index". The World Bank has added another sub-index called "Extent of Shareholders Governance Index" which consists of 3 more pillars. The new sub-index aims to provide a comprehensive assessment of countries investor protection by assessing different aspects of investor protection, for example, the rights of shareholders in decision making process, rules to prevent managers' entrenchment and power abuse... Unlike the previous three pillars, the new pillars is built based on best practices. Three additional pillars are:

(iv) Extent of shareholder rights

(v) Extent of ownership and control

(vi) Extent of corporate transparency

Detailed analysis of the index and its components will be presented in detail in the following sections.

b. Main components of Protecting Minority Investors Index

b1. Protecting Investors Index before 2015

Prior to 2015, the investor protection index was based entirely on the Anti-Self-Dealing Index. The hypothetical self-dealing transaction is summarized as follows:

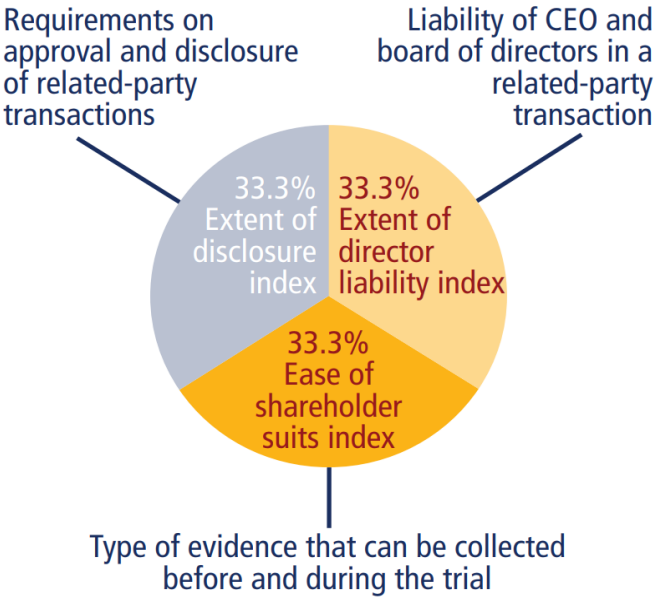
- The Buyer is a publicly traded corporation listed on the economy's most important stock exchange (HOSE in Vietnam). The Buyer has a controlling shareholder, Mr. James, who owns 60% of the company and is a member of the Board of Directors. Mr. James also has the right to nominate and appoint 2 of the 5 members of the Board of Directors.

- The Seller is a company which 90% of its total shares is belong to Mr. James.

Mr. James proposed that the Buyer purchase Seller's unused fleet of trucks to expand Buyer's distribution of its food products, a proposal to which Buyer agrees. The price is equal to 10% of Buyer's assets and is higher than the market value. This was identified as a self-dealing transaction causing damage to the Buyer and its shareholders.

The World Bank then assesses the mandatory regulations of each country to prevent such self-dealing transaction in three pillars.

Figure 3: Three pillars of Protecting Investors Index, Doing Business 2014



Source: Doing Business 2014

(i) Extent of disclosure index

The first pillar focuses on assessing the level of transparency and disclosure for self-dealing transactions. Disclosure is required both before and after the transaction is approved.

Before the transaction is approved, the World Bank recommends that the General Meeting of Shareholders should have the authority to approve these transactions. In additions, there should be an external independent organization to review in detail the terms of the transaction to ensure fairness among shareholders. Mr. James is also required to publicize his related interests.

After the transaction is approved, the company should be required to disclose all related benefits and transaction details in a complete and timely manner.

(ii) Extent of director liability index

The second pillar contains regulations aiming to clearly define the responsibilities of BOD members and the right of shareholders to sue members who breach their duties.

First, shareholders who own a certain percentage of shares should have the right to sue BOD members. Second, the responsibilities of Mr. James and other board members must be clearly specified. Responsibilities here include compensation for damages and return of benefits if the lawsuit is success. Third, the court must have the right to cancel the self-dealing transaction and impose additional penalties for Mr. James and BOD.

(iii) Ease of shareholder suits index

The final pillar focuses on assessing the easy of shareholder suits. A good investor protection mechanism must allow shareholders to easily and quickly suit Mr. James and BOD members. The ease of shareholder suits is shown in the following points:

First, shareholders should easily access to documents and evidence related to the transaction. Second, shareholder should have the right to directly question defendants and witnesses at the trial. Third, the burden of proof should be lower and shareholder can recover their legal expense from the company.

The content of three pillars shows that the Protecting Minority Investors Index before 2015 focused entirely on preventing self-dealing transaction. All three pillars have a similar market-oriented approach. The role of the state focuses on regulating transparency requirements, responsibilities of controlling shareholders and BOD members, and lawsuits. The enforcement, however, is carried out entirely by related individuals and organizations (private enforcement).

There is another approach in which the state can participate in the enforcement process by imposing administrative and criminal sanctions for individuals (public

enforcement). In fact, many countries impose heavy criminal liability for Mr. James and BOD members. For example, Italy provides a 3-year jail term for Mr. James, if the above transaction is made and Mr. James did not disclose his conflict of interest. It is safe to assume that countries imposing high civil and criminal penalties can better prevent self-dealing transactions because these penalties can impose higher costs and risks, reduce potential benefits, thus, discourage Mr. James and BOD members from conducting these transactions. The World Bank's index, however, does not include this aspect.

The second noteworthy point is that the World Bank's PMII only applies to listed companies. This remains the same even after the 2015 amendments. The Buyer is assumed to be a joint stock company listed on the largest stock exchange of the country. Therefore, the World Bank only evaluates the provisions preventing self-dealing transactions for listed joint stock companies. They did not assess the rules for unlisted public companies, limited liability company and private companies. Limited liability and unlisted companies, however, account for the majority of the total number of companies in Vietnam.

b2. Protecting Minority Investors Index after 2015

Since 2015, the World Bank has renamed the Protecting Investors Index into the Protecting Minority Investor Index. The new name reflects more precisely the purpose of this index: to protect minority investors from the expropriation of controlling shareholders and the BOD.

The World Bank has also expanded the scope of this index by adding a new sub-index. The Protecting Investors Index is now containing two sub-index: (i) the Extent of Conflict of Interest Regulation Index which is created by combining 3 previous pillars; and (ii) the Extent of Shareholders Governance Index which consists of 3 new pillars. Unlike the previous pillars, all 3 new pillars are based on best practices, focusing on measuring the rights of shareholders from three aspects: (iv) the rights of shareholders in making important company’s decisions; (v) regulations to prevent the control and entrenchment of the Board of Directors; and (vi) publicity, transparency of ownership, managers’ compensation, financial statements and auditing.

The World Bank’s assumptions for the Extent of Shareholders Governance Index are as follows:

- The Buyer is a company listed on the nation's largest stock exchange (HOSE in Vietnam)

- In addition, for this component, the World Bank added several questions for limited liability companies.

(iv) Extent of shareholder right index

This pillar focuses on regulations that allow shareholders participation in company's decisions making process. For example, several important shareholders' rights are included in this pillar such as: the right to sell assets valued at over 51% of total assets; the right to convene a General Meeting of Shareholders; the right to issue new shares, preemption rights... The World Bank also added a number of questions regarding the rights of members in limited liability companies.

(v) Extent of ownership and control index

This pillar aims to evaluate regulations to prevent control and entrenchment activities of the Board of Directors. Several good practices are mentioned in this pillar, for example: no duality between the position of CEO and Chairman of the BOD, the right to dismiss member of the BOD, requirement of independent and non-executive members of the BOD, tender offer from potential acquirer...

(vi) Extent of corporate transparency index

Corporate transparency in this case is transparency of ownership and information of employment, directorship and remuneration of BOD members, requirement for independent auditors of financial statements and publicity of audit reports. In addition, this pillar also assesses regulations on the General Shareholders Meeting procedures to ensure that all shareholders can participate and give opinions in the Meeting.

The new sub-index demonstrates the World Bank's desire to make a more comprehensive and better index to assess investor protection of countries with different contexts.

First, the addition of a new sub-index will help the World Bank better assess investor protection regulations for countries where a majority of companies have dispersed ownership structure.

We can easily recognize that the Extent of Shareholders Governance Index aims to assess regulations that govern the relationship between shareholders and the BOD. The BOD, having their own interests, can take advantage of their rights and information to expropriate company or shareholders' interests or to simply protect their positions. For example, members of the BOD may propose remuneration or bonuses that are higher than the compensation they deserve. Board members and CEO can also oppose mergers and acquisitions which can increase company's value and shareholders' benefits but potentially make them lose their positions. CEO and Board members can also use the company's resources for personal purpose such as expensive car or dining...

The conflict of interests between shareholders and the BOD, however, usually occur only in companies with dispersed ownership structure. In companies with concentrated ownership structures, controlling shareholders can easily control the Board of Directors, so conflict between shareholders and the BOD rarely happens. The Extent of Shareholders Governance Index also shares many similarities with the Anti-Director Index - another well-known index for assessing shareholder protection. The Anti-Director Index is considered more suitable for assessing investor protection in countries where companies have dispersed ownership structure.

It should be mentioned that the addition of the new sub-index does not bring only benefits but also make certain drawbacks emerge. Detailed analysis and policy implications on this issue will be provided in the following section.

Second, the new Index has included several questions for limited liability companies. This, again, reflects World Bank's attempt to make a more comprehensive index for all countries. The number of questions for limited liability companies, however, is still limited. Moreover, limited liability company has a big difference in establishment purpose and governance structure among countries. Meanwhile, the World Bank has no specific explanation or assumption for their limited liability company. This will make it difficult to analyze World Bank's recommendations for limited liability companies.

Table 4: Protecting Minority Investors Index after 2015

Extent of disclosure (0-10)	**Extent of shareholder rights (0-10)**
Review and approval requirements for related-party transaction Internal, immediate and periodic disclosure requirements for related-party transaction	Shareholders' rights and role in major corporate decisions
Extent of director liability (0-10)	**Extent of ownership and control (0-10)**
Minority shareholders' ability to sue and hold interested directors liable for prejudicial related-party transaction Available legal remedies (damages, disgorgement of profits, disqualification, rescission of transaction)	Governance safeguards protecting shareholders from undue board control and entrenchment
Ease of shareholder suits (0-10)	**Extent of corporate transparency (0-10)**
Access to internal corporate documents Evidence obtainable during trial, allocation of legal expenses	Corporate transparency on significant owners, executive compensation, annual meeting and audits
Extent of conflict of interest regulation	**Extent of shareholder governance index**

index (0-10)	**(0-10)**
Simple average of the Extent of disclosure, Extent of director liability and Ease of shareholder suits	Simple average of the Extent of shareholder rights, Extent of ownership and control and Extent of corporate transparency
Protecting Minority Investors Index (0-10)	
Simple average of the Extent of conflict of interest regulation index and the Extent of shareholder governance index.	

Source: Doing Business Report, World Bank.

1.3. Benefits and limitations of applying World Bank's approach

1.3.1. Benefits

There are a lot of benefits when applying World Bank (WB)'s approach to assess Vietnam's business environment and to conduct reform. The benefits can be listed here:

First, the application of WB approach will help managers assess Vietnam's business environment scientifically, effectively and economically. The World Bank's evaluation framework is based on scientific research. The indicators in the evaluation framework have been quantified and published in detail so that policy makers can easily apply without having to build a separate evaluation framework. Therefore, the application of the evaluation framework will help save a huge amount of costs, especially for developing countries.

The application of the WB evaluation framework also ensures the objectivity in the assessment. That the World Bank independently interviews and evaluates countries will help its assessments to be fair and objective compared to when countries evaluate themselves or evaluate each other.

Second, applying the WB evaluation framework will help Vietnam compare its own business environment reform process with that of the world. A country can build its own assessment framework to compare itself with the past. However, such comparisons are still not enough as other countries may reform and develop at a much faster pace. The application of a common assessment framework will help policy makers know where their country is compared to other countries, thereby creating an incentive to reform the business environment, pushing back conservative ideas.

Third, the application of WB evaluation framework also makes it easier for Vietnam to identify its weakness, particularly for the reform process. This benefit is especially true for the Starting a Business and Protecting Minority Investors Indexes. The Starting a Business Index is assessed based on the number of procedures, the

number of days to complete procedures and paying fees to start a business. Policymakers can rely on assessments of other countries to find out which procedures are no longer needed, the possibility of incorporating procedures or the feasibility of cutting down time to finish procedures. The Protection Minority Investors Index is assessed based on the regulations on investor protection. Policymakers can use this assessment to identify missing regulations and consider additional amendments to follow international practices.

In fact, Vietnam has applied the World Bank's evaluation framework to reform and gained remarkable achievements. In 2014, for the first time, the Prime Minister has issue the Resolution No. 19/NQ-CP which applies international evaluation framework (WB framework) to improve the country's business environment. The resolution sets out specific targets for each indicator (for instance, by (year), Vietnam's Starting Business index should increase (number) ranking points), and specifies the responsibilities of ministries and branches in implementing the goals. In 2019, the Resolution was renamed to Resolution No. 02/NQ-CP which is often issued at the beginning of the year, serving for the planning throughout the year.

Resolution No. 02/NQ-CP in 2019 sets the targets for Starting a Business Index as follows: increase 20-25 ranking levels in 2020 and increase at least by 5 levels in 2019. For Protectinve Minority Investors Index, and the resolution requires Vietnam to raise this index by 14-19 levels in 2020 and increase by at least 5 levels in 2019. These goals are considered as ambitious, especially when other countries also follow WB's Doing Business report to reform.

1.3.2. Limitations

The convenience, objectivity and efficiency of adopting a common evaluation framework are traded with certain limitations. The biggest limitation of using a one-size-fit-all evaluation framework is the failure to ***fully and accurately*** assess the situation of each country. Each country has its own historical, geographical and developmental background, leading to various socio-economic differences. Therefore, it is necessary to study carefully WB approach to each indicator in order to guide the reform accurately and effectively.

For Starting a Business Index, the assessment for a "sample" company with the assumptions above prevent the World Bank from assessing conditional business lines conditions. In fact, in Vietnam, enterprises in conditional business lines have to follow a lot of procedures to meet the business conditions and there is also a large number of conditional business lines. Those are ones of biggest market entry obstacles in Vietnam. This means that the ranking of Vietnam in this index does not fully reflects the difficulties in market entry in Vietnam.

Another following example of Protecting Minority Investors Index also demonstrates the limitations of WB approach. Researchers in the field of corporate governance have long doubted about the adequacy and accuracy of a one-size-fit-all investor protection index. Protecting Minority Investors Index is not out of doubt. Bebchuk and Hamdani (2009) have emphasized the difference in shareholder protection in countries with different ownership structures.

For companies with dispersed ownership structures, conflicts of interest mainly occur between the BOD and the company's shareholders. As each shareholder in this case owns a small amount of shares, he or she does not have enough motivation as well as resources to supervise the company. Consequently, the expropriation of benefits mainly comes from the BOD. The most common way is that the Board members offers a high salary to his or herself and takes action to protect his or her position contrary to the company's interests. In this case, shareholders must build a contract which aligns Board members' interests to company's long-term performance, encouraging BOD to act for company's benefit. Shareholders must also actively perform their supervision role over the BOD. Market mechanisms such as merger and acquisition and labor market (managers) must also be established to pressure BOD to fulfill its role. In addition, to protect shareholder, the state can minimize shareholders' supervision costs by enhancing shareholders' rights (for example, lowering the percentage of ownership shares required to convene the GMS…, similar to Anti-Director Index's approach).

For enterprises with a concentrated ownership structure, conflicts of interest are not between the BOD and the shareholders but rather between large and controlling shareholders with minority shareholders. In this case, the controlling shareholder has enough power to become a Board member and appoint someone close to him to become other Board members. The controlling shareholder does not pay much attention to above-mentioned regulations on shareholders' rights and the responsibility of BOD because they have enough ownership to control the BOD.

In contrast, with his or her control, major shareholder can easily conduct self-dealing transactions at the expense of minority shareholders. Bebchuck and Hamdani (2009) consider that self-dealing transactions are an important channel for expropriating company assets when the ownership structure of the company is concentrated and it is less likely to happen in the case of dispersed ownership structure. As mentioned above, the World Bank's Protecting Minority Investors Index before 2015 is based entirely on the Anti-Self-Dealing Index, so it is suitable to apply to companies with concentrated ownership structure.

In Vietnam, studies by Nguyen (2015), Lai (2017) and Tung (2019) all show that listed companies in Vietnam have a highly concentrated ownership structure. Major shareholders (owning shares greater than 5%) account for an average of 43-

54% of the company's shares, much higher than those in the US (24.81%), the UK (21%), Japan (33.66%) and France (46.89%). Tung's study (2019) also shows that up to 39% of the listed companies in the sample have controlling shareholders (owning shares greater than 50%). Among companies in the market, listed companies often have more dispersed ownership structure. Therefore, it can be assumed that non-listed companies in Vietnam even have much more highly concentrated ownership structure.

Therefore, in this case, the before-2015 WB Protecting Minority Investors Index is perfectly suitable to assess the situation of investor protection in Vietnam. However, after 2015, the World Bank added another sub-index - the Extent of shareholders governance index with 3 new pillars. These new pillars are based on good international practice and are somewhat similar to the Anti-Director-Index, which is more appropriate for companies with dispersed ownership structure. This addition is good in the sense that the Protecting Minority Investors Index now is able to assess different countries comprehensively. However, policymakers need to be very careful as it may cause confusion in assessing shareholder protection in Vietnam.

Tung (2019) analyzed this problem as follows. In the 2014 Doing Business report, Vietnam ranked 157 out of 189 countries in the Protecting Minority Investor Index. However, since the addition of new sub-index in 2015, Vietnam's ranking has increased rapidly to the position of 81st out of 190 countries. This promotion may make policy-makers wrongly think that Vietnam's investor protection has been improved and change their focus to other indicators.

However, in fact, Vietnam's high ranking is thanks to the adding of new sub-index, not to its self-improvement. Vietnam's average score for new component index is 6.7, even higher than the average of East Asia and the Pacific. Unfortunately, the score of Extent of conflict of interest regulation index to prevent self-dealing transactions is still very low, which is about 3.3 in the 2014 Report and 4.3 in the 2019 Report. When most of Vietnamese enterprises have concentrated ownership structure, this low score of Extent of conflict of interest regulation sub-index means that investor protection in Vietnam is actually still weak and has not improved much in recent years

Conclusion

The analysis of benefits and limitations of WB evaluation framework shows that Vietnam still needs to use the WB evaluation framework due to its irreplaceable advantages of objectivity, convenience and effectiveness. The use of this evaluation framework has positively promoted Vietnam's business environment reform in recent years. However, there is still a need to further analyze the content of each indicator of the evaluation framework in order to have an accurate assessment and direction for Vietnam's business environment reform.

The Enterprise Law provides corporate governance regulation for all types of businesses, regardless of their ownership structure. Therefore, it is still necessary to evaluate and improve the regulations for the pillars of the Extent of shareholders governance Index. However, it is necessary to focus more resources on improving the Extent of conflict of interest regulation Index to fight against self-dealing transactions as shareholders and businesses will benefit most when improving this aspect.

CHAPTER II: STARTING A BUSINESS AND PROTECTION OF MINORITY SHAREHOLDERS IN VIETNAM

2.1 Starting a business

2.1.1. Overview starting a business ranking of Vietnam, according to the World Bank

According to Doing Business Report 2020, Vietnam's starting a business indicator despite the increase in score (by reducing 1 day procedures) but has decreased in rank (dropped 11 spots), ranked 115/190 economies. Details of the procedure, times and costs are shown in the Table below:

Table 5: Starting a business ranking of Vietnam

	DB2017	DB2018	DB 2019	DB2020
Starting a business (rank)	**121**	**123**	**104**	**115**
Starting a business (score)	**81.76**	**82.02**	**84.82**	**85.1**
Procedure – Men (number)	9	9	8	8
Time – Men (days)	24	22	17	16
Cost – Men (% of income per capita)	4.6	6.5	5.9	5.6
Procedure – Women (number)	9	9	8	8
Time – Women (days)	24	22	17	16
Cost – Women (% of income per capita)	4.6	6.5	5.9	5.6
Paid-in min. capital (% of income per capita)	0	0	0	0

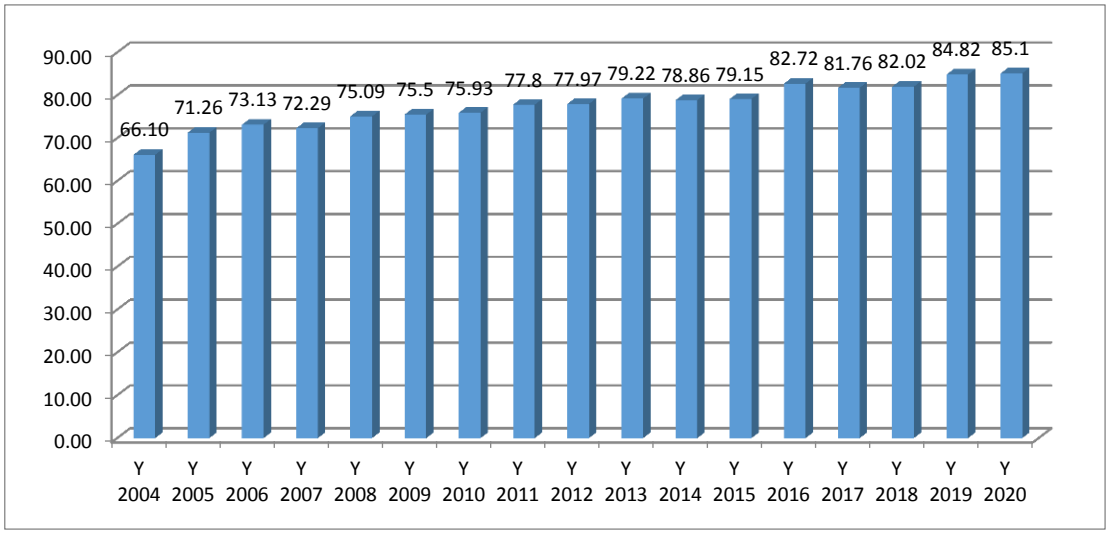
Source: Doing Business Report

Over the past 20 years of implementing the Enterprise Law[8], starting a business index of Vietnam has improved, this is shown by the increasing trend of the scores

[8] In 1999, the Enterprise Law was born on the basis of the unification of the two laws (the Corporate Law 1990 and the Private Enterprise Law), creating a common legal framework for economic entities in a market economy, creating an equality playground between types of businesses. Over the past 20 years, the Enterprise Law has

over the years (Figure 3). Especially after 2014, when Law on Enterprise 2014 was born with the breakthrough reform regulations and brought positive impact in creating more favorable business environment, promoting the establishment and development enterprise.

Figure 4: Starting a business score of Vietnam in World Bank's doing business ranking, 2004-2020



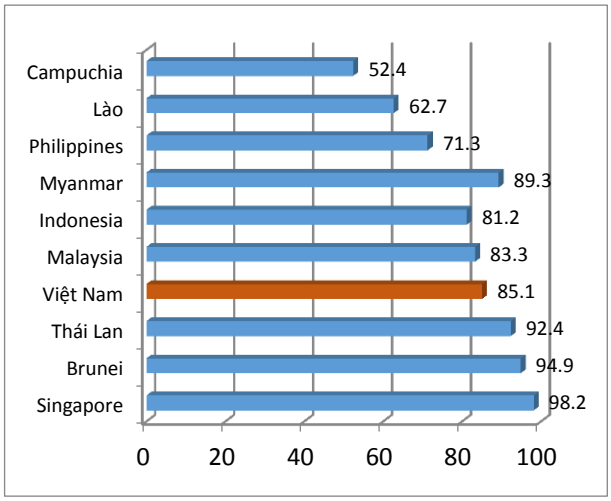
Source: Doing Business Report

Although the staring a business score has also had positive changes showing the Government's reform efforts, but this ranking of Vietnam still outside the top 100. Compared with other countries in the region, the index is still inferior. In ASEAN, Vietnam ranks behind Singapore, Brunei, Thailand and Myanmar, just standing on Malaysia, Indonesia, Philippines, Laos and Cambodia

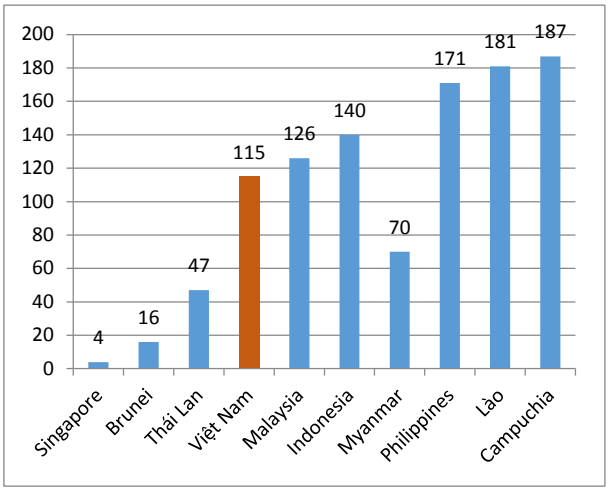
Figure 5: Raking of starting a business indicator of Vietnam compared with ASEAN countries

undergone two amendments (2005 and 2014) and is currently seeking amendments at the 8th Session, National Assembly XIV

Starting a business score of the ASEAN economies according to the 2020 Doing business report



Starting a business ranking of the ASEAN economies according to the 2020 Doing business report



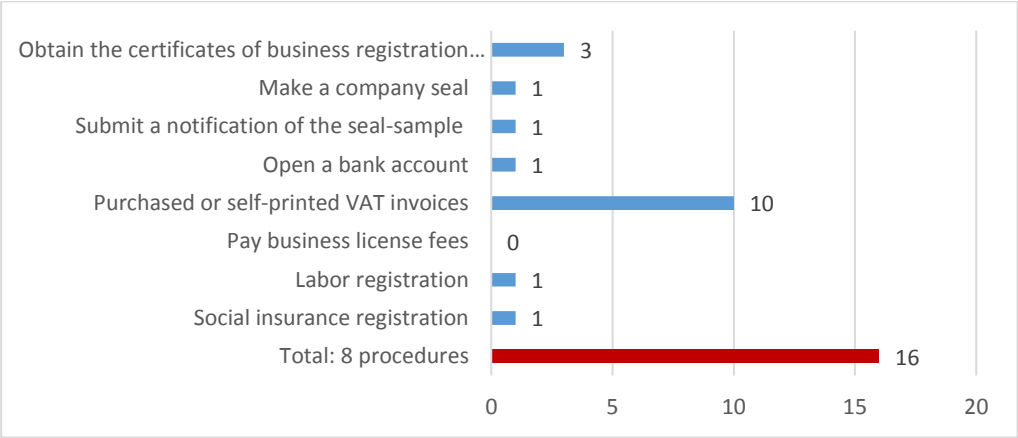
Note: Distance (0 = worst, 100 = best).

Source: 2020 Doing Business Report, World Bank

2.1.2. Details of the procedure, time and cost of starting a business in Vietnam

The process of starting a business in Vietnam consists of 8 procedures, namely: (1) Obtain the certificates of business registration and publish the registration contents; (2) Make a company seal; (3) Submit a notification of the seal-sample to business registration authorities; (4) Open a bank account; (5) Purchased or self-printed VAT invoices; (6) Pay business license fees; (7) Labor registration; and (8) Social insurance registration. These procedures are within the scope of 5 state management agencies: Ministry of Planning and Investment, State Bank of Vietnam, Ministry of Finance, Ministry of Labor - Invalids & Social Affairs and Vietnam Social Insurance.

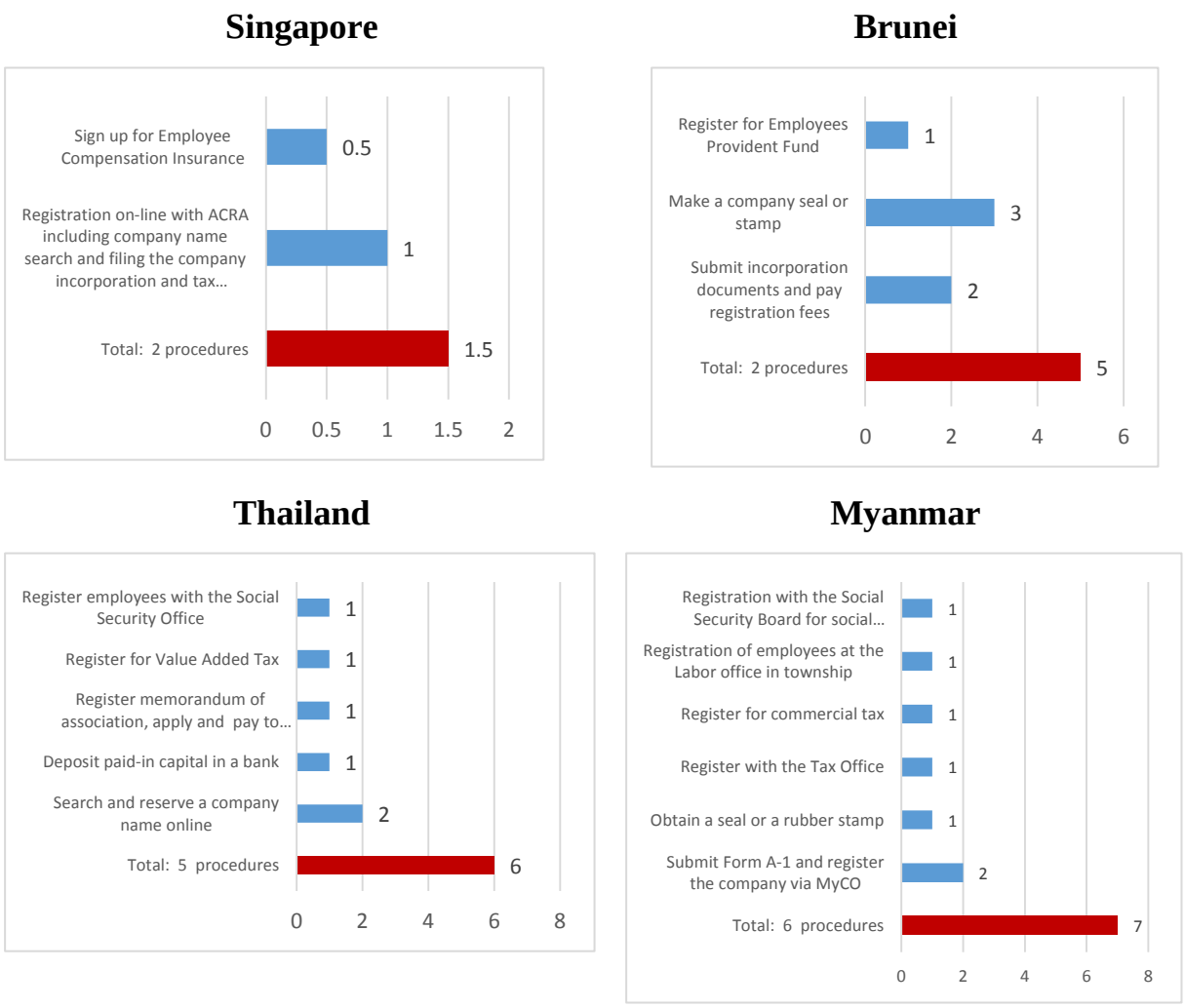
Figure 6: Number of procedures and time taken to start up a business in Vietnam



Source: 2020 Doing Business Report, World Bank

It takes 16 days to conduct 8 procedures in Vietnam, while this process in Singapore is 2 procedures and 1.5 days, Brunei, Thailand and Myanmar respectively 3 and 5; 5 and 6; 6 and 7 (Figure 6). On average, in East Asia and the Pacific, starting a business takes 6.5 procedures and 25.6 days.

Figure 7: The procedures and time for starting a business in Southeast Asian countries



Source: 2020 Doing Business Report, World Bank

2 of the 8 procedures significantly contribute to pulling back the rankings and scores of the Vietnam's starting a business indicator are: (i) purchased or self-printed VAT invoices (accounting for 10 days out of 16 days); (ii) pay business license fees (VND 2,000,000, accounting for over 60% of the total cost). Details of the procedures, time and costs of starting a business in Vietnam are shown in the Table below

Table 6: Details of the procedures, time and costs of Vienam's starting a business according to World Bank's Doing Business 2020

No	Procedures	Time to complete (day)	Associated costs
1	**Obtain the certificates of business registration and publish the registration contents** Agency: Business Registration Office, Department of Planning and Investment Legal documents: Article 27 of Enterprise Law 2014, Decree 78/2015 / ND-CP, Decree 108/2018 / ND-CP, Circular No. 215/2016 / TT-BTC, Circular 130/2017 / TT -BTC	3	VND 100,000 (registration, free if online); VND 300,000 (publication)
	- To register a company, the applicant must submit documents in accordance with Government Decree 78/2015/NĐ-CP dated 14 September 2015 on enterprise registration, as amended by Decree 78/2015/ND-CP dated 23 August 2018. After receipt of the application documents which fully satisfies the conditions for issuance of an enterprise registration certificate, the Business Registration Office shall key the information stated in the application into the National Business Registration Portal ("NBRP") and check the application and supporting documents - The Business Registration Office shall issue the enterprise registration certificate within 3 working days from the receipt of satisfactory application documents. Within 5 working days after issuance of the enterprise registration certificate, the Business Registration Office shall send the enterprise registration contents to the tax authority department, the statistics department, the labor department and the social insurance department - At the moment of business registration, entrepreneurs also request the publication of the registration contents online - The fee:		

	According to Circular 130/2017/TT-BTC dated 4 December 2017 amending a number of articles of Circular 215/2016/TT-BTC dated 10 November 2016 of the Ministry of Finance, the enterprise registration fee is VND 100,000. Particularly for cases of online enterprise registration, the enterprise registration fee is exempted. At the same time, the Circular also stipulates a fee of 300,000 VND for publish the registration contents.		
2	**Make a company seal** *Agency* : Business Registration Office	1	450.000 VND
	- Company seal is required by law and in practice to open a bank account. - The company obtains a company seal from a seal-maker. - The company has the right to decide on the design, content and quantity of its seal, unless otherwise prescribed by the company's charter. The enterprise can have several seals with the same design and content (in accordance with a registered seal form).		
3	**Submit an online notification of the seal-sample** Agency: Business Registration Office Legal documents: Article 44 of the Enterprise Law, Decree No. 99/2016 / ND-CP, Decree 78/2015 / ND-CP, Decree 108/2018 / ND-CP	1	No charge
	- The enterprise must submit a notification of the seal-sample to the Business Registration Office (BRO) before using it for publication on the National Business Registration Portal (NBRP) - The enterprise must submit an online notification of the seal-sample do not need to submit paper documents to BRO - At the time of receiving the notification, the BRO sends the entrepreneur a receipt, post the enterprise's notification on the NBRP and issue a notice on the posting of seal		

	sample of the enterprise. - The enterprise's seal is managed and used according to the company's charter and has no expiry date, until the enterprise wants to change the new seal sample. During the operation, enterprises wishing to change or cancel the seal just need to notify the business registration agency.		
4	**Open a bank account** *Agency* : Bank	1	no charge
	- After obtaining the certificate of enterprise registration, the enterprise needs to contact commercial banks to open a payment account for their enterprise. - Each bank requires a different minimum deposit to open an account. - To open the account, the bank requires a bank-issued application form, a copy of the notification on use of the seal with a confirmation stamp of the Business Registration Office, the Charter of the Company, the Enterprise Registration Certificate (ERC) and relevant documents as required by each bank. - Bank account is required in practice to pay taxes.		
5	**Approve pre-printed VAT invoices with the Municipal Taxation Department** *Agency*: Municipal Taxation Department Legal documents: Circular 39/2014 / TT-BTC dated March 31, 2014, Circular 37/2017 / TT-BTC dated April 27, 2017 (However, these are 2 documents that were updated during the WB data collection phase for the Doing Business Report 2020. Since November 14, 2019, the two above circulars have ceased to be effective and are replaced by Circular 68/2019/TT-BTC dated September 30, 2019, guiding the implementation of a number of articles of Decree 119/2018/ ND-CP)	10	About VND 200,000 per book

	- Companies shall use self-printed or purchased VAT invoices or electronic VAT invoices. Electronic VAT regulation is not mandatory, and majority of companies opt for traditional VAT system. - The applicant must contact a publisher to order the printing of VAT Invoice Books and must register the self-printed invoices with the Municipal Taxation Department. - To register for self-printing of invoices, company founders must submit an application on a standard form, along with (a) a sample self-printed invoice, including all statutory details; (b) a map showing the location of the company's office or copy of the lease contract if the premises are leased, certified by the ward commune people's committee; (c) the general director's identification card; (d) a copy of the business registration certificate; and (e) and the tax registration certificate and copy. Within 2 working days after receiving the enterprise's request, the Municipal Taxation Department must give an opinion on the conditions of using self-printed invoices. After 02 working days, if tax authorities do not give written opinions, enterprises may use self-printed invoices. - To purchase invoices, enterprises must submit the prescribed dossiers, including: (i) The application; (ii) A written commitment to the production and business address in accordance with the certificate of business registration or investment license (practicing license) or establishment decision of the competent authority; (iii) Power of attorney and identity card/citizen identity of the buyer (if not the legal representative). Tax authorities directly managing sales of invoices. - In total, it takes about 10 days to obtain the self-printed VAT invoices and have them		

	registered with the Municipal Taxation Department.		
*6	**Pay business license fee** *Agency*: Tax office Legal documents: Decree No. 139/2016 / ND-CP dated October 4, 2016 of the Government stipulating licensing fees, Circular 302/2016/ TT-BTC dated November 15, 2016 on guidelines license fees	Less than a day (online procedure), simultaneous with previous procedure	VND 2.000.000
	- The business license fee must be paid to the tax authority where the enterprise registers its tax reports or through designated commercial banks. - This license tax is paid annually and in the first month of a year (with regards to enterprises are operating) and in the month when the newly established enterprise obtains the tax code. - A new company established during the first 6 months of the year shall pay the entire annual business license tax. If it was established during the last 6 months, it must pay 50% of the annual license tax. - According to Article 4 of Circular 302/2016/TT-BTC, the business license tax depends on the charter capital of the enterprise as follows + An enterprise with charter capital above VND 10 billion: VND 3,000,000 per year; + An enterprise with charter capital of VND 10 billion or less: VND 2,000,000 per year; + Branches, representative offices, business locations, business units, other economic organizations: VND 1,000,000 per year. - The entrepreneur can transfer the licensing tax through commercial bank with form C1-02/NS enclosed to Circular 302/2016/TT-BTC.		
*7	**Register with the local labor office to declare use of labor**	1 day, simultane	No charge

	Agency: Municipal Department for Labor, Invalids and Social Affairs Legal documents: Labor Code, Decree 03/2014/ND-CP dated January 16, 2014 detailing a number of articles of the Labor Code on employment	ous with previous procedure	
	- Within 30 days of starting operations, employers must register all employees and their qualifications with the Labor Office (in conformity with set forms) - The relationship between the employer and its employees is regulated by the Labor Code and set forth in labor contracts.		
*8	**Register employees with the Social Insurance Fund for the payment of health insurance and social insurance** *Agency*: Social Insurance Fund Legal documents: Social Insurance Law No. 58/2014 / QH13 dated November 20, 2014 (Chapter VII), Decision 772 / QD-BHXH dated June 15, 2018	1 day, simultaneous with previous procedure	No charge
	- Within 30 days from the date of signing the labor contract or employment contract or the effective date of the recruitment decision, the company must register employees with the Social Insurance Fund. - The employer must complete a form provided by the Social Insurance Fund and include the following information: the employee name and date of birth, salary (as stated in the labor contract), the social insurance book serial number (for employees already issued with those books), a certified copy of the company's business registration certificate, and a copy of each labor contract. - The Social Insurance Office must, within 20 days from the date of receipt of the application file, issue an insurance registration book for each new employee that was not issued such book by the previous employer.		

	- he employer is responsible for paying social and health insurance contributions for each employee. - Since the health insurance merged with the social insurance funds, payment is made (monthly or quarterly) directly to the Social Insurance Fund. - Health insurance certificates are issued during the first month of the year.		

*Note: * Note: * are procedures performed simultaneously. Column No is the procedure corresponding to the order of procedure steps shown in Figure 4*

Source: Doing Business Report 2020, World Bank

2.1.3. Some noted reforms in starting a business in Vietnam

Recently, implementing the Resolution 19 (2014-2018) and Resolution 02/NQ-CP dated January 01, 2019 on improving the business environment and enhancing competitiveness, the Government as well as the ministries have made significant reform efforts to create a transparent business environment, favorable conditions for the business community development. A series of solutions have been proposed, including some reforms in the process of starting a business to shorten procedures, time and reduce costs for businesses, specifically:

- Include business registration procedures and publish business registration information. Accordingly, allowing enterprises to be included in the application for publication of enterprise registration information on the National Business Registration Portal at the time of submitting enterprise registration dossiers (prescribed in Decree No. 108 /2018/ND-CP amending and supplementing a number of articles of Decree No. 78/2015/ND-CP on business registration).

- Reduce costs for administrative procedures on enterprise registration: Since September 20, 2019, the enterprise registration fee is reduced by 50% compared to the previous regulation (from VND 100,000 to VND 50,000), 100% exemption if online registration, and the cost of publishing business registration content also decreases to 100,000 VND / time, instead of 300,000 VND/time as previously (as prescribed in Circular 47/2019 /TT-BTC dated August 5, 2019). However, this reform has not been recognized by the World Bank in Doing Business 2020.

- Reduce time for making company seal: require sealmaker to reduce the time for making company seals down to a maximum of 1 day. This reform was recorded in the Doing Business 2019 (instead of 05 days as in the 2018 Report).

- Submit an online notification of the seal-sample: Entrepreneurs must submit an online notification of the seal-sample to the Business Registration Office (without paper documents). And so the enterprise has fulfilled its obligations without waiting for the results.

- Reduce time for administrative procedures on VAT invoice

The table below shows some of the reforms in starting a business in Vietnam that were recognized by the World Bank in Doing Business reports.

Table 7: Starting a business reform in Vietnam through the Doing Business ranking by year

Report year	Reforms
✓DB2019	Vietnam made starting a business easier by publishing the notice of incorporation online and by reducing the cost of business registration.
x DB2017	Vietnam made starting a business more difficult by requiring entrepreneurs to receive approval of the seal sample before using it.
✓ DB2016	Vietnam made starting a business easier by reducing the time required to get the company seal engraved and registered.
✓ DB2013	Vietnam made starting a business easier by allowing companies to use self-printed value added tax invoices.
✓ DB2011	Vietnam eased company start-up by creating a one-stop shop that combines the processes for obtaining a business license and tax license and by eliminating the need for a seal for company licensing

Note: ✓Doing Business reform making it easier to do business

x: Change making it more difficult to do business

Source: Doing Business Report

2.1.4. Some good practice in starting a business in some countries

a. Application of information technology, implementing online registration procedures

The application of information technology, implementing online registration procedures has been increasingly focused and promoted. The main goal is to reduce the time and cost of the business registration process as well as increase accessibility for small companies located far from the center (in some countries, the enterprises still have to go to the capital city to carry out business registration procedures). Moreover, the government's demand for enterprise information for monitoring and

auditing purposes, as well as the need for databases to share information, is also growing.

Electronic services are available in more than 90% of high-income economies, in contrast to only about 40% of low-income ones. Several economies with the fastest business start-up offer electronic registration—including Australia, Canada, Denmark, Estonia, New Zealand, Portugal and Singapore.

New Zealand launched its first online registration system in 1996 and it has been mandatory to file most documents with the Companies Office online in 2008. Specifically, the process of starting a business in New Zealand has only one procedure: Online registration with the New Zealand Companies Office (NZCO).

Firstly, the applicant visits the NZCO Web site to reserve a company name online. A new company's name must be unique and can be reserved for up to 20 working days with the Companies Office. Under the Companies Act 1993, a company must have a name (reserved by the Registrar of Companies), at least one share, at least one shareholder, at least one director, a registered office, and an address for service, not mandatory statutory charter.

The applicant can apply for company registration online by completing forms on company details and paying the registration fee. When the application is processed, the founder will receive a notification by email along with the appropriate director and shareholder consent forms, which are generated by the Companies Office. The applicant must then fax the signed director and shareholder consent forms within 20 working days, after which the application will expire. The certificate of incorporation will be issued via email in a few minutes when the last consent form is accepted. In addition, the applicant can apply online for a company IRD (Inland Revenue Department) number and register for the GST (Good and Service Tax) at the same time as incorporating a company online with the NZCO.

To make the Myanmar company registration process more accessible, in January 2019, the government of Myanmar has initiated a separate electronic platform named as MyCO – Myanmar Companies Online. Accordingly, the investors who intend to do business in Myanmar will register a new company at MyCo. It also requires a re-registration online for existing companies.

At MyCo, several procedures were merged including company name search, requesting business incorporation certificate, payment of the registration fees and stamp duty, obtaining certificate of incorporation and submitting certificate of registration documents. This platform helps the incorporation of the company in lesser time and less physical documents. Moreover, it's easier to find information on all companies that are registered in Myanmar. Searching for companies in MyCO is simple and free (simply use the company name or registration number). The new

regulation of Myanmar Government is welcomed by the majority of businesses. It not only helps businesses save time but also increases productivity and business efficiency.

Starting a business in Singapore takes less than 2 days with 2 procedures, including 1 online procedure. First of all, registration on-line with Accounting and Corporate Regulatory Authority (ACRA) including company name search and filing the company incorporation and tax number (GST).

The Accounting and Corporate Regulatory Authority (ACRA) is the national regulator of business, public accountants and corporate service providers in Singapore. Incorporation is done through Bizfile+, an electronic filing system

Since 2007, Bizfile+ platform has been providing one-stop business facilitation services to customers at the point of registration. These services include reserving domain names, goods and services tax (GST) registration, subscribing for the relevant e-newsletter and registering for e-service alerts on latest government procurement opportunities, activating customs account and application for a corporate bank account.

The process starts with new company name application. The application for approval and reservation of a company name is to be submitted online at bizfile.gov.sg. An application fee of SGD 15 is payable for each approved company name. Once the application is submitted, the applicant can select to either pay the fee and continue with the incorporation later, or to immediately proceed to incorporation application. Name application can be approved within a few minutes from payment if the name is available. However, it may take between 14 working days to 2 months if the application needs to be referred to another agency for approval or review. The aplicant can proceed to register the business immediately after the name application is approved. Once a name has been approved, it will be reserved for 120 days.

If annual taxable turnover exceeds SGD 1 million, businesses will be required to register for goods & services tax (GST) and submit quarterly GST reports to Inland Revenue Authority of Singapore (IRAS). This process can be done using the same online forms.

After completing the online registration, businesses will sign up for employee compensation insurance at an insurance agency. Under Section 23(1) of the Work Injury Compensation Act (WICA), Chapter 354, of Singapore, every employer shall insure and maintain insurance under one or more approved policies with an insurer against all liabilities which the company may incur under the provisions of this Act in respect of any employee employed by the company unless the Minister, by notification in the Gazette, waives the requirement of such insurance in relation to any employer.

The purchase of Workman Injury Compensation Insurance (WICI) has been incorporated into ACRA's online registration process as of November 2017. Business owners can now apply for WICI from NTUC Income (via ACRA's online Bizfile+ system) immediately after completing the online registration process. Time and cost may depend on the arrangement between the company and the insurance agency.

b. Creating or improving one-stop shops and simplifying registration processes

One-stop shops for business start-up not only save time and money but also can make procedural requirements more transparent and accessible. While some one-stop shops are designated solely for business registration, others carry out various integrated functions, including postregistration formalities with tax authorities or municipalities.

Today more than two third of economies around the world have some kind of one-stop shop for business registration. This model helps to shorten the time of business registration, increasing the number of newly established enterprises.

Although in 2010, Moldova[9] established the State Registration Chamber, and one-stop shop for business registration, however, starting in 2017 the institution became the single contact point for company registration and began notifying the tax authority, the Social Security Fund, the Health Insurance Fund and the Statistical Agency about the registration of new legal entities. In 2018, the one-stop shop service was further improved based on the agreement between the National Bureau of Statistics and the State Tax Service. It now also includes registration with the national statistics bureau. Some one-stop shops are connected to a central database shared by other government agencies to facilitate postregistration procedures, as in Mauritius[10].

In Norway[11], the coordination between agencies related to information and business activities is carried out entirely via Altinn electronic network. Altinn was established on the basis of a cooperation between three agencies, the Broynoysund Registration Center, the General Department of Taxation and the Norwegian Statistics Office in 2002. This is considered a portal (digital dialogue) between businesses, individuals and government agencies, helping transparency and simplify administrative procedures. In addition, the sharing of information in a common database avoids the need for duplication of information between agencies for businesses and citizens. Today, Altinn is a well-established and comprehensive platform, and it is growing rapidly in both the amount of data, the number of connected government agencies and the number of digital services. Altinn has now

[9] Ranked 13th for starting a business
[10] Ranked 20th for starting a business
[11] Ranked 25th for starting a business

connected and shared information with 53 different agencies. Each agency participating in Altinn has the right to information and obligation to update information.

To simplify the process of business registration, the Korean Government has developed an Online Business Registration System (Start-Biz Online) to help small and medium enterprises to start business. This system has combined independent systems, including: Internet Register Office, the Local Tax Payment System, the Electronic Notarization System, the National Tax Information System, the Financial Common Network, and the Social Insurance Information System. Start Biz Online allows its users to process the entire incorporation process online, including checking the availability of trade name and obtain a certificate of name availability, opening a bank statement from a bank, filing the application package for incorporation and obtaining a corporate registration tax bill, register the company and obtaining a certificate of seal impression of corporation, registering and getting a tax identification number (TIN), submitting the rules of employment, and registering electronically for the Public Health Insurance Program, the National Pension Fund, Employment Insurance, and Industrial Accident Compensation Insurance.

Name verification is typically conducted prior to applying for registration. This can be done online, with no approval or verification by authorities. After checking the company name, uploading incorporation documents as well as filling company information, applicants can process to the payments for the corporate registration tax bill as well as the registration fee. Since applicant has already filled in the company information, there is no need to fill in separate forms for the payments. They will be automatically directed to the payment pages where they can make all payments, and re-directed to the Start-biz system once the payments are completed.

As a result, if previously, an individual wanted to start a business, he or she would have to fill out more than 30 forms and work with six different agencies - which made 96% of the company's founders hire lawyers as agents, now these businesses only have to enter information once and the online system will automatically move to the relevant departments. Using the system, the applicant can go through the application process without having to go directly to the relevant organizations. Therefore, the time required for the whole process was reduced from 17 days to 3 days. Individuals can use the system to check the availability of a trade name and obtain a certificate of availability, carry out business registration procedures, and pay corporate registration tax.

2.1.5. Room for starting a business reform in Vietnam

- Reduce costs for businesses entering the market:

On August 5, 2019, the Ministry of Finance issued Circular 47/2019/TT-BTC specifies the amounts, collection, payment, management and use of fees for providing information about enterprises, charges for enterprise registration (this Circular takes effect on September 20 2019). Accordingly, the enterprise registration fee decreases from VND 100,000/time to VND 50,000/time. In addition, the fees for publishing business registration information also decreased to 100,000 VND/time, instead of 300,000 VND / time as before. However, every year, the World Bank will end survey to collect data on the business environment by the end of May, so this reform has not been recorded in the Doing Business 2020. Hopefully, this reform will be noted in the next report (Doing Business 2021).

- Applying online business registration procedures:

In order to reduce the cost and time for enterprise registration in the spirit of the Government's Resolution No. 02 / NQ-CP dated January 1, 2019 on improving the business environment and enhancing national competitiveness; implementing the Directive No.10 /CT-TTg of the Prime Minister on directing agencies to strongly apply information technology to minimize direct contact between officials and people and businesses, the draft of Enterprise Law (amended) that is being submitted to the National Assembly has supplemented the regulations on online enterprise registration. Accordingly, business founders can register their businesses online with electronic documents (no need to submit additional paper documents as currently). It is expected that the draft Law will be reported to the National Assembly in the meeting to be held in May 2020.

- Notification of the seal-sample

In 2014, the National Assembly of Vietnam promulgated Enterprise Law 2014 with many positive new regulations and meaningful reforms, especially in the management and use of company seal. Accordingly, the company has the right to decide on the design, content and quantity of its seal. Thus, there is a drastic change in the management mechanism. Instead of before the state agency (police) issued a seal for businesses, now the enterprise decided to make and use its own seal. This change is completely appropriate and receives positive reviews from the business community. However, according to Article 44 of the Law on Enterprises, before using the seal, the enterprise must send the seal design to the business registration authority in order for the business registration authority to post it on the National Business Registration Portal. This procedure generates significant administrative costs and in some cases reduces the business agility of the enterprises.

The World Bank’s Doing Business considers the making a company seal and notification of the seal-sample as two administrative procedures and takes two days, which makes Vietnam's starting a business indicator underestimated. Moreover, after 4

years of implementing the Enterprise Law, the intervention of state agencies in making and using company seal is unnecessary, the procedure for notification of the seal -sample may be abolished. Therefore, in order to reduce unnecessary administrative costs and in line with good international practice, the draft Enterprise Law (amended) is now proposing to abolish the procedure of notification of seal samples before using the seal. If the law is passed, the process of starting a business in Vietnam will reduce 1 procedure.

- Purchased or self-printed VAT invoices

On September 30, 2019, the Ministry of Finance issued Circular No 68/2019/TT-BTC provides guidance on implementation of some article of the Government's Decree 119/2018/ND-CP on electronic invoices. Accordingly, the Circular stipulates that from November 01, 2020, enterprises, business organizations, other organizations, household businesses and individual businesses shall apply for use of electronic invoices. The mandatory regulation on the use of e-invoice is expected to reduce the time for buying or self-printed VAT invoices (being recorded takes 10 days) in the process of starting a business, thereby increasing the ranking of starting a business indicator of Vietnam. On the other hand, using e-invoices will help the business environment become more transparent and fair, namely: helping businesses optimize the time and costs in the business process, minimize fraud, trading fake invoices, preventing tax evasion, fighting against state budget losses and raising the competitiveness of the market.

- Paying business license tax

The Ministry of Finance is currently proposing to amend and supplement a number of articles of the Government's Decree 139/2016/ND-CP dated October 4, 2016, on license fees. In particular, the amendments that are expected to positively impact the process of starting a business is the deadline for payment of licensing fees. Specifically, for newly registered enterprises, the deadline for payment of licensing fees will be changed to January 30 every year as for existing enterprises. This means that businesses do not have to carry out the procedure of paying license fees in the first year, in other words the procedure of license fee payment will be taken out of the process of starting a business.

- Declaration of the use of labor

According to the Decree 03/2014/ND-CP dated January 16, 2014 of the Government details a number of articles of the Labor Code, within 30 days from the date of operation commencement, an employer shall declare the use of labor to the Labor, War Invalids and Social Affairs Division or Department. In fact, the compliance with the regulations on declaration of the use of labor of newly registered enterprises is not high, on the other hand, within 30 days of starting operations, the employment status of the enterprise is still not stable, so the

information that is declared by the enterprise does not mean much to the state authority. In addition, according to current regulations, biannually or annually, an employer shall report on labor changes to the Labor, War Invalids and Social Affairs Division or Department. Therefore, it is not necessary to require the employer must declare the use of labor within 30 days from the date of operation commencement.

- Combining some procedures in the process of starting a business

Currently, Ho Chi Minh City has implemented a 5-in-1 combination of procedures for starting a business. Accordingly, allowing businesses to carry out procedures for enterprise registration, disclosure of enterprise registration information, making seals and announcing seal samples, opening bank accounts and registering social insurance in in one application. With this combination, the time to complete the above 5 procedures only takes a maximum of 3 working days, instead of 09 working days as before, which reduce 66.66% of processing time. This becomes a good practice for other localities to study and implement.

Service model "5 in 1" in the process of starting a business in Ho Chi Minh City

Since the end of 2016, the Department of Planning and Investment of Ho Chi Minh City has allowed businesses to carry out the procedures for enterprise registration, disclosure of enterprise registration information, making seals and announcing seal samples, opening bank accounts and registering social insurance in in one application. Currently, the time to complete the above 05 procedures only takes a maximum of 03 working days, instead of 09 working days as before, which reduces 66.66% of processing time.

For the procedures for enterprises information disclosure, under the general guidance of the Department of Business Registration, at the time of submission of enterprise registration dossiers, enterprises may combine the request to publish the registration contents on the National Business Registration Portal after being granted enterprise registration certificates.

For the seals, Department of Planning and Investment of Ho Chi Minh City has encouraged the sealmaker to associate with the Department to support the enterprise in making the seal, and at the same time, the sealmaker on behalf of the enterprise shall send the notification of the seal-sample to the Business registration agency. Businesses can get a stamped seal registration form at the head office of the Business Registration Office or download a soft copy from the website of the Department of Planning and Investment of Ho Chi Minh City to fill out information, select the sealmaker according to the attached list (including 16 units) and submit it together with the application for enterprise registration.

For the procedure of opening a bank account, similar to the procedure for

making a seal, the Department of Planning and Investment of Ho Chi Minh City has called on 11 banks operating in the city to participate in the administrative procedure reform program to support the opening of bank accounts for businesses. The enterprise only need to complete the registration form for opening a bank account and submit it together with the application for enterprise registration.

In addition, Business Registration Office of Ho Chi Minh city has implemented an electronic communication mechanism with the Social Insurance Agency, whereby, after being granted an enterprise identification number, an enterprise will be issued a social insurance numbers. Currently, the registration of social insurance of businesses in the Ho Chi Minh city was made 97% online.

With the 5-in-1 service as above, within 03 working days only, when an enterprise receives an enterprise registration certificate, it will also receive the seal (the seal sample has been notified to the Business registration agency for posting on National Business Registration Portal), bank account information and social insurance number.

Source: *https://dangkykinhdoanh.gov.vn/vn/tin-tuc/603/4690/cong-tac-dang-ky-kinh-doanh-o-tp--ho-chi-minh-va-nhung-sang-kien-can-nhan-rong.aspx*

2.2. Protecting Minority Investor

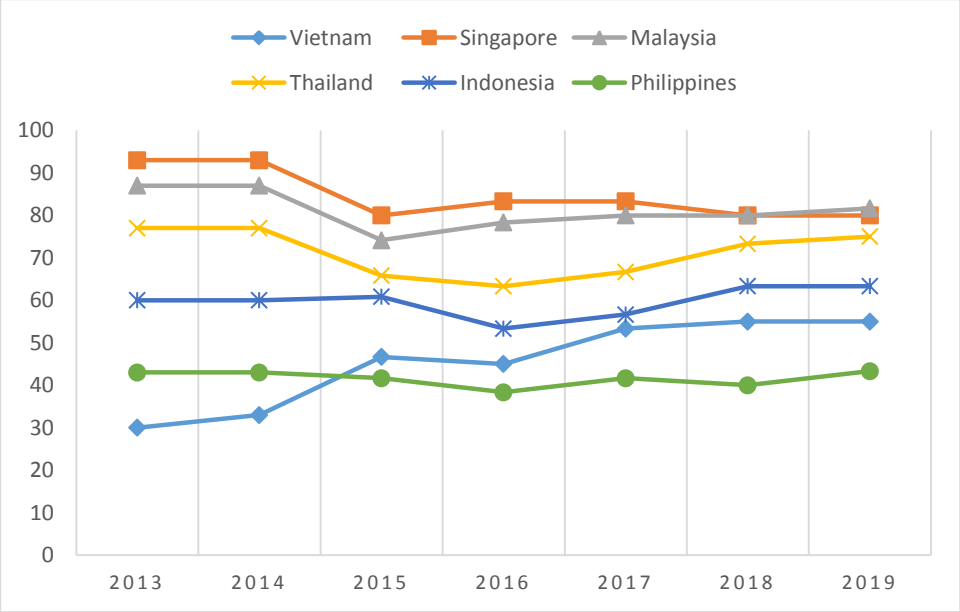
2.2.1. Overview on WB's analysis on investor protection in Vietnam

This part presents an overview of World Bank's assessment on Vietnam and ASEAN countries in term of Investor Protection index. The following figure shows WB Doing Business report during 2013-2019's evaluation scores for 6 ASEAN countries. The 6 countries included in the report are Singapore, Malaysia, Thailand, Indonesia, Philippines and Vietnam (in which four countries: Singapore, Malaysia, Thailand and Indonesia are mentioned as ASEAN-4 (the target that Vietnam aims to) in Resolution No.02).

In the 2019 Doing Business report, Vietnam earns 55/100 points,[12] ranking 89th out of 190 countries. As can be seen from Figure 8, when Protecting Minority Investor Index added another sub-index, Vietnam's score in this aspect has improved rapidly. However, in term of ranking, Vietnam still ranks 5th out of 6 ASEAN countries mentioned above (just above the Philippines).

Figure 8. South East Asian countries' score in Protecting Minority Investor Index, according to WB's Doing Business report

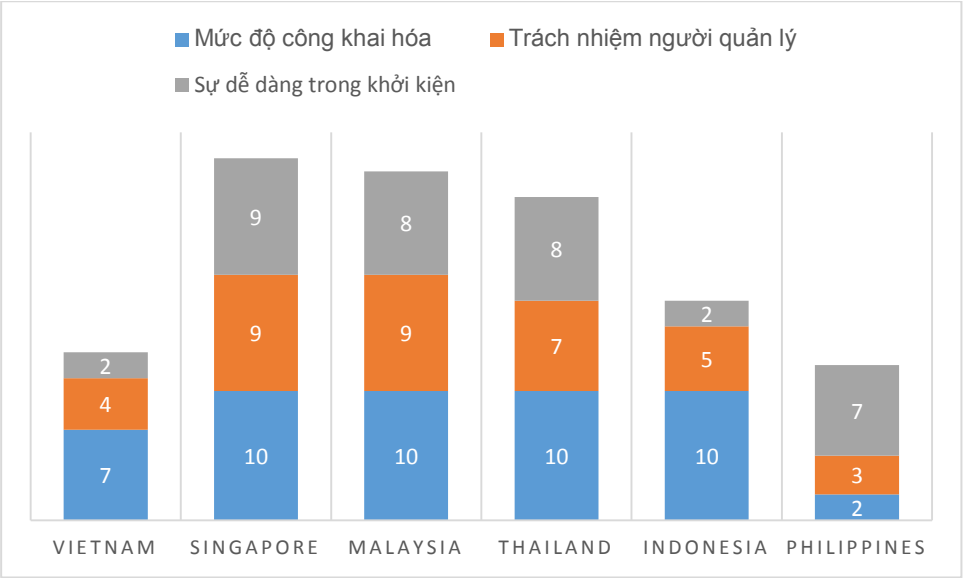
[12] However, Kazhastan, the country which has the highest ranking, also earns only 85 points.



Source: WB's Doing Business Report

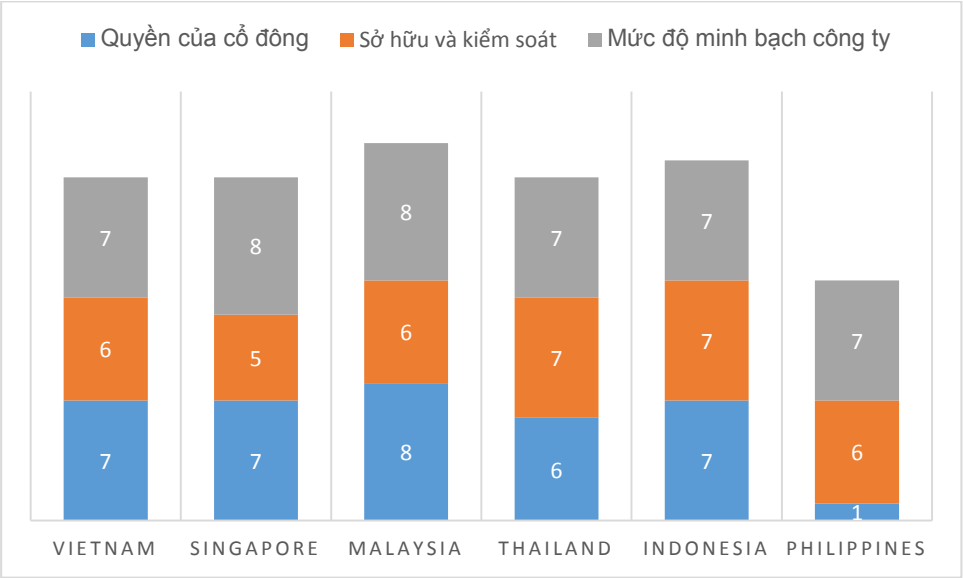
Singapore and Malaysia are the two countries which have the highest ranking in Southeast Asia and also rank highly in the world. Singapore currently ranks 7th and Malaysia ranks 2nd in the world. Thailand has also been assessed by the World Bank as having continuous improvements in investor protection (its ranking has increased rapidly from 36th in 2016 to 15th in 2019). Philippines has the lowest ranking among 6 countries and in the ASEAN, its ranking is just higher than that of Laos and Myanmar. Thus, for this index, it is relatively difficult to reach the level of ASEAN 4 countries' average.

Figure 8. Extent of conflict of interest regulation index of ASEAN countries in 2019



Source: WB's Doing Business Report

Figure 9. Extent of shareholder governance index of ASEAN countries in 2019



Source: WB's Doing Business Report

Figures 9 and 10 show a detailed score comparison for two main component indicators. Regarding the Extent of conflict of interest regulation index to prevent self-dealing transactions, Vietnam's score is low, only equal to that of the Philippines and lower than that of the remaining 4 countries. This demonstrates that the protection of investors from self-dealing transactions in Vietnam is far below international standards.

In contrast, the Extent of shareholder governance index's score of Vietnam is relatively high, equal to that of Singapore, Malaysia and Thailand. This fact once again demonstrates that it is necessary to focus more on preventing conflict of interests. However, different from the Extent of shareholder governance index, to improve the Extent of conflict of interest regulation index, it requires looking at not

only Enterprises Law but also Civil Law and Civil Procedure Law. This issue will be analyzed further in the later part of the report.

2.2.2 Review and analyze Vietnamese regulations on investor protection

The purpose of this section is to review existing Vietnamese regulations based on World Bank's requirements and recommendations for each component indicators. We will also analyze and evaluate whether Vietnam should revise these regulations following the World Bank's framework. And if we should, what are the specific documents or articles need to be amended?

2.2.2.1 Extent of conflict of interest regulation index

a. Extent of disclosure index (0-10)

Table 8: Extent of disclosure index: World Bank's assessment and our recommendations

Extent of disclosure index	Score 7/10	WB's Assessment	Vietnamese regulations/ Recommendation
1. Whose decision is sufficient to approve the Buyer-Seller transaction? (0-3)	2	BOD excluding interested members	Article 162 Law on Enterprises 2014 stipulates that members of the BOD have the authority to approve transactions and members with related interests are not allowed to vote. Propose to add one clause in this Article*: "Contracts or transactions between the company and a shareholder owning more than 50% of total shares of the company with value of at least 10% of the total assets value, must be approved by the GMS. Shareholders with related interests are not entitled to vote."*
2. Must an external body review the terms of the transaction before it takes place? (0-1)	0	No	The study proposes to initially add this requirement for listed companies in the Decree 71/2017/ND-CP on corporate governance for public companies. These companies generally have motive and resources to comply than non-public

			companies.
3. Must Mr. James disclose his conflict of interest to the board of directors? (0-2)	2	Full disclosure of all material facts	Article 162 stipulates the person that signs the contract on behalf of the company shall send a notification to BOD members and supervisors related to such contract or transaction, and enclose with the notification the draft contract or description of the transaction. Article 159 also stipulates that BOD members and managers must disclose their related interests to the company. Related interests must be carried out within 7 working days from the day on which such adjustment arises.
4. Must Buyer disclose the transaction in periodic filings (e.g. annual reports)? (0-2)	2	Disclosure on the transaction and on the conflict of interest	Circular 155/2015 / TT-BTC on guidelines for information disclosure on the stock market has detailed regulations on the information required in the Annual Report in Appendix 4.
5. Must Buyer immediately disclose the transaction to the public? (0-2)	1	Disclosure on the transaction only	Only requires publicly about transactions according to Article 9, Article 12 of Circular 155/2015/TT-BTC on the disclosure of extraordinary information within 24 hours. Can learn from Thai regulations on disclosing transaction information and related persons and amending in Circular 155/2015 / TT-BTC.

Whose decision is sufficient to approve the Buyer-Seller transaction? (0-3)

For this question, the World Bank has 4 level of scoring:

+ 0 points if a director or only a board member has the authority

+ 1 point if the BOD or the General Meeting of Shareholders (GMS) has the authority and Mr James is entitled to vote

+ 2 points if the BOD has the authority and Mr James is not entitled to vote

+ 3 points if the GMS has the authority and Mr James is not entitled to vote

Article 162 of the Law on Enterprises stipulates that contracts and transactions between the company and shareholders owning more than 10% of the company's total shares must be approved by the BOD or the GMS. In particular, the BOD have the right to approve contracts valued at less than 35% of the enterprise's total assets value and BOD members with related interests do not have voting right. Therefore, the World Bank gave Vietnam 2 points for this question.

So why does the World Bank give 3 points if these contracts have to be approved by the GMS and should Vietnam amend this article?

The World Bank's hypothetical transaction specifies that Mr James is a controlling shareholder and a BOD member. He also can appoint 2 directors to company's five-member board. Board members have to act for the benefit of the company, not for a specific shareholder. However, because Mr James has the right to appoint two Board members, it is clear that Mr James can influence the decisions of these two members. In additions, Mr James and these two members will make up a majority of the 5-member BOD, thus, can easily approve the transaction. Therefore, the World Bank will give maximum points if the GMS has the authority to approve this transaction and shareholders with related interests are not allowed to vote.

The Enterprise Law uses contract's value to separate the authority between the BOD and the GMS, thus, cannot prevent this self-dealing transaction. The law makers' intention here aims to facilitate company's operation by only requiring the General Meeting of Shareholders approval of big value contracts. However, the key point here is not the contract's value but company's ownership structure. Most of Vietnamese enterprises have a concentrated ownership structure. Only a few public and listed companies have a more dispersed ownership structure but are not as dispersed as UK or US companies. Therefore, the probability of having a controlling shareholder that can manipulate the BOD in Vietnamese companies is very high. At the same time, the cost of convening the GMS can be higher for public or listed companies with dispersed ownership structure but would be relatively lower for companies with concentrated ownership structure.

In addition, the GMS's approval of the transaction can also enhance transparency because information will be sent to all shareholders before the contract is approved. The BOD also can "bypass" the value threshold and "gain" the approval

authority by breaking down one high value transaction to many small value transactions[13].

Looking at the World Bank's reports of other countries, UK regulations has required the GMS approval for the hypothetical transaction and shareholders with related interests are not entitled to vote. The US, however, does not have this provision. ASEAN countries such as Singapore, Malaysia, Thailand and Indonesia require the GMS to approve the transaction while the Philippines and Cambodia do not.

Recommendation: This study proposes the Law on Enterprises to add one clause in this Article*: "Contracts or transactions between the company and a shareholder owning more than 50% of total shares of the company with value of at least 10% of the total assets value, must be approved by the General Meeting of Shareholders. Shareholders with related interests are not entitled to vote."* This provision can better prevent self-dealing transactions and helps increase score from the World Bank.

Must an external body review the terms of the transaction before it takes place? (0-1)

This requirement also aims to control self-dealing transactions before approval and prevent the influence of controlling shareholders on the BOD and decisions of the GMS. External organizations here may be audit organizations or financial advisory organizations which are independent of the company. It is necessary, however, to consider the costs incurred for companies, including the cost of hiring an independent audit firm or the time delay for contract approval.

Looking at international experience, again, the UK has this requirement, which request the company to consult the Financial Conduct Authority (an independent authority). Meanwhile, the US does not have this provision. Singapore, Malaysia, Thailand and Indonesia have regulations requiring an independent organization to review transactions.

Thailand stipulates that connected transactions must be approved by the General Meeting of Shareholders. Before that, the company must hire an Independent Financial Advisor to review and comment on the following issues[14]:

- The rationality and benefits to the listed company

- Fairness of the price and conditions

- Reasoning about whether the shareholders should vote for an approval of the transaction.

[13] There should be a separate provision to prevent this from happening as UK Enterprise Law
[14] https://www.set.or.th/en/regulations/simplified_regulations/connected_transactions_p1.html

The company must also send IFA's comments along with an invitation to the General Meeting of Shareholders to the Securities Exchange Commission (SEC) and the Stock Exchange of Thailand (SET) to consider about an adequacy of information at least 5 days before sending them to shareholders.

Also, in addition to IFA assessments, the GMS invitation must include the following information:

- Information disclosed to SET once the company agrees to enter into the transaction

- Summary of company information e.g. list of executives and major shareholders, business operations and trends, inter-company transactions, 3-year financial summaries and latest financial statement with MD&A, risk factors, and financial forecasts (if any).

- Names and number of shares held by shareholders who has no voting right

- Opinions of independent experts such as the asset appraiser

- The company must nominate at least one audit committee member to be a proxy of the shareholders

- Views of the BOD regarding the rationality and optimum benefits toward the company comparing to making a transaction with an outside party.

Recommendation: The study suggests that it is necessary to evaluate the competence of current independent audit firms or financial consulting firms in Vietnam to conduct these activities. At the same time, the government should develop specific guidelines on issues that need to be reviewed in the transaction. The study proposes to initially add this requirement for listed companies in the Decree 71/2017/ND-CP on corporate governance for public companies. These companies generally have motive and resources to comply than non-public companies.

Must James disclose his conflict of interest to the BOD? (0-2) and must Buyer disclose the transaction in periodic filling? (0-2)

The World Bank gave Vietnam maximum scores for both questions. The World Bank will give maximum points if all information about James's benefits and information about the transaction is disclosed to the Board.

Article 162 of the Law on Enterprises stipulates the person that signs the contract on behalf of the company shall send a notification to BOD members and supervisors related to such contract or transaction, and enclose with the notification the draft contract or description of the transaction. In addition, Article 159 also stipulates that BOD members and managers must disclose their related interests to the

company. Related interests must be carried out within 7 working days from the day on which such adjustment arises.

For the disclosure of transactions in the annual report, the World Bank gives a maximum score if the regulation requires disclosure of the terms of the transaction and Mr. James' related interests in the annual report.

Circular 155/2015/TT-BTC guiding the disclosure of information on the stock market has detailed provisions on the information that must be included in the annual report in Appendix 4. Accordingly, only listed companies are required to disclose information in its reports regarding contracts or transactions between the company and its subsidiaries, between the company and companies which are controlled by their managers. The list of related persons of the company must also be made public in the Report on corporate governance of listed companies.

Must Buyer immediately disclose the transaction to the public? (0-2)

The World Bank requires companies to immediately disclose the transaction to the public, shareholders or authorities and will give a maximum score if the information includes the terms of the transaction and James' related interests.

The World Bank assessed that Vietnam only requires companies to make information of transactions available to the public, does not require to public James' related interests. In fact, Articles 9 and 12 of Circular 155/2015/TT-BTC on disclosing extraordinary information require a public company to make an extraordinary disclosure of information within 24 hours after the GMS or the BOD approves the transactions between the company and related persons. The regulation does not specify the disclosure of controlling shareholders' or board members' related interests in transactions.

Thailand clearly stipulates the disclosure of information through the Stock Exchange of Thailand Portal as follows:

The company must immediately disclose information on the day that the GMS, the BOD makes a decision or at 9 am the following day. The information includes:

- Date, month, year of the transaction and the name of counterparty

- Description about the assets, services, financial assistance to be provided or received, and in case of investment capital, the name and type of business must be specified as well as the business operations, summary of the financial statements and operational performance, list of major shareholders, and the directors.

- Total value and the measurement of total value, total transaction value, payment method, conditions, interest rate, interest payment terms, and the guarantee (if any)

- Names of the connected persons and how they are connected.

- Description and scope of the connected persons' stake in making connected transactions.

- The source of fund for buying assets, and financial assistance and the fund adequacy. In case of loan, possible conditions that may affect the shareholder rights must be specified such as the limitation to pay dividend.

- Specify the names of directors having the interest and/or directors who are connected persons, and specify that the mentioned persons had not attended the director meeting and had no voting right.

- The views of the BOD about an agreement to enter into the transaction in terms of the rationality, the company's optimum benefit compering a transaction with an outside independent person, as well as associated risks.

- The opinion of an audit committee and/or the directors that differ from the BOD.

Recommendation: Thai regulation of disclosing information about transactions and related persons are very detailed. Vietnam can learn from this example and amend it in Circular 155/2015/TT-BTC

b. Ease of shareholder suits index

Table 9: Ease of shareholder suit index: World Bank's assessment and our recommendations

Ease of shareholder suits index	Score 2/10	WB's assessment	Vietnam regulations/ recommendations
1. Before suing, can shareholders representing 10% of Buyer's share capital inspect the transaction documents? (0-1)	0	No	The study proposes to abolish the condition of "owning shares for at least 6 consecutive months" and stipulate more details as follow: "Shareholders owning 10% of shares are entitled to check documents on contracts and transactions which are approved by GMS and BOD in Article 162."
2. Can the plaintiff obtain any documents from the defendant and witnesses at trial?	0	No	The 2015 Civil Procedure Code has stipulated the obligation to notify the litigants of the documents and evidence submitted (Clause 2, Article 24); the obligation to send to other involved party copies of the petition and documents and

(0-3)			evidence (Clause 9, Article 70); when handing over documents and evidence to the Court, obligations to copy and send such documents to other litigants or their lawful representatives, (Clause 5, Article 96) However, these are new provisions in the 2015 Civil Procedure Code compared to the previous Code. It was not until 2017 that the Supreme People's Court issued instructions regarding these provisions[15]. Thus, Vietnam may not have been able to receive points yet because these regulations have not been put into practice.
3. Can the plaintiff request categories of documents from the defendant without identifying specific ones? (0-1)	0	No	Article 106 of the 2015 Civil Procedure Code require the litigants to specify documents and evidence to be provided. To make it easier for shareholders to sue in this case, the law may be revised as follows: the plaintiffs when making request for documents may not specify the names of the documents and only need to specify the name of individual or organization possessing the documents. To change this provision, Vietnam need to revise the Civil Procedure Code not the Enterprise Law.
4. Can the plaintiff directly question the defendant and witnesses at trial? (0-2)	1	Preapproved questions only	Article 261 of the 2015 Civil Procedure Code only stipulates that: *"When making presentations on the assessment of evidences or expressing their views on the resolution of cases, persons participating in the arguments must base themselves on documents and evidences that have been collected, examined and verified in Court sessions as well as results of the inquiring process in Court sessions. They may respond to the opinions of others."*

[15] https://tapchitoaan.vn/bai-viet/phap-luat/nghia-vu-sao-gui-tai-lieu-chung-cu-cho-duong-su-khac-cua-duong-su

			Therefore, Vietnam needs to talk to the World Bank about this assessment and find out which laws and regulations the World Bank used to evaluate.
5. Is the level of proof required for civil suits lower than that of criminal cases? (0-1)	0	No	Vietnamese law follows the civil law system, thus, there is no provision that differentiates standard of proof among cases. To meet World Bank's requirements in this case, Vietnam needs time to research and apply, so amendment may not feasible in the near future.
6. Can shareholder plaintiffs recover their legal expenses from the company? (0-2)	1	Yes if succesful	Article 72.3 of Enterprise Law and Article 26, Resolution 326/2016/UBTVQH stipulates that shareholders will be reimbursed if the lawsuit is successful. To earn 2 points, shareholders can be reimbursed whether the lawsuit is successful or not. This, however, need to be carefully considered, balancing the interests of shareholder plaintiffs against the risks that shareholders can take advantage of this privison to disrupt the company. In fact, the UK, the US, Japan, Singapore, Malaysia and many other countries only stipulate that shareholders will be reimbursed if the lawsuit is successful.

Before suing, can shareholders representing 10% of Buyer's share capital inspect the transaction documents? (0-1)

The World Bank assessed that Vietnam did not allow shareholders owning 10% of the shares to check documents related to self-dealing transactions.

In fact, the Enterprise Law 2014 stipulates that a shareholder or a group of shareholders owning at least 10% of the total shares for at least 6 consecutive months has the right to review and extract the minutes and the Resolutions of the BOD, mid-year and annual financial statements and reports of the Supervisory Board. To check the resolution documents of the BOD... shareholders must meet two conditions: (i) owning at least 10% of the total shares and (ii) for at least 6 consecutive months; therefore does not meet World Bank’s requirements.

At the same time, there have been many recommendations from enterprises that the condition "owning shares for at least 6 consecutive months" is unreasonable, limiting the rights of shareholders.

Recommendations: The study proposes to abolish the condition of "owning shares for at least 6 consecutive months" and stipulate more details as follow: "Shareholders owning 10% of shares are entitled to check documents on contracts and transactions which are approved by GMS and BOD in Article 162."

Can the plaintiff obtain any documents from the defendant and witnesses at trial? (0-3)

The World Bank assessed that the plaintiff is currently unable to access documents from the defendant and witness at trial (0 points). The World Bank will award points if the plaintiff has access to the following documents: information that the defendant is expected to use for defense; information proving specific facts in the defendant's allegations; any information regarding the allegation.

This, however, is the point that the World Bank needs to review when evaluating Vietnamese regulations. The 2015 Civil Procedure Code has clearly defined the obligation to notify the plaintiff and defendant of the documents and evidence submitted. Specifically, Clause 2, Article 24 stipulates:

"2. The involved parties and the people protecting the legitimate rights and interests of the involved parties may collect and submit the evidences and relevant materials to the Courts since the Courts accepted civil lawsuits and ***shall notify to each other of the submitted materials and evidences****…"*

Clause 9, Article 70 also stipulates the involved parties' rights and obligations as follows:

"9. To send other involved parties or their lawful representatives photocopies of the petition and materials and evidences, excluding evidences and materials that other involved parties have been provided with as prescribed in clause 2 Article 109 of this Code."

Clause 5, Article 96 also provides for the submission of documents and evidence as follows:

"5. When materials and evidences hand over to the Courts, ***there must be their copies sent to other involved parties or lawful representatives or other involved parties****; regarding materials and evidences specified in clause 2 Article 109*[16] *of this Code or materials and evidences whose copies cannot be made, written notifications*

[16] Clause 2, Article 109 is documents related to business secrets

must be sent to other involved parties or lawful representatives of other involved parties."

It can be seen that the 2015 Civil Procedure Code specifically stipulates the right to access the evidence documents used by all parties, as well as the obligation to send documents and evidence to related parties. However, these are new provisions in the 2015 Civil Procedure Code compared to the previous Code. It was not until 2017 that the Supreme People's Court issued instructions regarding these provisions[17]. Thus, Vietnam may not have been able to receive points yet because these regulations have not been put into practice.

Recommendation: The Enterprise Law can repeat the right to access any documents related to allegations in the lawsuit and refer to these above provisions of the 2015 Civil Procedure Code.

Can the plaintiff request categories of documents from the defendant without identifying specific ones? (0-1)

The World Bank assessed that Vietnam had no provisions to allow access to documents without having to specify this document. This assessment is justified because provisions of the 2015 Civil Procedure Code require the litigants to specify documents and evidence to be provided (Article 106).

Recommendation: To make it easier for shareholders to sue in this case, the law may be revised as follows: the plaintiffs when making request for documents may not specify the names of the documents and only need to specify the name of individual or organization possessing the documents. To change this provision Vietnam need to revise the Civil Procedure Code not the Enterprise Law.

Can the plaintiff directly question the defendant and witness at trial? (0-2)

The World Bank assessed that Vietnam's regulation only allow the plaintiff to question the defendant with pre-approved questions, thus only gave Vietnam 1 point in this question. The World Bank will give 2 points if the plaintiff can directly question the defendant and witnesses without preapproval.

Our team have reviewed the 2015 Civil Procedure Code but found no specific provisions on the issue. Article 261 of the 2015 Civil Procedure Code only stipulates that:

"When making presentations on the assessment of evidences or expressing their views on the resolution of cases, persons participating in the arguments must

[17] https://tapchitoaan.vn/bai-viet/phap-luat/nghia-vu-sao-gui-tai-lieu-chung-cu-cho-duong-su-khac-cua-duong-su

base themselves on documents and evidences that have been collected, examined and verified in Court sessions as well as results of the inquiring process in Court sessions. They may respond to the opinions of others."

Therefore, Vietnam needs to talk to the World Bank about this assessment and find out which laws and regulations the World Bank used to evaluate.

Is the level of proof required for civil suits lower than that of criminal cases? (0-1)

The World Bank assessed the burden of proof for civil proceedings in Vietnam is not lower than that of criminal cases thus did not give any point for this question.

Burden of prove is a concept derived from common law system in countries like the US and the UK. Standard of prove in the common law system is divided into several levels that apply in different case types. For a criminal case, the standard of proof is often at a level called "beyond a reasonable doubt." That means, to convict, juries needs to be persuaded "so that you are sure". In other words, evidence need to be clear and convincing so there is no plausible reason to believe otherwise. This is the highest level of the proof.

Meanwhile, for civil cases, the standard of proof is often much lower, at the "preponderance of evidence" level. That means the standard is justified if there is a greater than fifty percent chance that the proposition is true. In other words, the probability of a proposal being true is greater than 50%.

The burden of proof for civil cases is lower than that of criminal cases means the plaintiff - shareholders, just need to convince the judge with evidence that has a lower probability of true compared with "beyond a reasonable doubt" level. It also means that time and cost for a lawsuit will be relatively lower.

Countries using the civil law system, however, rarely make a distinction in the burden of proof between civil and criminal case. For example, Japan requires the probability of evidence to be true similar to the probability level of "above reasonable doubt". While the US only requires the probability "more likely to be true". Vietnamese law follows the civil law system, thus, there is no provision that differentiates standard of proof among cases. To meet World Bank's requirements in this case, Vietnam needs time to research and apply, so amendment may not feasible in the near future.

Can shareholder plaintiffs recover their legal expenses from the company (0-2)

The World Bank gave 1 point for Vietnam because a successful lawsuit will give shareholders legal costs reimbursement from the company. The Bank will give 2

points if shareholder can recover legal expenses whether the lawsuit is successful or not.

The above assessment is reasonable based on the Enterprise Law and the Resolution of the National Assembly Standing Committee. Clause 3, Article 72 of the Law on Enterprises stipulates that the proceeding costs when a member file a lawsuits on behalf of the company shall be included in the company's expense, unless such lawsuit is denied.

Article 26 of Resolution 326/2016/UBTVQH on the obligation to pay civil court fees also stipulates that (i) the plaintiff must bear the entire civil court fee in case the entire plaintiff's request is not accepted by the Court and (ii) the plaintiff must bear the civil court fee corresponding to the portion of the request not accepted by the Court.

This provision needs to be carefully considered, balancing the interests of the shareholder plaintiffs with the risks that shareholders can take advantage of this provision to initiate lawsuits to disrupt the company operation. In case the law stipulates that the shareholder plaintiffs is reimbursed for legal expenses, whether successful or not, it is necessary to have strict provisions on lawsuit approval regulation. In addition, both the Enterprise Law and Resolution of the National Assembly Standing Committee need to be revised to prevent potential legal conflicts.

Countries such as the United Kingdom, the United States, Japan, Singapore and Malaysia... all stipulate that shareholders can be compensated if successful. On the other hand, Thailand allows shareholder to receive legal cost reimbursement whether the case is successful or not.

c. Extent of director liability index

Table 10: Extent of director liability index: World Bank's assessment and our recommendations

Extent of director liability index	Score 4/10	WB's assessment	Vietnam regulations/ recommendations
1. Can shareholders representing 10% of Buyer's share capital sue for the damage the transaction caused to Buyer? (0-1)	1	Yes	Article 161 of the Law on Enterprises: The shareholder or group of shareholders that continuously holds at least 1% of ordinary shares for 06 months is entitled to, whether single-handedly or on behalf of the company, file civil lawsuits against a Member of the BOD or the

			Director/General Director…
2. Can shareholders hold Mr. James liable for the damage the transaction caused to Buyer? (0-2)	1	Liable if negligent	Vietnam gets 1 point thanks to Article 160 and Article 162 of the Law on Enterprises: shareholders can sue Board members in case Board members violate the obligations of the company manager. The responsibilities of a company manager are defined in Article 160 including: *"Performing given rights and obligations in a truthful, careful manner to ensure the company's legitimate interests"*.
3. Can shareholders hold the other directors liable for the damage the transaction caused to Buyer? (0-2)	0	Not liable	The Enterprise Law may stipulate that Board members must be jointly liable if they violate the duty of care (or responsibilities in Article 160) in approving contracts and transactions with related persons; and explain the concept duty of care
4. Must Mr. James pay damages for the harm caused to Buyer upon a successful claim by shareholders? (0-1)	1	Yes	For these two questions, Clause 4, Article 162 of the Law on Enterprises clearly stipulates that in case of a successful lawsuit, the person who signs the transaction, the related shareholder, and Board members must jointly compensate for damage and reimburse the company the benefits gaining from the transaction.
5. Must Mr. James repay profits made from the transaction upon a successful claim by shareholders? (0-1)	1	Yes	
6. Is Mr. James disqualified upon a successful claim by shareholders? (0-1)	0	No	Add a provison in the Decree 108/2013/NĐ-CP on sanctioning violations in the securities market: Board member violating the law on self-dealing transaction is not allowed to represent or hold a managerial position in any company for at least 1 year if the shareholder successfully sues.

7. Can a court void the transaction upon a successful claim by shareholders? (0-2)	0	Only in case of fraud or bad faith	Add a provision: the transaction will be invalid if negligent is identified

Can shareholders representing 10% of Buyer's share capital sue for the damage the transaction caused to Buyer? (0-1)

Vietnam has regulations allowing shareholders who own 1% of shares for 6 months to have the right to sue company's managers in Article 161 of the Enterprise Law and have been recognized by the World Bank.

Can shareholders hold Mr. James liable for the damage the transaction caused to Buyer? (0-2)

The World Bank gave Vietnam 1 point for having regulation holding Mr. James responsible for the damage caused by the transaction to the company if James is negligent.

For this question, the World Bank has 3 level of scoring:

+ 0 points if Mr. James is not responsible or only is responsible if is determined to be fraud or fraudulent

+ 1 point if Mr. James is responsible if he is determined to be careless (negligent)

+ 2 points if Mr. James is responsible if the transaction is determined to be unfair or cause damage to shareholders (unfair or prejudicial).

Vietnam gets 1 point thanks to Article 160 and Article 162 of the Law on Enterprises. According to these clauses, shareholders can sue Board members in case Board members violate the obligations of the company manager. The responsibilities of a company manager are defined in Article 160 including: *"Performing given rights and obligations in a truthful, careful manner to ensure the company's legitimate interests"*.

So why does the World Bank give points based on the above criteria? And should Vietnam follow World Bank's recommendation and how to do it?

The World Bank's assessment in this section is based on concepts in the common law system. In the common law system, fraud and negligent are different. Fraud is defined as intentionally interpreting or hiding a fact that the victim believes and relies on, to cause harm to the victim. Factors to identify a fraudulent behavior include:

- Deliberately interpreting or hiding a truth to take actions that harm the victim

- The victim believes in the wrong interpretation

- The victim suffer damages because of the above actions due to their belief in misinterpretation.

To prove that defendant is a fraud, the plaintiff must demonstrate all of the above factors.

Negligent, meanwhile, means that an individual despite having duty of care toward the victim, acts recklessly - below the general level of knowledge, skills, and experience of an ordinary person in this position and causing damage to the victim. In corporate governance, the duty of care is often clearly specified in the Law on Enterprises. Board members are obliged to act with care and diligence. The prudent action of Board members can be defined as an action based on the general knowledge, skills, and experience that a Board member usually has or is expected to have as a Board member[18].

Typically, courts in countries that apply common law consider that serious allegations often has a lower probability of occurrence. Therefore, the strength of evidence, or the standard of proof of that allegation should be higher[19]. Fraud is a more serious allegation than negligent, so in this sense, the plaintiff needs to gather more convincing evidence to prove a person is fraudulent than a person who is reckless. In the common law system, pleading fraud has bigger advantages over a claim in negligence. For example, the defendant's liability if deemed a fraud will not be limited, easier to pierce the corporate veil and the court usually accepts higher estimated amount of damage. In general, the aforementioned benefits will cause the court to ask more convincing evidence from the plaintiff if the defendant is accused of fraud.

Therefore, "Mr. James is only responsible if being a fraud" will create a greater burden of proof for the shareholder plaintiff compared with the provisions "Mr. James is responsible if being negligent". Similarly, "Mr. James is responsible if shareholders can prove that the transaction is unfair and cause damage to shareholders" will create more favorable conditions for shareholders to sue compared to the two cases above. In this case, shareholder plaintiffs do not have to prove fraud or negligent, but only need to demonstrate that the transaction is unfair or has caused damage to themselves and other shareholders.

In Vietnam, the Civil Code 2015 only stipulates that deception in transactions in Article 127. Accordingly, *"deception in a civil transaction means an intentional act of a party or a third person for the purpose of misleading the other party as to the subject, the nature of the entity or contents of the civil transaction which has caused*

[18] Article 174(2) UK Companies Act

[19] http://www.allenovery.com/publications/en-gb/Pages/Burden-of-proof-in-commercial-fraud-claim.aspx

the other party to enter into such transaction". Civil transactions conducted due to deception are determined to be invalid. The Civil Code has no concept of a duty of care or duty of managers or Board members.

The Enterprise Law from 1999 to 2014, however, already recognized the responsibilities of company managers. Unfortunately, the Enterprise Law did not specific or gave clear instructions to explain what is "truthful, careful manner". In the civil law system, the absence of specific instructions makes the courts very reluctant to apply this concept in trial. That may be the reason why shareholder's lawsuits regarding negligent behavior of managers rarely happens in practices.

This study proposes two ways to solve this problem. First, the duty of care concept should be specified in the Enterprises Law. The UK Companies Act 2006 provides duty of care provision as follows:

"174. Duty to exercise reasonable care, skill and diligence

(1) A director of a company must exercise reasonable care, skill and diligence

(2) This means the care, skill and diligence that would be exercised by a reasonably diligent person with—

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company, and

(b) the general knowledge, skill and experience that the director has."

Thailand is a country following the civil law system but also strongly influenced by the common law system. The latest Thai Securities Law provides the following provisions:

"89/8. In performing duty with responsibility and due care, a director and an executive shall act in the similar manner as an ordinary person undertaking the like business under the similar circumstance

Any matter proven by the director or executive that, at the time of considering such matter, his decision has met the following requirements shall be deemed that the said director or executive has performed his duty with responsibility and due care under the first paragraph:

(1) Decision has been made with honest belief and reasonable ground that it is for the best interest of the company;

(2) Decision has been made in reliance of information honestly believed to be sufficient and;

(3) Decision has been made without his interest, whether directly or indirectly, in such matter."

"89/9. In considering whether each director or executive has performed his duty with responsibility and due care, the following factors shall be taken into account:

(1) Position in the company held by such person at that time;

(2) Scope of responsibility in the position of such person in accordance with the laws or as assigned by the board of directors and;

(3) Qualification, knowledge, capability, and experience including purposes of appointment."

It is easy to see that Thai law makers have tried to explain in more detail the manager's responsibilities for implementation. For Vietnam, the above provision, however, may not be sufficient to apply in practice. This study proposes to develop guidance documents which contain "duty of care" violation examples and case law from common law system. The guidance will help the court in practices.

The second way is to stipulate that James is responsible if the transaction is determined to be unfair or cause damage to shareholders. This provision means that: although James has fulfilled obligations such as disclosing information about the person involved, or not voting to approve the transaction... but if the transaction is determined to cause damage to shareholders, James is still responsible. It is necessary to have deeper discussions with the court and other stakeholders on how to determine damages and responsibilities of James and other Board members in this case.

Can shareholders hold the other directors liable for the damage the transaction caused to Buyer? (0-2)

The World Bank did not give Vietnam any points for this question because other Board members are not responsible or are only responsible if they are determined to be fraudulent.

For this question, the World Bank has 3 level of scoring:

+ 0 points if other Board members are not responsible or only is responsible if is determined to be fraud or fraudulent

+ 1 point if other Board members are responsible if they are determined to be negligent

+ 2 points if other Board members are responsible if the transaction is determined to be unfair or cause damage to shareholders (unfair or prejudicial).

The World Bank has indicated that Mr. James is a Board member and can appoint two other members of the 5-members BOD. As such, it is clear that Mr. James and 2 other members can make up the majority of the BOD and approve the transaction. Thus, the purpose of defining responsibilities of other Board members is

for the case where controlling shareholders can influence decisions of other Board members.

Similar to the above question, countries will receive higher point if plaintiff only need to prove Board members are negligent or transaction is unfair.

Clause 4, Article 162 of the Law on Enterprises 2014 stipulates that Board members are jointly liable if they fail to comply with some provisions when approving self-dealing transactions:

"A contract or transaction shall be annulled and dealt with in accordance with law when it is concluded or carried out without approval as prescribed in Clause 2 and Clause 3 of this Article and thus causes damage to the company; the person that concludes the contract, related shareholders, Members of the Board of Directors, the Director/General Director are jointly responsible for paying compensation and return the incomes derived from such contract or transaction to the company."

According to the above provision, unless violating Clauses 2 and 3 regarding (i) the authority to approve transactions, (ii) the obligation to notify Board members and supervisors about the related person, draft contract or major content of the transaction; (iii) members with related interests do not have voting rights, the Board members do not have to compensate for damages causing by the transaction. In other words, Board members will not be held responsible for breaching duty of care.

Recommendation: the Law on Enterprises may stipulate that Board members must be jointly liable if they violate the duty of care (or responsibilities in Article 160) in approving contracts and transactions with related persons. At the same time, clearly defining the concept of duty of care.

Must Mr. James repay profits made from the transaction upon a successful claim by shareholders? (0-1) and Must Mr. James pay damages for the harm caused to Buyer upon a successful claim by shareholders? (0-1)

For these two questions, Clause 4, Article 162 of the Law on Enterprises clearly stipulates that in case of a successful lawsuit, the person who signs the transaction, the related shareholder, and Board members must jointly compensate for damage and reimburse the company the benefits gaining from the transaction. Therefore, the World Bank gave full points to Vietnam for these questions.

Is Mr. James disqualified upon a successful claim by shareholders? (0-1)

This is a example of how the state can intervene in the enforcement process by imposing fines and penalties. As explained above, severe penalties will make the opportunity cost for violation higher, then, Mr. James and other Board members will be more hesitant to conduct the transaction. The Bank will give 1 point if Mr. James is

dismissed and cannot hold a management position for at least 1 year upon a successful claim.

Currently, according to the World Bank, the US and the UK do not have this penalties, while ASEAN countries such as Singapore, Malaysia, Thailand and Cambodia receive 1 point from the Bank. Vietnam may also consider to include this provision in the Decree stipulating sanctions against administrative violations in the securities market (Decree 108/2013/ND-CP and Decree 145/2016 ND-CP).

Can a court void the transaction upon a successful claim by shareholders? (0-2)

The Bank did not give Vietnam any point for this question. The scoring scale is as follows:

+ 0 points if the Court does not declare the transaction invalid or only invalid because the transaction is a fraud or bad faith

+ 1 point if the Court declares the transaction invalid because the transaction causes damage to shareholders

+ 2 points if the Court declares the transaction invalid because the transaction is unfair or there is conflict of interests.

Article 122 to Article 129 of the Vietnam Civil Code stipulate cases where a transaction is declared invalid. In particular, transactions can be declared invalid due to falsification, misunderstanding, deception... Clause 4, Article 162 of the Law on Enterprises also stipulates that transactions are invalid if the person signing that contract and related shareholders violate Clauses 2 and 3 regarding (i) the authority to approve transactions, (ii) the obligation to notify the Board members, supervisors on related subjects, draft contract or the main content of the transaction; (iii) members with related interests do not have voting rights.

It is clear that Vietnam cannot receive any points according to these above provisions. It is necessary to discuss with the World Bank about the option 3: how the court can declare the transaction invalid due to there exists a conflict of interest. However, the World Bank rated 1 point for Singapore, Malaysia, and Thailand because the Court in these countries can declared the transaction invalid if negligent is identified. Therefore, the Enterprise Law may also stipulate that the transaction is invalid if Board members breach the duty of care.

2.2.2.2 Extent of shareholder governance index

a. Extent of shareholder right index

Table 11: Extent of shareholder right index: World Bank's assessment and our recommendation

Extent of shareholder right	Score 7/10	WB's assessment	Vietnam regulation/ Proposing recommendation
1. Does the sale of 51% of Buyer's assets require shareholder approval?	1	Yes	Article 135 of the Enterprise Law stipulates that the GMS has the authority to decide investment or sale of assets of which the values are equal to or higher than 35% of the total asset value written in the latest financial statement of the company, unless a smaller rate is prescribed by the company's charter.
2. Can shareholders representing 10% of Buyer's share capital call for a meeting of shareholders?	1	Yes	Article 114 of the Enterprise Law stipulates that: Any shareholder or group of shareholders that holds at least 10% of ordinary shares for at least 06 consecutive months (or a smaller amount prescribed by the company's charter) shall have the right to request convention of the GMS
3. Must Buyer obtain its shareholders' approval every time it issues new shares?	0	No	This study recommends that the Enterprises Law should remove the authorized shares concept following the Bank's suggestion
4. Do shareholders automatically receive preemption rights every time Buyer issues new shares?	1	Yes	Article 114 of the Enterprise Law stipulates that every ordinary shareholder is entitled to has the preemptive right when buying newly-offered shares in proportion to his/her ordinary shares
5. Do shareholders elect and dismiss the external auditor?	1	Yes	Article 135 of the Enterprise Law does not specify the right to approve independent auditing companies, but Article 22 of Decree 71/2017/ND-CP indirectly stipulates that the Supervisor Board can propose to the GMS to approve independent auditing organization.

6. Are changes to the rights of a class of shares only possible if the holders of the affected shares approve?	0	No	The Law on Enterprises should stipulate that to transform the preference shares to common shares, the company need approval of shareholders owning at least 75% of the value of such shares
7. Assuming that Buyer is a limited company, does the sale of 51% of its assets require member approval?	1	Yes	Article 56 of the Law on Enterprises stipulates the rights of members to sell assets of which the value is equal to or higher than 50% of total asset value written in the latest financial statement (or a smaller rate or value prescribed by the company's charter)
8. Assuming that Buyer is a limited company, can members representing 10% call for a meeting of members?	1	Yes	Article 56 of the Law on Enterprises stipulates that any member or group of members that owns at least 10% of the charter capital (or a smaller amount prescribed by the company's charter) shall have the right to request meetings of the Board of members to resolve issues within its competence.
9. Assuming that Buyer is a limited company, must all or almost all members consent to add a new member?	0	No	The study suggests that Vietnam should discuss carefully with the World Bank before decide to change.
10. Assuming that Buyer is a limited company, must a member first offer to sell their interest to the existing members before they can sell to non-members?	1	Yes	Article 53 of the Law on Enterprises stipulates that members of a limited liability company must offer the stakes to other members in proportion to their capital contribution in the company under the same conditions.

Must Buyer obtain its shareholders' approval every time it issues new shares?

The Bank's recommendation in this case is clear: the GMS must have authority to approve every time the company issues shares. This provision is to prevent the BOD issuing shares to dilute the company's shares, detrimental to the decision of shareholders.

The BOD has great motivation to do this especially when the threat of merge and acquisition arises. To prevent acquisition, the BOD will issue shares thus, forcing the acquiring company to spend huge resources to control the company. The dilution of shares disincentive acquiring company or force them to negotiate directly with the Board. This is considered a classic countermeasure to protect the position of the Board members.

This measure, however, can cause great damage to shareholders and the company. Existing shareholders have to buy more shares to achieve the same ownership ratio as before. The company also suffers losses if the company value can increase after the merger. Board members also can protect their position even though their performance are not good enough[20]. Therefore, the World Bank recommends that the GMS must have the authority to approve all the issuance of shares to avoid this case.

Vietnamese regulations differ significantly from those of the World Bank. The current Enterprise Law still keep the concept of authorized capital, issued share capital or paid-up capital. Article 135 of the Enterprise Law stipulates that the GMS has the right to decide the type of shares and amount of each type of authorized shares. In other words, the GMS has the right to decide the maximum number of shares to be offered. The authority to sell the authorized shares belongs to the BOD. Article 125 of the Law on Enterprises stipulates that the BOD can decide the time, method of sale and the selling price of shares. These provisions are expected to create favourable conditions for company operation since the BOD has more freedom in attracting capital for the company but still subject to the maximum authorized shares from the GMS. The goal of limiting the share dilution can still be achieved. However, the above assessment may not completely true in practices.

Looking at international experience, in 2006, the new UK Companies Act officially abolished the concept of authorized shares. The charter capital is only based on issued shares. Australia also abolished this concept in 2001. Singapore, Malaysia, Hong Kong followed the trend in 2006 and 2016. The above countries only use the concept of issued shares to define charter capital. So why did these countries abolish the authorized capital concept? [21]

[20] Merge and acquisition is an extremely important market mechanism to ensure that the Board of Directors work for the company and shareholders benefit, not their own benefits.

[21] In addition, the World Bank assessed that UK, France, Germany, China, Singapore, Malaysia, Thailand have regulations requiring the GMS to approve all the issuance of shares. The UK, Singapore, Malaysia and Hong Kong

First, the authorized share concept can cause misunderstanding about the actual charter capital of companies. Abolishing this concept helps investors and state authorities to focus entirely on the company's issued shares. In fact, a company may have a very big authorized shares, but very small actual paid-up capital and the information of authorized shares can be misleading to investors. The 2014 Enterprise Law clearly stipulates that a company's charter capital is the total number of issued shares[22], but confusion can still occur, especially in the context of unprofessional investment and insufficient information disclosure. Information disclosure in Vietnam is not fully and timely complied, even for public companies. This is one of the reasons Singapore abolished this concept[23].

Second, determining an appropriate authorized capital is often difficult because there is no specific framework or basis to depend on. For example, both attracting capital and preventing acquisition by diluting stocks require the company to increase authorized shares. However, the amount that needs to be adjusted in each case is different. If the above situations have not emerged yet, the GMS cannot determine a suitable authorized share for both objectives. The authorized share can be too high or too low. To be rational, the GMS have to act cautiously and likely to convene shareholder meeting many times. Thus, all initial expected objectives cannot be achieved and even generate a misleading concept.

The abolition of authorized shares concept can increase the GMS' awareness of the above issues. For example, if the company need capital, the GMS has a clear target and objective to issue shares. They know they need to issue shares to raise capital not to dilute stock. Thus, the GMS can easily determine the number of issued shares. On the contrary, if the GMS want to prevent acquisition - this is a complicated situation because the existing shareholders also bear the costs of this decision, the GMS also can have a clear target of share issuance. Once again, the GMS can easily calculate the required number of issues.

Assigning this duty to the BOD to facilitate company operation in this case is unreasonable. The decision to issue additional shares is directly linked to the interests of all shareholders, thus, they need to attend the meeting or authorize others to attend. Moreover, the 2014 Enterprise Law reduced the required quorum and the voting rate to approve decisions making it easier to conduct shareholder meeting. Therefore, it is necessary to keep the authority for the GMS rather than delegate it to the BOD.

Recommendation: This study recommends that the Enterprises Law should remove the authorized shares concept following the Bank's suggestion.

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have all abolished the concept of authorized capital. This study does not have the opportunity to find out whether the remaining countries use the authorized shares concept

[22] Article 111 2014 Enterprises Law

[23] https://learn.asialawnetwork.com/2018/09/25/what-is-the-difference-between-paid-up-and-authorised-capital/

Are changes to the rights of a class of shares only possible if the holders of the affected shares approve?

The World Bank requires that if the company want to change the rights of a class of shares, they must seek approval from the shareholders holding that type of shares. This regulation aims to protect the rights of shareholders owning a specific type of shares. The World Bank assessed that Vietnam did not have this provision.

Article 113 of the Enterprise Law stipulates that preferred shares can be converted into ordinary shares under the Resolution of the GMS. As such, a controlling shareholder (owning more than 50% of the shares) can change the rights of a class of shares without the consent of the shareholders owning that class. This provision, therefore, cannot protect the legitimate rights of minority shareholders in this case. Many countries such as the UK, USA, Japan, Germany, Singapore, Malaysia, Thailand, Indonesia… stipulate that only shareholders owning a type of shares can change the rights of that type.

The provisions of the 2006 UK Companies Act Law are as follows:

630(2). Rights attached to a class of a company's shares may only be varied:

(a) in accordance with provision in the company's articles for the variation of those rights, or;

(b) where the company's articles contain no such provision, if the holders of shares of that class consent to the variation in accordance with this section.

630(4). The consent required for the purposes of this section on the part of the holders of a class of a company's shares is—:

(a) consent in writing from the holders of at least three-quarters in nominal value of the issued shares of that class (excluding any shares held as treasury shares), or

(b) a special resolution passed at a separate general meeting of the holders of that class sanctioning the variation.

Recommendations: The Law on Enterprises should stipulate that to transform the preference shares to common shares, the company need approval of shareholders owning at least 75% of the value of such shares.

Assuming that Buyer is a limited company, must all or almost all members consent to add a new member?

It is difficult to recognize the purpose of the World Bank for this recommendation because the World Bank did not give specific explanations about the limited liability company that they use to assess. The Bank only described the limited

liability company as a simpler type of company and could not issue shares to the public.

Meanwhile, limited liability company in the UK, USA, Germany... has many different characteristics in the organizational structure, operation, voting method or the purpose, context of its establishment. For example, a limited liability company in the United States has no limits on the number of members, no regulations on governance, no corporate income tax and only personal income tax for each member... Therefore, the comparison of regulations for limited liability company between countries in this case is not reasonable.

In Vietnam, the Enterprise Law 2014 does not have provisions on the addition of members of a limited liability company, only stipulate the maximum number of members and provision on the addition of members of a partnership. Therefore, the study suggests that Vietnam should discuss carefully with the World Bank before decide to change.

b. Extent of ownership and control

Table 12: Extent of ownership and control: World Bank's assessment and our recommendations

Extent of ownership and control	Score 6/10	WB's assessment	Vietnam regulations/ Recommendations
1. Is it forbidden to appoint the same individual as CEO and chairperson of the board of directors?	0	No	This study recommends that the Enterprise Law should not prohibit the same individual holding both CEO and chairperson of the BOD positions?
2. Must the board of directors include independent and nonexecutive board members?	1	Yes	Article 134 of the Enterprise Law requires that for a company operating under the one-tier model, at least 20% of members of the Board of Directors must be independent members. Article 13 of Decree 71/2017/ND-CP stipulates that for a public company, at least 1/3 members of the Board of Directors must be non-executive members.

3. Can shareholders remove members of the board of directors without cause before the end of their term?	1	Yes	Article 135 of the Enterprise Law stipulates that the GMS has the right to elect and dismiss members of the Board of Directors.
4. Must the board of directors include a separate audit committee exclusively comprising board members?	0	No	Revise the concept "Internal Audit Committee" to "Audit Committee" and specify that the Audit Committee includes a certain number of Board members
5. Must a potential acquirer make a tender offer to all shareholders upon acquiring 50% of Buyer?	1	Yes	Article 32 of the Law on Securities stipulates that the public offer of shares that leads to own at least 25% of the public company's outstanding shares will be subject to a tender offer.
6. Must Buyer pay declared dividends within a maximum period set by law?	1	Yes	Clause 4, Article 132 of the Law on Enterprises stipulates that dividends must be paid in full within 6 months from the end of the General Meeting of Shareholders.
7. Is a subsidiary prohibited from acquiring shares issued by its parent company?	1	Yes	Clause 2, Article 189 of the Law on Enterprises stipulates that subsidiaries cannot buy shares of the parent company
8. Assuming that Buyer is a limited company, must Buyer have a mechanism to resolve disagreements among members?	1	Yes	Articles 58, 59 and 60 of the Enterprise Law provide provisions for convening members meetings, conditions and procedures for conducting members meetings
9. Assuming that Buyer is a limited company, must a potential acquirer make a tender offer	0	No	Vietnam should be cautious in adopting this recommendation.

to all shareholders upon acquiring 50% of Buyer?			
10. Assuming that Buyer is a limited company, must Buyer distribute profits within a maximum period set by law?	0	No	Limited liability company does not have Board of Directors so there is no conflict between the Board and members. Setting the maximum period for paying profits may not be necessary. However, it is feasible to strictly determine the time limit for profit payment under members' decision.

Is it forbidden to appoint the same individual as CEO and chairperson of the BOD?

This rule aims to prevent an individual, usually a controlling shareholder, from holding two key positions in the company. This provision is considered a best corporate governance practice for public or listed companies.

However, duality can have both negative and positive effects. One person holding both Chairman of the BOD and CEO position can help the company operate smoothly, save operation costs and quick decision making process.

In fact, there have been many empirical studies evaluating the impact of duality on company performance. The results are inconsistent and not consensus. Wintoki et al. (2012) studied the impact of corporate governance features on firm performance including the impact of: independent board members, duality and number of board members. The result shows that there is no significant impact of duality on firm performance. Wintoki et al. (2012) uses one of the most advanced econometric methods and the paper is published in a very prestigious financial journal[24]. In Vietnam, Nguyen et al. (2015) using the data of listed companies in two stock exchange market to investigate this relationship. The result also indicates that there is no negative effect of the duality on company performance.

In addition, compared with other countries, the UK, the US, Japan, Singapore, Malaysia and Thailand do not prohibit duality. Only Germany and Indonesia have this rule.

Recommendation: This study recommends that the Enterprise Law should not prohibit the same individual holding both CEO and chairperson of the BOD positions.

[24] Wintoki et al. (2012) used the GMM model to control endogenous variables and the paper is published in the Journal of Financial Economics.

Must the BOD include a separate audit committee exclusively comprising board members?

Article 134 of the Enterprise Law states that shareholding companies operating under the one-tier board model must have an Internal audit committee. The Internal audit committee here has the same role and function as the Audit committee in the World Bank's recommendation. Perhaps due to the difference in name, the World Bank did not give Vietnam point in this question.

Recommendation: Vietnam should revise the concept "Internal Audit Committee" to "Audit Committee" and specify that the Audit Committee includes a certain number of Board members.

Assuming that Buyer is a limited company, must a potential acquirer make a tender offer to all shareholders upon acquiring 50% of Buyer?

This recommendation is similar to the above requirement for shareholding company. According to World Bank, UK, USA, Japan, Germany, Singapore, Malaysia, Thailand, Indonesia and some other countries do not have this rule. As mentioned above, due to the uncertainty about the characteristics of the limited liability company used by the World Bank, Vietnam should be cautious in adopting this recommendation.

Recommendations: Vietnam should be cautious in adopting this recommendation.

Assuming that Buyer is a limited company, must Buyer distribute profits within a maximum period set by law?

For shareholding companies, the BOD has the authority to decide the time limit and procedures for dividend payment. Therefore, the Enterprises Law should set a maximum time limit for dividends payment to shareholders. In contrast, the limited liability company does not have BOD and the members' council has the authority to decide the plan for use and distribution profits. Thus, there is no conflict between the Board and members. Setting the maximum period for paying profits may not be necessary.

Recommendation: However, it is possible to strictly determine the time limit for profit payment under members' decision.

c. Extent of corporate transparency

Table 13: Extent of corporate transparency: World Bank's assessment and our recommendations

Extent of corporate transparency	Score 7/10	WB's assessment	Vietnam regulations/ Recommendations
1. Must Buyer disclose direct and indirect beneficial ownership stakes representing 5%?	1	Yes	Article 29 of the Securities Law stipulates that major shareholders (directly or indirectly owning at least 5% of total shares) must report to public companies, the State Securities Commission, and Stock Exchanges.
2. Must Buyer disclose information about board members' primary employment and directorships in other companies?	1	Yes	Article 159 of the Enterprise Law stipulates that Board members, supervisors, executives and other managers must declare their related interests with the company, including: Name, enterprise ID number, address of the headquarter, business lines of every enterprise of which they have stakes or shares; the proportion and time of obtainment of such stakes or shares.
3. Must Buyer disclose the compensation of individual managers?	1	Yes	Article 158 of the Enterprise Law stipulates that remuneration for Board members and salary of Executives and other managers must be reported to the General Meeting of Shareholders at the annual meeting.
4. Must a detailed notice of general meeting be sent 21 days before the meeting?	0	No	The Enterprise Law should not follow the Bank's recommendation
5. Can shareholders representing 5% of Buyer's share capital put items on the general meeting agenda?	0	No	The Enterprise Law should remove the condition "for at least 6 months" and reduce the percentage of share from 10% to 5% or 1%.
6. Must Buyer's annual financial statements be audited by an external auditor?	1	Yes	Article 101 of the Securities Law requires public companies to disclose periodic information on audited annual financial statements, six-month financial statements which have been reviewed by independent auditing companies, quarterly financial statements
7. Must Buyer disclose its audit reports to the public?	1	Yes	

8. Assuming that Buyer is a limited company, must members meet at least once a year?	1	Yes	Clause 1, Article 56 of the Law on Enterprises stipulates that the Board of Directors must meet at least once a year.
9. Assuming that Buyer is a limited company, can members representing 5% put items on the meeting agenda?	1	Yes	Article 58 of the Enterprise Law stipulates that the Chairman of the BOD prepares the schedule, the content of documents and convenes meetings of the Members' Council. Members have the right to propose additional content of the meeting agenda.
10. Assuming that Buyer is a limited company, must Buyer's annual financial statements be audited by an external auditor?	0	No	The Enterprise Law should consider carefully this recommendation, should not amend immediately in the next revision.

Must a detailed notice of general meeting be sent 21 days before the meeting?

The World Bank expects that 21 days is enough for shareholders to carefully review documents, prepare and arrange to attend the GMS. They want to ensure that all shareholders can participate in the GMS to perform and protect their rights.

Article 139 of the Enterprise Law requires that the convenor of the GMS must send the invitation to all shareholders in the List of shareholders entitled to attend the meeting at least 10 days before the opening date.

In fact, there are several other factors must be considered when determining an appropriate time period. If the period is too long, the List of shareholders entitled to attend the meeting need to be determined long before the meeting, causing disadvantages for shareholders who buy shares after the time the List is made. Moreover, the long time period will affect company ability to make quick decision if the company encounters urgent problems. Countries such as the UK, the US, Japan, Singapore, Malaysia, Thailand and Indonesia did not meet this requirement.

Recommendation: The Enterprise Law should not follow the Bank's recommendation.

Can shareholders representing 5% of Buyer's share capital put items on the general meeting agenda?

Article 114 and Article 138 of the Enterprise Law stipulate that shareholders who own at least 10% of the shares for at least 6 consecutive months are entitled to propose additional issues to the agenda of the GMS. The draft Enterprise Law is proposing to reduce the ratio from 10% to 1% to enhance shareholders' rights.

Recommendation: The Enterprise Law should remove the condition "for at least 6 months" and reduce the percentage of share from 10% to 5% or 1%.

Assuming that Buyer is a limited company, must Buyer's annual financial statements be audited by an external auditor?

The Enterprise Law does not require the financial statements of limited liability companies to be independently audited. Article 37 of the Law on Independent Auditing and Article 15 of Decree 17/2012/ND-CP stipulate that only public companies, some state-owned companies need the independently audited financial statements. These provisions do not require all shareholding companies or limited liability companies to do that.

Requiring all limited liability companies to have independent audited financial statements will incur huge costs for these enterprises. In addition, most of Vietnamese companies are small and medium-sized enterprises and owned by small number of shareholders. Thus, independent audited financial statements may be not necessary because of limited conflict of interests in the company.

According to the World Bank, the UK, Singapore, Malaysia, Thailand and Indonesia now require limited liability company's financial statements to be independently audited while the US and Japan do not. However, as mentioned above, limited liability company among countries may have different characteristics, so Vietnam needs to consider carefully.

Recommendation: The Enterprise Law should consider carefully this recommendation, should not amend immediately in the next revision.

CHAPTER III: RECOMMENDATIONS FOR FUTURE REFORMING BASEDS ON STARTING A BUSINESS AND PROTECTING MINORITY INVESTOR INDEX

3.1 Starting a business recommendations

As analyzed, Vietnam still has a lot of room to reform its starting a business indicator. Therefore, some recommendations to continue improving the score and ranking of starting a business indicator in the coming time are as follows:

- Recommendations to ministries (can be done within the next year)

+ The Ministry of Finance recommends amending the Government's Decree No 139/2016/ND-CP dated October 4, 2016 on licensing fees in the aim of extending the deadline for declaration and payment of licensing fees to January 30 of the following year; supervise the implementation of regulations on external/internal invoice printing procedures and invoice issuance notice within 4 days as prescribed. Application for purchase of invoices shall be processed within the day. The use of electronic invoices shall be promoted in accordance with the Government's Decree No 119/2018/ND-CP dated September 12, 2018, stipulating electronic invoices on sale of goods and provision of services.

+ The Ministry of Labor, War Invalids and Social Affairs researches on building the online Employee Registration System having internet connection to the National Business.

+ The Ministry of Planning and Investment continues to improve the draft Enterprise Law (amended) with the aim of abolishing or simplifying unnecessary and inappropriate procedures in order to shorten the time and cost of market entry (Abolition of the notification of the seal-sample, application of online business registration procedures, …)

- Some other recommendations (long term)

+ Increase effective coordination and accountability mechanisms among agencies

To carry out business start-up procedures, enterprises must work with 05 agencies[25]. However, up to now, there has been only coordination between tax authorities and business registries in issuing tax codes and business identification numbers. It is necessary in strengthening coordination among state management agencies to streamline procedures, regulations to reduce time and strictly monitor implementation to facilitate businesses to enter the market, attract investment, encourage creativity in business.

[25] including Business Registration, Taxation, Banking, Social Insurance and Labor.

On the other hand, in order to ensure good coordination in this case, an overall reform process is needed, which involves both state agencies and enterprises, and a clear mechanism on information sharing, accountability, and higher-level transfer processes must be created to address issues. To ensure that problems arise, technical and institutional issues are resolved promptly and properly.

+ Apply e-government in the process of starting a business

The Government should promote Resolution 17/NQ-CP dated March 7, 2019 on some key tasks and solutions for the e-Government development in the period of 2019-2020 with vision towards 2025 to further promote the National Database of Business Registration. In the coming time, it is necessary to study and consider building an electronic platform for synchronous business registration between direct transaction offices (front office) and data processing agencies (back office) to further reduce the number of transactions between businesses and state agencies, and improve the level of compliance with the law.

3.2 Protecting Minority Investors recommendations

3.2.1 Future direction to amend regulations related to PMII

Based on the above analysis, future direction for revising regulation related to Protecting Minority Investors Index are as follows.

First, Vietnam should focus on amending the provisions related to the Extent of conflict of interest regulation index. The prevalence of concentrated ownership structure in Vietnamese companies means that controlling shareholder has big oppoturnity to expropriate benefits of the company and minority shareholders. The popular way to do this is self-dealing transaction. Protecting investors and shareholders from self-dealing transactions, thus, is extremely important. The Extent of conflict of interest regulation index reflect the strength of curent regulations to prevent such transaction. However, according to the World Bank, Vietnam's score on this sub-index is very low, especially with the 2 pillars: Extent of director liability index and Ease of shareholder suits index.

Second, to improve self-dealing transaction regulation, not only the Enterprises Law need to be revised. Several provisions related to the Ease of shareholder suit index are within the scope of the Civil Code and the Civil Procedure Code. To enforce these regulations in practice, it is also necessary to have close coordination between several state agencies. For example, the role of the Court in hearing derivative cases and determining directors' liability based on common law concepts is crucial to ensure shareholders' rights against self-dealing transaction. Therefore, the Ministry of Planning and Investment, as the agency responsible for this index, needs to coordinate with other related ministries such as the Ministry of Justice or the

Supreme People's Court, to conduct comprehensive review, revise all related regulation.

Third, for the Extent of shareholder governance sub-index, Vietnam need to consider carefully World Bank's suggestions. The World Bank's recommendations in this index are based on good international practice. Thus, several recommendations may not be suitable for all countries. Some recommendations may not based on empirical studies or still on debate. Some suggestions are unclear, especially those related to limited liability companies. Moreover, Vietnam's scores in this sub-index are already relatively high compared with other high-ranking countries such as Singapore or Malaysia. The amendment of provisions related to this index should be thoroughly assessed and widely consulted with the business community.

3.2.2 Specific recommendations

Our recommendations are classified into 3 groups: (a) regulations that can be amended immediately in the Enterprise Law; (b) regulations need to be amended in other legal documents; (c) regulations requiring further review and consideration. If amending the provisions of the Enterprise Law as proposed, Vietnam may increase 11 points in the World Bank's score system, reaching the 48th out of 190 countries.

a. Regulations that can be amended immediately in the Enterprise Law

	WB's assessment	**Vietnam regulation/ Recommendations**	**Expected score**
Extent of conflict of interest regulation index			
Extent of disclosure index			
Whose decision is sufficient to approve the Buyer-Seller transaction? (0-3)	BOD excluding interested members (2 points)	Article 162 Law on Enterprises 2014 stipulates that members of the BOD have the authority to approve transactions and members with related interests are not allowed to vote. Propose to add one clause in this Article*: "Contracts or transactions between the company and a shareholder owning more than 50% of total shares of the company with value of at least 10% of the total assets value, must be approved by the GMS. Shareholders with related interests are not entitled to vote."*	Increase 1 point

Ease of shareholder suit index			
Before suing, can shareholders representing 10% of Buyer's share capital inspect the transaction documents? (0-1	No (0 point)	The study proposes to abolish the condition of "owning shares for at least 6 consecutive months" and stipulate more details as follow: "Shareholders owning 10% of shares are entitled to check documents on contracts and transactions which are approved by GMS and BOD in Article 162."	Increase 1 point
Can the plaintiff obtain any documents from the defendant and witnesses at trial? (0-3)	No (0 point)	The 2015 Civil Procedure Code has stipulated the obligation to notify the litigants of the documents and evidence submitted; the obligation to send to other involved party copies of the petition and documents and evidence; when handing over documents and evidence to the Court, obligations to copy and send such documents to other litigants or their lawful representatives However, these are new provisions and it was not until 2017 that the Supreme People's Court issued instructions regarding these provisions. The Enterprise Law can stipulate that the plaintiff can request the litigant to send him all relevant documents according the provisions of the 2015 Civil Procedure Code.	Increase 3 points
Extent of director liability index			
Can shareholders hold the other directors liable for the damage the transaction caused to Buyer? (0-2)	Not liable (0 point)	The Enterprise Law may stipulate that Board members must be jointly liable if they violate the duty of care (or responsibilities in Article 160) in approving contracts and transactions with related persons; and explain the concept duty of care	Increase 1 point

Can a court void the transaction upon a successful claim by shareholders? (0-2)	Only in case of fraud or bad faith (0 point)	Add a provision: the transaction will be invalid if negligent is identified	Increase 1 point
Extent of shareholder governance index			
Extent of shareholder right index			
Must Buyer obtain its shareholders' approval every time it issues new shares?	No (0 point)	This study recommends that the Enterprises Law should remove the authorized shares concept and follow the Bank's suggestion	Increase 1 point
Are changes to the rights of a class of shares only possible if the holders of the affected shares approve?	No (0 point)	The Law on Enterprises should stipulate that to transform the preference shares to common shares, the company need approval of shareholders owning at least 75% of the value of such shares	Increase 1 point
Extent of ownership and control			
Must the BOD include a separate audit committee exclusively comprising board members?	No (0 point)	Revise the concept "Internal Audit Committee" to "Audit Committee" and specify that the Audit Committee includes a certain number of Board members	Increase 1 point
Extent of corporate transparency			
Can shareholders representing 5% of Buyer's share capital put items on the general meeting agenda?	No (0 point)	The Enterprise Law should remove the condition "for at least 6 months" and reduce the percentage of share from 10% to 5% or 1%.	Increase 1 point
Total			**Increase 11 points**

b. Regulations need to be amended in other legal documents

	WB's	**Vietnam**	**Expected**

	assessment	regulation/Recommendation	score
Extent of conflict of interest regulation index			
Extent of disclosure index			
Must an external body review the terms of the transaction before it takes place? (0-1)	No (0 point)	The study proposes to initially add this requirement for listed companies in the Decree 71/2017/ND-CP on corporate governance for public companies. These companies generally have motive and resources to comply than non-public companies.	Increase 1 point
Must Buyer immediately disclose the transaction to the public? (0-2)	Disclosure on the transaction only (1 point)	Only requires publicly about transactions according to Article 9, Article 12 of Circular 155/2015/TT-BTC on the disclosure of extraordinary information within 24 hours. Can learn from Thai regulations on disclosing transaction information and related persons and amending in Circular 155/2015 / TT-BTC.	Increase 1 point
Ease of shareholder suits index			
Can the plaintiff request categories of documents from the defendant without identifying specific ones? (0-1)	No (0 point)	Article 106 of the 2015 Civil Procedure Code require the litigants to specify documents and evidence to be provided. To make it easier for shareholders to sue in this case, the law may be revised as follows: the plaintiffs when making request for documents may not specify the names of the documents and only need to specify the name of individual or organization possessing the documents. To change this provision, Vietnam need to revise the Civil Procedure Code not the Enterprise Law.	Increase 1 point
Extent of director liability index			
Is Mr. James disqualified upon a successful claim by shareholders? (0-1)	No (0 point)	Add a provision in the Decree 108/2013/NĐ-CP on sanctioning violations in the securities market: Board member violating the law on self-dealing transaction is not allowed	Increase 1 point

		to represent or hold a managerial position in any company for at least 1 year if the shareholder successfully sues.	
Total			**Increase 4 points**

c. Regulations requiring further review and consideration

	WB's assessment	**Vietnam regulation/Recommendations**
Extent of conflict of interest regulation index		
Ease of shareholder suits index		
Can the plaintiff directly question the defendant and witnesses at trial? (0-2)	Preapproved questions only (1 point)	Article 261 of the 2015 Civil Procedure Code only stipulates that: *"When making presentations on the assessment of evidences or expressing their views on the resolution of cases, persons participating in the arguments must base themselves on documents and evidences that have been collected, examined and verified in Court sessions as well as results of the inquiring process in Court sessions. They may respond to the opinions of others."* Therefore, Vietnam needs to talk to the World Bank about this assessment and find out which laws and regulations the World Bank used to evaluate.
Is the level of proof required for civil suits lower than that of criminal cases? (0-1)	No (0 point)	Vietnamese law follows the civil law system, thus, there is no provision that differentiates standard of proof among cases. To meet World Bank's requirements in this case, Vietnam needs time to research and apply, so amendment may not feasible in the near future.
Can shareholder plaintiffs recover their legal expenses from the company? (0-2)	Yes if successful (1 point)	Article 72.3 of Enterprise Law and Article 26, Resolution 326/2016/UBTVQH stipulates that shareholders will be reimbursed if the lawsuit is successful. To earn 2 points, shareholders can be reimbursed whether the lawsuit is successful or not. This, however, need to be carefully

		considered, balancing the interests of shareholder plaintiffs against the risks that shareholders can take advantage of this provision to disrupt the company. In fact, the UK, the US, Japan, Singapore, Malaysia and many other countries only stipulate that shareholders will be reimbursed if the lawsuit is successful.
Extent of director liability index		
Can shareholders hold Mr. James liable for the damage the transaction caused to Buyer? (0-2)	Liable if negligent (1 point)	Vietnam gets 1 point thanks to Article 160 and Article 162 of the Law on Enterprises: shareholders can sue Board members in case Board members violate the obligations of the company manager. The responsibilities of a company manager are defined in Article 160 including: *"Performing given rights and obligations in a truthful, careful manner to ensure the company's legitimate interests"*.
Extent of shareholder governance index		
Extent of shareholder right		
Assuming that Buyer is a limited company, must all or almost all members consent to add a new member?	No (0 point)	The study suggests that Vietnam should discuss carefully with the World Bank before decide to change.
Extent of ownership and control		
Is it forbidden to appoint the same individual as CEO and chairperson of the board of directors?	No (0 point)	This study recommends that the Enterprise Law should not prohibit the same individual holding both CEO and chairperson of the BOD positions?
Assuming that Buyer is a limited company, must a potential acquirer make a tender offer to all shareholders upon	No (0 point)	Vietnam should be cautious in adopting this recommendation.

acquiring 50% of Buyer?		
Assuming that Buyer is a limited company, must Buyer distribute profits within a maximum period set by law?	No (0 point)	Limited liability company does not have Board of Directors so there is no conflict between the Board and members. Setting the maximum period for paying profits may not be necessary. However, it is feasible to strictly determine the time limit for profit payment under members' decision.
Extent of corporate transparency		
Must a detailed notice of general meeting be sent 21 days before the meeting?	No (0 point)	The Enterprise Law should not follow the Bank's recommendation
Assuming that Buyer is a limited company, must Buyer's annual financial statements be audited by an external auditor?	No (0 point)	The Enterprise Law should consider carefully this recommendation, should not amend immediately in the next revision.

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