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CORPORATE GOVERNANCE IN VIETNAM:

REGULATIONS, PRACTICES AND PROBLEMS

Nguyen Dinh Cung

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Introduction

Enterprise Law 2005 has made a significant progress in improving corporate governance regulation in general and that for shareholding company in particular. However, enforcement of the enterprise law is often reviewed from the aspect of state management rather than corporate governance within an enterprise.

This study is to focus on analysis and assessment of corporate governance at the enterprise level, especially in regard to corporate governance of shareholding companies. The study comprises of three parts. Part 1 introduces briefly historical development of legal framework of corporate governance in Vietnam. Part 2 is of a comprehensive assessment of current legal framework of corporate governance in Vietnam. Assessment will be done in regard to every components of the corporate governance and in a format as follows: (i) reviewing all relevant regulations, (ii) explaining why to have those regulations and (iii) introducing good practices in corporate governance performance, especially those from Japan and China. Findings thereof are expected to be achievements and weaknesses of the corporate governance in Vietnam. Analysis in the part 3 will focus on performance of corporate governance in Vietnam and comparing it with that in Japan and China. Gaps between regulations and their implementation is also expected to disclose in this part. As a result, preliminary recommendations for improvement of both regulations and performance of corporate governance will constitute this part.

I. Historical development of regulations on corporate governance in Vietnam

Vietnam economy has been transforming from command - plan economy to market-oriented economy for 20 years. Development of a market economy is exposing itself to be a dominant principle in reforming the development economic. Recent development in the enterprise system is seen as clear evidence for successes of the reforming process. Private, foreign invested and state owned enterprises were emerged from different contexts and divided into economic sectors or components. Unfair treatment between economic sectors in a sense that one sector is favored than the others has been happening for a long time. Regulations on enterprises has been also affected very much by dividing the economy into different-treated economic sectors on the principle of ownership. As a result, regulation on corporate governance is vary corresponding to different economic sectors.

1. "DOMESTIC" PRIVATE SECTOR

Law on company and law on sole proprietorship in 1990 established the first legal frame for forming domestic private enterprises which was supposed to be very elementary regulations on corporate governance in Vietnam. There were only 10 articles relating to corporate governance, among total 46 articles of the law. Those provisions on corporate governance provided poorly rights and obligations of shareholders and company members. Shareholding company was structured by shareholder meeting, board of director and supervision board. Shareholders had rights to get dividend and to vote at the shareholder meeting. They were not given rights to vote on merger, division, ... of the company. Right and obligation distinction between shareholder meeting, board of director, executive director and supervision board was not clear. Many other essential aspects of the corporate governance, such as information disclosure, fiduciary duty of managers, etc, not only were not stipulated by the law on company but also were very new concepts toward the law makers.

The law on company has set forth legal frame for operation of 1000 relatively-large shareholding and limited liability companies in the period 1990-1999. The law has incurred no significant changes for the purpose of improving corporate governance during that time. This may explained partially by a reason that a majority of enterprises are small and medium size enterprises of which shareholders acted as directors and managers. Moreover, enterprises are basically allowed to do what are permitted explicitly by laws. Supervision on enterprises tended to vest on state authorities rather than supervising mechanism within the enterprises. Integration of the economy was limited so that new concepts in regard to corporate governance were not introduced in Vietnam. Those weaknesses of the corporate-governance legal frame has resulted in negative consequences, such as ”Épco-Minh Phụng” collapse. One reason of the collapse came from weaknesses in its corporate governance.

Enterprise law (No.10/1999/QH11) is considered as a breakthrough in the development of legal frame of corporate governance in Vietnam. However, the law was applied to domestic private enterprises. According to the law, corporate governance was designed with full standard characteristics as it would have. Rights and obligations of shareholder are defined clearly and fairly. Functions, rights and obligations of corporate bodies are defined clearly and distinctly. Concepts such as related transactions and information disclosure are adapted to fit in the context of Vietnam. In addition, the office of Government has issued a standard company charter to apply respectively to companies that are listed on the stock exchange. This standard company charter reflected fully OECD principles on corporate governance. The standard company charter is provided with some supplemental guidelines such as requirements that one third of total members of the board of management are non-executive directors, re-elected annually, disclosure of remuneration of the board of management and supervision board, ...

In conclusion, Vietnam legal frame of corporate governance has developed and adapted to reflect best practices in the world since 2000. However, there were some shortcomings in the legal frame of corporate governance as follows:[1]

- Rights of shareholders and members of company are not stipulated and enforced fully and effectively.

- Decision making quorum is set forth at lower level in comparison with common practices. Therefore, privileges of minor shareholder and members of company are not protected duly.

- There is not a sufficient distinction between company owners and managers in the limited liability company so that it is not relevant to organization of limited liability company of which members are legal entities.

- Supervision mechanism within the company, which is done either by shareholders and members or by other way as internal auditing, is not stipulated clearly and efficient.

- Fiduciary duties of manager is not defined and stipulated.

- Supervision on related-person or transactions is not either stipulated fully and clearly or done efficiently.

- Qualification and remuneration of managers are not stipulated clearly so as to base on performance of their duties.

- Requirement of information disclosure is not clear and enforced strictly.

- In addition, corporate governance is not established and observed properly because of a gap between legal provisions and reality.

All those shortcomings have contributed to weak corporate governance in the reality and resulted in restricting full development of companies in particular

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CIEM-UNDP-GTZ (2005): Hightime for another breakthrough: *Review of the enterprise law and recommendation for change*.

and the economy in general in Vietnam. Luckily, those shortcomings in the corporate governance has been overcome by the enterprise law 2005.

2. FOREIGN INVESTED ENTERPRISE (FIE)

Foreign invested enterprises existed in forms of joint-venture and enterprise with 100% foreign invested capital which are limited liability companies. However, corporate governance is different between joint ventures and enterprise with 100% foreign invested capital. Moreover, legal frame on corporate governance in relation to FIE remained unchanged before July 2006.

2.2. Enterprise with 100% foreign invested capital

Enterprise with 100% foreign invested capital is an enterprise of which capital is invested fully by one or more foreign investors. The law on foreign investment in Vietnam did not set forth legal frame of corporate governance in relation to 100% foreign invested enterprise.[2] Reality showed that corporate governance of 100% foreign invested enterprise looks like:

- 100% foreign invested enterprise is subsidiary of a foreign company. Therefore, corporate governance frame of the foreign company will apply to 100% foreign invested enterprise in Vietnam.

- 100% foreign invested enterprise is established in Vietnam by individuals or foreign companies which do not operate in the country where they registered their business. In this case, corporate governance of the 100% foreign invested enterprises in Vietnam will be vary from enterprise to enterprise because there is lacking of corporate governance regulation applying to them. Collapse of SITC is considered as typical adverse consequence of lacking corporate governance regulation in relation to 100% foreign invested enterprises.

- 100% foreign invested enterprises is established in Vietnam by foreign individuals and companies that come from various countries. In this case, foreign

[2] The law on foreign investment in Vietnam comprised of only few provisions on corporate governance of 100% foreign invested enterprises.

investors will decide which corporate governance frame will apply to enterprise in Vietnam. The chosen corporate governance frame often comes from one of their countries.

2.2. Joint Venture (JV).

JV will be founded by a joint investment between Vietnam and foreign legal entities. Fact showed that there is clear separation between ownership and management in the JVs. Owners did not participate in management of the JV.

Unlike 100% foreign invested enterprise, the law on foreign investment and its regulations have set forth some provisions on corporate governance in relation to JV. According to those regulations, only few rights of owners were stipulated and obligations of the owners have not been mentioned. In principle, rights and obligations of owners of a JV will be mutually agreed and stipulated in the joint-venture contract. According to the law on foreign investment, JV's owners can transfer their capital contribution to third parties if approved by a competent state authority. They may appoint their representative to be member of the board of management or themselves participate in the meeting of the board of management. They will receive benefit in proportion to their capital share. However, there is a contradiction between law on foreign investment and its implementation regulations in relation to liability of owners of JV. According to article 10- the law on foreign investment, JV's owners will bear all risks and losses in proportion to their capital share. Meanwhile, according to article 11(3) - Decree 24/2000/ND-CP, JV's owners will bear all risks and losses within capital amount that they contributed to the legal capital of the JV.

Corporate governance structure of a JV will comprise of the board of management and general director or director. JV's owners will appoint their representative to be member of the board of management. Number of representative that each owner may appoint will depend on capital share of that owner with some exceptions. If there are only two owners in a JV each owner is allowed to appoint at least two representatives to be members of the board of management. If there are more than two owners in a JV each owner is able to appoint at least one representative to be member of the board of management. If JV is founded by one Vietnam investor and more than one foreign investors, Vietnam counterpart is allowed to appoint at least two representatives to be members of the board of management and vice versa. As a result, those regulations on forming the board of management has neutralized a principle that the board of management is structured in proportion to capital share.

The board of management is leading body of the JV. According to the law on foreign investment, powers of the board of management is not clear. The law divided decisions of the board of management into two categories depending on the voting method. Followings are decisions that must be adopted by unanimity:[3]

- Elect or dismiss general director, director and deputy director.
- Change the JV's charter
- Other matters as stipulated in the JV's charter.

All other decisions will be adopted by a majority of members that attend the meeting.

General director and deputy general director will be appointed by the board of management. From legal aspect, those two persons are obligated to run daily business operation of the JV. In fact, general director is legal representative of the JV. Detailed rights and obligations of general director and deputy general director will be stipulated in the JV's charter. In the reality, the board of management will

[3] Law on foreign investment in Vietnam dated 1987 provided that "the most important matters in relation to organizational structure and operation of the joint venture such as business plan, appointment of key managers must be approved aninamously by the board of management (article 13).
Change of Law on foreign investment in Vietnam dated 1996 stipulated that "the most important matters in relation to organizational structure and operation of the joint venture such as opppointment and dismissal of general director, deputy general director, chief accountant, amendment of the JV's charter, approval of annual financial statement and giving loan must be approved aninamously by the board of management" (article 4).
Finally, article 2(1) of the law No. 18/2000/QH10 on amending the law on foreign investment in Vietnam required that "the most important matters in relation to organizational structure and operation of the joint venture such as opppointment and dismissal of general director, deputy general director and amendment of the JV's charter must be approved aninamously by the board of management".

specify rights and obligations for each of them. General director is required to consult the deputy general director in relation to important decisions, such as: organizational structure, election or dismissal of key managers, annual financial statement and big transactions. If deputy general direct does not agree with the general director, the decision will be submitted to the board of management for approval.

All above-mentioned analysis indicated that there are a number of shortcomings facing corporate governance of foreign invested enterprises.

- Some principles are not compatible with common best practices on corporate governance. For example. The term "sole counterpart" of the JV should be understood as to consist of only one investor. However, it is often understood as to compose of some investors come from the same country.[4] This wrong understanding may result in damaging benefit of relevant members of the JV. Similarly, concept of "the board of management" under the law on foreign investment is absolutely different with that in other countries in term of rights, obligations and structure. In addition, the board of management in JVs is designed not to play a central role in initiating long-term development strategy of the enterprise. By the contrast, the board of management deals with matter as power and benefit division between members of the JV.

- The corporate governance does not compose of its full components in comparison with the common practices in the world.

- Rights of owners/members of the foreign invested enterprises are not clear and effectively implemented in the reality. Owners are not treated equally. Minority and majority owners are given the same voting right regardless of different proportion of their capital share.

[4] "Vietnam sole counterpart" will compose of one or more legal entities. Vietnamese individuals may contribute their capital to Vietnamese legal entities in order to constitute "Vietnam sole counterpart" in forming a joint venture with foreign investors (Article 2(2) of the law on foreign investment in Vietnam dated 1987).

- Powers of management bodies in the JV are not clear so that authority division between the board of management and general director or deputy general director is very blurred.

- There is somehow an overlapping and/or contradiction of powers between the board of management and general director or deputy general director.

A significant achievement made from four-time changes of the law on foreign investment is a shorter list of matters that are subjected to unanimous approval by the board of management. As matter of fact, those changes were made under pressure of foreign investors rather than intendment to improve corporate governance system toward the most common international practices.

In conclusion, corporate governance regulations on foreign invested enterprises have not been improved until 2006. In addition, improvement of corporate governance regulation on foreign invested enterprises have never been a topic for discussion at forums on attracting foreign investment into Vietnam. Consequently, there has not been a corporate governance regulation on 100% foreign invested enterprises. Corporate governance regulations on JV have been not only inadequate but also inconsistent with the most common international practices on corporate governance.

3. STATE OWNED ENTERPRISE (SOE)

Reform of corporate governance in relation to SOE has focused on enhancing autonomous doing-business right since 1995. Essence of the reform is to shift business decision-making power from state authority to SOE’s managers. In one hand, consequence of the reform and fast development of private enterprises have made SOE oriented more to the market in making their business decisions. In the other hand, difficulty in keeping balance between efficient supervision of the owner and autonomy of the enterprise is emerging more clearly during reforming process. Main objective of state authorities is to prevent managers from abusing their position to appropriate benefits of the state.

However, if supervision of the state authorities over the enterprise is too strict and rigorous it will impede performance of the enterprise. Moreover, it is difficult to clarify which intervention is done by a state authority as a result of exercising its administrative state management or ownership management. That why enhancing supervision power of the state authority has been considered as necessity to retain for the purpose of keeping a balance in 1990s. As a result, Law on state owned enterprise has been enacted in 1995. One objective of the law is to enhance “state supervision over enterprises”.[5]

Law on state own enterprise is the first legal frame on corporate governance of the state own enterprise. According to this legal frame, “general state corporation” and independent large-size state own enterprise are distinguishable from other state own enterprises in term of organizational structure. General corporation and independent large-size enterprise are constituted by the board of management, supervision board, director and other relevant departments. Other state own enterprises comprise of director and relevant departments. The law has set forth rights of owner of the enterprise and the Government is responsible to exercise those rights.[6] However, relevant ministries and people’s committee are actual persons who do those rights under authorization of the Government. Therefore, in the reality, all ministries and people’s committees are involved in exercising rights of state ownership in the enterprises. As matter of fact, guidelines on how to exercise right of state ownership have not been detailed enough to follow rigidly until 2003. So that, provisions of the law on rights of state ownership have not been implemented effectively.

According to the law on state own enterprise, board of management was established at general corporations and independent large-size enterprises.

[5] Objective of the law on state own enterprise has clearly defined in its foreword that the law aimed at “enhancing leading role of state sector in the socialist oriented market economy; protecting legistimate rights and benefits of the state owned enterprises; promoting state management on enterprises; helping state owned enterprises to operate effectively and achieve goals that are assigned by the state”.

[6] Article 27(1) – law on state owned enterprise 1995.

Organizational structure and function of the board of management were also stipulated in the law. The board of management was the highest managing body in the enterprise (Art. 29). However, the board of management was functioned as advisory body to the owner in making long-term business plan and strategy. The board of management will approve proposals made by director in relation to plan for using and preserving state capital, annual financial statement, obtaining loans, organizational structure of the enterprise, etc. Then, the board of management has supervised (general) director only in using and preserving state capital.

(General) director was appointed by either Prime Minister, minister or chairman of the people's committee. Director is legal representative of the enterprise. Director is responsible before both the board of management and appointing person. Duties of director are very heavy. Director and chairman of the board of management will sign capital-transferring contract and are responsible to preserve capital, prepare annual and long term business plan and strategy, investment project, recommend candidate for vice-director position or director and managing position in the subsidiaries, etc.[7] So, director is a very powerful person in the enterprise who initiates and implements business strategy and control the enterprise in term of finance and human resource. Board of surpervision was established by the board of management and given a duty of watching the director performance.

The law on state own enterprise has not defined clearly role, function and legal status of owner of state ownership as well as tools for the owner to surpervise effectively performance of the enterprise's director and other manager. Fragmental and inefficient exercise of the state ownership was not awared of and dealt with under the law on state own enterprises.

The board of management was not provided with functions and duties in comformity with common practices. Operation of the board of management was conducted in a passive manner. From aspect of functions and working

[7] Article ...

mechanism, the board of management served as ”liaison” for exchanging information from owner to director and vice verse. The board of management doesn’t look like a body to initiate businesss development stratergy and manage all resources for the enterprise development. Activities of the board of management was formalistic and served somehow as person who legalizes (stamps on) decisions of director in many cases. Actually, directors manage, control and run the enterprise. They initiate and implement all business stratergy and long-term business plan, appoint key managers and decide on organizational structure of the enterprise. Director play a very active role that seemed to overstep that of the board management. Incentives that are given to both director and board of management are not relevant to their duties. Remuneration of both director and members of the board of management are similar to that of state official.

Basically, corporate governance framework that developed by the law on state own enterprise 2003 remained unchaged in comparison with that of preceding law on state own enterprise. The corporate governance frramework under the new law is stipulated more clearly and adequately. Rights of the state-ownership holder are manifested clearly and in a manner that there is distinguishable separation and decentralization between the Government, ministries and pepple’s committee. However, there is lacking a mechanism for ensuring coordination between state authorities in exercising rights of the state-ownership holder. As a result, supervision of the state-ownership holder over the enterprise managers is irregular, undisciplined, inefficient and weak. A number of corruptions and collapses during that time were an evidences for weakness of the corporate governance regulations.[8]

In conclusion, development of the corporate governance framework is vary from economic sectors. From legal espect, corporate governance framework

[8] See other cases, such as “Lã thị Kim Oanh”, “Nguyễn Lâm Thái”, “PMU18”, “Ho Chi Minh electronic galvanometer”, etc.

applicable to domestic private sector reflects the most comon principles on corporate governance and seems to be the most developed in comparison with the others. Corporate governance regulation applied on the foreign invested enterprises is the most simplest. Narrowing the scope of application of the unanimous voting principle is considered as the most advanced develepment in the corporate governance framework of the FIEs. A lot of efforts have been made in reforming the corporate governance of SOEs. However, the reform brought in a little sucess. Balance between enterprise control of the state ownership holder and enterprise autonomy seems to be two side of the coin. It has been impossible to find the solution for enforcing effectively and adequately rights of the state ownership holder for nearly tweenty years of reforming. Principles, such as fairness, transparency, accountability and disclosure are very new within the corporate governance of the SOEs.

Finally, the law on enterprise (2005) is the greatest development in corporate governance regulations in Vietnam. The law created a unique corporate governance framework for enterprises regardless of their capital ownership or economic sector. Moreover, corporate governance framework that is stipulated by the law is not only clear, comprehensive but also similar to the most common practices on corporate governance. In other word, the law on enteprise provided a corporate governance framwork that every enterprises would to comply with.

Following will be detailed analysis of the corporate governance regulation and its implementation in the reality.

II. Corporate governance of joint stock company: legal aspect

As mentioned at the begining of the chapter, corporate governance of joint stock company has been gradually adapting to the most common practices on corporate governance for nearly tweenty years. [9] Corporate governance framework is abided by the law on enterprise (2005) and law on securities (2005).

1. SHAREHOLDER MEETING.

Shareholders are treated equally before the law.[10] A principle that each type of share will provide its holder with same rights and obligations is respected explicitly by laws, espcially the law on enterprise. Rights of shareholers are mainly regulated by the law on enterprise. Those rights are similar to that in other countries. Shareholders are entile to:

- Take preemption in buying newly issued shares in proportion to their ordinary shares. This preemptive right can be transfered to other person.

- transfer freely their shares to others unless otherwise unless they are founding shareholders..[11]

- rreceive dividend in pursuant to decision of the Shareholders' Meeting

- Check, review and extract information from the list of shareholders with voting rights and ask for correction of inaccurate information.

- Check, review, extract or copy the company charter, the book of meeting minutes as well as decisions of the Shareholders’ Meeting.

- be inform about all decisions of the shareholder meeting event that shareholder himself or herself did not participate in the meeting; be infomed about annual financial status of the company.

- file a petition requesting the court or arbitration to revoke decisions of the shareholders’ meeting if (i) formality and procedure for convening meeting of

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[9] WB conducted a report on a comparison between Vietnam corporate governance law and OECD best practices on corporate governance in 2005.

[10] Shareholder means organization or individual that owns no less than one share issued by the shareholding company. Shareholder is divided into two types: ordinary and preference shareholder. Founding shareholder means shareholder who approves and signs the original company charter.

[11] Within 3 years from the issuing date of the certificate of business registration, founding shareholders are free to transfer their ordinary shares to other founding shareholders. Founding shareholders can transfer their ordinary shares to another person who is not founding shareholders if so approved by the shareholders’ meeting.

shareholders fail to comply with provisions of this law and the company charter, and (ii) formality and procedure for adopting decisions of the shareholders' meeting as well as contents thereof are contrary to the laws or the company charter.

- rreceive part of the property in proportion to their shares when the company is dissolved.

- participate and discuss in all Shareholders' Meetings and vote directly or via proxy; an ordinary share will be conferred one vote. The shareholder meeting will decide on: (i) company development strategy, (ii) types and total number of authorized shares of each type, (iii) Elect, exempt and dismiss members of the Board of Management and the Board of supervision on the principle of accumulative voting, and their remuneration, (iv) large-scale transaction or investment that may affect current share ratio of the company; (v) annual financial report and payment of devident, (vi) reorganization and dissolution of the company. etc. In short, shareholder can participate in deciding the most important decisions of the company.

Provisions on procedures for convening a shareholder meeting are clear and sufficient in ensuring that shareholders are treated fairly and provided with adequate information that enable them to vote properly at the shareholder meeting.

Shareholder will be entitled to request the company to buy back his own shares if such shareholder votes against decisions of the Shareholders' Meeting in relation to the reconstruction of the company or alteration of the rights, obligations of shareholders that stipulated in the company charter. Market price or price that determined by an independent organization will be used to buy back shares.

Shareholder holding share for twelve consecutive months is entiled to request the board of management to suspend enforcement of its decision that is approved in contrary to law, company charter or damages previledge of the company and shareholders.

Shareholder or group shareholders holding more than ten percent of total ordinary shares for least six consecutive months or a smaller ratio as specified in the company charter is entitled to:

- Nominate members of the Board of management and Board of supervision (if any);

- Review and extract the book meeting minutes, decisions of the Board of management, periodical and annual financial report in the standard form and reports of the Board of supervision.

- Suggest issues to be discussed at the shareholder meeting.

- Request convocation of meeting of shareholders if:

+ The Board of Management seriously violates the rights of shareholders, duties of managers or makes decisions beyond its power.

+ The term of the Board of Management is expired more than 6 months and there is no election of the replacement board of management.

- Convene the Shareholders' Meeting if the board of management and board of supervision are failed to convene the meeting at their request.

- Request the Board of supervision to examine specific problem in relation to the management and operation of the company if necessary .

- Request the business registration office to take part in the shareholder meeting as an observer if necessary.

The meeting of shareholders is required to be held annually or extraordinarily. Condition for proceeding the shareholder meeting depend on number of attending shareholders. The first-call shareholder meeting is entitled to open if all participating shareholders own at least 65% of total voting shares. The second-call shareholder meeting is entitled to open if all participating shareholders own at least 51% of total voting shares. The third-call shareholder meeting is always entitled to open regardless of the number of participating shareholders as well as their voting shares. This regulation aims at enabling the shareholder meeting to be held at long last. This mechanism of convening shareholder meeting will both induce majority shareholders to take into their consideration interests of minority shareholders when making decision and protect lawful interests of minority from being abused by majority.

Decision of the shareholder meeting will be adopted by at leat a number of participating shareholders owning at least 65% of total votes in regard to normal decision or a number of participating shareholders owning at least 75% of total votes in regard to more important decisions as stipulated in article 104(3)(b) of the law on enterprise. However, these voting threshold may be higher as stipulated in the company charter.

In conclusion, above-mentioned provisions on shareholder rights have been enable shareholders to supervise directors and managers as well as enable minority sharehoders to protect themselves at certain extent.

- All shareholders have right to discuss and dicide on all important decisions of the shareholder meeting such as company development strategy, elect and dismiss membership of the board of management and board of supervision, etc.

- Voting threshold as stipulated in the law is relative high so that enable minority shareholders to have some influences on decisions made by shareholder meeting. Therefore, minority shareholders are motivated to be more involved in making important decisions of the company. Active involvement of the minority shareholders in the process of decision making is considered as necesity in the context of Vietnam where external supervision mechanism over the company, such as court proceeding, is still weak and insufficient to protect fairly interests of shareholders and other related parties. So, high level of voting threshold will contribute much to balance of interests between majority and minority shareholders.

- Shareholders are entiled to be provided with relevant information about operation of the company. However, quality, quantity of information and capacity of shareholders will decide how efficient their supervison over the company operation is done. Pre-emptive righ that is given to shareholders will enable them to maintain their existing position in the companay at certain extent.

- Shareholders whose interests are likely to be infringed or who oppose the company performace may vote for decision that is expected to improve the company performance. Those shareholders also may:

+ Transfer their shares to others.

+ Request the company to buy back their shares at market price.

+ Request or summon a shareholder meeting for the purpose of making decision on their interested issues. Minority shareholders may realize this right under the law on enterprise.

+ Ffile a petition requesting the court or arbitration to revoke decisions of the shareholders' meeting if formality and procedure for convening meeting of shareholders fail to comply with provisions of this law and the company charter, and formality and procedure for adopting decisions of the shareholders' meeting as well as contents thereof are contrary to the laws or the company charter.

- Finally, rreceive part of the property in proportion to his shares when the company is dissolved.

However, above-mentioned rights of shareholders are diverse negatively from common practices as follows:

- Shareholder right of accessing to information is feeble in term of quality and quantity of information. Shareholder holding less than 10% of total shares is provided with only brief financial statement and informed about decisions made by the shareholer meeting. He or she may ask for an extraction of the book of shareholder registration and minutes of the shareholder meeting. Shareholder or group of shareholders holding more than 10% of total shares are entitled to access to decisions, meeting minutes and other information of the board of management. Shareholders are not allowed to access to the company accounting records..

- The law doesn't provide shareholders with right to appeal the board of management before the court or request the court to dismiss membership of the board of management and/or supervision.

- The law also doesn't provide shareholders with right to request competent authority or court to revoke decisions of the shareholder meeting and/or the board of management for the purpose of preventing legistimate interests of the company, shareholder or related party from abusing.

- etc.

So, those negative divergences should be taken into consideration in elaborating the company charter.

2. BOARD OF MANAGEMENT

The Board of Management is a management body of the company, which is entitled to act on behalf of the company in exercising all the rights and obligations, except those falls under the authority of the Shareholders' Meeting (article 108(1)-the law on enterprise). In short, the board of manegement will decide on all issues except those will be decided by the shareholder meeting. The shareholder meeting is not allowed to authorize the board of manage ment to do one or more its rights.

The Board of Management will consist of at least 3 members and no more than 11 members, unless otherwise provided in the company charter. Members of the board of management can be either shareholder or other. Any individual shareholder holding more than 5% of total shares is eligible for membership of the board of management. Other candidate for the membership of the board of management, including shareholder holding less than 5% of total shares, is required to acquire certain expertise and experience in relation to business management or major business activities of the company; other qualification can be stipulated by the company charter. As for subsidiary in which the state owned capital is of 50% or more than of the charter capital, members of the board of management can not be related persons of managers and persons who have power to appoint managers of the holding company.

Rights and obligations of the board of managment are divided into five groups. First group concerns about preparation and supervision on implementation of business stratergies as follows:

- Determine the development strategy and the annual business plan of the company;

- Decide on investment projects as stipulated in the company charter;

- Make decisions on market promoting, marketing and technology solutions; approve all large-scale contracts of sales, purchase, borrowing, lending or any other types of contracts;

- make decisions on the establishment of branches, representative offices and subsidiaries; decide the contribution of capital to or buying of shares issued by other companies;

- Supervise and guide the director or general director and other managers in running the day-to-day business of the company;

- Make proposal with respect to reorganization or dissolution of the company.

Second group of rights relates to interal working rules and human resource management, such as:

- Appoint and dismiss the director or general director and other key managers of the company;

- Aappoint the authorized representative to exercise the ownership rights of shares or the rights of capital contribution in other companies;

- Decide remuneration of the company managers;

- Approve the organisational structure, internal working rules;

Third group of rights focuses on capital and asset management, including right to:

- Make proposals with regard to the types of shares and the total number of authorized shares of each type;

- Decide on new offer of authorized shares of each type; mobilization of capital in other form;

- Decide on buy-back of 10% or less of total issued shares of each type for every 12 months;

- Decide on buy-back of share at a request of shareholders;

- Set the offering price of shares and bonds and mobilization of capital in other form;

- Make proposal on the amount of dividend.

- Make decisions on time and procedure for payment of dividend or method for settlement of losses.

Fourth group of rights involves exercise of shareholder rights, such as:

- Manage the book of shareholder registration;

- Convene and chair the shareholder meeting;

- Prepare the agenda, materials of the Shareholders' Meeting; approve annual financial report;

- Draft decisions of the shareholder meeting;

- Make necessary preparation for adoption of dicision of the shareholder meetin in form of off-shore voting (voting without convening the meeting).

- Approve related transactions.

Firth group of rights is connected to information disclosure requirement as follows:

- Make suggestion on remuneration of the board of management and supervision board;

- Examine and monitor transactions between company and related parties.;

- Establish a system for information exchange and internal supervison within the company.

Therefore, the board of management is given a significant power and plays a central role in the company. Power of the board of management covers a wide range of the company operation, from initiating development strategy, capital and human resource management to supervising the day-to-day business operation. However, performance of the board of management will depend much on its size, structure and expertise of individual members as well as whole board.

Chairman of the board of management is a special member. Chairman of the board of management will be elected by either the Shareholders' Meeting or the Board of Management (Article 111(1)-the law on enterprise). The Chairman will have the following rights and obligations:

- Prepare programs and working plans of the Board of Management;

- Prepare agenda, contents and materials for the meetings of the Board of Management; convene and chair the meetings

- Be in charge of adopting decisions of the Board of Management;

- Supervise the implementation of decisions adopted by the Board of Management;

- Chair the meetings of shareholders;

- Sign dicisions and transactions made by the board of management;

- Sign other documents as stipulated by law and the company charter.

Chairman of the board of management plays a ”standing”role in carrying out daily work of the board in addition to his duties as a member of the board of management. It will be confusion if the chairman of the board of manangement is supposed to be permanent member and others are part-time members. As matter of fact, the board of management will comprise of permanent members, including the chairman. The chairman as a ”special” member will avail oneself of better position in the process of making decision in the company.

Ordinary meetings of the Board of Management will be convened by the chairman at least once per quarter or at any time when necessary. The chairman will convene meeting of the board of management if:

- He himself considers it as necesity.

- Requested by the Board of supervision;

- Requested by the director or general director or at least 5 other managers;

- Requested by at least 2 members of the Board of Management.

First-call meeting of the Board of Management will be lawful if there is attendance of ¾ of total members of the board of management. Second-call meeting can proceed if attendances accounts for more than ½ of total members of the board. Decision of the board of management will be adopted by a majority of total members.

Law on enterprise has provided in detail procedures for convening a meeting of the board of management in a manner that enable all members to have adequate information and time to discuss and vote at the meeting.

3. (GENERAL) DIRECTOR.

(General) director will manage the day-to-day business operation of the company under the supervision of the Board of Management and be liable to the Board of Management for his performance of assigned rights and obligations. (General) director can be member of the board of management. (General) director will have following rights and obligations:

- Make decisions on all matters arising from the day-to-day business operation of the company without insisting adoption of decision of the Board of Management.

- Arrange for the implementation of decisions adopted by the Board of Management;

-Arrange for implementation of business and investment plans of the company;

- Make proposals as to the organizational structure and the internal management rules of the company;

- Appoint, dismiss or remove managers of the company, except those whose appointment, dismissal or removal are within the power of the Board of Management;

- Determine the salary and other allowances of employees of the company, including managers whose appointment is within the power of the director or general director;

- Hire employees;

- Make proposal as to payment of dividend or settlement of losses of the company.

- Other rights and obligations as stipulated in this Law, the company charter and decisions of the Board of Management.

From legal aspect, statutory power of the (general) director is not significant and focuses on implementation of decisions made by the board of management. Basically, (general) director will carry out day-to-day business operation. From aspect of human resource management, (general) director is authorized to hire only employees. He may employ managers in accordance with authorization of the board of management as stipulated in the company charter. However, as matter of fact, influence of (general) direct places more on production organization, interal working rule and method of paying dividend as he is responsible to make proposal on all those issues. Finally, scope of influence of (general) director is relative large as all employees and workers are under his management and direction.

4. REMUNERATION AND OTHER BENEFITS OF (GENERAL) DIRECTOR AND MEMBERS OF THE BOARD OF MANAGEMENT.

Remuneration is one of the most important tool for motivating (general) director and members of the board of management to act in a fiduciary, diligent and optimal manner for the purpose of maximizing legitimate benefit of the company and its shareholders. Article 117 of the law on enterprise has specified explicitly principle for defining remuneration of (general) director and members of the board of managment toward linking their benefit to that of the company and shareholders. Remuneration of (general) director and members of the board of management is calculated basing on business performance of the company. The remuneration is calculated basing on the working days necessary to complete the assigned tasks and the daily remuneration. The total remuneration of the Board of Management will be determined by the Shareholders' Meeting in an ordinary meeting. Members of the Board of Management will be reimbursed all expenses such as meals, accommodation, transportation and other reasonable expenses that they have to pay to fulfill their duties. The salary of the (general) director is determined by the Board of Management. Remuneration of the Board of Management and salaries of (general) director or other managers of the company will be deducted from business expenses of the company and will be presented in a separate section of the company's annual financial statement and reported to the annual Shareholders' Meeting.

In conclusion, regulation on remuneration of the board of management and (general) director has following developments:

- Remuneration is not regulated by a ceiling margin. By contrast, the remuneration will be defined basing on the company performance.

- Remuneration will be deducted from business expenses of the company.

- Remuneration will be disclosured at the shareholding meeting and presented in the annual financial statement.

5. DUTIES OF MANAGERS

Duties of managers, including (general) director, members of the board of management are stipulated by article 119 of the law on enterprise.[12] Those duties are tool for measuring effort and behavior of managers in carrying out their asigned duties. Duties of mmanagers are as follows:

- Exercise rights and obligations in accordance with provisions of this law, other related laws, the company charter and decisions of the shareholders' meeting;

- Exercise rights and obligations in a fiduciary, diligent and optimal manner for the purpose of maximizing legitimate benefit of the company and its shareholders;

- Pledge loyalty toward the company and its shareholders. This duty often demonstrates some activities as follows::

[12] Those duties are much more detailed and clearer than that in the law on enterprise 1999

+ do not make use of information, know-how and business opportunity of the company for the benefit of themselves or other individual or organization;

+ do not abuse their position, power and assets of the company for the benefit of themselves or other individual or organization;

+ Notify promptly, fully and accurately the company of companies in which they or their related persons are sole owner or own a dominant capital contributor or major shareholder. Transactions without those related persons should be suspended promptly or should not be implemented without permission from the shareholder meeting and/or the board of management.

+ suspend implementation of any activity within the scope of the business operation of the company, that they engage on their own behalf or on behalf of others. That activity is required to report to the board of management.

+ are not allowed to increase the salary or pay bonus if the company is incapable of paying off due debts and other liabilities.

As matter of fact, concepts of fiduciary and diligent duties are far away from acknowledge of managers in Vietnam. Adaptation of these concepts into the law on enterprise is necessary on one hand. However, enforcement of these duties is not easy in the reality.

6. DISCLOSURE OF RELATED BENEFITS.

Disclosure of related benefits is one activity that manifest fiduciary duty of managers. However, it is more difficult to control these related benefits in the reality. The law on enterprise 2005 is considered as a huge development in comparison with the law on enterprise 1999 from espect of disclosure of related benefits. According to the law on enterprise 2005, related benefits refer to transactions between:[13]

- company and its holding company

[13] Article 4(17) – Law on enterprise.

- company and managers of the holding company.[14]

- company and persons who are competent to appoint managers of the holding company

- company and person or group of person who are capable of dominating operations of the company. For example. Company A holds more than 50% of total shares in three companies: B, C and D. These three companies set up company E in which each holds 20% of total shares. From legal aspect, either company B, C or D owns only 20% of toal shares of the company E. However, in fact, company A will dominate company E as company A dominating all three companies B, C and D which all constitute a majority shareholder (holding 60% of total shares) in the company E. Therefore, transactions between company E and either company A, B, C or D will be considered as related transactions.

- company and its managers.

- company and wwife, husband, father, foster father, mother, foster mother, child, adopted child, or sibling of its managers.

- company and wife, husband, father, foster father, mother, foster mother, child, adopted child, or sibling of its majority shareholders.

- company and other company both of which are subsidiaries of another company.

- company and other company of which majority shareholder is wife, husband, father, foster father, mother, foster mother, child, adopted child, or sibling of managers of the company.

However, the reality showed that related transactions has been seen every where. Crisis about electric galvanometer purchase in Ho Chi Minh city is a typical example.

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[14] Managers are defined in article 4(13) as to include: the owner, director of sole proprietorship; general partners of partnership; chairman of the Members' Council, chairman of the company, members of the Board of Management, director or general director.

These related transactions are vary from civil, ecnomic to labor contracts. Related parties are defined as persons who indirectly or directly influence managers of the company. In my opinion, related transactions are not necessarily limited to above-mentioned transactions. [15] They may be more diverse and complex in the reality. Therefore, it is recommeded for the company charter to abeborate list of related persons and transactions.

The law requires related transactions to be approved by the board of maangement or the shareholder meeting. According to article 120 of the law on enterprise, contracts and transactions in equivalent to less than 50% of total value of assets recorded in the latest financial report of the company or smaller percentage as stipulated in the company charter will be approved by the Board of Management.[16] Other higher-value contracts will be approved by the shareholder meeting.

7. INFORMATION DISCLOSURE

Requirement of information disclosure is stipulated in the law on enterprise and law on securities as well as its implementation regulations. From aspect of information disclosure, there is significant difference between public joint stock company and other joint stock company. Joint stock company is required by the law on enterprise to:

- Make announcement of business registration and change of business registration on three consecutive issues of a newspaper.

- submit annual audited financial report to competent state authorities. Brief financial report will be kept the business registration office and accessible to any third party.

[15] For example, Wife, husband, father, foster father, mother, foster mother, child, adopted child, or sibling of a manager are all considered as related persons.

[16] Corporate law in some countries distincguished between “ordinary” and “inordinary” transactions in order to set forth regime for controling insider trading. The distinction does not base on transaction value. Ordinary transaction construes contracts necessary for normal orpoeration of the company. For example, contracts on importing material for garment and textile are considered as ordinary contrasactions. However, if the compay engages in lending its cash or other assets may be considered as inordinary transactions.

In addition, joint stock company is also required to disclose (i) book of shareholder registration, (ii) list of related persons and/or transactions, (ii) annual financial report and business performance report, (iii) decisions and minutes of the shareholder meeting, (iv) reports of the board of supervision.

Public joint stock company is required to disclose regularly and promptly inform at request of the state commission of securities. These information are often of:

- Annual report, website and other publications of the company.

- Annual report, website and other publications of the state security commission.

- Communication means of the stock agency and stock exchange, such as: stock market bulletin, websites of the stock agency and stock exchange, Các phương tiện công bố thông tin của SGDCK, TTGDCK bao gồm: bản tin thị trường chứng khoán, trang thông tin điện tử của SGDCK, TTGDCK, bảng hiển thị điện tử tại SGDCK, TTGDCK, các trạm đầu cuối tại SGDCK, TGDCK.

- Mass media.

Annual financial report is required to publish annually by the joint stock company. The report must be audited and is structured as to include business performance, cash-flow statement, financial statement. Unified financial report is needed to prepare by a joint stock company which is holding company.

Annual financial report and other reports must be published on a newspaper or website of the company and is required to store at the company's head-quarter at lest for ten years. Public joint stock company is required to publish its brief of annual financial report on three consecutive central newspapers and one local newspaper where the company's head-quarter is located or via communication mean of the state security commission.

Public joint stock company must public following information:

- Decisions are approved by the shareholder meeting in accordance with article 104-the law on enterprise.

- Decisions are made by the board of management in relation to share buy-back, offering bought-back shares, date on which payment of share will be made, and date on which bond will be converted into share, etc and other matters as stipulated in article 108(2)- the law on enterprise.

In addition, public joint stock company must make known publicly if:

- account of the company is blocked or unblocked.

- operation of the company is suspended temporarily.

- certificate of business registration of the company is revoked.

- Members of the board of management, director or vice director, chief accountant of the company is brought before the court.

- The company is imposed a discipline by the court or tax authority.

- The company decides to apply for a loan or offer bonds that are amounted to more than 30% of total existing capital.

- The company decides to change the existing accounting system.

- The company is requested to bankcrupt by the court.

In addition to announcement of information, the company is also required to explain reasons and resolutions if any.

The state security commission is entitled to request the public joint stock company to explain if there is information:

- suspecting that the company is infringing seriously interets of its shareholders.

- that is needed to varify as it may induce high increase in price of its shares.

Above-mentioned requirements on information disclosure imposing on the public joint stock company is considered as significant development in the legal corporate frame that contributed much to the efficient corporate governance, development of the financial market and state management on the financial market.

However, those requirements on information disclosure are unable to keep with the best practices. Following information are not required to make public:

- ownership structure of the company and/or corporate group.

- the company's future development projection made by the board of management.

- personal features, expertise and accountability of members of the board of management and other key managers; remuneration of managers.

Moreover, mechanism for checking and valuing information that is made public by public joint stock companies is not established under above-mentioned laws.

8. SUPERVISION BOARD

The supervision board is designed intentionally to be an independent body in the company. The supervision board is responsible to examine performance of the board of management and other managers for the benefit of the company and its shareholders.

The Board of supervision will comprise of from 3 to 5 members who meet following qualifications: (Articles 121 & 122 of the law on enterprise)

- Being a person who is than 21 years old, has capacity for civil acts.

- Being a person who is not prohibited from establishing and managing enterprises as stipulated in the Law on enterprise.

- Not being wife, husband, father, foster father, mother, foster father, child, adopted child or sibling of members of the Board of Management, director or general director and other managers of the company.

- Not being manager of the company.

- At least one member has accoungting expertise.

- More than ½ total members must reside permanently in Vietnam.

- Finally, members of the supervision board do not necessarily work in the company.

The supervision board will be assigned to exercise following obligations and rights:

- Reviewing the reasonableness, lawfulness, trustworthiness and diligence of the business management and running, accounting books, and financial statements

- Appraising the reports on business operation, annual and half-year financial reports of the company and the report on evaluation of performance of the Board of Management.

- Check and review accounting books and other documents of the company or matters particularly related to the management and running of the company if necessary or in pursuant to a decision of the Shareholders' Meeting, or at the request made by shareholder or group of shareholders. Investigation must be done by the board of supervision within 7 days from the date of receipt of such request.

- Recommend the Board of Management or the Shareholders' Meeting to take measures on adjusting and improving structure of organizational management of the company.

- . Notify the board of management of any violation of duties of managers and request the manager who committed such a violation to stop and indemnify losses.

The Board of supervision is entitled to make use of consulting service when carrying out assigned obligations. Information-accessible right of the members of the supervision board is similar to that of the members of the board of management.

Members of the Board of supervision will be paid remuneration and other benefits in according to decisions of the ordinary meetings of shareholders. The total remuneration and the annual budget saved for the Board of supervision will be determined by the Shareholders' Meeting based on estimated number of working days, amount and nature of work and the average daily remuneration of members. Members of the Board of supervision will be paid expenses such as meals, accommodations, transportation and fees for using independent consultants at an appropriate rate.

Like members of the board of management, members of the supervision board is obligated to carry out their duties in a fiduciary, diligent and optimal manner in order to maximize legitimate benefit of the company and its shareholders.

In conclusion, the law on enterprise has set forth comprehensive provisons govening operation of the supervision board. Those provisons have generated following advantages:

- The supervision board is independent in comparison with the board of management and other managers. The supervision board is also enhaced in term of expertise and matterial support so that enable the board to carry out its duties efficiently and sucessfully.

- Duties and working method of the supervision board is clear and detailed. The supervision board will exercise its supervision in a regular manner or at the request of the shareholder meeting or shareholders and group of shareholders.

- Authority that is given to the supervision board by the law has offset partially weaknesses in relation to rights of shareholders. Shareholder or group shareholders holding more than ten percent of total ordinary shares for least six consecutive months or a smaller ratio as specified in the company charter is entitled to request the supervision board to examine specific problem in relation to the management and operation of the company if necessary; those shareholders or group of shareholders may request the supervision board to stop infringement of the board of managment and its members.

However, role of the supervision board is somehow weak as:

- members of the supervision board is allowed to be employees of the company. This permision will hinder independence of the supervision board.

- the supervision board focuses mainly on supervising what have been done rather than what will be done.

- remuneration of the supervision board is calculated for doing a part-time job.

- the supervision board doesn't pay much attention in monitoring related transactions and quality of information that is made public by the company

- recommedations made by the supervision board are only "suggestions" that may not be implemented. The supervision board is not allowed to act on behalf of the company in filing a petition against the board of management if it is necessary to protect benefit of the company and its shareholders.

These shortcomings may be overcome by addressing them in the company charter.

Laws and regulations on the corporate governance have been applicable to all types of company regardless of their ownership structure since 2006. Basically, corporate governance frame of the joint stock company is kept with the most common practices in the world. However, there are still some gaps or shortcomings in comparison with the best practices. Those gaps can be listed as follows:

- Shareholders are not treated equally in acessing to information. Moreover, information – accession right of the shareholder is limited in general.

- Operation of the board of management is not really independent and professional. It is not difficult for majority shareholders to takeover the board of management in running the company. Similarly, structure and expertise of the supervision board do not ensure the boart to act independently and efficiently. Moreover, there is lacking of mechanism for esuring implementation of suggestions made by the supervision board.

- Information disclosure requirement will not suffice to examine quality of published information.

- Supervision on related transactions is not sufficient. The law doesn't have any guidlines on how and who will take responsibility to monitor related transactions sucessfully and efficiently.

Althought there are some shortcomings the corporate governance frame that is stipulated in the law on enterprise and other regulations is considered as significant development in the process of improving corporate law and governance of the joint stock company. Shortcomings of the law may be easily overcome when drafting the company charter. Howver, awareness of those shortcomings is very important in improving performance of corporate governance in Vietnam.

III. Corporate governance in Vietnam: practices and problems

Analysis in the part II has showed gaps between legal corporate governance frame in Vietnam and best pratices. This part will focus on anlaysing implementation of legal corporate governance frame in the reality in order to find out what is gap between regulation and practice. Findings in this part is expected to use as background for making recomendations in the part IV. Analysis in this part will be structured as that in part II. However, analysis will base mainly on statistics from a questionare survey that conducted by the author at the end of 2007. Moreover, interviews and information acquired from semiar and workshop are very usful for analysis in this part.

1. RIGHTS OF SHAREHOLDERS AND SHAREHOLDER MEETING

Rights of shareholders are realized in the reality. Rights given to minority shareholders such as right to ask for convenning the shareholder meeting have been used in a number of company. Shareholders are often provided with not only brief of the annual financial report, decisions of the shareholder meeting but also decisions of the board of mangement and (general) director. This reality showed that shareholder is accessible to more information that it would be as stipulated by the law on enterprise.

Almost all joint stock companies hold the annual shareholder meeting. The survey showed that number of company holding the annual shareholder meeting is of 98% of total surveyed companies. Company in which shareholder meeting is held quarterly accounted for from 30% to 40%. 60% of total surveyed companies followed strictly procedure for convenning the shareholder meeting as stipulated in the law. Annual shareholder meeting is often held to discuss three main issues: (i) annual report on the company's business performance; (ii) report on next-year business plan, and (iii) dividend payment. Election of members of the board of managment and supervision board is another content of the shareholder meeting in some companies. Shareholder meeting is likely to forget to discuss and decide on long-term development stratergy of the company.

Chairman of the board of management is concurrently (general) director of the company is very widespread and it happened in 85% of total surveyed companies.[17] Person who often prepares agenda of the shareholder meeting is pluralistic chairman of the board of management. Chairman or a member of the board of management or director is responsible to prepare agenda of the

[17] This chairman of the board of management is referred to pluralistic chairman of the board of management

shareholder meeting in some companies. Annual shareholder meeting that lasted for ½ day and a day accounted for 52% and 47% of total surveyed companies respectively. There are not many shareholder meetings being extended to more than one day. Scenario of the shareholder meeting is the same as follows: (i) Reporting by the chairman of the board of management or director (ii) reporting by the supervision board, (iii) debate and discussion. Shareholders often question the board of management at the shareholder meeting. Only few shareholder meetings incur new issues in comparison with the meeting agenda. Survey showed that only 8% of shareholder meetings incur new issues during the meeting. This fact indicates that shareholders, especially minority shareholders, have made small influence on decisions made by the board of management.

Reality also shows that a number of companies do not follow strictly procedure for convening the shareholder meeting. Reason for this failure is that the board of management does not understand very well how and what to do in order to convene a lawful shareholder meeting. A lot of conflicts have been orginated from failure to convene lawfully the shareholder meeting

Infringement of the rights of shareholders is manifested in following patterns:

- Majority shareholders, especially state shareholder, have abused their power or exercised their power unduly. They themselves appoint members of the board of management or decide to increase the charter capital and use assests of the company at their will. They may buy newly-offered shares not proportional to their ordinary shares, etc.

- Founding shareholders do not pay promptly and fully their shares. There is misunderstanding between charter capital, shares that constitute the charter capital and shares that are authorized to offer. Charter capital will be equal to total number of shares that has been paid multiply nominal share price. In fact, the charter capital is perceived as total number of shares that include unpaid shares multiply nominal share price. Moreover, total number of paid shares accounts for a little percentage (1/20) of total shares in some companies. This misunderstanding about charter capital has resulted in negative consequences in the reality. Real ownership structure of the company my be confused by third party. There may be significant difference between real ownership structure (only paid shares are calculated) and nominal ownership structure (total shares are calculated).

Box 2. Founding shareholders did not pay fully for shares that they registered to buy: mistakes and consequences.

Company Z was founded by four shareholders in 2003. The company has registered its charter capital in equivalent to VND 80 billion or 80.000 shares. This capital is estimated to suffice to build a hydroelectric plant. Shareholder A registered to contribute up to VND 50 billion or 40.000 shares (50% of total shares). Shareholder B committed to buy 20.000 shares (25% of total shares). Shareholder C and D registered to buy 12,000 and 8.000 shares respectively. The shareholder meeting has decided to increase the charter capital to VND 160 billion two years later. Newly-offer shares will be distributed to existing shareholders A and B in proportion to 32.000 and 24.000 respectively. Each shareholder C and D will be given 12.000 newly-offer shares. However, only 2000 shares were paid fully by shareholders untill 2007 (four years after registration of the company). In other word, number of paid shares accounts for only 1/20 of total shares.

Then, shareholder D would like to sell his shares to other existing shareholders with a price that amounted to VND 3 million/share (that is three times higher than share par-value). However, they were unable to agree on “what” shareholder D is entiled to sell, whether it is his paid shares or “preemptive right”. Finally, all other shareholders decided to pay shareholder D VND 2 billion plus its bank-rate interest. All shares that shareholder D has committed to buy will be distributed equally to remaining shareholders. Later on, VND 2 billion has been paid to bank account of shareholder D by the company Z. In other word, remaining shareholders has used money of the company to pay shareholder D in order to acquire his shares. However, shareholder D has refused to accept those money by transfering it back to the company Z.

Shareholders has made following mistakes:

- Founding shareholders did not pay their shares fully after having certificate of business registration.

- The company has offered new shares meanwhile shareholders haven't paid fully for their shares. Moreover, new shares are sold on credit to existing shareholders not proportional to their share-holding proportion.

- There is a confusion between paid shares and shares authorized to offer. Charter capital has been construing as par-value of total shares that are authorized to offer. However, according to the law, charter capital is only equal to par-value of total paid shares.

- A part of shares that shareholder D would like to transfer is only his preemptive right rather than shares. This fact showed that there is a failure to understand correctly the "preemptive right" under the law on enterprise. Preemptive right is statutory right that enable existing shareholders to buy newly-offer shares in proportion to their shares. This preemptive right can be transferred to others. Therefore, this preemptive right is totally different with "commitment to buy shares". If shareholders commit to buy certain number of shares they will have to pay for those shares promptly and fully.

- Some shareholders have used asset of the company to served their own benefit. Shareholders A, B and C have used money of the company Z to pay shareholder D in order to accquire his shares.

All above-mentioned mistakes have led to following serious consequenses:

- Third parties, including creditors may be confused about financial status of the company Z. In other word, shareholders of the company Z have been cheating third parties intentionally or unintentionally. The company has registered its charter capital of VND 160 million. Therefore, in principle, third parties will understand that they are guarantied by an amount of money in equivalent to VND 160 million. However, all shareholders have paid up VND 8 million so that their liability will be limited to paid-up capital – VND 8 million.

- Shareholders have made potential investors confused about financial status of the company. If those investors buy shares from existing shareholders they may pay for"fake" shares because those shares never sold to shareholders.

- There is a significant discrepency between "real" ownership structure and ownership structure in acordance with registered capital. Therefore, how will benefit of shareholders be distributed? This fact has been reason for a number of disputes between shareholders so far, especially in sucessful companies.

- The company capital surplus arising from issuing new shares has been appropriated by shareholders. This capital surplus may be significant and an important financial resource for development of the company. For example. If shareholder D is sucessful in transfering his toal 20.000 shares with price of VND 3 million, the company will lose its captital surplus of VND 36 billion. Because, shareholder D has only 2000 shares (paid shares) that he is entitled to transfer. Meanwhile, 18.000 shares will be considered as shares that the company is authorized to offer. Similarly, if all four shareholders are sucessful in transfering all their shares, the company may lose VND 304 billion as its capital surplus. It is expected shares will be reduced in its price in the long-term. Howver, failure of the company will make up "sucess" of shareholders.

This fact has often happened in recently-established joint stock companies and been causing negative consequences to related parties and the company itself. It is recommeded that the business registration office should make more efforts in helping the company to clarify between charter capital (paid shares) and authorized/unpaid shares (shares that the company authorized to offer). Moreover, the business registration office also should pay more attention on ensuring that fouding shareholders have to pay up their shares within 90 days from the day of issuing the certificate of business registration. Investors should be very careful when buying shares from founding shareholders in order to avoid buying “fake” shares. Both company and its shareholders must be aware of that shares are asset of the compay and issuing shares will be used as tool for mobilizing capital. Shareholders own only paid-up shares. Unpaid shares can not be distributed discretionarily to either all or a number of shareholders.

Confusion about the charter capital has leaded to ancrease in number of disputes within the company. Basically, upaid shares can be considered as shares that shareholders owe the company. In other word, upaid shares are shares that the company sell on credit to shareholders. Therefore, if shares are not paid promptly and fully, it will not only impede the company to use mobilized capital but also obstruct long-term development of the company and later on infringe benefits of sharehoders in general. Unpaid shares may make third party confused as third party may overestimate financial status of the company. Transfer of unpaid shares is transfer of “preemptive right” to buy shares. However, the buyer may have to pay for the shares rather than “preemptive right” to buy shares. In other word, the buyers do not acknowledge that buying unpaid shares is acquiring “preemptive right” to buy shares. In conclusion, all above-mentioned misunderstanding and reality are contrary to a principle of the law on enterprise that shares are required to pay fully and promptly and liability of shareholders is limited to only their paid shares.

- Preemptive right of shareholders is often abused. Majority shareholders have abused their position in deciding to selling new shares to them exceeding to their share proportion or offering new shares in fovour of employees of the company. As matter of fact, shareholders of joint stock companies that are converted from state own enterprises are mainly employees of the company. So, selling new shares to employees means selling new shares to shareholders. However, members of the board of management and other managers who are often veteran employees will be eligible to buy more shares than others. Selling new shares to the so-called “strategic investor” is often abused by majority shareholders. Majority shareholders consider themselves as strategic investors so that they are eligible to buy more new shares with reseonable price. These facts indicate that principple that each type of shareholder will be treated in the same way is infringed implicitly. Majority shareholders have abused their position to appropriate benefit of minority shareholders in particular and assest of the company in general.

- Shareholders are likely to be affected by short-term oriented benefit rather than benefit from long-term development of the company. Shareholders are in favour of receiving dividend in term of share. However, share par-value (not share market-price) is used to calculate dividend. This kind of dividend payment means that shareholders have appropriated a part of capital surplus of the company which is important financial sourse for future development of the company. In addition, this kind of dividend payment may lessen share value in a way that (i) share supply will increase and (ii) the company long-term development is likely unstable. Distribution of capital surplus by issuing shares to shareholders means that the company is failed to maximine capital mobilization by issuing shares. By contrast, gains from transfering share later on goes to the pocket of shareholders. Shares are distributed to shareholder according to its par-value which is often much less than its market value. This will be resulted in a negative consequence that either the company is failed to maximine capital mobilization or a part of the company assests is transfered to shareholders. In conclusion, shareholders in a number of joint stock companies tended to focus on short-term benefit and foget to support long-term and stable development of the company which is their better benefit.

- In addition, rights of shareholder is often infringed as: (i) voting at the shareholder meeting is calculated by head rather than share-holding proportion, (ii) only shareholders holding certain amount of shares are allowed to attend and vote at the shareholder meeting, (iii) free transfer of share is limited in some ways, and (iv) there is not a book of shareholder registration in a number of joint stock company or shareholders are not provided with share certificate, etc.

In short, rights of shareholder have been implemented to certain extent in the reality. However, performance of rights of minority shareholders is much more limited. Infringement of shareholder rights is not only numerous but also vary and it is not easy to disclose. Tendency that shareholder is biased by short-term benefit rather than long-term one is obvious in a number of joint stock companies.

2. SATE SHAREHOLDER AND ITS RIGHT

Unlike other developed countries, the State is playing an important role as a shareholder or investor in the economy and many joint stock companies in Vietnam.[18] By the end of 2007, the state ownership in joint stock companies that are converted from state own enterprises amouts to .... in average. The state is holding shares in .... joint stock companies that are converted from state own enterprises.

Currently, state body which is authorized to exercise state ownership right at the company is numerous, ranging from ministry, provincial people's committee and relevant department, general corporation of state investment, and other state holding company and state own enterprise. Rights of state shareholder is exercised by a specific individual who is representative of state shareholder. Number of representative of the state shareholder in a company depends on how much is the state-share proportion. The survay showed that there are approximately 60% of total questioned companies having only one representative of the state shareholder. Number of company in which state shareholder authorized two or three individuals to exercise its shareholder rights accounts for nearly 40%. There is only a few companies in which representative of the state shareholder is more than three individuals.

[18] China is similar to Vietnam in this respect.

In regard to working place of individual representative of state shareholder, survey indicated that 63% of total state-authorized representative work at the enterprise of which the state is a shareholder; 26% working at the state body which is the state shareholder and some others work at the people's committee and relevant provincial department. All almost individual representatives of the sate shareholder obtained an university-degree in which 50% specialized in scientific area and other 40% specialized in economic, law, accounting or financial area.

A massive number of individual representative of the state shareholders acts as chairman of the board of management (account for 60%), of which 30% is concurrently (general) director and 9% is vice (general) director contemporarily. For the remaining individual representatives of the sate shareholder, 7% are members of the supervision board and all the others are members of the board of management. So, a majority of individual representative of the sate shareholder have acted as executive managers rather than supervisors. Change of individual representative of the state shreholder is also happened sometimes. However, reasons for that change are mainly retirement (accounting for 81%), shifting of job or shifting of state shareholder. There are only few cases where individual representative of the state shareholder is changed because of failure to fulfil his assigned duties.

It will be interesting to know what and how the state shareholder does in the reality. A majority (...... enterprises) of surveyed enterprises did not answer this question. The remaining responses to this questions also did not give us correct answers. All the answers are exactly a description of jobs that individual representative of the state shareholder is carrying at the enterprise as chairman of the board of management, (general) director or members of the board of management. There may be two assumptions based on this reality. First assumption is that the question in the questionare is not designed so clear that it is impossible to generate correct answer. Second assumption will be that there is lacking of a clear criteria for exercising rights of the state shareholder in regard to what and how to do. Therefore, it is impossible for the surveyed enterprises to answer this question. In our opinion, second assumption may reflect the fact the most.

Working relationship between the state shareholders and its individual representative manifests periodical reporting and asking for permission before voting at the shareholder meeting or meeting of the board of management. State body which is assigned as state shareholder will measure performance of its individual representative. The survey showed that performance of the individual representative of the state shareholder is often measured by financial performance of the enterprise. This means that if the company achieves a targeted benefit performance of the individual representative of the state shareholder is considered as good. In general, there is lacking of an explicit critera for measuring properly, objectively and fairly performance of the individual representative of the state shareholder.

Basically, rights of shareholder are exercised in accordance with method and way as stipulated in the laws, which are similar to the most common practices. Therefore, rights of the state shareholder will be done in comfortmity with relevant laws. However, way of exercising rights of the state shareholder in state own enterprises that are not converted into joint stock companies or sole member limited liability company is obsolutely divergent. In fact, this number of not-converted state own enterprises is still numerous. In those state own enterprises, there is not existing a clear state body that will exercise rights of the state shareholder and undistinguished separation between administrative management and business management that are vested concurrently on the same state shareholder. There are a number of ministries and people's committees which are acting as both state administrative bodies and state shareholders. As a result, the way of exercising rights of the state shareholder is often done in the same way of making a state administrative decision that implies diversity, untransperancy, explicitness, unaccountability and inefficiency. Another survey showed that there is not real owner of the state own enterprises.[19] From aspect of state administrative management, there is somehow unfair treatment beween economic sectors in which state sector is treated with greater kindness than private sector in some areas.[20] In regard to not-converted state own enterprises, way that the state exercises its rights is not done in conformity with the law on enterprise and therefore not similar to the recommended OECD principles on corporate governance..

The reality showed that the way of exercising rights of the state shareholder has been improving gradually toward distinguishing two roles that state shareholder is playing as state body and investor. The state shareholder will exercise its rights by the same way as other shareholders do in complying with the law on enterprise and other relevant laws. As for state own enterprises, the state will exercise its rights by the way as stipulated in the law on state own enterprise. However, there are some shortcomings in relation to performance of rights of the state shareholder in reality.

First, rights of the sate shareholder is done by a variety of state bodies rather than a specific body. State administrative bodies are often assigned to carry out rights of state shareholder in the state own enterprises. This fact showed an inconsistency with priciple of exercising rights of state shareholder as stipulated in article 168 of the law on enterprise.

Second, there is not a seperation between ownership, business management and business supervision in exercising rights of state shareholder. The survey showed that a majority of individual representatives of state shareholder are both chairman of the board of management and (general) director. As a result, principle of balance and supervision in the corporate governance will be void in this context. Authority is concentrated in the individual

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[19]. IFC/MPDF (2004): Corporate governance in Vietnam: premilinary findings.

[20]

representative of the state shareholder without a sufficient supervision. In addition, individual representative as an agent of state shareholder will have its own interests that may contradict that of state shareholder. As a result, it will be difficult to prevent individual representatives of state shareholer from being avail themselves of making their own benefits if there is lacking of a sufficient supervision.

Third, there is not neither specific mechanism for exercising rights of state shareholder nor criteria for measuring performance of individual representative of state shareholder. The Government as the ultimate state shareholder who is responsible for managing all state investment in the economy has not ever done a report on ”overall performance of state investment in the enterprises” as required by article 168 of the law on enterprise.

All those shortcomings have made ”how to exercise rights of state shareholder” to be a hot topic for discussion and urgent to reform in order to enhance performance of state investment in general and state shareholder in particular.

3. THE BOARD OF MANAGEMENT: ROLE IS NOT COMPATIBLE WITH ITS AUTHORITY

The Board of Management is a management body of the company, which is entitled to act on behalf of the company in exercising all the rights and obligations, except those falls under the authority of the Shareholders' Meeting. Functions of the board of management focuses on initiating development strategy and monitoring performance of the company. However, performance of the board of management will be affected by some factors.

The fact shows that popular number of members of the board of management is from 3 to 7, depending on the company’s size. Three-members board of management is established in 21% of total questioned companies. Number of company of which the board of management comprises of five and seven members accounts for 62% and 12% of total questioned companies. There are some companies of which the board of management is constituted by 9 or 10 members. In average, the board of management comprises of 5 members. A majority of members of the board of management act as a manager at the company. Chairman of the board of management is often (general) director of the company. Moreover, members of the board of management are often majority shareholders. In other word, members of the board of management are often majority shareholders and concurrently (general) director of the company.

Meeting of the board of management is held every month, two months or three months. Number of companies in which meeting of the board of management is held every month accounts for 34% of total questioned companies. 12% of total surveyed enterprises said that meeting of the board of management is convened every two months. Meeting of the board of management is even convened every two weeks in some enterprises. Half-a-day meeting is the most popular, accounting for 80% of total questioned enterprises. Some meetings are extended to two days. In average, meeting of the board of management prolongs 4,5 hours.

Issues to discuss at the meeting of the board of management are mainly: report on business performance (annual or quarter), next-year business plan, specific investment project, advantages and disadvantages in relation to implementation of business plan and human resources. Long-term development strategy is rarely a topic of the meeting of the board of management..

Chairman of the board of management is often a person who will prepare meeting agenda (accounting for 80% of total questioned enterprises). A specific member of the board of management, director or secretary of the company or head of administrative division sometimes prepare the meeting agenda. Decision is made in written during the meeting.

Finally, following remarks are withdrawn from above-mentioned analysis:

- The board of management is not large in size and its members acquire high qualifications.

- Members of the board of management are often majority shareholders and concurrently managers of the company. The survey showed that 75% of chairman of the board of management is also (general) director of the company. This means that there is not distinction between function of board of management and day-to-day business management in the reality. Members of the board of management are likely not to be independent. By the contrast, they are dominated by the chairman and other executive members because they are lower-level manager in the company.

- Authority of the board of management is vested on the chairman who is concurrently (general) director of the company.

This structure of the board of management has resulted in following consequenses:

- Authority is concentrated in the board of management. The board of management can dominate the shareholder meeting and director.

- The board of management focuses its activities on day-to-day business management rather than long-term development strategy. Members of the board of management with exception of the chairman play a passive role in carrying out functions of the board. All they do is to try to fufill their tasks assigned by the board.

- Internal supervision cost may be minimized by blurred distinction between ownership and management. However, supervision from outsiders such as minority shareholders or state shareholder will be inadequate.

- High possibility of abusing power by the board of management in general and its chairman in particular. As matter of fact, this kind of power misuse has often happened in form of issuing new shares to only member of the board of management, veteran employees or engaging in related transactions, etc.

In conclusion, the board of management is lacking of long-term vision and failed to play a role in balancing authority between shareholders and executive managers. In addition, members of the board of management accquire a limited expertise so that they are unable to act professionally.[21] Their thinking are likely to be dominated by a habit of ”doing a thing as it is convinent”. This working habit and structure of the board of management may resulted in:

(i) Short-term and unstable development stratergy in relation to a specific company.

(ii) Weak and unstable coordination between enterprises in exchanging products and services.

(iii) Finally, limiting competitiveness of enterprises in particular and business community in general.

4. INFORMATION DISCLOSURE IS NOT SUFFICIENT.

Inadequate information disclosure is one of the worst problem facing corporate gavernance system in Vietnam. Shareholders are not provided prompty and sufficiently with basic information about the company. Those information would normally comprise of financial and asset status and capital flow of the company. Those information are considered as ”dead” information that are background for investors to measure value of the company.

Shareholders are not provided with information that will help them to forecast future of the company. For example, Those information would be forecast on fureture changes of products or markets relevant to development of the company. Those information are very important for investors to measure dynamic value of the company and predict furutre development of the company.

Information in relation to benefit of managers are rarely disclosured. Those information would include remuneration and other benefits paid to managers or income flow of the majority shareholders.

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[21] They are often majority shareholers

5. INADEQUATE CONTROL OF INSIDER TRADING

Similar to numerous countries, the Vietnam law on enterprise does not prohibit related transactions from being engaged.[22] As matter of fact, members of the board of managemet, senior managers or majority shareholders are often important customers of the company. Those customers are likely to be unable to measure potential development of the comany or the company may be requested to give out its business secret in exchange for commitment from those customers. In addition, related transactions may bring more benefit to the company. Therefore, it also may be difficult and unfair to prohibit related transactions from being engaged.

Acknowledging this problem, the law on enterprise has set forth provisions on related transactions toward giving guildlines on how to control abuse of related transactions rather than prohibit them. However, control of related transaction is blurred in the reality. Shareholders and managers are not fully aware of advantages and disadvantages of related transactions if they are abused. The company never indentifies who are related parties and does not know how to identify, update and keep the list of related parties and transactions. As a result, related transactions never seems to be recognized by either the company or shareholders or managers. Therefore, it may be true that requirement on disclosure and control abuse of related transactions is never implemented in the reality. This is the most serious weakness of the corporate governance system in Vietnam.

Box 2. Chairman of the board of management who is concurrently director has failed to comply with fiduciary duty.

Mr. X is a member of the board of management of company H. He is a member of another limited liability company N and his capital share is of 70% of

[22] There are two categories of transaction, including transaction between company and manager whose interest may contradict with shareholders and transaction between company and majority shareholders whose interest is contradictory with minority shareholders.

total capital. The company H decided to rent out some its buildings, including a three-star hotel with ground area of 500 m^2 in Hanoi. Company N has rented this hotel under a ten-year contract with a rent of VND 12 million/month. However, company N has re-rented this hotel with a rent of VD 120 million..

According to the law, company N will be considered as relater person of Mr. X who is both director and legal representative of company H. If so, transaction between company H and company N will be related transactions that must be supervised. According to the law on enterprise, Mr. X must notify the transaction to the board of management for approval. However, Mr. X has failed to do so. Finally, Mr. X himself has gained a great benefit through company N in re-renting the hotel. But, that benefit should belong to the company H and its shareholders if the transaction is submitted to the board of management for approval.

In addition, behavior of Mr. X has exposed himself to following wrongs:

- He has failed to disclosure his related person and to implement related transaction without permission from the board of management.

- He has used business opportunity and asset of the company for the purpose of making his own benefit. He has violated fiduciary duty of manager as stipulated in the law on enterprise.

In regard to other members of the board of management, they may be also considered as violating fiduciary duty as not taking any measure in order to stop implementation of related transaction for a long time. Similarly, members of the supervision board will be imposed the same responsibility as that of members of the board of management. In addition, if making a comparison between renting out the hotel and running the hotel members of the board is certainly considered as infringing their fiduciary duty.

Similar issues has often happened in the enterprises that are converted from state own enterprises.

3. 5. Weakness of internal supervision

From legal aspect, organizational structure of joint stock company is adequate. The supervision board is responsible for supervising the board of management and other managers. The supervision board is in equal position with the board of management as they are both repsonsbile before shareholders in doing their assigned tasks.

Three-members supervision board accounted for 95% of total questioned enterprises. There are up to 5 members in the supervision board in some companies. Similar to the board of management, members of the supervision board are workers of the company, accounting for 72% of total questioned enterprises. Remaining are shareholders or individual representatives of state shareholder. Members of the supervision board work in a part-time manner. Expertise of members of the supervision board is lower than that of the board of management in general. The survey showed that 35% of total members acquired an university degree in accounting, finance, economic or law; 32% are engineers; and 33% graduated from junior colleges. Operation of the supervision board is not regular and depends on initiative of individual member. Activity of the supervision board rarely based on request made by shareholders, epsecially minority shareholders.

The supervision board is often provided with information such as: (i) annual financial reports; (ii) business performance report; (iii)meeting minutes and decsions of the shareholder meeting; (iv) meeting minutes and decsions of the board of mangement, and (v) decisions made by director. Information to be available to members of the supervision board and shareholers are the same.

According to the law, members of the supervision board is elected and dismissed by the shareholder meeting. However, they seem to be appointed by the board of management in the reality. This is because members of the board of management are often majority shareholders who will elect members of the supervision board. This blurred distinction between ownership and management has affected negatively establishment and operation of the supervision board.

The suvey showed that members of the supervision board are also workers of the company. Therefore, what they do as members of the supervision board is doing a part-time job. They will make much more effort in doing their main job as worker of the company.

Members of the supervision will depend on their bosses who are members of the board of management or directors. In addition, members of the supervision board often accquire lower expertise and experience in comparison with that of managers. Therefore, they are unable to act independently in supervising managers.

Therefore, current structure of the supervision board has made it difficult in fufilling sucessfully their taks as assigned by law. In other word, operation of the supervision boad has been getting more formalistic and served as person who will ”legalize” decisions of the board of mangement or director if necessary. This situation seems to be similar to that in China where the supervision board is existed as ”inviting guests”, ”friendly consultant”, ”grasped supervisor” rather than an independent supervision unit which will supervise the board of mangement and other managers for the best interests of the company and sharehoders.

Conclusion

Vietnam enterprises have been flourishing significantly in all sectors after twenty years of reforming economic policies towards the socialist-oriented market economy. There is gradual increase in number of domectic private enterprises meanwhile state own enterprises is declining gradually. However, state own enterprises are playing an important role in the economy. Foreign invested enterprises become indispensable part of the economy and contributing very much to the ecnonomic development in Vietnam.

Legal framework on enterprise has been improved considerably and comprehensively. There is now an unique legal framework applicable to all types of enterprise regardless of their ownership struture and economic sectors. The law on enterprise 2005 is a good example for sucess in reforming the legal framework on enterprise.

Corporate governance regulations, especially those on joint stock company, are considered as adequate. Corporate governance of the joint stock company is constituted by shareholder meeting, board of management, (general) director and supervision board. In general, corporate gavernance of joint stock company as stipulated in the law is similar to the most common principles on corporate governance in the world.

Corporate governance regulations have empharized on issues relevant to developing countries, that is relationship between majority and minority shareholders. The law has provided minority shareholders a number of tools for protecting their lawful interests. In addition, role and function of the supervision board has been enhanced toward lessening possibility of abusing power by the managers or majority shareholders.

The board of management is designed to play a central role in balancing ownership and management and initiating long-term development stratergy. A number of new ”concept” has been adapted to the law, such as concept of: (i) related person, (i) control of related transaction, (iii) fiduciary duty of manager, ...

However, if we make a comparison between corporate governance system in Vietnam and other best practices on corporate governance, following weaknesses in Vietnam corporate governance system are founded:

(i) shareholders are not equal in accessing information

(ii) rights of shareholder are not adequate and missing.

(iii) Structure of the board of management does not make it to be an independent body in balancing interests beween shareholders and managers. Ownership and management is blurred.

(iv) Requirement on information disclosure is still weak and insufficient.

(v) Tools for controlling related transactions is not clear and understandable to implement effectively in the reality

(vi) Establishment and structure of the supervision board does not make it to be independent body in exercising its supervision role efficiently.

Finally, the greatest contribution of this study is to draw an overall picture of how corporate governance regulation is implemented in the reality in Vietnam. In addition, the study has pointed out divergences between corporate governance regulation and its enforcement in reality in Vietnam. As matter of fact, current structure of corporate governance in the joint stock company has leaded to authority concentration in few persons who are often majority shareholders and concurrently senior managers as memebers of the board of management and/or directors. Such those powerful persons will dominate entirely the company so that impede role of minority shareholders. By the contrast, the board of management will acquire more power than that stipulated by the law. However, operation of the board of management is not conpatible with its expected role as ”thinking” body of the company. Activities of the board of management related too much to daily business management and biased by their owned benefits. Supervision within the company is relatively weak and formalistic, especially in enterprises that are converted from state owned enterprises.

In conclusion, Vietnam corporate governance system is charactered with two features: authority is concentrated in few persons and external supervision is not existed or very weak. These weaknesses may create a large room for majority shareholders, individual representative of state shareholder and managers to make use of the company asset and oppurtunity to serve their own benefit. In the long term, such a power abuse will have negative impact on development of the company in particular and the whole economic in general. Therefore, further improvement of corporate governance regulation and its enforcement in the reality must be considered as first reforming prior toward building socialist-oriented market economy in Vietnam.

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