

The Role of Supervisory Board in Corporate Governance in Vietnam: From Legal Regulations to Practice

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Abstract

Good corporate governance is always associated with an effective internal control system, which is expected to quickly forecast and detect the infringements of laws and the company's charters committed by the main corporate governance bodies like the board of directors, the general director, and provide timely advice on remedial solutions. Following this theory, since the adoption of the first Vietnamese company law in 1990, the supervisory board, a special body of Vietnamese corporate governance structure, has formed and become a traditionally internal control body in joint-stock companies (JSCs). However, supervisory boards seem not to promote their effectiveness as expected. Many major violations conducted by the board of directors and the CEO took place in large companies, where the supervisory boards did not detect or were complicit in these violations. Most recently, the trend of replacing supervisory boards with independent directors and audit committees has occurred in many public companies in Vietnam. This paradox raises questions about the ineffectiveness of supervisory boards and the reasons causing the situation. To find the answers, the article will focus on analyzing the role of the supervisory board in Vietnamese JSCs compared with international practices. Thereby, to find out the reasons for the limitations of supervisory boards in both legal provision and practice. To conclude the research, the article will make some suggestions for reforming the supervisory board so that this internal control body could bring its effectiveness.

Key-words: Corporate Governance, Joint-stock Company, Board of Directors, Supervisory board, Independent Director, Vietnam.

1. Introduction

The term "corporate governance" was introduced to Vietnam in the early 2000s through the English-Vietnamese bilingual version of the Principles of Corporate Governance by the Organization for Economic Co-operation and Development – the OECD (OECD, 2004). Particularly, after the book “Corporate Governance Manual” was jointly published by the International Financial

Corporation (IFC) - a member of the World Bank Group- and the State Securities Commission of Vietnam (ISS) in 2010, corporate governance and the related concepts have gradually become popular and mainstream in the country. Previously, in the early stage of the Vietnamese market economy, there was confusion between corporate governance and corporate management (IFC and SSC, 2010). Therefore, internal corporate governance control (internal control) was an unfamiliar issue in the thinking of the lawmakers and government authorities in Vietnam as well.

Before that, in the mid-1980s of the 20th century, Vietnam launched the 1986 Renovation to transform gradually its centrally planned economy based on the socialist model to a market economy. The renovation has changed the whole economic management and legal thinking in Vietnam. For the first time, the country approached and practiced concepts such as market economy, business, enterprise, corporate governance... Those were new and still very foreign concepts to the socio-economy and never existed in the country. Although Vietnamese lawmakers and government authorities, at that time, did not have a thorough understanding and training corporate governance in a market economy, they had made great efforts to learn from experience form a legal framework for private enterprises from the legislators of the former Republic of Vietnam regime, despite political prejudices (Quang, 2006), the market economies in Southeast Asia, and especially from emerging market economy having socio-political institutions similar to Vietnam as China; and then to gradually put corporate governance into law and practice (Guo, 2004).

Interestingly, right from the first company law promulgated in 1990, the legislators made a great attempt to introduce an internal control process into the operation of the limited liability companies and JSCs through the role of supervisors. This practice has continued in the later enterprise laws promulgated respectively in 2000, 2005, and 2014 and most recently in the 2020 Enterprise Law. This corporate governance body aims to meet the requirements of transparency and accountability in the operation of the corporate governance system.

In the short history of Vietnamese corporate laws, the supervisory board has been considered the traditional corporate governance body that assumed a central role in implementing the internal control process since the adoption of the 1990 Company Law. Until July 1, 2015, when the 2014 Enterprise Law took effect, the one-tier board model was added as a new corporate governance model for Vietnamese JSCs. Hence, another kind of internal supervisory organ has emerged. It is a combination of independent directors on the board of directors and an internal audit committee. The latest Enterprise Law promulgated in 2020 also maintains both models of corporate governance and internal control. Under Vietnamese corporate laws, the supervisory board is elected by the General Meeting of Shareholders (GMS), on behalf of shareholders, to perform its supervision on the board of

directors and the CEO. Taking on such a large duty and power, the supervisor board is expected to promptly detect violations in the financial and business activities of the company, to ensure that the company's operations are under the charter and laws.

However, there is a paradox that in many companies, the supervisory boards are only useful on paper, hardly effective in practice. It seems to be more of a decorative governance structure than a real authority (Nguyen and Nguyen, 2018). In many cases, supervisory boards colluded with the companies' senior managers to commit economic crimes. After the recognition of the one-tier board model in the 2014 Enterprise Law, many large companies, especially public JSCs, replaced their supervisory boards with independent directors and internal audit committees (Tam, 2019). This trend raises a series of questions about the effectiveness of the supervisory boards and their actual role in corporate governance and the reasons that make the supervisory boards inefficient.

To answer these questions, this article will analyze the philosophy of corporate governance and internal control, the popular models of corporate governance and internal control in the world. Therefrom, compared with the organizational and operational models of the supervisory board by Vietnamese law and in practice. It also outlines the reasons for the inefficiency of this internal control organ and then offers suggestions to reform this internal control institution.

The article is divided into 4 parts: Part 1. Introduction, Part 2. Research Methodology, Part 3. Discussion, and Part 4. Recommendation and Conclusion.

2. Research Methodology

The used methodology is based upon traditional legal methods, analytical and critical ones combined with insights from other disciplines including the use of comparative methods and legal classification.

3. Discussion

3.1. The Importance of Internal Supervision in Corporate Governance

In the opinion of IFC, there is no single definition of corporate governance that can be applied to all situations and jurisdictions. The various definitions that exist today largely depend on the institution or author, country, and legal tradition. From an internal perspective, OECD, in the 2nd Edition of Principles of Corporate Governance, offers a more detailed definition of corporate

governance as: *“The internal means by which corporations are operated and controlled, which involve a set of relationships between a company’s management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined”*(OECD, 2004). From this perspective, the OECD also offers 6 operating principles of good corporate governance, which are: (1). Ensuring the Basis for an Effective Corporate Governance Framework, (2). The Rights of Shareholders and Key Ownership Functions, (3) The Equitable Treatment of Shareholders, (4). The Role of Stakeholders in Corporate Governance, (5). Disclosure and Transparency, and (6). The Responsibilities of the Board (OECD, 2004). In another viewpoint, Cadbury Committee, in turn, states that corporate governance refers to the system by which companies are directed and controlled (Dunne and Morris, 2008). Similarly, IFC defines corporate governance as *“the structures and processes for the direction and control of companies.”*(IFC and SSC, 2010).

As analyzed by IFCCorporate governance is composed of four basic components, which are: (1) Corporate governance is a system of relationships, defined by structures and processes, (2) These relationships may involve parties with different and sometimes contrasting interests, (3) All parties are involved in the direction and control of the company, and (4) All this is done to properly distribute rights and responsibilities and thus increase long-term shareholder value (IFC and SSC, 2010).

From the above-mentioned definitions and explanations of corporate governance, it can be observed that corporate governance has two main contents: Empowering key corporate governance structures (bodies) to manage the company and control the relationships between these structures to ensure that the company develops in the right direction and protects the legitimate interests of shareholders. In other words, corporate governance can only truly achieve its goals if an efficient internal control system is maintained and operated. Nevertheless, it should also be emphasized that good corporate governance not only focuses on the interests of shareholders. It must also pay attention to the legitimate interests of stakeholders so that the company can have sustainable growth. (Millon, 2011).

As analyzed, internal control is a core issue in the practice of corporate governance. According to the OECD, *“Internal control refers to the processes used within organizations to ensure that operations are efficient, effective and in line with established laws and policy objectives”* (OECD, 2014). Generally, internal control in a JSC is a system of corporate governance bodies that are empowered by shareholders and arranged in a mutual control relationship such as the GMS

electing the Board of directors; The Board of directors appoints CEO and supervises the position in corporate management.

In addition to the division of power and mutual control of the aforementioned governing bodies, in international practice, corporate laws in most countries require GMS to exercise the supervisory right of shareholders by appointing either the supervisory board or independent directors so that these special bodies, on its behalf of the GMS to keep track on the board of directors and CEO in corporate management. Based on the provisions of law, depending on their purpose and specific needs, companies can choose a corporate governance model with a supervisory board or with the participation of independent members/directors of the board of directors. It can be seen that the Supervisory board or Independent Directors is playing a focal role in the internal control system and process.

3.2.A brief Overview of the Supervisory Bodies in the Popular Models of Corporate Governance

*** One-tier Board Model**

This is a model that does not have a separated governance structure that oversees the operations of the board of directors. Before 2001, in public corporations in the US, there was almost no separation between the board of directors and the CEO, the chairman of the board often concurrently held the role of CEO. Nonetheless, the collapse of many large corporations, a typical example was the downfall of the Enron corporation, which led to severe social-economic consequences (William, 2002). It pointed out the biggest defects of the one-tier board model were the lack of transparency and the lack of internal control system that caused the fraudulent audit reports to cheat investors (Li, 2010, Peregrine et al., 2016).

To remedy that situation, the Public Company Accounting Reform and Investor Protection Act of 2002) called the Sarbanes-Oxley Act of 2002 (SOX 2002) was enacted to protect shareholders and stakeholders from audit errors and fraudulent practices of public companies such as Enron. The main content of the law requires increasing the accuracy of the financial statements published by the company, if wrong, the CEO and the CFO will be criminally liable. It requires companies to set up their internal audit board to oversee the audit firms that work for the company and force the companies to have annual internal control reports certified by the independent audition. The provisions on disclosure and transparency are valid even for private JSCs (Title VIII, IX, X, XII). Under the pressure of the law, companies themselves also actively seek a new corporate governance model to strengthen internal control by adding independent, non-executive directors to the board of

directors and establishing internal audit committees under the board of directors to oversee the transparency of the company's financial operations (Baum, 2016).

*** Two-tier board model**

This is a typical German corporate governance model and is used by many European countries. According to the provisions of the German Corporate Governance Code (Deutscher Corporate Governance Kodex-“GCGC”), last amended in 2015, the Independent Supervisory board consists of representatives of shareholders and representatives of employees, appointed GMS, has the function of supervising the business activities of the Management Board, which is in charge of the day to day business management of the company (Block and Gerstner, 2016). These two structures have a close relationship with each other; the members of the Management Board are appointed and dismissed by the supervisory board, whereas the Management Board is responsible to the supervisory board for the financial and business activities of the company. The supervisory board represents shareholders, employees, and labor unions. In some cases, they also represent the parent company in the group, their business partners, their creditors, and represent the Government if relevant (Jungmann, 2007). Despite the effective ability of internal control, the German two-tier model board is just preferred in some European countries. It is not as pervasive as the one-tier board model in Anglo-Saxon countries because of its heaviness of layers and the slower reaction to business opportunities.

*** China's blended corporate governance model**

Although the corporate governance model recognized in the Chinese Company Law is not as influential in the world as the two above-referenced models, it has many similarities with the corporate governance model of Vietnam.

The Chinese Company Law was first promulgated in 2003. Since then, it has undergone multi-amendments. China has maintained a mixed corporate governance model, neither the "one-tier board" model of the US nor the "two-tier board" model of Germany. There is always the presence of an independent Supervisory board in the company structure. The board of directors is elected by the GMS, has from 5-19 members, including a president and vice presidents, may have representatives of employees in the company. In turn, the board of directors elects the director/general director (CEO)

who is in charge of the day-to-day operations of the company and is responsible to the board of directors for the implementation of the assigned rights and obligations. (Section 3: Article 108-115).

The supervisory board appointed by the GMS has at least 03 members. The board of supervisors shall include representatives of shareholders and an appropriate percentage of representatives of the company's employees. It is responsible for monitoring the company's activities and reporting the results to GMS (Section 4: Article 117-119). Within these regulations, it is difficult for members of the Supervisory board to operate independently and not be influenced by the interests of shareholders or employees of the company. Although the English name is similar to the supervisory board in the German JSC, the function of the supervisory board by the Chinese Company Law is very narrow, only encapsulated in monitoring the company's compliance with the law and the company's charter, without consulting function to repair the violations. According to legal experts, due to the lack of resources and practical power, the performance of the supervisory board, in general, is not high, it is more decorative than the supervisory function (Tenev et al., 2002). According to the current Company Law, only listed companies are required to have independent directors (Article 122). However, independent directors are also facing challenges in terms of the less independence and ability to supervise the internal audit committee in the practice of corporate governance. (Cai, 2017, Clarke, 2016).

3.3. Supervisory Board in Corporate Laws in Vietnam through the Development of Enterprise Laws

3.3.1. The Period before the 2014 Law on Enterprises Took Effect

In the early stage of the newborn market economy, although Vietnamese lawmakers and government authorities had not yet approached the theories and principles of the OECD modern corporate governance, they had understood the importance of internal control in corporate operations and tried to put it in the law. However, the provisions on the internal control body in the 1990 Company Law were inceptive. Article 41 required a JSC with 11 or more shareholders to have at least 2 supervisors elected by the GMS to inspect the internal accounting work and verify the annual financial statements and oversee the financial activities including extraordinary financial activities of the company.

The 2000 Enterprise Law, the merger between the corporate law and the private enterprise law, stipulates that in the case of having 11 or more shareholders, the GMS must establish an independent supervisory board with 3 to 5 members to perform internal control function (Article

88.1). The supervisory board was given more power in supervising company business activities, appraising the annual financial statements and the annual report of the GMS on financial and business management of the company; even it was encouraged to recommend measures related to the management and administration of the company (Article 88.2.d). Furthermore, the law required the board of directors, the director/general director (CEO) to disclose information on financial transactions and business operations at the request of the supervisory board (Article 89). Whereas, contrary to the reported powers, the supervisory board is still dependent on the Board of directors. It must “regularly notify the board of directors about the results of operations; consult the board of directors before submitting reports, conclusions, and recommendations to the general meeting of shareholders” (Article 88.2.c). It could be seen that the effort to practice internal control of the supervisory board would be ineffective if the board of directors did not agree with the monitoring reports.

After nearly 20 years of opening the economy, the 2005 Enterprise Law was promulgated to prepare for Vietnam's accession to the World Trade Organization (WTO). As stated by the law, JSCs were improved in structure and internal control activities. For the first time, the function of representing the company's owners was separated from the function of managing and operating the company; The chairman of the board of directors could not concurrently hold the position of CEO. There were mutual supervisions in companies. A company with more than 11 individual shareholders or an organizational shareholder holding more than 50% of the total shares must have a supervisory board (Article 95). The supervisory board had a more independent role and greater authority than those recorded in the 2000 Enterprise Law. It had the right to use independent consultants to perform the assigned tasks and was not required to consult the board of directors before submitting reports, conclusions, and recommendations to the GMS (Article 123.9). In addition to the power given by law, they had to exercise delegated rights and perform delegated duties honestly, diligently and to the best of their ability in the maximum lawful interest of the company and the shareholders like other high managers (Article 126.2), and must commit not to use information, secrets, business opportunities of the company, or to abuse his or her position and powers and assets of the company for their benefit or the benefit of other organizations or individuals. In particular, much stricter than the previous laws, the 2005 Enterprise Law required supervisors, in the case of breaching the bear obligations in law causing damage to the company or other people, must personal or joint liability to compensate for such damage (Article 126.4).

It is obvious that through each development stage, the regulations on the Supervisory board of a JSC appeared increasingly strict to enlarge transparency and accountability in the company's

operations. However, it can be seen that since the 2000 Enterprise Law 2000, the supervisory board model in Vietnam had many correspondences in terms of structure and operation of the supervisory board model in the Chinese Company Law. It is understandable because China and Vietnam have many similarities in their political-economic institutions; Vietnam opened its economy ten years after China. (Kerkvliet et al., 1998). The influence of Chinese corporate law in the way of building a market legal framework for corporate governance in Vietnam was inevitable.

However, unlike the Chinese Company Law, the 2005 Enterprise Law 2005 and the later laws have a reform towards the objectivity and fairness of the Supervisory board when stipulating that members of the supervisory board shall not hold managerial positions and are not necessarily shareholders or employees of the company.

3.3.2. The Period Since the Enterprise Law 2014 took Effect Until the Present

*** The 2014 Enterprise Law**

The law officially took effect on July 1, 2015, and has many significant reforms in JSC governance in Vietnam.

A very important change of the Enterprise Law 2014 was to accept the one-tier board model. Accordingly, investors can choose a one-tier model with the participation of independent directors instead of the traditional independent supervisory board model. In this model, at least 20% of the members of the board of directors must be independent directors. These independent members will coordinate with the internal audit committee established by the board of directors, to internally monitor the company's business activities (Article 134.2). This was a great change that showed that Vietnamese corporate law had become more open and provided favorable conditions for investors. Using the term “independent directors/members” for that particular internal monitoring mechanism, the law implied that the “Independent directors” do not have a material relationship with a company and is neither part of its executive team nor involved in the day-to-day operations of the company as international practice (Clarke, 2007). To avoid any ambiguity when appointing independent directors, Article 151.2 require the taught criteria to be an independent member as follows:

- a/ Not working for the same company or a subsidiary of the company;
not used to work for the same company or a subsidiary of the company during three previous consecutive years;
- b/ Not currently being entitled to salaries and remuneration from the the company, except the allowance enjoyed by members of the Board of Directors under regulations;

- c/ Not being a person whose spouse, natural father, adoptive father natural mother, adoptive mother, natural child, adopted child, or sibling is a large shareholder of the company; or is a manager of the company or a subsidiary of the company;
- d/ Not being a person directly or indirectly owning at least 1 percent of the total number of voting shares of the company;
- dd/ Not being a person who used to be a member of the Board of directors, or Supervisory board of the company during at least 5 previous consecutive years.

Despite strict regulations on the criteria for appointing independent members, the 2014 Enterprise Law 2014 had a major legal loophole in its content. It did not contain any provisions on the authorities and duties of independent directors. Even Decree No. 71/2017/ND-CP dated June 6th, 2017, providing guidelines on corporate governance of public companies, also did not mention these legal issues of independent directors. It was supposed that both the Law and the Decree imply that the rights and duties of independent directors were quite determined by the company's charter. The lack of a clear legal framework that outlines the limits for independent directors' activities would cause many inadequacies, that is, arbitrariness and ambiguity in the role and operation of the independent director in practice (Hoang, 2017).

The model of the supervisory board has not changed much, the law only adds one more mandatory standard that supervisors of listed companies and companies in which the state holds more than 50 percent of charter capital must be an auditor or accountant (Article 164.2). That regulation aims to improve the financial supervision capacity of the Supervisory board in large companies or companies with complex capital structures.

*** The 2020 Enterprise Law**

In 2020, a new enterprises law was enacted and took effect on January 1, 2021. There are no major changes in the governance models of JSCs and internal control bodies in comparison with the 2005 Enterprise Law. The law remains the two corporate governance models but has additional provisions on the operating conditions of independent directors and supervisors. Accordingly, independent directors are not allowed to serve on the board of directors for more than 02 terms (Article 154.2.a); The head of the Supervisory board must have a university degree or higher in one of the majors in economics, finance, accounting, auditing, law, business administration or a major related to the enterprise's business activities. industry, unless the company's charter stipulates a higher standard. Moreover, he/she must have at least 5 years of working experience (Article 168.2)

These stricter conditions are expected to enhance the independence, professional capacity, and supervisory capacity of independent directors and the supervisory board in the internal control of the company.

Compared with previous corporate laws, in the 2020 Enterprise Law, the audit committee formed by the board of directors is paid full attention. The law sets forth the powers and duties of audit committee members. In particular, the law requires an independent director to assume the position of the audit committee chairman. Other members of the audit committee must be non-executive members of the board of directors (Article 161.1). This regulation essentially creates independence for the audit committee and its members to ensure that the audit committee focuses on professional work, under the direction of independent and non-executive directors, not be under the influence of the board of directors.

3.4. Inadequacies of Implementing Legal Regulation on Internal Control in Vietnam

It seems that regulations on models of internal control bodies such as the Supervisory board and independent directors are not completely constructive when applied to corporate governance practices in Vietnam. Both regulations on the supervisory board and independent directors have exposed their shortcomings.

3.4.1. Regulations on Supervisory Board in Practice

The independent supervisory board is expected to perform the internal control function over the Board of directors and CEO to promptly detect and prevent violations. However, in many cases, it proved ineffective. Many senior managers of companies have committed serious violations of the law and company charter, but the supervisory board did not detect these violations or did not perform the supervision duty to prevent and suspend the infringement, and report to the GMS for resolution. The two following criminal cases can be described as the typical examples of internal control failures, which aggravate the violations of the board of directors and the CEO.

*** The first criminal case**

On March 30, 2012, the People's Court of Hai Phong City issued the judgment of Criminal Case No 45/2012/HSST (2012) which sentenced nine defendants to prison with sentences ranging from 3 to 20 years in prison and imposed them to jointly liable for damages to the State for the crime of Deliberately acting against the State's regulations on economic management, causing serious consequences (Article 165, the 1999 Penal Code). Those defendants included the former Chairman of the Board of directors Pham Thanh Binh, the former Head of Supervisory board Tran Van Liem, and 7 accomplices who were former members of the Board of directors of Vietnam Shipbuilding Industry Corporation (Vinashin) - A leading state-owned enterprise in Vietnam in the field of shipbuilding and shipping – and the form directors of company members. Accordingly, from 2002 to 2010, the Chairman and members of the Board of directors and the CEO continuously conducted illegal business activities in Vinashin and other company members. It caused property damage up to 1000 billion VND (equivalent to about 52milions USD) in 2012. Pham Thanh Binh was sentenced to 20 years in prison. For failing to carry out the duty of internal control and report the violation to the Council of members and the government competencies, Tran Van Liem was sentenced to 19 years in prison and jointly with Pham Thanh Binh compensated for the loss of about 500 billion VND (about more than 25 million USD) caused by the wrongdoing. The media reported that the state barely recovered the damage. This is a serious failure in the governance of state-owned enterprises (Mai, 2017).

*** The second criminal case**

On January 16, 2020, the People's Court of Hanoi issued the judgment of Criminal case No. 31/2020/HS-ST (2020), which sentenced Bui Van Hai - the former head of the supervisory board of Ocean Bank from 2009 to 2018, 3 years in prison. According to the judgment, during the period from 2011-2014, the chairman of the board of directors directed the CEO and the entire banking system to spend huge amounts of money illegally for many large customers to raise capital and loaned large amounts of credit to the customers that were not qualified. Holding the position as the head of the supervisory board, Bui Van Hai had to know or should know the violations of the chairman, the CEO, and the board members. In fact, Bui Van Hai failed to properly and fully perform his duties following the law as well as the Ocean Bank's charter. As a result of those violations, Ocean Bank lost an amount of 1.050 billion VND (equivalent to about 45.650.000 USD) in 2014. The mistake caused Bui

van Hai to be sentenced to 3 years in prison for the crime of Deliberately acting against the State's regulations on economic management, causing serious consequences. (Article 165, the 1999 Penal Code).

*** Causes of the supervisory board's failures**

According to economic, financial, and legal experts, the common causes leading to violations of the Supervisory board in Vietnam are institutional and cognitive bias.

Firstly, the institution of the supervisory board is not strong enough. From the 2005 Enterprise Law and earlier, although the Supervisory board is given a lot of power, in reality, it was the controlling shareholders who had the most power. They were the ones who decided the governance structure and personnel positions of the company. Most of them hold positions on the Board of Directors. Members of the Supervisory board were chosen and controlled by them. Therefore, it is difficult for the Supervisory board to monitor the business activities of the Board of directors (Nguyen and Nguyen, 2018). This happens not only in Vietnam, in many Chinese JSCs, members of the Supervisory board are also required to represent shareholders and employees, so their operation cannot independent. Financial experts have commented that the Supervisory board in Chinese JSCs mostly performs formal activities, playing a more decorative role than actual functions (Tenev et al., 2002).

In particular, in state-owned enterprises, the role of the Supervisory board is even more blurred. The supervisory boards of these corporations are established by the board of directors, the head of the supervisory board is a member of the board of directors. The members of the supervisory board are appointed, and dismissed by the board of directors, and the supervisory board operates under the regulations issued by the board of directors (Nguyen and Nguyen, 2018).

Second, the related parties' awareness of internal control is still poor. Many supervisory boards are operating formally because companies and their shareholders do not appreciate the role of the supervisory board in corporate governance. There is a fact that, in many companies, the GMS assigns the Board of directors to establish the Supervisory board, and the Supervisory board operates within the scope of work directed by the Board of directors. Therefore, the Supervisory board lost its function and became a tool of the Board of directors instead of supervising the Board of directors

Third, the supervisory board lacks human resources and a mechanism to operate. Following the law and the company's charter, members of the supervisory board work part-time, without an assistant apparatus. Members of the supervisory board are not qualified to perform internal

supervision and risk management skills. They also do not have sufficient professional capacity in accounting, auditing, and legal compliance supervision (Nguyen and Nguyen, 2018). This makes it difficult for the supervisory board to assume its duties, detect violations, and provide solutions as required by the 2014 Enterprise Law 2014 and the 2020 Enterprise Law 2020.

Fourthly, most of the supervisory boards lack the assisting apparatus, tools, and working facilities to complete their tasks. Except for the banking sector, most of the supervisory boards are not equipped with a system for receiving and managing information, specific to internal surveillance. Usually, the supervisory boards only rely on the periodic reports of the enterprise and only have access to the general information provided to them by the enterprise. Therefore, it is difficult to forecast and detect violations (Nguyen, 2018).

3.4.2. Regulations on Independent Directors in Practice

Since the 2014 Enterprise Law, independent member combined with internal audit committee is a new model of internal control body, which is especially recommended for public companies in Vietnam, but in fact, except for areas such as banking and securities, the participation of independent directors in the board of directors are not interested because of the following shortcomings:

Firstly, the participation of independent directors in the board of directors is a new corporate governance model, introduced to Vietnam in the 2014 Enterprise Law. Therefore, it is still unfamiliar to the companies using the traditional model that have supervisory boards. In addition, the laws do not stipulate the framework for independent directors in the board of directors but entrust completely this legal issue to companies to decide on their charters. Therefore, companies are very confused when determining the operational limits, powers, and duties of independent directors. (Nguyễn, 2017)

Secondly, as required by the 2014 Enterprise Law 2014 and later the 2020 Enterprise Law, independent directors must be experts in the fields related to the company's business. The standards for meeting the requirements of the independent director are quite serious, thus it is difficult to find the right persons for these positions in the board of directors (Hoang, 2017).

4. Research Results

4.1. Critical Commentary on the Internal Control Bodies in Vietnamese JSCs

*** Supervisory board**

The supervisory board in Vietnamese companies seems to be influenced by the supervisory board model under Chinese company law, not the classic German model. In theory, it plays a very important role in controlling the financial activities of enterprises, but in practice, it is a weak institution, without real power, but assigned too many responsibilities. As result, it is impossible to work efficiently. To improve the effectiveness of the supervisory board, it is necessary to have clear regulations on the institution of the supervisory board to ensure its functions, powers, and independence so that it is controlled by the board of directors and/or the CEO. In addition, the law should introduce stricter sanctions on failure to perform the duties and powers of the supervisory board to ensure that it makes all efforts to properly performs its functions.

The related parties, such as controlling shareholders and the board of directors, should consider seriously the supervisory board as an effective tool to help enterprises have better internal control and protect the legitimate interests of the companies and their shareholders. With such awareness, the GMS could appoint qualified and experienced people as members of the supervisory board to undertake internal financial supervision. The supervisors must have sufficient capabilities and professional competence in accounting, auditing, and compliance management to appraise financial statements.

Besides, Vietnamese companies also need to design a special information system for internal control and establish an independent internal audit department directly under the supervisory board's direction to help the board perform its functions.

*** Independent directors – members of the board of directors**

The model of independent members of the Board of directors in coordination with the Audit Committee to supervise the company's activities is suitable with modern corporate governance. The introduction of this model into Vietnam is a progressive approach of the lawmaker to corporate governance in the country. The presence of independent directors helps to improve the limitations of the current supervisory board model. On the one hand, it increases the ability to supervise the board of directors and contribute expert advice to the operations of the executives. On the other hand, the

fact that independent directors direct the internal audit committee's activities will increase the objectivity in the internal monitoring of the company's financial activities. In other expressions, the independent directors have an internal audit committee to assist them, so their supervisory capacity and effectiveness will improve compared to the operation of the Supervisory board. The coordination between the independent director and the internal audit committee will improve the quality of the company's internal control.

Nevertheless, the biggest problem of this model in practice is that the law does not have provisions on the limits of independent directors' power and duty. This causes suspicion and confusion of this model for companies that want to apply it.

4.2. Some Recommendations on Internal Control Models in Vietnam

According to the current Vietnamese law, JSCs, including listed companies have the option of choosing a traditional governance model with a supervisory board or a one-tier board model with the participation of independent directors and an internal audit committee.

If choosing the model with a supervisory board, JSCs should note that this is a complex institution. Theoretically, the supervisory board is independent and powerful, but in practice, there are many barriers. The typical cases of serious violations in corporate governance in Vietnam have shown that many supervisory boards have not operated effectively for many reasons. The solutions to overcome these limitations must be a comprehensive solution, including reforming the supervisory board institution, selecting capable members, and adding the assisting body for the supervisory board. And finally, it is necessary to impose severe punishment and compensatory damages on supervisors who fail to perform their duties properly.

The model of combining independent directors with an internal audit committee seems to overcome all the current weaknesses of the supervisory board. This model allows the company to select outstanding experts who are able to monitor the company's financial activities and provide advice to the board of directors.

The most important thing at present is that the lawmaker should adopt regulations on the independent directors' authorities and duties to ensure the legal consistency of this internal control body. Based on that legal framework, companies will have specific regulations on the role of independent directors in their charters, suitable for their purposes and business areas.

5. Conclusion

Vietnam is an emerging market economy, still in the process of passively absorbing corporate governance experience from abroad. Vietnamese corporate laws are mainly imported from abroad. Therefore, there is a large gap between the theories of good corporate governance, the legal regulations, and the practice of corporate governance in the country. A common weakness in corporate governance in Vietnam is that company's internal control activities are not effective in point of fact.

To improve the legal framework for corporate governance, Vietnamese lawmakers and the government authorities should take seriously the company managers' opinions on the common shortages of the current law. It is helpful to compare Vietnamese corporate governance laws with good international practices recommended by the OECD to find out the deficiencies that make the laws not effective in practice as anticipated, By doing so, it is possible to supplement or amend the laws with adequate legal provisions.

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