

DEVELOPMENTS IN CORPORATE GOVERNANCE: THE CASE OF VIETNAM

*Tran Thi Hong Lien**, *David A. Holloway***

Abstract

Corporate governance practices have changed significantly across the world in the past three decades. Spectacular corporate failures during this period have acted as a catalyst for the development of codes and guidelines that have resulted in the global acceptance of a 'best practice' model. This study assesses the relevance of such a 'one size fits all model' for the developing nation state of Vietnam. The findings of this analytical paper is that there are three key elements (government, international institutions and the nature of business) that are pertinent and central to corporate governance developments in the country. We also find that the quality of corporate governance in Vietnam is at a medium level when compared to international practices. Vietnam still has a long way to go to construct and embed effective corporate governance policies and practices and promote ethical business behaviours and sound decision making at board level.

Keywords: Corporate Governance, Public Companies, Government, International Institutions, Vietnam

* *School of Management and Governance, Murdoch University, 90 South Street, Murdoch WA 6150, Western Australia*
Email: L.Tran@murdoch.edu.au

** *School of Management and Governance, Murdoch University, 90 South Street, Murdoch WA 6150, Western Australia*
Email: D.Holloway@murdoch.edu.au

1. Introduction

Corporate governance has come a long way in both developed and developing nations in the past three decades (Solomon, 2007; Tricker, 2012). A series of spectacular corporate failures across the globe in that period of time has acted as a catalyst for the establishment of a range of enquiries across different nations that have crafted recommendations to develop sets of principles, guidelines and codes to help construct a 'best practice model' of corporate governance (Clarke, 2007; Dallas, 2004a; Hamilton & Micklethwait, 2006; OECD, 2004; Psaros, 2009; Solomon, 2007; Tricker, 2012). The major part of this work on a best practice model has occurred in the Western developed nations. The question that remains unanswered is whether such a model is capable of being imported without major change into other regions of the world and used by developing nations in their own evolving corporate governance frameworks.

This paper investigates the situation in Vietnam and argues that a 'one size fits all' model is not necessarily the best approach for this developing nation. We argue that there are key features and cultural contexts in the country that need to be taken into account when promoting appropriate corporate governance policies and practices in the corporate sector. In the end, we also acknowledge that

performance and behaviour in the corporate governance field cannot be legislated for and needs to be nurtured and encouraged across the country. Vietnam provides effective case studies to assess to what extent Western developed corporate governance codes and practices are relevant to this vibrant, regional nation state.

This paper consists of several parts. The first, deals with the background literature of corporate governance internationally and then corporate governance developments in Vietnam. The next section highlights and analyses the history of corporate governance and the emergence of joint stock companies in the country. The following part focuses on three key elements (government, international institutions and the nature of business) that have emerged as central to the Vietnamese corporate governance context. Then a discussion section deepens the analysis and features a case of serious fraud that raises serious questions about the embedding of effective and ethical behaviours in the corporate governance arena. The final part concludes that Vietnam still has a longer journey to undertake effective corporate governance reform and to embed acceptable ethical behaviours in public companies.

2. Literature Review

2.1 Corporate Governance

Corporate governance literature has identified a range of different issues and perspectives. There are several theories about the corporate governance phenomenon including agency, transaction costs economics, stewardship, resource dependency, stakeholder, managerial hegemony and class hegemony. They encompass different dimensions such as the role of corporate governance in organisations and the role and purpose of boards, theoretical origin, unit of analysis, focal dimension, details about board activity, level of empirical support and they also identify a range of limitations about the appropriate application of theory (Clarke, 2007).

There is an acceptance that agency theory is the most prevalent theoretical lens used in corporate governance research (Bebchuk, Cohen, & Ferrell, 2009; Claessens & Fan, 2003; Clarke, 2007; Mallin, 2013; Monks & Minow, 2004; Psaros, 2009; Solomon, 2007; Tricker, 2012). Utilising this theoretical insight, corporate governance issues and concerns emerge because of the inappropriate relationship that exists between the principal and the agent. The principals are considered to be the shareholders (owners) and board of directors; whilst the agents are members of senior management. The theory argues that the agents have their own personal goals that are not the same as, or aligned with, those of the principals, so they do not always act to advance the interests of the principals. In other words, the agents act primarily to advance their own self-interests.

When this relationship imbalance occurs, shareholders, corporation and economies can suffer financially from illegal and/or unethical events such as fraudulent accounting, insider trading, unauthorized transactions and ultimately corporate failures, as demonstrated by the Barings and Enron scandals (Gourevitch & Shinn, 2005; Hogan, 1997; Tricker, 2012). Avoidance of these negative consequences requires that the principals/shareholders need to exercise control over senior management through a range of mechanisms; one of which is effective corporate governance.

Corporate governance issues emerge because of the separation between ownership and management (Gourevitch & Shinn, 2005; Solomon, 2007; Swan, 2000; Tricker, 2012). This separation can be traced back to the formation of joint stock companies in the 17th century. Increasing concentration of economic power into ever larger corporations was accompanied by a dispersion of ownership; individual shareholders gave the power to blockholders and senior managers who took daily charge of corporate operations (Berle & Means, 1933). Berle and Means (1933) also predicted that corporations would become dominant institutions like nation states and religions.

Controllers (managers) of corporations must balance the interests of the community, not just those of the owners or the controllers. In other words, corporations need to take into account owners, management, employees and a range of other stakeholder groups.

This concept and argument led to the emergence of the “Multi-stakeholders” theory of corporate governance. “Corporate governance is defined as the system of checks and balances, both internal and external to companies, which ensures that companies discharge their accountability to all their stakeholders and act in a socially responsible way in all areas of their business activities” (Solomon, 2007, p. 14). The Organization for Economic Co-operation and Development (OECD) and the World Bank, two active promoters of good corporate governance practices on a global scale, have identified a list of these stakeholder groups that include management, the board of directors, controlling shareholders, minority shareholders and other stakeholders such as creditors, financial institutions, employees, trade unions, public interest groups and general society. Corporate governance processes and activities need to take into account the relationships between these diverse parties as they are affected by the very same structures and processes that impact the direction and control of companies (The World Bank, 2006). Whilst agency theory has equivocal empirical evidence and has been heavily critiqued, multi-stakeholder theory has received solid support in the literature (Zahra & Pearce quoted by Clark, 2007, p. 28).

Taking a further step, some researchers advocate using a mix of theories for empirical investigation. “A multi-theoric approach to corporate governance is essential for recognising the many mechanisms and structures that might reasonably enhance organizational functioning” (Daily, Dalton & Cannella quoted by Clark, 2007, p. 26).

Serious corporate governance concerns and scandals have emerged during the past three decades. Corporate governance issues came to the fore after a series of spectacular corporate failures and scandals in leading corporations such as Barings (UK), Allied Irish Bank (Ireland), Enron (US), WorldCom (US), Tyco (US), Marconi (UK), Swissair (Switzerland), Royal Ahold (Netherlands), and Parmalat (Italy). Several elements had been attributed as the root causes for the scandals such as corporate overexpansion; over dominant CEOs; greed, hubris and desire for power; failure of internal controls, and ineffective boards (Hamilton & Micklethwait, 2006). Fraudulent accounting techniques were often used to conceal serious financial and governance problems. Poor external auditing practices also allowed problems to remain hidden and prominent rating agencies also failed to provide early warning of troubles ahead (Hamilton & Micklethwait, 2006). As a result there emerged a demand for serious reform of corporate governance principles and practices. A

series of enquiries and government initiatives identified that the solution should be at the macro level by constructing best practice codes of corporate governance.

In as much as companies are “social institutions”, their impacts on societies and economies are so significant that corporate governance problems attract the attention and intervention of governments in resolving these concerns. There has been a proliferation of corporate governance codes and policy documents, voluntary or mandatory, both at the national and supra-national levels (Solomon, 2007). At least 96 nations have developed what they deemed to be appropriate corporate governance codes (ecgi, 2013).

The United Kingdom is generally acknowledged as a world leader in corporate governance reform, as a result of a growing stakeholder interest in corporate governance issues within the boardroom, the institutional investment community and the Government (Solomon, 2007, p. 49). The most prominent countries in the reform movement, besides the United Kingdom, are the United States, Japan, Switzerland, South Africa and Korea, and most of the extant literature has focused on these developments. However, other countries such as Russia, China, India and Brazil have also emerged as new locations for corporate governance research and reform (Claessens & Fan, 2003; Monks & Minow, 2004; OECD, 2001, 2011; Shleifer & Vishny, 1997; Solomon, 2007; Tricker, 2012)

Different reform approaches emphasize different aspects of corporate governance codes and practices. The focus is on ensuring a sound basis for an effective corporate governance framework, enhancing the rights of shareholders and key ownership functions, the equitable treatment of shareholders, the role of stakeholders, disclosure and transparency, as well as the responsibilities of the board (OECD, 2004). Tricker (2012) identified six areas for improvement, including clarification of the board role, the board’s access to information and understanding of the organisation, enhancing good relations between boards and management, effective board oversight of company strategy, appropriate management development, and succession and risk management. A narrower focus considers only shareholders and ownership, directors and monitoring, management and performance (Monks & Minow, 2004). Padgett (2012), however, argues that corporate governance reform should focus on issues to do with ownership, the board of directors, stakeholders, remuneration, the market for corporate control, regulation, and communication and disclosure. Mallin (2013) also includes institutional investors in shareholder and stakeholder perspectives.

Corporate governance does matter and there is no “one size fits all” concept. A holistic approach that incorporates multiple explanatory factors and stakeholder groups would be a reform process that

can deliver an effective solution in the longer term (Dallas & Patel, 2004), p. 13).

2.2 Corporate governance – Country Assessment

Corporate governance alternative systems are classified as Anglo-Saxon, Germanic, Latin and Japanese with acknowledged differences in their orientation, representative countries, prevailing concept of the firm, the board system, main stakeholders that exert influence on managerial decision-making, importance of stock and bond markets, market for corporate control, ownership concentration, compensation based on performance and the time horizon of economic relationships (Clarke, 2007). Researchers generally agree that the main categories of corporate governance in the world consist of models from the Anglo-America, Continental Europe, Asia Pacific, emerging markets and transition economies (Clarke, 2007; Dallas, 2004a; Lou, 2007; Psaros, 2009; Solomon, 2007; Tricker, 2012).

Different countries start their corporate governance reforms in different ways. Many governance reformers have cited the Cadbury Report 1992 in the United Kingdom as a key development in the modern literature on corporate governance. This code, and the development of the U.K. Combined Code which was to follow, was formulated as a response to several visible U.K. corporate failures of the late 1980s and early 1990s (Dallas & Patel, 2004). Similarly, regulatory reforms in the United States following the corporate failures in that country were an effort to stabilise the financial markets.

In Europe, several countries’ corporate governance codes and other efforts were inspired by the code in the UK and US (Clarke, 2007). “At the beginning probably there was a sense of simply matching the regulation of close economic neighbours by developing similar codes, however over time it is likely that the engagement in the codes became more real” (Clarke, 2007, p. 175-176).

In Asian countries:

“a range of external agencies have an interest in sustaining the reform process including the IMF, World Bank, and Asian Development Bank, and they have all engaged in major initiatives to facilitate and support the reform process. Moreover, international investors will not be sympathetic to economies that are not consistently raising their standards of corporate governance” (Clarke, 2007, p. 207-208).

In addition as Dallas argued:

“Country factors can play important, even determining, roles in setting the environment for corporate governance practice at the individual company level. Attitudes toward corporate governance can vary from country to country. Diverse country forces – legal, political, historical, cultural – come together to shape ownership structures,

stakeholder priorities, and fundamental attitudes toward the role of the firm in the economy” (2004a, p. 138).

Currently there are two major frameworks in use: one incorporates rules based approach and the second uses a principles-based approach. In addition, the main areas of focus are market infrastructure, legal infrastructure, regulatory infrastructure and information infrastructure (Dallas, 2004b). Also, there are the two analytical processes of modeling and clinical/interactive approaches (Dallas, 2004b).

Finally, there are varying country perspectives and drivers in relation to corporate governance initiatives such as Standard and Poor’s Sovereign Credit Ratings, World Bank’s Rule of Law Regulatory Indicators and Transparency International’s Corruption Perceptions Index (Dallas, 2004a). The Organisation for Economic Co-Operation and Development (OECD) is a major player in the area of country assessment with a system of national reports, regional roundables (Asia, Euroasia, Latin America, Middle East and North Africa and South Africa). The assessment is also based on the main aspects of legal and regulatory system and economic conditions.

2.3 Corporate Governance in Vietnam

Vietnam is still an under-researched location in the literature on corporate governance. For example, the book, *Corporate Governance and Accountability* (Solomon, 2007), provides an analysis and overview of corporate governance developments in 36 countries around the world, including not only developed countries but also developing or transition countries such as Poland, Thailand, Indonesia and Hungary. Vietnam is, however, not included.

A similar omission occurs in some of the more highly cited papers on corporate governance, such as Shleifer and Vishny (1997) and Porta et al. (1998). For instance, in "A Survey of Corporate Governance", the authors investigated corporate governance through a major review of published studies mainly from the United States, United Kingdom, Japan, Sweden and Russia; they felt it “unfortunate” that there is little research from the rest of the world (Shleifer & Vishny, 1997); and, of course, there were no studies about Vietnamese corporate governance. In “Law and Finance”, the authors used a sample including non-financial listed companies from 49 countries in Europe, North and South America, Africa, Asia and Australia; there were no socialist or transition economies (Porta, Lopez-de-Silanes, Shleifer, & Vishny, 1998); obviously, again, Vietnam was not included.

In some studies focusing on the Asia-Pacific region, such as "Corporate Governance in Asia: A Survey" (Claessens & Fan, 2003) and “Corporate Governance in Asia: A Comparative Perspective (OECD, 2001), the authors discussed and analyzed

Vietnam’s neighboring countries such as China, Japan, Thailand, Malaysia, Singapore, Korea and Indonesia but not Vietnam itself. In addition, since 2006, the OECD has published a series of reports on corporate governance in the region (OECD, 2011), in which Vietnam is more frequently mentioned as a participant in the surveys. The reports show progress in the region based on six main corporate governance principles recommended by the OECD; however, there are no major studies of corporate governance in Vietnam.

What has led to this outcome and gap in the literature? Most of the leading international studies are based on previous studies published in leading journals, conferences, books and reports; these publications have not been extended into the Vietnamese context. Therefore, a thorough investigation into the corporate governance policies and practices of listed companies in the country should be of interest to different stakeholders, such as international academics, policy makers, and investors and an effective contribution to closing this gap.

In 2006, the World Bank issued a Report on the Observance of Standards and Codes (ROSC) – Corporate Governance Country Assessment on Vietnam. The corporate governance frameworks were benchmarked against the OECD Principles of Corporate Governance: the main areas for focus included ensuring the basis for an effective corporate governance framework, the rights of shareholders and key ownership functions, the equitable treatment of shareholders, the role of stakeholders in corporate governance, disclosure and transparency and the responsibilities of the board. The report analysed four key issues relating to investor protection, disclosure, enforcement and company oversight and the board. The report also made several policy recommendations (The World Bank, 2006).

3. Analytical Overview of the Development of Corporate Governance in Vietnam

On a narrow scope, corporate governance issues relate mainly to public companies. The definition of a public company is enshrined in Article 25, section 1, Law on Securities (Quốc hội khóa 11, 2006) :

A public company means a shareholding company which belongs to one of the following three categories:

- (a) A company which has made a public offer of shares;
- (b) A company which has shares listed on the Stock Exchange or a Securities Trading Centre;
- (c) A company which has shares owned by at least one hundred (100) investors excluding professional securities investors, and which has paid-up charter capital of ten (10) billion Vietnamese dong¹ or more.

¹ Currency unit in Vietnam

3.1 Securities Markets Development

One critical feature of joint stock companies is that their shares can be transferred freely between different parties. This enables the number of shareholders to range from three to an unlimited number. When the number surpasses the threshold of 100, a company is designated as a public company.

Traditionally, Vietnamese do business and trade with people they know personally; personal relationships are considered a requirement for ensuring credibility and trust among parties. When capital source funding from this group is not sufficient for a particular business, company owners and managers then look for investment funds from outsiders. These outsiders are also looking for credible partners in which to invest. The two parties then agree on a mechanism for ensuring credibility other than the usual personal relationship. Securities markets with prescribed financial functions of listing, public offering, and share auction are such a mechanism since this mechanism is backed by the Government. In fact, both of the securities exchanges in Vietnam are one-member limited liabilities companies with 100% State ownership with the government represented by the Ministry of Finance (Hochiminh Stock Exchange, 2013).

The first securities exchange of Vietnam was opened in Ho Chi Minh City in 2000; the second one was in Hanoi and came into operation in 2005. A central over-the-counter exchange system (UPCoM) was also opened in 2009 under the management of Hanoi Stock Exchange. The Law on Securities was passed and promulgated by government in June 2006 and subsequently amended in November 2010. This provided the legal and enhanced framework for securities markets in general and markets for public companies in particular.

At the start, there were only two companies listed on the Hochiminh Stock Exchange. By April 2013, there were 702 listed companies on both exchanges, accounting for 55% of all the public companies in Vietnam. This is evidence of the exchanges' influence on the development and growth of public companies across the country.

3.2 Equitization of State-owned Enterprises (SOEs) and the Formation of Public Companies in Vietnam

The transformation of state-owned enterprises into joint stock companies in Vietnam was conducted via several careful steps including "test" (1990), "trial" (1992) then equitization (in other words, privatization) on a large scope (1996-1998) (Chính phủ, 1996; Chủ tịch Hội đồng bộ trưởng, 1992; Hội đồng bộ trưởng, 1990).

From 1998 to 2007, equitization was conducted on large scale (Chính phủ, 1998, 2002, 2004). Conditions were lowered to allow legal entities and

natural persons to have rights to buy shares. All small and medium enterprises in industries that the Government did not need to keep under 100% government ownership were part of the equitization scheme. However, the biggest corporations were not on the list. In 2007, big corporations with 100% state ownership were then put on the equitization scheme considerations (Chính phủ, 2007, 2011). Some of the big ones that were successfully equitized and listed are Vietcombank, Military Bank and Vietinbank. There are many other large entities that are expected to be part of large IPO offerings in the future, such as Vinaphone, Mobiphone, Vietnam Airlines, BIDV and Agribank.

In 2012, the Prime Minister approved a scheme for re-structuring state-owned enterprises and corporations in the period up to 2015 with an important focus on classifying them into sub-categories in which the Government maintains either 100%, 75%, 65% and 50% ownership (Thủ tướng Chính phủ, 2012). The equitizations program should have been finished in 2010. However, the equitization process has slowed down because of the large scale and complexity of the remaining corporations. The scale of the new scheme is such that one cannot expect the equitization/privatisation process to be completed before 2020.

The equitization schemes have transformed a significant number of SOEs into joint stock companies including public companies. Thirty companies form the VN30 index baskets of the Hanoi Stock Exchange and the Hochiminh Stock Exchange as at April 2013, with each basket containing 16 companies that used to be state-owned enterprises that were privatised. VN30 indices are calculated based on the 30 top shares in terms of market values which accounts for about 80% of total market value and 60% of total trading value (Sở giao dịch chứng khoán thành phố Hồ Chí Minh, 2013).

In addition, most of the listed companies outside the VN30 baskets were also formed as part of the equitization process. This development provides evidence of the crucial nature of the contribution of equitization schemes in helping to establish a robust group of public companies in Vietnam.

3.3 Typical Features of Corporate Governance of Public Companies in Vietnam

As part of this development phase, the evolution of corporate governance in the public sphere in Vietnam highlights three key features that are analysed in the following sub-sections.

Leading Role of the Government

The government of the day is the prime initiator when it comes to making laws that embedded key corporate governance principles and practices. Governments

around the world carry out this key role through the enactment of laws and through court processes that ensure a central role in creating principles and codes for corporate governance in all nations (Gourevitch & Shinn, 2005). If the private “bonding mechanism” is effective, then the role of politics and laws are less important; if, however, this mechanism is not effective then solutions to such a problem require the enactment of effective laws (Gourevitch & Shinn, 2005).

In the 20-year development of public companies in Vietnam, the government opened the way for the creation of joint stock companies, and also supplied the markets with the very first public and listed companies and created the biggest public companies through the privatisation of SOEs. The government has also created the framework, and principles for corporate governance and guided the markets to conform with these codes.

The establishment of a corporate governance framework has achieved significant progress in a medium time frame. In 2006, the “legal framework and institutional foundation for capital market in Vietnam is in its initial development” (World Bank, 2006, p. 1). The legal framework for corporate governance is regulated by the Law on Enterprises enacted in 2005, the Model Charter 2002 and the Law on Securities 2006. Vietnam has had to confront major challenges in enforcing laws, enhancing institutions for administration, compulsory law enforcement, and market development as well as promoting good corporate governance.

In 2012, six years after the previous comment, “institutional framework for effective corporate governance has been issued. In fact, administrative agencies have implemented active measures for the last years in issuing appropriate documents on enhancing corporate governance. In 2010, Laws on Credit Institutions was approved. After Circular 09/2010², a new circular on information declaration was approved in April 2012 (Circular 52/2012 by Ministry of Finance), and Guidelines on corporate governance was issued in July 2012. All of these legal documents expose new challenges to companies in Vietnam with poor corporate governance quality” (IFC, 2012, p. 23). (Tổ chức Tài chính Quốc tế (IFC), 2012, 23).

Recognizing the importance of the government in corporate governance in Vietnam, the International Finance Corporation (IFC) warned that “The government must be “a pioneer” in promoting good corporate governance practice. At least, the government needs to approve its representatives in companies with major part of state ownership, requires those companies to implement good corporate governance” (IFC, 2012, p. 24). In addition, “shareholders, especially state shareholders, need to more actively participate in corporate

governance issues” (IFC, 2012, p. 25). Three years of Corporate Governance Scorecard reports reveal that corporate governance in Vietnam has been implemented in a top-down way, relying on legal framework and penalty measures (IFC, 2012, p. 23).

The government can influence corporate governance practices in public companies in two major ways, either by establishing an appropriate institutional framework for these public companies or by directly participating in corporate governance as a key shareholder within these companies. A recent survey concluded that state ownership had a negligible impact on corporate governance scores and practices by comparison with foreign shareholders. This finding also identified that the government held a controlling ownership interest (50% or over) in 31% of all the companies surveyed (IFC, 2012, p. 20).

The government plays a crucial role in the macro political environment; changes in the political environment and interactions among key stakeholders occur continuously and they can affect corporate governance. For example, the extension of pension funds (especially of Pillar 2 – Corporate funds, and Pillar 3 – Savings and investment of employees) acts as a direct driver for enhancing employee participation in corporate governance (Gourevitch & Shinn, 2005, p. 23). These major stakeholders and shareholders include: financial institutions, banks, other firms; family or ethnic networks; and state ownership (Gourevitch & Shinn, 2005, p. 5).

In the context of Vietnam, the government’s key role as a major shareholder in a range of public companies and its attention to employees’ benefits which is expressed through the participation of the trade union in corporate activities (a key feature of a socialist society) work relatively harmoniously. In addition, corporate managers are selected through the influence of key stakeholders especially the government. Therefore, in many public companies, a coalition exists that is similar to a corporatist compromise coalition³. A similar situation occurs in those public companies without significant levels of state ownership. As a result, majority shareholders prevail and minority shareholder protection is weak. The average score of “Equitable treatment of shareholders” has continuously decreased in the IFC’s Corporate Governance Scorecards in consecutive years from 2009 (65.1), 2010 (61.0) through to 2011 (57.8) (IFC, 2012, p. 13).

In addition, pension savings of employees are almost all via social insurance funds that are mostly contributed to by the companies, a minor part by the employees and then the funds are managed by the Government. This is considered Pillar 1 amongst the three pillars of the pension system. Corporate pension

² Circular regulates information disclosure on securities markets by the Ministry of Finance

³ In a corporatist compromise coalition, managers and workers form a coalition that win over the diffused owners. As a result, the owners form a blockholding to balance the relationship and protect their interest in companies (Gourevitch and Shinn, 2005)

funds do not exist and private investment by employees is low because of low wage rates. Employees do not usually have direct input into the investment activities of the current government-managing pension funds, so they do not have incentives to participate in the corporate governance of public companies.

Clearly, the impact and the influence of the political system over corporate governance of public companies in Vietnam are highly visible and pervasive. To sum up, the participation of the government in corporate governance policies and practices is substantial; however, the outcome is only positive in the area of the governance framework. While playing the role of a major shareholder, the government has not generated more positive outcomes in the Corporate Governance Scorecard results compared to the private sector, and especially in respect to those companies with foreign ownership levels.

Active Participation of International Institutions

Corporate governance frameworks have evolved and developed around the world via a process of dissemination from one country to another. Until the first half of the 2000s the “main propellants of thoughts and practices in corporate governance come from the United States. Institutional investors from U.S. influenced corporate governance practices in other countries where they invested in and required U.S. governance principles. The number of research and publications on corporate governance from United States were bigger than that from the rest of the world” (Tricker, 2012, p. 474). Together with the development and the emergence of other economies such as the BRIC (Brazil, Russia, India and China) and the Middle East countries, and diminishing importance and attractiveness of capital flows from United States, initiatives in corporate governance frameworks have emerged in other countries. This started with the influential Cadbury report in 1992 investigating financial aspects of corporate governance in United Kingdom, followed by OECD and World Bank’s principles (not through legislation) of corporate governance, and best practice models for corporate governance in family businesses in Asia (Tricker, 2012).

International financial institutions (International Monetary Fund (IMF), Bank for International Settlement (BIS) and OECD) have a special interest in promoting good corporate governance; they act as intermediaries connecting good corporate governance with major shareholders and external investors, especially international investors. Development organizations such as the World Bank and the OECD are interested in enhancing the protection of minority shareholders in order to develop stronger and more effective capital markets; with the resulting market development, in its turn, promoting national and

regional economic growth. The IMF and BIS have a vital interest in the reduction of ethical problems in financial corporations (Gourevitch & Shinn, 2005). In other words, these institutions are pioneers in the opening of national markets, establishing a level playing field favourable for national and international investors. This disseminating mechanism has been well demonstrated in outcomes that had been embedded in Vietnam. The World Bank and IFC are the two institutions with the most credible activities in promoting the establishment of effective corporate governance practices in public companies in Vietnam.

From 1999 to 2013, the World Bank had financed Vietnam through the establishment of 26 technical support projects that included components focusing on corporate governance with a total total value of US\$1,652,780,000. These projects focused on major issues such as renovating the management of state-owned enterprises, restructuring the banking system, educating directors of boards about good corporate governance as well as projects aimed at alleviating poverty (World Bank, 2013). (Ngân hàng thế giới, 2013)

In 2006, the World Bank published a report on corporate governance in Vietnam, Report on the Observance of Standards and Codes (ROSC) – Corporate Governance Country Assessment – Vietnam 2006. This is considered to be the first document that has introduced the definition of modern corporate governance into Vietnam, and evaluated the observance of corporate governance codes and standards based on OECD principles. This report analyses the corporate governance framework in Vietnam, including components of relevant laws and regulations, supervisory and compulsory behaviour mechanisms and markets, especially the securities markets. The report highlighted major issues, summarized the context of observance and compliance with OECD corporate governance principles and recommended additional points for further improvement (World Bank, 2006). Since this report, the term “corporate governance” has been disseminated widely from policy consultants to researchers and business people throughout Vietnam. (Ngân hàng thế giới, 2006)

Following the initiatives of the World Bank, the IFC – a member of the World Bank Group, is implementing the “Vietnam Corporate Governance Project”. According to the IFC, this project aims to improve overall corporate governance practices in Vietnam via a specific range of activities such as: consulting corporations, institutional investors and banks about the implementation of good corporate governance practices; working with related state agencies in improving the legal framework for corporate governance; enhancing capability for corporate governance training and education organizations; and, improving society’s understanding of the importance of corporate governance. The project has published a series of reports and books on

corporate governance such as the corporate governance scorecard (2010-2012), OECD corporate governance principles (2004), and a manual for board directors (2010). These empirical research outcomes and essential corporate governance knowledge needs to be widely disseminated to all interested parties.

Passiveness of Businesses

How have businesses responded to these ranges of activities and promotion of good corporate governance by the government and the international institutions? The analysis in the first section of the three key features has demonstrated the degree of activity by the government in establishing and continuously improving the institutional system for corporate governance. However, from the perspective of business, there has been little progressive change, except for some minor cases (IFC, 2012). In 2012, the 100 biggest listed companies on the two exchanges of Vietnam showed a decrease in corporate governance score results referred to earlier in this paper; only one conclusion can be drawn from this. The companies themselves have not fulfilled their duties in developing a quality investment market in Vietnam (IFC, 2012).

Jay Lorsch (cited by Tricker, 2012, p. 21-22) discovered that the most current corporate collapses were due mostly to the increasing complexity of the companies and this situation could only be solved by improvement in the role and functions of the boards of directors, not by direct intervention by government. Boards should develop appropriate structures, processes and practices. Muth and Donalson (cited by Tricker, 2012, p. 62) recognized that a board with executive members operated better than a board that merely 'ticked the boxes' with respect to best practice corporate governance principles in using independent board members. This discovery goes against accepted ideas of good corporate governance; however, there is support for Lorsch's argument that it is the effective performance of the board of directors itself, not the government that can improve and deliver effective corporate governance.

All companies need a charter that forms the foundation for companies corporate governance regime; however, many board members and committee members have never even read the charter (Tricker, 2012). This situation also occurs in Vietnam; where almost all listed and unlisted companies have implemented the model charter for joint stock companies issued by the Ministry of Finance (Hài & Liên, 2012), with only minor modification for individual company details and industry. This appears to mean that shareholders also do not consider the charter important for protecting their benefits.

There may be two reasons behind this outcome. The first is that the shareholders may want to rely on external mechanisms such as the government to protect their benefits; the second is that they may

choose to exit by selling off their shareholding instead of voicing their concerns when they recognize the companies are not performing effectively. In both cases, the shareholders do not invest resources in the development of private contracts such as the charter. In reality, the second choice is popular in Vietnam because of a traditional viewpoint that "until you get compensation, you have suffered more than that"⁴. The government should pay special attention to this if they want to enhance good corporate governance; people need a solution to the problem that shareholders do not trust official bonding mechanisms, both private and governmental.

4. Discussion

Despite the efforts detailed above, the corporate governance performance of companies in Vietnam in general, and public companies in particular, are at the medium quality level on several scales. In a two-phase survey, Hai & Lien (2012) found that the quality of corporate governance of companies listed on the Hanoi Stock Exchange in 2010 was at the medium level (25.73/51) on the Gov-Score scale, meeting the minimum requirements of promulgated regulations and that there were only minor instances of progressive practices and improvement. This conclusion matches the results of the IFC's "Corporate Governance Scorecard Report 2011" which was based on 2010 data.

The report had calculated that the average corporate governance score of all surveyed companies was 44.7%, slightly higher than the score of 43.9% in 2009 (IFC, 2011). In general, the companies had made some improvement, such that there was no companies with a low score below 20%, the minimum score in 2010 was 29.3% (IFC, 2011). However, this level of improvement was not maintained through to 2011. According to the currently accepted standards on good corporate governance practices, the score should be in a range from 65% to 74%; however none of the companies surveyed in Vietnam recorded such a score (IFC, 2012). In 2010, 80% of the companies scored from 40% to 59%; whilst in 2011, this percentage had reduced to 73% and there were more companies registered as scoring from 10% to 29% compared to the 2010 results (IFC, 2012). Even among the top 25 companies by market value, the average corporate governance score was only 46.5%, which was only slightly higher than the overall average of 42.5% (IFC, 2012). These results substantiate Hai & Lien's conclusion that there was no difference in the corporate governance of companies listed in Hanoi Stock Exchange in 2010, with scores ranging from 24 to 28 (on a 51 point scale). Analysis of a 2011 survey of 107 public companies (either listed or unlisted) based on the Gov-Score criteria shows that the quality of corporate

⁴ An old saying in Vietnam

governance in public companies in Vietnam has only shown a minor improvement and there is no significant differences among corporate groups even though they differ in scale and their listing on separate exchanges. The 2011 Gov-Score was 24.6/51, slightly lower than the score 25.7 in 2010 (Hải & Liên, 2013).

The Anglo-Saxon corporate governance model and system has been developed specifically for a market based system with diffused equity ownership, strong minority protection and disclosure, and strong company law enforcement. European continental countries have corporate relationships based around bank finance and with business networks at the center. Asian countries, on the other hand, utilised a corporate governance approach that is personal relationship based, with high levels of family control and a business networks perspective (Clarke, 2007). Vietnam is closer to the Asia model with some minor differences.

In Asian countries, researchers call for stronger government intervention because they have seen the failure of voluntary efforts and lack of effective action by business itself. They also call for a stronger supervising role by banks. However, in Vietnam, the reliance on banks for such purposes can also be suspect. The following section identifies a serious problem in one of Vietnam’s main banks and is an exemplar of the difficulties in Vietnam for embedding effective and good corporate governance practices in large companies.

Fraud and the Forging of Documents at Vietinbank

Vietinbank was the only Vietnamese enterprise listed in the Top 2000 world's largest enterprises by Forbes Magazine in 2012. In 2012, the total assets of the bank was 503.5 billion Vietnam Dong, with owners equity of 33.6 billion and a charter capital of 26.2 billion (Vietinbank, 2013). State ownership, represented by the State Bank of Vietnam, accounts for 89% of the total ownership interests in the bank. In 2013, the charter capital was raised to 37.2 billion, with 35.5% of the outstanding shares listed on the Hochiminh Stock Exchange.

In the first month of 2014, observers in Vietnam became aware that an ex-official of Vietinbank, Nhu – the former manager of risk management division of a Vietinbank branch in Hochiminh City, had been convicted of illegally appropriating assets, forgery and defrauding personal clients and other banks of about 4,000 billion Vietnam dong (equivalent to US\$200m). She had started by borrowing millions of dollars in 2007 from financial institutions and individuals with extremely high interest rates around 1% to 3% per day to finance her real estate deals. When she was unable to repay these loans, she started to forge documents to withdraw money from Vietinbank accounts. Nhu carried out this fraudulent borrowing for more than a year, and all the transactions were between Vietinbank and other banks and individuals and conducted in Vietinbank premises. She claimed to be raising funds on the bank's behalf.

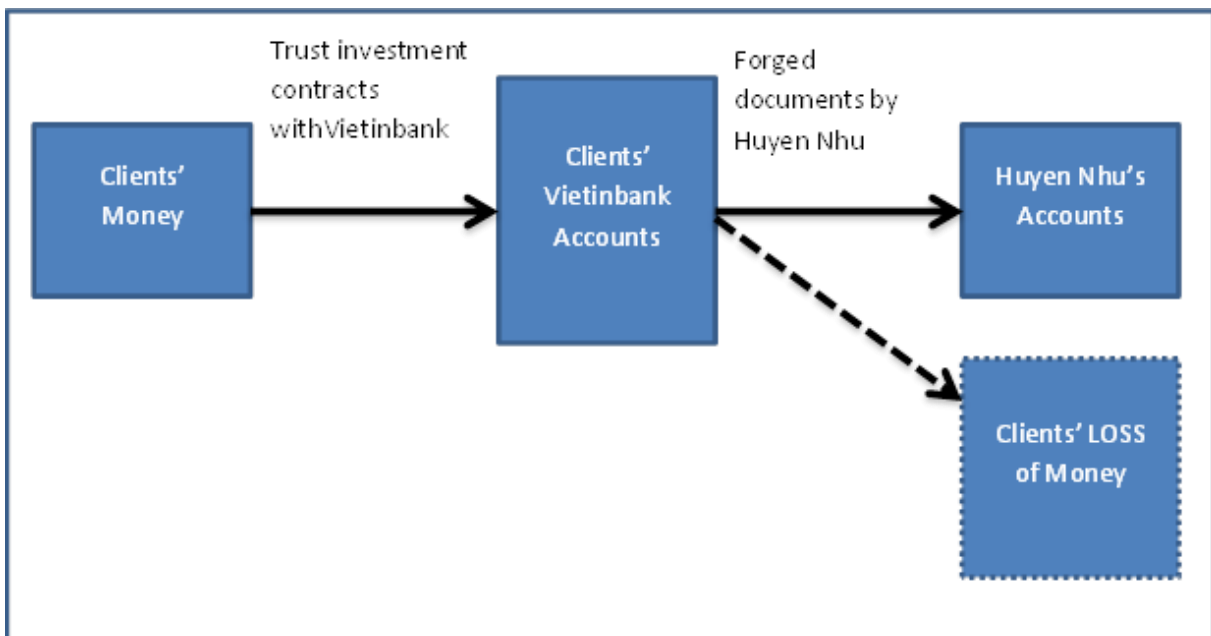


Figure1. Money flow in Vietinbank Scandal 2014

From March 2010 to September 2011, Nhu used similar fraudulent techniques to withdraw money from the accounts of nine companies, three banks and

three individuals with a total value of nearly 4,000 billion Vietnam Dong. The banks included Navibank,

Maritime Bank and the Asia Commercial Bank (ACB).

From May 2010 to November 2011, ACB had entrusted 19 staff members to make trust investment contracts with Vietinbank with a total value of VND719 million. All those contracts were supposedly entitled to interest rates higher than the ceiling rate (14 percent) set by the State Bank of Vietnam by 3.8% to 4.5% annually. In the same way, the Maritime bank had also entrusted with Vietinbank 2,500 billion, Navibank 1,500 million and Tienphong Bank 1,860 billion. In the final count, ACB had lost 716 million, and Navibank 200 billion in this fraud.

After individual clients had deposited money into their Vietinbank accounts, Nhu then forged clients' signatures and stamps to make saving books under the clients' name. Then, she used those saving books as collateral to acquire loans from Vietinbank and other banks (such as the Vietnam International Bank – VIB). When Vietinbank discovered that all the loan documents were forged, Vietinbank still withdrew money from the collateralized saving books to compensate for the loans it had made.

At first, Vietinbank rejected any obligations to the clients who had lost significant funds by arguing that all the trust investment contracts with Vietinbank were forged and all the money had not been put into the bank's financial records, and all the transactions were not in Vietinbank premises. However, under pressure from the individual victims and organizations, the bank declared that it would be responsible for honouring the legal contracts in this case. Lawyers acting for the individual and corporate victims submitted bank statements to the court as evidence that all the money had already been put into Vietinbank system and was reflected in the bank's accounts.

Ultimately Nhu was found guilty and was sentenced to life imprisonment. However what has angered people is the decision of the prosecutors to clear Vietinbank of any liability. This fraudulent scandal reflects badly on both micro and macro corporate governance issues in Vietinbank and other banks and Vietnam in general. The bank's board of directors had failed to prevent the management implementing a deposit and saving policy that supplied interest rates higher than the legal ceiling rate. In addition to failing to audit and detect weaknesses in the transaction system and procedures, the failure put the bank at a high risk of capital loss. In fact, ACB and Navibank did lose a large amount of funds in this case.

There had been illegal transactions not only between individuals and respective banks, but also between banks with other banks. This helped to unearth a significant failure of the legal interbank transaction system in meeting banks' capital demand and a corresponding failure of policies. In addition, auditors, both private and state, had carried out

several audits on the bank during the time of this major fraudulent activity, but they failed to discover anything amiss.

This case of fraud has certainly highlighted that there are still major concerns and difficulties with corporate governance practices and processes across the corporate sector in Vietnam. There is still a lot of work to do to embed best practice and effective corporate governance models that are capable of working as required in the Vietnamese context.

Conclusion

Corporate governance frameworks are still evolving in both developed and developing nations. The common approach is not to take a legislative path to ensure effective reform, rather the process has been one of developing principles, guidelines and codes that effectively construct a 'best practice model' of corporate governance. However, it is also clear that a 'one size fits all' model is not applicable across the globe. There is a clear need to construct corporate governance frameworks that are situationally contextual and appropriate to different regions and nation states. In particular, the notion that a Western developed corporate governance model can be imported without change into the ASEAN region is problematic.

This paper has highlighted a range of issues that has confronted decision-makers, government and other major stakeholders in Vietnam when attempting to construct an appropriate corporate governance regime that will be appropriate for this developing nation. The details of the fraudulent case in the Vietinbank highlight a key point in the corporate governance debate. Ultimately, the approach required is to enhance and promote effective performance and behaviour amongst board directors to help deliver effective and good corporate governance without utilising a big legislative stick as a threat.

The underlying reality of corporate governance practices in Vietnam is that the quality of corporate governance is below international standards and is only currently at a medium level of quality. The Vietnamese government has actively developed an enhanced and more complete corporate governance framework, and international institutions in the country have actively supported these developments, but the passive attitude and nature of the companies themselves is slowing down the embedding of improved corporate governance practices. The roots of this problematic situation are located, firstly in the civil-law-originated legal system used in Vietnam, and also the existence of an institutional system that over-prioritizes the role of the government in the economy, and finally, a socio-economic environment with opportunities that allow for unprofessional business practices to prosper. Such features weaken economic incentives created by contemporary policies and make it difficult for companies to practice good

corporate governance. Vietnam still has a long way to go in the field of corporate governance.

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