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PROTECTION OF MINORITY SHAREHOLDERS AGAINST SELF-DEALING BY CONTROLLING SHAREHOLDERS IN JOINT-STOCK COMPANIES UNDER VIETNAMESE LAW

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ABSTRACT

This article analyzes the mechanisms for protecting minority shareholders against self-dealing by controlling shareholders in joint-stock companies under Vietnamese law. Drawing on the principal–principal conflict theory and studies on tunneling, propping, and private benefits of control, the paper argues that in economies with concentrated ownership, the risk of expropriation arises not only from managers but also from dominant shareholders. Vietnamese law has established several important instruments, including the right of shareholder groups holding at least 5% to access information, the right to request the convening of general meetings, the right of shareholder groups holding at least 1% to initiate derivative lawsuits, disclosure obligations regarding related interests, approval mechanisms for related-party transactions, and enhanced protections for public companies through independent directors, audit committees, and disclosure requirements. However, the effectiveness of minority shareholder protection remains limited due to information asymmetry, difficulties in identifying ultimate beneficial owners, the relatively low quality of independent oversight, challenges in enforcing litigation mechanisms, and regulatory gaps between public and non-public joint-stock companies. Accordingly, the article proposes legal reforms aimed at enhancing transparency of beneficial ownership, expanding access to evidence, strengthening the effectiveness of independent oversight institutions, and applying majority-of-the-minority voting mechanisms for certain conflict-of-interest transactions.

Keyword: minority shareholders; controlling shareholders; self-dealing; related-party transactions; joint-stock companies; Law on Enterprises.

1. INTRODUCTION

In joint-stock companies, conflicts of interest are often first understood as conflicts between shareholders and managers. However, in emerging economies where ownership structures are highly concentrated and controlling shareholder groups play a dominant role, the more practically significant conflict is that between controlling shareholders and minority shareholders. Young, Peng, Ahlstrom, Bruton, and Jiang (2008) argue that in such contexts, principal–principal conflicts may be more prominent than principal–agent conflicts. Controlling shareholders do not necessarily expropriate company assets in a direct or crude manner; instead, they may use voting rights, appointment powers, and informal influence to steer transactions, allocate business opportunities, or restructure the firm in ways that benefit themselves.

Johnson, La Porta, Lopez-de-Silanes, and Shleifer (2000) refer to the extraction of assets or profits from a company for the benefit of controlling shareholders as "tunneling." Friedman, Johnson, and Mitton (2003), on the other hand, highlight the phenomenon of "propping," whereby controlling shareholders inject resources into a firm to maintain control when necessary. These phenomena demonstrate that control rights can generate private benefits that are not proportionately shared with minority shareholders. In Vietnam, this risk is particularly noteworthy, as many joint-stock companies operate within family ownership structures, cross-ownership arrangements, or networks of affiliated legal entities, where the boundaries between corporate interests and those of the controlling group can easily become blurred.

Therefore, protecting minority shareholders is not only a matter of internal corporate fairness but

also a prerequisite for reducing the cost of capital, strengthening investor confidence, and improving the quality of capital markets. The G20/OECD Principles of Corporate Governance (2023) also emphasize that the abuse of related-party transactions is a particularly serious policy issue in markets characterized by concentrated ownership and corporate group structures; accordingly, legal systems must establish appropriate mechanisms for identifying, approving, and disclosing such transactions (OECD, 2023). From this perspective, the article focuses on clarifying the theoretical foundations, the current legal framework, and potential directions for improving Vietnamese law to better protect minority shareholders against self-dealing by controlling shareholders.

2. THEORETICAL FOUNDATIONS FOR THE PROTECTION OF MINORITY SHAREHOLDERS

The protection of minority shareholders is a core element of corporate governance, as outside investors are only willing to provide capital when they believe their interests will not be expropriated by controlling groups. Michael C. Jensen and William H. Meckling (1976) point out that agency costs arise when decision-makers do not fully bear the economic consequences of their decisions. In concentrated ownership structures, agency costs extend beyond the relationship between shareholders and managers and shift significantly toward the relationship between controlling shareholders and minority shareholders. Michael N. Young et al. (2008) explain that family ownership, business groups, underdeveloped capital markets, and weak legal protection are factors that make principal–principal conflicts typical in emerging economies.

Self-dealing by controlling shareholders generally manifests in three main forms. First, related-party transactions that are not conducted at arm's length, such as selling assets at undervalued prices, purchasing services at inflated prices, providing preferential loans, or offering intra-group guarantees. Organisation for Economic Co-operation and Development (2012) identifies this as the highest-risk area for minority shareholders and recommends comprehensive control mechanisms covering identification, approval, disclosure, and enforcement. Second, the appropriation of business opportunities or the use of company assets and information for the benefit of affiliated entities. Third, the use of voting power to pass decisions that dilute the interests of minority shareholders, such as non-transparent private placements, unfavorable restructurings, or biased profit distributions.

Therefore, an effective protection framework must combine ex ante preventive mechanisms with ex post remedial mechanisms. At the first level, the law should ensure transparency, exclude conflicted shareholders from voting, and strengthen the role of independent directors and audit committees. At the second level, the law must grant minority shareholders the right to access documents, request explanations, and initiate legal action. Based on data from listed companies in Vietnam, Pham and Nguyen (2022) find that mechanisms such as approval of related-party transactions, minority shareholder litigation rights, access to internal documents, and approval rights over major investment or asset sale transactions help reduce firm-level agency costs.

3. MECHANISMS FOR THE PROTECTION OF MINORITY SHAREHOLDERS UNDER VIETNAMESE LAW

Vietnamese law currently protects minority shareholders through multiple layers of instruments, including shareholder rights under the 2020 Law on Enterprises; obligations of managers and mechanisms for approving conflict-of-interest transactions; as well as enhanced protections for public companies under the 2019 Law on Securities, Law No. 56/2024/QH15, Decree No. 155/2020/ND-CP, Decree No. 245/2025/ND-CP, and Circular No. 116/2020/TT-BTC (Ministry of Finance, 2020; Government, 2020, 2025; National Assembly, 2019, 2020, 2024).

First, Article 115 of the 2020 Law on Enterprises grants shareholders or groups of shareholders holding at least 5% of total ordinary shares, or a lower threshold as stipulated in the company charter, the right to examine, access, and extract minutes, resolutions, and decisions of the Board of Directors, financial statements, reports of the Supervisory Board, contracts and transactions subject to Board approval, and other documents, except for those classified as trade secrets or business secrets (National Assembly, 2020). This group of shareholders also has the right to request the convening of the General Meeting of Shareholders in legally prescribed cases and to propose additional agenda items. The reduction of

ownership thresholds and the removal of continuous holding requirements have significantly facilitated minority shareholders in internal monitoring.

Next, Article 164 of the 2020 Law on Enterprises requires members of the Board of Directors, controllers, the Director or General Director, and other managers to disclose related interests. Lists of related persons and associated interests must be maintained, disclosed, and made available for review, extraction, and copying by authorized parties (National Assembly, 2020). Article 165 establishes duties of honesty, prudence, and loyalty to the company's interests, and prohibits the abuse of position, authority, information, business opportunities, or company assets for personal gain. This serves as a legal foundation for identifying violations when controlling shareholders use managers as instruments to pursue private benefits.

Notably, Article 166 grants shareholders or groups of shareholders holding at least 1% of total ordinary shares the right to initiate lawsuits, either in their own name or on behalf of the company, against members of the Board of Directors, the Director, or the General Director for breaches of managerial duties. This mechanism provides an internal enforcement tool and aligns with recommendations of the Organisation for Economic Co-operation and Development (2023) on the use of derivative litigation as a complementary mechanism for enforcing fiduciary duties. In addition, Article 167 requires approval by the General Meeting of Shareholders or the Board of Directors for transactions between the company and shareholders holding more than 10% of ordinary shares, managers and their related persons, or enterprises in which such persons have declared interests (National Assembly, 2020).

For public companies, minority shareholder protection is further strengthened. Circular No. 116/2020/TT-BTC requires that members of the Board of Directors must not vote on transactions that benefit themselves or their related persons; the audit committee must review related-party transactions within the approval authority of the Board or the General Meeting of Shareholders and provide recommendations; and the chair of the audit committee must be an independent director (Ministry of Finance, 2020). Disclosure obligations under securities law also enhance the ability of minority shareholders and the market to monitor corporate activities.

4. LIMITATIONS OF THE CURRENT LEGAL FRAMEWORK

Despite notable progress in the legal framework, the effectiveness of minority shareholder protection in Vietnam remains limited. The first bottleneck is information asymmetry. The right to access documents under Article 115 is significant, but in practice its enforcement largely depends on the willingness of the management apparatus to cooperate and on how "trade secrets" and "business secrets" are interpreted. When key documents are delayed or denied, minority shareholders face substantial difficulties in gathering evidence to challenge transactions or prepare for litigation.

The second bottleneck lies in the difficulty of identifying ultimate beneficiaries within complex ownership structures, including cross-ownership, subsidiaries, affiliates, and networks of related legal entities. The Organisation for Economic Co-operation and Development (2023) notes that such complex group structures increase the inherent opacity of related-party transactions and create opportunities to circumvent disclosure requirements. In the Vietnamese context, although the concept of "related persons" is relatively broad, it does not always suffice to fully uncover indirect control chains and ultimate beneficial owners.

The third bottleneck concerns the limited effectiveness of independent oversight and the practical challenges in exercising minority shareholder litigation rights. Bui (2025) finds that the Vietnamese business community still harbors skepticism regarding the effectiveness of independent directors. This skepticism is understandable, as nomination sources, remuneration, and information flows are still significantly influenced by controlling groups. Meanwhile, although Article 166 represents a progressive step, litigation remains hindered by major obstacles related to evidence, costs, and time, as procedural law has not yet fully developed mechanisms for pre-trial discovery. As a result, many minority shareholder rights risk remaining largely formalistic.

The fourth bottleneck is the considerable gap in protection levels between public companies and non-public joint-stock companies. For public

companies, securities laws and corporate governance guidelines impose additional layers of transparency, oversight, and disclosure. In contrast, many non-public joint-stock companies, where conflicts between controlling groups and minority shareholders can be particularly intense, primarily operate under the minimum standards of the Law on Enterprises. This leads to a situation where the level of protection depends more on the form of capital mobilization than on the actual intensity of conflict-of-interest risks.

5. RECOMMENDATIONS FOR LEGAL REFORM

First, the mechanism for identifying related persons should be improved by placing greater emphasis on ultimate beneficial ownership and substantive control. The law should require more detailed disclosure of indirect control chains, individuals capable of influencing corporate decisions, and ultimate economic beneficiaries. For enterprises with complex group structures, obligations to explain intra-group transactions should be tightened to reduce opacity surrounding related interests.

Second, a majority-of-the-minority voting mechanism should be introduced for certain sensitive transactions, particularly those between the company and controlling shareholders or entities under their control. When such transactions can only be approved with the consent of a majority of disinterested shareholders, the ability of controlling groups to impose their will would be significantly reduced. This approach is also considered effective by the Organisation for Economic Co-operation and Development (2012) in markets characterized by concentrated ownership.

Third, it is necessary to strengthen minority shareholders' access to information and evidence. The law should more clearly define obligations to provide documents within specified time limits, limit the abuse of "business secrecy" as a ground for refusing legitimate requests, and allow courts to order the disclosure of documents or temporarily suspend transactions where there is prima facie evidence of asset dissipation risks. Without addressing evidentiary barriers, the litigation mechanism under Article 166 is unlikely to achieve real deterrent effect.

Fourth, the substantive role of independent directors and audit committees should be reinforced. Beyond formal requirements, the law should strengthen independence from major shareholders, ensure transparency in nomination and remuneration mechanisms, expand the right to use independent advisors, and require clear disclosure of audit committee opinions on related-party transactions. For material transactions, fairness assessments and clear explanations of the transaction's benefits to the company should be mandatory.

Fifth, minimum protection standards should be harmonized between public and non-public joint-stock companies. While it may not be necessary to apply all standards designed for listed companies to every enterprise, core mechanisms such as disclosure of related interests, exclusion of conflicted voting, record-keeping of related-party transactions, and minority shareholders' access to documents should be elevated to common standards applicable to all joint-stock companies. At the same time, implementation guidance should be strengthened through case law, consistent judicial interpretation, and corporate governance recommendations.

6. CONCLUSION

Protecting minority shareholders against self-dealing by controlling shareholders is a fundamental pillar of modern corporate law. In the case of Vietnam, the significance of this issue goes beyond internal corporate disputes; it is closely linked to capital mobilization capacity, investor confidence, and the quality of capital market development. The 2020 Law on Enterprises has introduced notable improvements by expanding the rights of minority shareholder groups, enhancing transparency regarding related interests, and granting the right to initiate derivative lawsuits, while securities and corporate governance regulations continue to add additional layers of control for public companies. However, in an environment characterized by concentrated ownership and complex corporate group structures, the risk of self-dealing by controlling shareholders remains present and may become more sophisticated than existing control mechanisms can effectively address. Therefore, future legal reforms should focus on ensuring that existing rights are effectively enforceable in practice by enhancing transparency of beneficial ownership, expanding access to evidence, strengthening the independence of internal oversight mechanisms, and designing voting mechanisms that genuinely exclude conflicted

parties from decision-making. Only then can the law effectively protect minority shareholders and contribute to building a sound and sustainable corporate governance environment.

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