PROTECTION OF MINORITY SHAREHOLDERS - VIETNAM

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In 2019 the World Bank ranked Vietnam's regulatory framework for protecting minority shareholders 97th out of 190 countries.[1] *This indicates that there is room for improvement in the protection guaranteed for minority shareholders in Vietnam. The purpose of this article is to identify the aspects where the protection of minority shareholders is seen as lacking and where further adjustments should be made to streamline the mechanism and enhance efficiency.*

Dans un classement de la Banque Mondiale publié en 2019, le cadre réglementaire du Vietnam en matière de protection des actionnaires minoritaires figure au 97e rang sur 190 pays. Cela témoigne des défaillances dans les protections accordées aux actionnaires minoritaires au Vietnam. Dans le cadre de ses observations et commentaires, l'auteur détaille les situations dans lesquelles cette protection est manifestement déficiente. Il propose au lecteur quelques améliorations pour améliorer le mécanisme actuel et pour renforcer son efficacité.

I INTRODUCTION

From the economic reform policy initiated in 1986, the Vietnamese economy was dominated by State-owned and family-owned enterprises.[2] Over decades of economic reforms, more and more investors, especially foreign organisations and Vietnamese individuals, are participating in the market.[3] Especially during the COVID pandemic, the stock market has emerged as an attractive investment channel

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1 "Ease of Doing Business Rankings" The World Bank - IBRD - IDA <archive.doingbusiness.org/en/rankings>. At the 97th rank, Vietnam scored 54 points. In comparison, New Zealand was ranked third with 86 points; OECD high-income countries and East Asia and Pacific countries on average scored 68.2 and 49.7 respectively.

2 Anja Baum "Vietnam's Development Success Story and the Unfinished SDG Agenda" (IMF Working Paper, International Monetary Fund, 2020) at 7 and 8; Yuki Higuchi "Family Business Management and Succession in Vietnam" (PhD Dissertation, National Graduate Institute for Policy Studies, 2014) at 10.

3 Anja Baum, above n 2, at 8.

for new individual investors and its size and potentiality has expanded impressively.[4] A number of reasons caused the development, from regulatory reforms to market changes.[5] The government introduced new restrictions on the private placement of corporate bonds that effectively excluded a large number of individual investors from buying corporate bonds. Banks reduced saving interests significantly. Other conventional business operations stagnated due to continuous lockdowns and strict social distancing rules. However, despite the increase in the number of foreign and individual investors, State-owned and family-owned enterprises remain major players in the market. Noticeably, in the ten largest listed companies on Vietnam's stock exchange, there is a dominant presence of the State and of a small group of individuals.[6] Taking VIC, the largest company on Vietnam's stock exchange as an example, 78% of its shares are held by the chairman of the board and his related persons (including his wife, and his in-laws, and another corporation in which the chairman holds an equity interest).[7]

Within the context above, it is crucial to monitor the exercise of power by majority shareholders and minority shareholders, especially when the control of companies is converged and such majority shareholders may exercise control over the companies beyond their investment value.[8] If they abuse their position and power to acquire private benefits, they potentially harm minority shareholders in two ways: the company receives less income and its value is not maximised.[9] Therefore, the corporate law is essentially directed to address such conflict of interests amongst corporate constituencies such as majority and minority shareholders (commonly known as "agency problems") and protect minority shareholders from expropriation

4 Van Giap "Ministry of Finance: Volume of stock trading in Vietnam is ranked the 2nd in ASEAN" Vietnam News Agency (19 April 2022) <https://link.gov.vn/VuGvYGhX>. By the first quarter of 2022, the trading volume increased by 15.9% in comparison to the average of 2021, and is ranked the 2nd in ASEAN after Thailand; the scale of listing increased by 3.35%; the number of stock trading accounts increased by 15.7%.

5 "Vietnam's Stock Market in May 2021" Securities Magazine (online ed, Vietnam, 15 June 2021) <www.ssc.gov.vn>.

6 Phan Duy Hiep "Conflict of Interest and Protection of Shareholders' Rights under Vietnamese Law" (7 July 2021) Financial Magazine <tapchitaichinh.vn/kinh-te-vi-mo/xung-dot-loi-ich-co-dong-va-bao-ve-quyen-loi-co-dong-theo-phap-luat-viet-nam-335815.html>.

7 Above n 6.

8 Rafael La Porta, Florencio Lopez de Silanes and Andrei Shleifer "Corporate Ownership around the World" (1999) 2 Journal of Finance 471 at 511.

9 Ronald J Gilson and Alan Schwartz "Contracting About Private Benefits of Control" (Law & Economics Research Paper No. 436, Columbia University Centre for Law & Economics Studies, 2012) at 1.

by major shareholders.[10] Studies have also found that protecting minority shareholders is a way to achieve sound corporate governance and increase the value of corporations.[11] Rigorous exercise of all shareholders' rights should aim for the optimal outcome where it works as a self-discipline regime to ensure companies function fairly and lawfully while each shareholder is entitled to legitimate interests and gains corresponding to their investment.

II POTENTIAL FIELDS TO ENHANCE THE PROTECTION FOR MINORITY SHAREHOLDERS

Limited liability companies and joint stock companies[12] are the most popular corporate forms in Vietnam. For the purpose of the discussion here, the focus is exclusively on joint stock companies, as the number of shareholders of joint stock companies (especially in companies listed on the stock exchange) is unlimited, and the composition is variable and diverse (investors, employees, customers, suppliers and government agencies). Depending on the charter capital amount, shareholder composition or status of public offers, joint stock companies are categorised as either private or public.[13] Principally, public companies abide by the same law and regulations as private companies, except for specific circumstances where the securities law provides for more stringent conditions and criteria. The underlying

10 John Armour, Henry Hansmann and Reiner Kraakman "The Essential Elements of Corporate Law: What is Corporate Law?" (Oxford Legal Studies Research Paper No. 20/2009, Yale Law, Economics & Public Policy Research Paper No 387, Harvard Law and Economics Research Paper No 643, Harvard Public Law Working Paper No 09-39, European Corporate Governance Institute - Law Working Paper No. 134/2009) at 1; and Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer and Robert Vishny "Investor Protection and Corporate Governance" (2000) 58 Journal of Financial Economics 3 at 4.

11 Above n 8, at 511; and Pham Nguyen Hoang and Nguyen Cong Minh, "Minority Investor Protection Mechanisms and Agency Costs: An Empirical Study Using the World Bank-Developed Approach" (3 March 2021) SSRN <ssrn.com/abstract=3796571> at 6.

12 According to the Enterprise Law 2020 (Vietnam), art 111, a joint stock company is a company whose charter capital is divided into equal portions of shares (normally, the par value is VND 10,000). The minimum number of shareholders in a joint stock company is three, and there is no cap on the maximum number. In comparison, the charter capital of a limited liability company is not associated with a par value, and the number of members is limited from one to fifty in accordance with the Enterprise Law 2020, arts 4.7, 46.1 and 74.1. Further, a limited liability company is not allowed to issue shares, except for the purpose of converting into a joint stock company; therefore, a limited liability company is not a public company or listed on stock exchange.

13 According to the Securities Law 2019 (Vietnam), art 32.1, a public company is a joint stock company that falls into any of the following circumstances:

> Its charter capital is from VND 30 billion, and at least 10% of its voting shares are held by at least 100 shareholders who are not major shareholders; or
>
> The company has successfully made an initial public offer via registration with the Securities State Commission.

rationale for the increased scrutiny is that the operations of public companies are relevant and impactful to a larger group of stakeholders and may significantly impact on the equity market. For instance, in addition to the public disclosure duties as explained in sub-Part C below, public companies are subject to more requirements in terms of corporate governance and composition of the board of directors.[14]

In the Vietnamese context, only a few empirical studies have examined the efficiency of existing mechanisms aimed at the protection of shareholders rights, including those of minority shareholders.[15] Among others, the mechanisms governing related party transactions, disclosure duties and the possibility for minority investors to claim and hold directors accountable for their duties are found to have the most substantial impacts on the protection of minority shareholders.[16] While Vietnam's legislation has established foundation stones for those mechanisms, their practicability and efficiency is debatable.

A Review and Approval Requirements for Related-party Transactions

There is little doubt that in many occasions, transactions between companies and their related parties (such as a controlling shareholder) can bring significant economic advantages to companies, especially for those belonging to a conglomerate or relying on expertise and resources of a major shareholder for development. However, for the same reasons, related-party transactions, in the absence of appropriate legal restraints, may create leeway for major shareholders who have the decision-making power in the company to manipulate them for their undue interests. Striking a balance between those concerns is crucial to protect minority shareholders' voices in executing related-party transactions, without compromising the overall legitimate interests of the company itself and concerned shareholders.[17] A longstanding and well-proven solution is to require that transactions between the

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14 According to Decree 155/2020/ND-CP, art 276, at least one-third of the board of directors in a public company must be non-executive members. Further, when the public company is listed, it must appoint independent members of the boards in the following ratios:

> At least one independent member if the board of directors consists of between three and five members;
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> At least two independent members if the board of directors consists of between six and eight members;
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> At least three independent members if the board of directors consists of between nine and eleven members.

15 Pham and Nguyen, above n 11, at 2.

16 Pham and Nguyen, above n 11, at 19.

17 OECD "Related Party Transactions and Minority Shareholder Rights" (29 March 2012) OECD Publishing <doi.org/10.1787/9789264168008-en> at 11.

companies and related persons[18] be approved in advance either by a board of directors or a general meeting of shareholders.[19] In Vietnam, related-party transactions pending such prior approval mainly include transactions between companies and any of the following:[20]

(i) Shareholders, authorised representative(s) of an organisational shareholder holding more than 10% of ordinary shares in the company and their related persons;
(ii) members of the board, chief executive officer (CEO), and their related persons (in the case of public companies, this category also include inspectors, executives and their related persons);

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18 The scope of 'related persons' varies significantly between private companies and public companies. In the case of a private company, pursuant to the Enterprise Law 2020, art 4.23, its related persons include:

> Its parent company, executive and its legal representative, and the person who has the power to designate the executive officer of its parent company;
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> Its subsidiary company, its executive and legal representative;
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> Individuals or organisations that can influence its operation through share ownership, share acquisition, or decision-making process;
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> Its executive, legal representative, inspectors;
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> Spouses, parents (biological, adoptive and in-law), children (biological, adoptive and in-law), siblings (biological and in-law) of its executive officer, legal representatives, inspectors, shareholders; and
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> Any individual being an authorised representative of companies or organisations listed in point i, ii or iii above;
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> An enterprise in which an individual, company or organisation mentioned above has the controlling interest.

In the case of a public company, in addition to the foregoing, under the Securities Law 2019, art 4.46, its related persons are expanded to cover the following:

> An enterprise, a public fund or public investment company and its insiders;
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> An enterprise and any organisation or individual holding more than 10% of voting shares or stakes of such enterprise;
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> Any organisation or individual that controls or is controlled, whether directly or indirectly, by another organisation or individual; or under control of the same entity;
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> A securities fund management company, a securities investment fund, or a securities investment companies under its management;
>
> An organisation or individual that is the representative of another organisation or individual pursuant to a contractual arrangement.

19 Enterprise Law 2020, art 167.

20 Enterprise Law 2020, art 167 and Decree 155/2021/ND-CP, art 293.

(iii) Enterprises in which members of the board, CEO, inspectors, and executives have declared conflicts of interest as required by law; and
(iv) Loan or sale of assets that exceeds 10% of the total assets in the latest financial statement with shareholder holding at least 51% of voting shares or their related person.

Commonly, the approval authority is divided between the board and the general meeting of shareholders based on the material threshold of 35% of the total assets in the company's most recent financial statement (except for transactions (iv) above which require a general meeting of shareholders' approval, or where the company stipulates a lowered threshold in its charter). The director or the shareholder who has any interest relevant to the proposed transaction will be barred from voting. Related party transactions that are in violation of these requirements may be void and invalidated by the courts.[21] In addition, the shareholders involved and the CEO may be held jointly liable for damages and to reimburse the company for illegitimate profits earned from such transactions.[22]

Even though the law requires that "fundamental" contents of the contemplated transactions be disclosed, no criteria for fundamentality is elaborated by law.[23] In addition to the possibility to determine fundamental contents arbitrarily, there is an absence of statutory requirements for external parties (such as independent auditors) to review and present expert opinions on the proposed transaction. Loopholes may create enough ambiguities to preclude an average shareholder from fully comprehending the actual nature and implication of the contemplated transactions.

B Minority Shareholder's Ability to Sue and Hold Directors Liable

According to the World Bank, economies offer the best protection for minority shareholders when they provide clear guidance on board directors' duties and maintain streamlined court proceedings which make it practicable for minority shareholders to pursue lawsuits against accountable directors and achieve outcomes in due course.[24] It has been found that in many large corporations, one of the most critical agency problems is between a minority shareholder and a majority

21 Enterprise Law 2020, art 167.

22 Enterprise Law 2020, art 167. The Enterprise Law does not elaborate further on legal consequences in case no profit is generated from such an invalidated related party transaction. Nevertheless, as a principle set forth under the Civil Code 2015 (Vietnam), art 131, when a transaction is invalidated, the concerned parties are obliged to restore everything to the original status and return to each other what they have received. If the restitution is not able to be made in kind, it is to be made in cash.

23 Enterprise Law 2020, arts 167.2 and 167.4.

24 Protecting Minority Investors – Good Practice (May 2019) World Bank <subnational.doing business.org/en/data/exploretopics/protecting-minority-investors/good-practices#facilitating>.

shareholder who has sufficient power to control the board of directors.[25] To preserve their positions and other interests, directors may act in a way that is substantially to execute the wishes of such a majority shareholder.[26]

Under the Vietnamese law, a board of directors is the fundamental management authority of a joint stock company.[27] It is empowered to make decisions and take action on the company's behalf (except for extraordinary matters that must be referred to a general meeting of shareholders).[28] Major shareholders usually have the right to nominate candidates for appointment as directors of the board,[29] and in some cases, even control the board.[30] Furthermore, the board automatically and legally has the power to decide on the appointment or employment of the CEO.[31] The ability of major shareholders to control both the board and the CEO may induce a high risk of conflicts of interest between major shareholders and minority shareholders.[32] For such reasons, the law permits shareholder(s) holding at least 1% of the charter capital (issued shares) to file a lawsuit for indemnification or compensation, whether on their own behalf or the company's behalf, when a board director or the CEO commits a wrong.[33] That is similar to the concept of "derivative suits" that has been long adopted in common law jurisdictions. Proceedings costs in the case where the lawsuit

25 La Porta et al "Investor Protection and Corporate Governance", above n 10, at 15.

26 Controller Confusion: Realigning Controlling Stockholders and Controlled Board (March 2020) Harvard Law Review <https://harvardlawreview.org/>.

27 Enterprise Law 2020, arts 153.1.

28 Above n 27.

29 According to the Enterprise Law 2020, art 115.5, shareholder(s) holding at least 10% of ordinary shares (or a smaller shareholding percentage as provided by the company charter) have the statutory right to nominate candidates to the board of directors and the inspection committee. The appointment of such people as a director of the board or a member of the inspection committee is to be decided by the general meeting of shareholders under the Enterprise Law 2020, art 138.2.

30 The Vietnamese Enterprise Law does not cover the concept of 'shadow directors'. Thus, a person (such as a shareholder) may not be held liable solely for the reason that he or she has somehow exerted control over a company while holding no formal position in that company.

31 Enterprise Law 2020, art 162.

32 Farman Ullah Khan, Vanina Adoriana Trifan, Mioara Florina Pantea, Junrui Zhang and Muhammad Nouman "Internal Governance and Corporate Social Responsibility: Evidence from Chinese Companies" (2022) 14(4) Sustainability 2261 at 6 and 15.

33 Wrongdoing suable under art 166 of Law on Enterprise 2020 includes (i) violations of fiduciary duties as company managers as prescribed in art 164 of Law on Enterprise 2020, (ii) failure to implement properly and promptly their assigned duties, (iii) abuse their positions or use company's information, trade secrets and other properties for their own interest, and (iv) other violations as provided by law or in the company's charter.

is filed on behalf of the company will be recorded as the company's expense, unless the filing of lawsuit fails.

However, in practice, lawsuits remain a major challenge, especially for individuals or small enterprises that may not have good access to resources and funding to follow lengthy and complicated litigation proceedings. While contingency fee arrangements are allowable in Vietnam,[34] there is no rule or common practice on circumstances where an attorney will collect a reasonable fee based on the fund the attorney may recover for their clients. Therefore, how to pay an attorney's fee essentially depends on the negotiation with the attorney and it is likely that clients have to pay a level of attorney's fee at certain points during the litigation proceedings. Also, there is a lack of empirical evidence on how significant an attorney's role is in the pursuit of a lawsuit against directors in Vietnam.

Unlike in common law jurisdictions, a shareholder who files a lawsuit not on their own behalf but on behalf of the company (ie derivative suits) is a relatively new concept in Vietnam and is largely untested. The longstanding practice in Vietnamese litigation proceedings is that an individual or an organisation, whether directly or indirectly via their authorised representative, initiates lawsuits to request the protection of their own interests and benefits.[35] Other than the aforementioned skeleton provision under the enterprise law, neither the enterprise law nor the civil proceeding law provides further guidance on derivative suits. Noticeably, while shareholder(s) holding at least 1% of the charter capital are entitled to derivative suits under the enterprise law, the civil proceeding law has not clearly acknowledged this right; therefore, courts may not be familiar with the handling of these suits. Accordingly, plaintiffs are (i) persons who initiate lawsuits on the basis that their own lawful rights and benefits have been infringed, or (ii) other agencies and organisations who initiate lawsuits to protect public or State interests that fall under their management authority.[36] The law continues to elaborate on category (ii) but

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34 According to the Attorney Law (Vietnam) 2006, art 54, while attorney's fees in criminal cases are subject to a statutory cap, attorney's fees applicable to non-criminal cases can be freely determined based on agreement between the attorney and client in accordance with any of the following methods:

> Hourly fee;
> Full package fee;
> Pro rata fee based on the value of the case or the contract; or
> Retainer fee.

35 Pham Van Loi "Derivative Suits in Vietnam: From Theory to Practice" (10 March 2022) Vietnam Lawyer Journal <lsvn.vn>. Accordingly, derivative suits are understood to have been adopted for the first time in Vietnam in 2010, not under the then-effective Enterprise Law 2004 but under its guiding regulation, ie Decree 102/2010/ND-CP.

36 Civil Proceedings Code 2015 (Vietnam), art 68.2.

fails to include shareholders who bring lawsuits on behalf of the company under the enterprise law as a legitimate plaintiff for civil proceedings' purpose.[37] This raises the important question about the legality of shareholders bringing derivative suits. Even if the case is accepted by the courts de facto, their position, rights and obligations remain controversial throughout the entire proceedings.

Further, as the law is silent on the circumstances where shareholders may or must file direct suits or derivative suits, there are other critical issues. Most importantly, the company is not legally guaranteed the right to review and approve a derivative suit in advance, especially when the company's and the shareholders' stances on the alleged violation and implication of the lawsuit are contradictory. Even if the general meeting of shareholders of the company has legitimate reasons for believing that the lawsuit is not beneficial for the company, there is no legal basis to withhold or suspend the filing. In other words, the Vietnamese law has not been designed to detect and deter "strike suits"[38] where shareholders may bring frivolous suits without merits just to pursue their own agenda.

The opposite side of the coin is that courts accept a derivative suit by shareholders only if it is duly authorised by the company.[39]Authorisation granted by a company means it must be approved and signed by its legal representative, which in many cases means the chairman of the board and the CEO who could themselves be defendants in the lawsuits. This requirement for authorisation to be given by the defendants could render derivative suits by shareholders impossible.

C Minority Shareholders' Access to Corporate Documents

As highlighted by the World Bank, minority shareholders will be protected efficiently if they have access to sufficient corporate information to safeguard themselves against top level abuse of power and to actively engage in the decision-making process.[40] Access to information is fundamental for

37 Civil Proceedings Code 2015, art 187.

38 "Extortionate Corporate Litigation: The Strike Suit Strike Suit" (1934) 34(7) Columbia Law Review 1308 at 1308. Strike suit means "an action brought by a security holder, not in good faith, but, through the exploitation of its nuisance value, to force the payment of a sum disproportionate to the normal value of his interest as the price of discontinuance".

39 Resolution 04/2017/NQ-HĐTP of the Judges' Committee under the Supreme Court dated 5 May 2017, art 2 and Official Letter No. 212/TANDTC-PC of the Supreme Court dated 13 September 2019. This requirement essentially means the filing dossier of the lawsuit must be signed by the legal representative of the company and affixed with the company stamp. The Enterprise Law does not expressly require the general meeting of shareholders or the board of directors to ratify such action.

40 Above n 17.

shareholders to protect their legitimate rights and interests and to proceed with filing lawsuits when necessary.[41] Guaranteeing access to corporate information for minority shareholders is evidence of corporate transparency on shareholding structure, compensation and financial health. Empirical research also points out that companies which comply with requirements on disclosure duties will acquire a higher stock valuation than those that fail to do so.[42] This is especially crucial for an emerging stock market like Vietnam where there is a rapidly increasing number of individual investors, a majority of whom may be easily swayed and manipulated by a small number of interested persons.

Among the various criteria of the minority shareholder protection mechanism, Vietnam has the best performance in terms of disclosure, which was scored 7 out of 10.[43] This is attributable to previous regulatory reform resulting in an existing framework that imposes extensive disclosure duties on companies and their key stockholders. It is proven to be fair and in line with the worldwide trend in terms of minority shareholder protection, so that they can proactively monitor the company's key policies to make informed decisions and to pursue their legitimate interests.

On the shareholders' side, they are guaranteed the right to increased access to key corporate documents. Previously, shareholder(s) needed to hold 10 per cent of the total number of ordinary shares in at least consecutive six months to attain the statutory right to examine and receive copies of the board's meeting minutes and resolutions, biannual and annual financial statements, and reports of the inspection committee.[44] Now, the statutory shareholding level is 5 per cent without a requirement for a minimum holding period, and accessible documents additionally include documents on transactions and contracts to be approved by the board and other corporate documents (excluding trade secrets of the company).[45] Also, shareholders who are filing a lawsuit against a board director or the CEO are entitled to access and extract necessary information by order of the court or arbitral tribunal before and during the proceedings.[46]

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41 La Porta et al "Investor Protection and Corporate Governance", above n 10, at 6.

42 La Porta et al "Investor Protection and Corporate Governance", above n 10, at 15.

43 Above n 1.

44 Law on Enterprise 2014 (Vietnam), art 114.2.

45 Law on Enterprise 2020, art 115.2.

46 Law on Enterprise 2020, art 166.

On the companies' side, all are bound to disclose related persons and related interests to prevent potential conflicts of interest.[47] Particularly, public companies are subject to stronger and more comprehensive requirements for public disclosure. The principle is that public companies must make disclosure of regulated information in a complete, accurate and prompt manner.[48] Such disclosure is to be made either on a regular or a non-regular basis. Regular disclosure is applicable to fundamental information reflecting the status of public companies as an ongoing business, such as audited annual financial statements, annual reports on operation and governance, and materials in respect of the annual general meeting of shareholders.[49] The extraordinary disclosure duty arises upon the occurrence of events that may affect the stock price or significantly affect the company's operation or governance and eventually impact on decisions of shareholders and prospective investors.[50] Besides the disclosure duty of public companies, there are further disclosure duties imposed on their major shareholders, founding shareholders and insiders relating to changes in their status or upcoming share transfers, as the case may be.[51] Such disclosure duties on shareholders requests a shift away from the conventional shareholder's rational apathy, but appears to be in line with the modern corporate norm.[52] More shareholder activism is believed to be beneficial for the companies as a whole.[53]

Notwithstanding the extensive law on disclosure duties, the actual effect seems questionable due to weak enforcement and lenient sanctions. There is a recent infamous case where the board chairman who is also the largest shareholder holding 30.34 per cent stakes in FLC Group Joint Stock Company (listed on the Ho Chi Minh City Stock Exchange) transferred 74.8 million stock, worth at least VND 1.5 trillion after failing to comply with the applicable disclosure duties. As a result, he was fined VND 1.5 billion (which is the maximum rate to be applied on an individual violator) and barred from stock trading for five months in accordance with administrative proceedings.[54] The transfers of 74.8 million stock between him and other investors

47 Law on Enterprise 2020, art 164 and Decree 155/2021/ND-CP, art 291.

48 Decree 155/2021/ND-CP, art 295.

49 Circular 96/2020/TT-BTC, art 10.

50 Circular 96/2020/TT-BTC, arts 11 and 12.

51 Circular 96/2020/TT-BTC, arts 31-33.

52 Fairfax Lisa M "From Apathy to Activism: The Emergence, Impact, and Future of Shareholder Activism as the New Corporate Governance Norm" (2019) 99 Boston U L Rev 1301, at 1307 and 1314.

53 Above n 52, at 1329.

54 Decision 34/QD-XPHC of the State Securities Commission dated 18 January 2022.

on the stock exchange were cancelled, which protected the investors who directly entered into the transfers with him.[55] However, it failed to protect other investors who were adversely affected by his non-compliance, as FLC's stock price has plummeted since then. It is noteworthy that in 2017, he also traded 57 million of FLC stock without making prior disclosure. While the transaction reportedly earned him at least VND 400 billion, he was subject to an administrative fine of VND 65 million only.[56] Thus, there have been increasing calls for lawmakers to promulgate more severe sanctions on non-compliance with disclosure duties.[57] It seems that the government has finally taken a tougher stance on the enforcement policy. At the beginning of April 2022, the January 2022 administrative sanction was revoked by the State Securities Commission because the violator has been arrested and is being prosecuted under the criminal proceedings for offences of concealment of information on stock activities and market manipulation.[58]

III CONCLUSION

As a principle of law, shareholders should be entitled to fair rights and treatment corresponding to their level of shareholding in a company. On that basis, controlling and major shareholders undoubtedly have the legitimate initiative and power to manage and make decisions on the company. The regulatory framework on protection of minority shareholders is arranged to ensure that minority shareholders' voices must be listened to and taken into consideration promptly and appropriately. When that is violated, there should be viable channels for minority shareholders to take legal action and to retain their legitimate rights and interests through the maintenance of the sound governance and operation of the company. Yet, protection of minority shareholders carries a more substantial meaning to maintain the health of the overall economy.[59] Research shows that when the market is distressed, majority shareholders may try to expropriate the company and minority shareholders may not be able to prevent that.[60] That is why the level of investor protection, among

55 State Securities Commission "Notification of Cancellation of FLC Stock Transactions by Trinh Van Quyet" (press release, 12 January 2022).

56 Decision 1039/QD-XPVPHC of the State Securities Commission dated 10 November 2017.

57 Bong Mai "From Trinh Van Quyet Case, Preventing Undisclosed Stock Trading from Causing Market Disruption" (12 January 2022) Tuoi Tre Newspaper <tuoitre.vn/tu-vu-trinh-van-quyet-phai-ngan-ban-chui-co-phieu-pha-thi-truong-20220112005608436.htm>.

58 Decision 188/QD-HB of the State Securities Commission dated 5 April 2022; State Securities Commission "Prosecution of Criminal Case and Arrest of Mr. Trinh Van Quyet – Board Chairman of FLC Group" (press release, 29 March 2022).

59 La Porta et al "Investor Protection and Corporate Governance", above n 10, at 16.

60 La Porta et al "Investor Protection and Corporate Governance", above n 10, at 16.

others, can be relied on as a strong indicator of how severe the market crisis could be.[61]

The existing mechanism on related party transactions, ability to sue directors and disclosure duties has failed to meet that expectation. One mechanism however may be more flawed than others. In particular, a great deal of improvement is needed for derivative suits, while the mechanisms on related party transactions and disclosure duties are relatively thorough. In the latter case, moderate adjustments are recommended to achieve a more coherent and efficient framework, and tightening enforcement is necessary to ensure that that the frameworks are complied with.

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61 La Porta et al "Investor Protection and Corporate Governance", above n 10, at 16.