

**THE ORGANIZATIONAL STRUCTURE OF THE SECURITIES COMPANY UNDER THE
LAW OF VIETNAM CURRENT**

Nguyen Vinh Hung^A Dao Xuan Hoi^B Nguyen Dang Duy^C



ARTICLE INFO	ABSTRACT
<p>Article history:</p> <p>Received 31 January 2023</p> <p>Accepted 04 April 2023</p>	<p>Purpose: The article researches on the organizational structure of securities company under the Securities Law 2019 in order to point out some limitations and shortcomings and propose for recommendations to improve law about organizational structure on this form of company.</p>
<p>Keywords:</p> <p>Stock Company; Organizational Structure; Securities Law; Shareholder; Stock.</p>	<p>Theoretical framework: Recent literature points out that securities companies play very important role in the development of Vietnam's stock market. However, in the current stage of development, from the influence and impact of international integration and the increasingly fierce competitive pressure, the securities companies have encountered many difficulties to survive. In there, limits and problems in regulations about securities company organizational structures has caused many difficulties for these companies when organization and operation. On the other hand, in the context of judicial reform in Vietnam, the issue of complete law system and expanding the freedom to business has always been paid special attention by the Party and Vietnam State.</p>
	<p>Design/methodology/approach: The authors have combined traditional research methods of legal science such as legal analysis method, legal efficiency assessment method and legal comparison method.</p>
	<p>Findings: According to research, regulations on the organizational structure of a securities company are directly related to the efficiency of management and administration of this company. In there, Supervisory Board/Internal Audit Committee always ensuring to limit negative and fraudulent acts of the company's leaders, to better ensure the legitimate rights and interests of the company's members and customers. Therefore, the authors have proposed several solutions such as the need to stipulate the mandatory requirement of a Supervisory Board for the securities trading company under the model of limited liability company, and expand and strengthen the powers of the Supervisory Board/Internal Audit Committee, independent members in securities companies doing business in the form of joint stock company. These are important bases to contribute to perfecting the Law on the organizational structure of securities companies in Vietnam and further enhancing the stability and safety of the Vietnamese stock market.</p>
	<p>Research, Practical & Social implications: This research may support many develop future research in Vietnam. At the same time, the research to help foreign investors' activities in Vietnam's stock market.</p>
	<p>Originality/value: The research of the freedom to business and organizational structure of securities companies become more and more urgent and very important</p>

^A PhD in Law. Lecturer. Hanoi Law University. Vietnam. E-mail: nguyenvinhhung85@gmail.com

Orcid: <https://orcid.org/0000-0002-9750-4453>

^B PhD in Law. Lecturer. University of Labour and Social Affairs. Vietnam. E-mail: xuanhoi-ulsa@gmail.com

Orcid: <https://orcid.org/0000-0001-7366-8376>

^C Master in Law. Lecturer. Hanoi Law University. Vietnam. E-mail: duynd@vnu.edu.vn

Orcid: <https://orcid.org/0000-0001-6075-1402>

in Vietnam.

Doi: <https://doi.org/10.26668/businessreview/2023.v8i4.2012>

A ESTRUTURA ORGANIZACIONAL DA COMPANHIA DE VALORES MOBILIÁRIOS SOB A LEI DO VIETNÃ ATUAL

RESUMO

Objetivo: O artigo pesquisa sobre a estrutura organizacional da empresa de valores mobiliários sob a Lei de Valores Mobiliários de 2019, a fim de apontar algumas limitações e deficiências e propor recomendações para melhorar a lei sobre a estrutura organizacional dessa forma de empresa.

Referencial teórico: A literatura recente aponta que as empresas de valores mobiliários desempenham um papel muito importante no desenvolvimento do mercado de ações do Vietnã. No entanto, no atual estágio de desenvolvimento, devido à influência e impacto da integração internacional e à pressão competitiva cada vez mais acirrada, as empresas de valores mobiliários têm encontrado muitas dificuldades para sobreviver. Ali, os limites e problemas nas regulamentações sobre as estruturas organizacionais das empresas de valores mobiliários têm causado muitas dificuldades para essas empresas na organização e operação. Por outro lado, no contexto da reforma judicial no Vietnã, a questão do sistema jurídico completo e a expansão da liberdade de negócios sempre receberam atenção especial do Partido e do Estado do Vietnã.

Desenho/metodologia/abordagem: Os autores combinaram métodos de pesquisa tradicionais da ciência jurídica, como método de análise jurídica, método de avaliação de eficiência jurídica e método de comparação jurídica.

Resultados: De acordo com a pesquisa, as regulamentações sobre a estrutura organizacional de uma empresa de valores mobiliários estão diretamente relacionadas à eficiência da gestão e administração dessa empresa. Nela, o Conselho Fiscal/Comitê de Auditoria Interna sempre zelando para limitar os atos negativos e fraudulentos dos dirigentes da empresa, para melhor assegurar os legítimos direitos e interesses dos integrantes e clientes da empresa. Assim, os autores propuseram várias soluções, como a necessidade de estipular a obrigatoriedade de um Conselho Fiscal para a sociedade de negociação de valores mobiliários sob o modelo de sociedade limitada, e ampliar e fortalecer as competências do Conselho Fiscal/Comitê de Auditoria Interna, independente sócios de sociedades de valores mobiliários que operam sob a forma de sociedade anônima. Estas são bases importantes para contribuir com o aperfeiçoamento da Lei sobre a estrutura organizacional das empresas de valores mobiliários no Vietnã e aumentar ainda mais a estabilidade e a segurança do mercado de ações vietnamita.

Pesquisa, implicações práticas e sociais: esta pesquisa pode ajudar muitos a desenvolver pesquisas futuras no Vietnã. Ao mesmo tempo, a pesquisa para ajudar as atividades dos investidores estrangeiros no mercado de ações do Vietnã.

Originalidade/valor: A pesquisa da liberdade de negócios e estrutura organizacional das empresas de valores mobiliários torna-se cada vez mais urgente e muito importante no Vietnã.

Palavras-chave: Sociedade por Ações, Estrutura Organizacional, Direito dos Valores Mobiliários, Acionista, Ações.

LA ESTRUCTURA ORGANIZATIVA DE LA COMPAÑÍA DE VALORES BAJO LA LEY DE VIETNAM VIGENTE

RESUMEN

Propósito: El artículo investiga sobre la estructura organizativa de la empresa de valores bajo la Ley de Valores de 2019 con el fin de señalar algunas limitaciones y deficiencias y proponer recomendaciones para mejorar la ley sobre la estructura organizativa de esta forma de empresa.

Marco teórico: La literatura reciente señala que las sociedades de valores juegan un papel muy importante en el desarrollo del mercado de valores de Vietnam. Sin embargo, en la etapa actual de desarrollo, por la influencia y el impacto de la integración internacional y la presión competitiva cada vez más feroz, las sociedades de valores han encontrado muchas dificultades para sobrevivir. Allí, los límites y problemas en las regulaciones sobre las estructuras organizativas de las sociedades de valores ha provocado muchas dificultades para estas empresas a la hora de organizarse y operar. Por otro lado, en el contexto de la reforma judicial en Vietnam, el Partido y el Estado de Vietnam siempre han prestado especial atención a la cuestión del sistema legal completo y la expansión de la libertad comercial.

Diseño/metodología/enfoque: Los autores han combinado métodos de investigación tradicionales de las ciencias jurídicas, como el método de análisis jurídico, el método de evaluación de la eficacia jurídica y el método de comparación jurídica.

Hallazgos: Según la investigación, las normas sobre la estructura organizativa de una sociedad de valores están directamente relacionadas con la eficiencia de la gestión y administración de esta sociedad. Allí, el Consejo de Supervisión/Comité de Auditoría Interna siempre se asegura de limitar los actos negativos y fraudulentos de los líderes de la empresa, para garantizar mejor los derechos e intereses legítimos de los miembros y clientes de la empresa. Por lo tanto, los autores han propuesto varias soluciones como la necesidad de estipular el requisito obligatorio de un Consejo de Vigilancia para la sociedad de negociación de valores bajo el modelo de sociedad de responsabilidad limitada, y ampliar y fortalecer las facultades del Consejo de Vigilancia/Comité de Auditoría Interna, independiente miembros de compañías de valores que hacen negocios en forma de sociedad anónima. Estas son bases importantes para contribuir a perfeccionar la Ley sobre la estructura organizativa de las sociedades de valores en Vietnam y mejorar aún más la estabilidad y seguridad del mercado de valores vietnamita.

Implicaciones de investigación, prácticas y sociales: esta investigación puede apoyar el desarrollo de muchas investigaciones futuras en Vietnam. Al mismo tiempo, la investigación para ayudar a las actividades de los inversores extranjeros en el mercado de valores de Vietnam.

Originalidad/valor: La investigación de la libertad comercial y la estructura organizativa de las sociedades de valores se vuelve cada vez más urgente y muy importante en Vietnam.

Palabras clave: Sociedad Anónima, Estructura Orgánica, Ley de Valores, Accionista, Acciones.

INTRODUCTION

“Nowadays, Vietnam’s stock market has had rapid growth and attracted an increasing number of investors” (Nguyen Vinh Hung et al., 2022_2). Therein, “securities company is an important intermediary financial institution in the stock market” (Hanoi Law University, 2012). Therefore, securities companies always “play a very important role in the development of the stock market” (Le Thi Thu Thuy, 2015). In order for a securities company to operate stably, sustainably, effectively and safely, the organizational model of this company has been always paid special attention of Vietnamese laws. On the other hand, at the same time as the Law on Securities in 2019, the Law on Enterprises in 2020 has some very important changes related to the organizational structure of some forms of companies that the securities company has to follow. Since then, the need to research on the organizational structure of securities companies has become more importantly. This is also a very important issue for foreign investors when they have interests in cooperation and doing business with securities companies in Vietnam.

LITERATURE REVIEW

Up to now, research on the topic of organizational structure of securities companies in Vietnam is still quite small. Because, majority of research papers focus only on studying legal issues related to business activities of securities companies such as securities trading activities, securities investment consulting activities, securities brokerage activities, etc. However, if studied from the perspective of corporate law, there are quite a lot of research papers related to the organizational structure of joint stock companies (JSC) and types of limited liability

companies (LLC). Therefore, a few typical research works in Vietnam have mentioned some of the contents of this topic such as:

Regarding documents at law training institutions in Vietnam, you can find: *Education Securities Law* and *Vietnam Commercial Law Textbook (Volume 1)* of Hanoi Law University. These are textbooks to serve the learning and research needs of subjects on Vietnam Securities Law and Vietnam Commercial Law. The contents of the textbooks mention a number of issues related to the organizational structure of securities companies in Vietnam.

Some documents in the form of monographs, reference books, articles in magazines in Vietnam related to the topic, which can be mentioned by Nguyen Dang Nam (editor 2006) - *Analysis and investment of securities*, Le Thi Thu Thuy (editor) - *Textbook of Law on the Securities Market*, Faculty of Law - VNU in 2015, Nguyen Van Tuyen (Editor 2008) - *Textbook of Securities Law*, Pham The Anh (2007) - *Handbook in securities investment*; Nguyen Vinh Hung (2021) - *Conditions for initial public offering of shares in the Securities Law 2019*, The Journal of Legislative Studies No. 06/2021; Nguyen Vinh Hung et al., (2022) - *Shortcomings in the Legal System on Securities in Vietnam*, JURNAL CITA HUKUM (Indonesian Law Journal) FSH UIN Syarif Hidayatullah Jakarta, Indonesia, Vol. 10 No. 3 (2022); Nguyen Vinh Hung et al., (2022) - *The conditions for the initial public offering of fund certificates in Vietnams Securities law 2019*, Baltic Journal of Law & Politics, A Journal of Vytautas Magnus University VOLUME 15, NUMBER 2 (2022).

In-depth studies on the organizational structure of various types of companies related to securities companies can be mentioned: Le Minh Toan (editor 2006) - *Vietnam Economic Laws*, Nguyen Nhu Phat (Editor-in-Chief 2011) - *Textbook of Vietnamese Economic Laws*, Pham Duy Nghia (2009) - *Enterprise Laws - Case studies - Analysis - Commentary*, Le Hoc Lam and Le Ngoc Duc (2010) - *Business Laws*, Nguyen Thi Lan Huong (2009) - *Some comparisons of JSC under the Japanese Companies Laws and Vietnam Enterprise Laws*, Science Journal - Vietnam National University, Law No. 02/2009, Nguyen Vinh Hung (2019) - *Organizational structure of joint-stock companies according to the Enterprise Law 2014*, Journal of Legislative Research, No. 12/2019.

In general, the above studies are still quite fragmented, scattered and mainly researched in the context of expired legal provisions in Vietnam. Therefore, research on the topic of organizational structure of securities companies under Vietnamese law is still relatively new in Vietnam.

METHODOLOGY

To study the organizational structure of the securities company under the law of Vietnam current, the authors have used a combination of traditional research methods of the social sciences and legal sciences such as legal analysis method, the legal efficiency evaluation method, and legal comparative method.

In general, the above research methods are used in close and harmonious combination by the authors to achieve the research objectives of this article.

RESULTS AND DISCUSSION

Currently, securities company are organized and operate according to the business models prescribed by the securities laws and enterprise laws in Vietnam. Specifically, based on Clause 2, Article 71 of the Law Securities 2019, a securities company must be organized in the form of a LLC or a JSC in accordance with the provisions of the Enterprise Law 2020. It can be seen that , the common point of these types of companies is that they are “all in the form of a counterpart company and members/shareholders are entitled to a limited property regime” (Hanoi Law University, 2018). That means, LLC and JSC are only liable to creditors/customers to the extent of the company’s assets, and members/shareholders are only liable to the extent of their amount of capital contribution to the company. Therefore, these types of companies have full legal status, which fully meet the standards of legal entities according to the provisions of the Civil code 2015.^D Perhaps, securities trading is a type of risky business and the transfer and mobilization of capital is usually quick and widely available, therefore, in order to reduce risks and contribute to creating flexibility and ease when it is necessary to mobilize capital, only types of new counterpart company are appropriate with this particular business field.

Pursuant to the provisions of the Enterprise Law 2020 on LLC and JSC, the organizational structure of the current securities company will basically be organized as follows:

Regarding to Securities Companies Organized According to the Model of a Limited Liability Company:

Inheriting and developing from the previous Enterprise Laws, the current Enterprise Law 2020 continues to maintain both the two models of the LLC, which are: “One - member LLC” and “two or more members LLC”. The basic difference between these two models is that,

^D Article 74 of the Civil code 2015.

in all cases, a one-member LLC exists and operates with only one member. Two or more members LLC must have a minimum of two members and a maximum of 50 members (the laws of each country have different conceptions on the number of members, for example, the maximum members of a LLC in the Russian Federation is not more than 50 people; in the Republic of South Africa it is not more than 30 people; in the USA it is regulated by each state) (Le Hoc Lam et al, 2010).

SECURITIES COMPANY ORGANIZED ACCORDING TO THE MODEL OF A ONE-MEMBER LIMITED LIABILITY COMPANY:

Currently, depending on the entity establishing or owning a securities company, it is a natural person (individual) or a legal entity (organization). One-member LLC can be organized under two models: One-member LLC owned by an individuals; or a one-member LLC owned by an organization.

+ *One-Member LLC Owned by an Individual:*

The organizational model of this company includes President, Director or General Director.^E In general, the organizational model of a one-member LLC in the case of an individual as the owner is quite simple and neat. In principle, the company owner is the President of the company and can concurrently hold the title of Director or General Director.

However, the company owner can also hire someone else to act as the Director or General Director if necessary.

+ *One-Member LLC Owned By the Organization:*

If the organization establishes a securities company and chooses the operating model of a one-member LLC, in this case, the organization is the owner and can select one of two following operating models:^F

(i) Company with President, Director or General Director.

(ii) The Board of members, Director or General Director.

The basic difference between model (i) and model (ii) is the appearance of the the Board of members (with from 03 to 07 members and members must be appointed and exempted by the company's owner with a term of not more than 5 years) instead of place of the President of the company. The President of the Board of members may also be appointed by the company

^E Clause 1, Article 85 of the Enterprise Law 2020.

^F Clause 1, Article 79 of the Enterprise Law 2020.

owner or elected by the members of the Board of members on the principle of majority. In principle, the Board of members shall on behalf of the company owner, exercise the rights and obligations of the company owner.^G In practice, the organizational model (ii) is usually suitable for one-member LLC established and operated by the State. Because, with the organizational model (ii), there will be many members involved in managing, leading and operating the company, there should be stricter inspection and supervision compared to the model (i). In addition, a remarkable point in the organizational structure of a one-member LLC established by an organization is that, unlike the Enterprise Law 2014, which requires the participation of a Controller,^H the Enterprises Law 2020 mandatory regulation on Controllers has been removed. Currently, the Enterprise Law 2020 only stipulates for companies whose owners are state-owned enterprises in which 100% of charter capital is held by the State or enterprises in which 50% of charter capital is held by the State, which is prescribed in Clause 1, Article 88, the Board of Controllers must be established, unless otherwise decided by the company.^I Therefore, this is a matter of great concern and consideration, because the field of securities trading often requires very close inspection and supervision right from, within the company. Without the inspection and supervision of the Controllers, it is very difficult to promptly detect the violations of the securities company's leadership.

SECURITIES COMPANY ORGANIZED ACCORDING TO THE MODEL OF A TWO OR MORE MEMBERS LIMITED LIABILITY COMPANY:

Pursuant to Article 54 of the Enterprise Law 2020, the organizational structure of a securities company operating under the model of a two-members or more LLC include: the Board of members, President of the Board of members, Director or General Director. Thus, the Enterprise Law 2020 has also removed the requirement that a two or more member LLC with 11 or more members will have to establish a Board of Controllers (or if there are fewer than 11 members, it can still be established Board of Controllers in accordance with corporate governance requirements).^J Currently, the Enterprise Law 2020 only requires that in case the State establishes a two or more members LLC and holds more than 50% of the charter capital or a subsidiary of a state-owned enterprise, then it must establish Board of Controllers to supervise the activities of the company. In this organizational model, the members Board is the

^G Article 80 of the Enterprise Law 2020.

^H Clause 1, Article 78 of the 2014 Enterprise Law.

^I Article 79 of the Enterprise Law 2020.

^J Article 55 of the Enterprise Law 2014.

highest and only decision-making body of the securities company and in principle, will include all members of the company (individuals and representatives under the law authorized by members who are organizations).^K Because of the removal of the requirement to have a Board of Controllers, monitoring the activities of the Board of members and other leadership positions of the company has become increasingly difficult and complicated.

In general, LLC are often not chosen by investors when they want to establish and conduct securities business. Because, when trading in securities, investors often want to easily mobilize widely contributed capital. As for the models of LLC, there are some huge limitations that are limited to the maximum number of members, the transfer of contributed capital is often difficult, troublesome, complicated and especially the company can only issue bonds. Therefore, the psychology of most investors when establishing a securities company wants to establish and operate according to the organizational model of a JSC.

FOR A SECURITIES COMPANY ORGANIZED ACCORDING TO THE MODEL OF A JOINT-STOCK COMPANY:

Unlike a LLC, a JSC always “has a large number of members. There are JSC with tens of thousands of shareholders in almost every country over the world, so the ability to raise capital is the widest among the public to invest in many different fields” (Le Minh Toan, 2006). In addition, the great strength of a JSC is that it is “capable of expanding capital through the stock market” (Nguyen Thi Lan Huong, 2009). Therefore, for choosing securities business, the JSC model is always favoured by investors not only in Vietnam but also in most countries around the world. However, because there are many shareholders involved and the change of shareholders is quite simple and easy, “the issue of organization and management of this company is always very complicated” (Hanoi Law University, 2018). The study shows that “the laws of most countries regulate the organizational structure of JSC with the participation of many agencies, such as: Owners (shareholders); Board of Directors or Board of Supervisors; Managing Director; Supervisory Board for companies with more than 11 members. The participation of these agencies is mainly for the purpose of managing, operating, and maintaining the business activities of the JSC, and on the other hand, also to supervise and check each other in order to limit the abuse of power of each agency” (Nguyen Vinh Hung, 2019).

^K Clause 2, Article 54; and Clause 1, Article 55 of the Enterprise Law 2020.

Currently, Enterprise Law 2020 continues to design two models of the organizational structure of a JSC so that investors, when wishing to establish a securities company, have the freedom to choose:

- (i) General Meeting of Shareholders, Board of Directors, Board of Controllers, Director, or General Director.
- (ii) The General Meeting of Shareholders, the Board of Directors (with the participation of independent members and the Audit Committee under the Board of Directors); Director or General Manager.^L

It can be seen that the basic difference between the two organizational models is reflected in the presence or absence of the Board of Controllers or the Audit Committee under the Board of Directors and independent members.

- (i) The organizational model of a joint-stock securities company in which the *Board of Controllers* participates.

This is the traditional organizational model, also known as the classic model of a JSC. Because this model has been applied in many countries and for a very long time. Regarding the details of this organizational model, based on point a, Clause 1, Article 137 of the Enterprise Law 2020, including the following institutions: General Meeting of Shareholders, Board of Directors, Board of Controllers; and The Director or General Director. In case a JSC has fewer than 11 shareholders and the shareholders are organizations holding less than 50% of the total shares of the company, it is not required to have a Board of Controllers. Basically, the institutions in this organizational model have the following basic functions, tasks, and powers:

For the *General Meeting of Shareholders*, it was commented that “one of the characteristics of a JSC is centralized management through the board structure. In principle, the organizational structure and the distribution of power in the organizational structure are the internal work of the investors” (Le Hoc Lam et al, 2010). According to Clause 1, Article 138 of the Enterprise Law 2020, all shareholders with voting rights have the right to participate in the General Meeting of Shareholders, which is also the highest decision-making body of the company share.

Regarding the Board of Directors, it is considered as “the core authority in a JSC” (Pham Duy Nghia, 2009). Because the Board of Directors holds a lot of important powers and is the body responsible for deciding to solve all the problems that occur daily in the company. Therefore, if there is an act of manipulating the power or profit of the members of the Board of

^L Point 1, Article 137 of the Enterprise Law 2020.

Directors, the minority shareholders, or the interests of customers, securities investors will be greatly affected. There is a comment that “if the members of the Board of Directors work diligently and have a high spirit and sense of responsibility for their work, the company and its shareholders or minority shareholders will benefit. On the contrary, if the members of the Board of Directors collude with each other for autocratic and self-seeking purposes, it will cause great influence and damage to the company as well as affect the legitimate rights and interests of shareholders or groups minority shareholders. Therefore, most JSC now stipulate the participation of the Board of Controllers to inspect and supervise the activities of the members of the Board of Directors” (Nguyen Vinh Hung, 2019).

For the Board of Controllers, “in JSC, especially public companies and listed companies, the role of the Board of Controllers is very important” (Vneconomy.vn, 2021). This is because the Board of Controllers is a specialized agency and is preeminent responsible for regularly inspecting and supervising the activities of the Board of Directors and other leadership. To be able to properly perform its responsibilities, in principle, the Board of Controllers must have the right to access all information related to the activities of the members of the Board of Directors or the leadership positions of the company. However, in Vietnam today, from business practice not only in the securities sector but also in most other fields, it has been shown that “in many companies, the Board of Controllers only plays the role of a figurehead, built up by the Board of Directors and major shareholders and completely neutralized, even considered as a supporting force, behind and aiding the Board of Directors, General Director/The Director is deeply involved in illegal activities, infringing on the interests of small shareholders” (Vneconomy.vn, 2021). “There are many cases where the Board of Directors and the Board of Controllers coordinate and associate with each other to manipulate all power in a JSC” (Nguyen Vinh Hung, 2019). For a securities company operating in the form of a JSC, the ineffective operation of the Board of Controllers may cause particularly heavy consequences for minority shareholders or customers and investors deal with this company. Because, as mentioned, securities trading is a business field that contains a lot of risks and constant fluctuations. In many cases, it can be fast or slow in a very short period of time, but investors and customers can gain or lose a huge amount of profit. Therefore, if the Board of Controllers could closely monitor the activities of the members of the Board of Directors and promptly provide customers information and reports fully, quickly, and accurately, it could help shareholders of companies or investors and the stock market become safer, fairer, and more transparent.

As for the titles of *Director* or *General Director*, the duties and powers of these titles are quite similar to the titles of Director or General Director in models of LLC. Because The Director or General Director is often thought of as the people responsible for running the company's day-to-day business without the need for a decision by the Board of Directors or from the President/ Board of members positions of the company in various types of LLC.

In summary, in this organizational model, the JSC emphasizes the role and authority of the Board of Directors. On the other hand, it can be seen that a JSC “is a type of counterpart company, has legal status, and a JSC is organized and managed according to a mechanism with a clear separation between ownership and corporate governance. The right to manage the company is not spread out, or distributed to shareholders, but is concentrated in a "professional" apparatus. Shareholders hold ownership of the company, have the right to elect the company's management apparatus, but each shareholder is not the manager of the company” (Nguyen Nhu Phat, 2011). Especially for public companies, this is a company with a very large scale or has issued securities to the public, so “has a diversified shareholder structure, in which, the major shareholder is an organization or individual that can nominate someone to be elected as a member of the Board of Directors or a Controller. In many cases, these people are directly involved in the management and administration of the company, while small shareholders can only associate with nominating candidates for the Board of Directors or Board of Controllers and are unlikely to have representatives on the Board of Directors and the Board of Controllers” (Nguyen Thi Lan Huong, 2013). According to the management principles applied to public companies current, the corporate governance of this company must include the principles of timely, complete, accurate, and transparent disclosure of information; ensuring the effective operation of the Board of Directors with the Board of Controllers...^M Because, the information associated with the JSC is often “important financial information” (Al-Refiay, H. A. N et al., 2022). Therefore, for securities companies, the Board of Controllers clearly shows its position and especially its important role in supervising all activities of the Board of Directors.

(ii) Organizational model of a joint-stock securities company with the participation of the Audit Committee under the Board of Directors and independent members

This model of JSC governance was officially recognized for the first time in the Enterprise Law 2014. After that, the Enterprise Law 2020 only changed the name of the Internal audit committee to become a Commission audit committee under the Board of Directors. However, basically, the functions, tasks, and powers of this agency in the Enterprise Law 2014

^M Article 40 of Securities Law 2019.

and the Enterprise Law 2020 are the same. In particular, based on point b, Clause 1, Article 137 of the Enterprise Law 2020, with this organizational model, a JSC will include the following institutions: General Meeting of Shareholders, Board of Directors and The Director/General Manager. Notably, the Board of Directors must have at least 20% of the members who are independent members and also have the participation of the affiliated Audit Committee.

“Compared to the traditional organizational structure model of a JSC above, for this new organizational model, basic issues such as positions, roles, tasks, powers, and other regulations are required. General Meeting of Shareholders, Board of Directors, The Director/General Director are similar” (Nguyen Vinh Hung, 2019). The difference between the two governance models only shows when in the organizational structure of the Board of Directors, there is the participation of the affiliated Audit Committee and independent members. Specifically, the basic functions, tasks, and powers of these institutions are as follows:

Regarding the *Affiliated Audit Committee*, the Enterprise Law 2020 allows joint-stock companies to have the freedom to decide the organizational structure, functions, and duties of the affiliated audit committee in the charter of the JSC or the operating regulations of the affiliated Audit Committee shall be promulgated by the Board of Directors.^N According to Article 161 of the Enterprise Law 2020, the Audit Committee is defined as a specialized agency under the Board of Directors and has two or more members. At the same time, in order to strengthen supervision over the Board of Directors, the Chairman of the Audit Committee must be an independent member, and the remaining members of the Audit Committee must be non-executive members of the Board of Directors.

For independent members, the Enterprise Law 2020 continues to maintain the spirit of the Enterprise Law 2014 when it still stipulates that at least 20% of the members of the Board of Directors must be independent members. In performing their duties, “the independent members perform the function of supervising and organizing the exercise of control over the management and administration of the company” (Nguyen Vinh Hung, 2019). The criteria and conditions for becoming an independent member are detailed in Article 155 of the Enterprise Law 2020. In principle, an independent member “is a member of the Board of Directors but is not a Director (General Director), Deputy Director/Deputy General Director, Chief Accountant, and other managers appointed by the Board of Directors or major shareholders of the company” (Nguyen Thi Lan Huong, 2013). This is because it ensures that independent members are not

^N Point b, Clause 1, Article 137 of the Enterprise Law 2020.

dominated and influenced by the benefits that can be obtained from holding important positions and powers in the company.

When comparing the second organizational model with the first organizational model of a JSC, it can be seen that the second organizational model is more favorable for investors when it can be simplified and collected streamline the organizational and management apparatus of a JSC. However, the limitation of the second organizational model is that the Audit Committee is not independent of the Board of Directors, is an agency directly dependent on the Board of Directors maybe that leads to an easier situation for the Board of Directors when it is necessary to manipulate and control the affiliated Audit Committee. Because the attached Audit Committee is no different from the extended arm of the Board of Directors in manipulating the company's published audit information.

In addition, Clause 2, Article 137 of the Enterprise Law 2020 stipulates that in case a JSC has only one legal representative, the Chairman of the Board of Directors or The Director/General Director will be the person that is the legal representative of the company. Unless otherwise provided for in the charter of a JSC, the Chairman of the Board of Directors is the legal representative of this company. In the case of a JSC with more than one legal representative, the Chairman of the Board of Directors and The Director or General Director are the legal representatives of the JSC. Regulations on representation are applied to both organizational models of JSC in the Enterprise Law 2020.

In addition, it should be noted that, in addition to complying with the provisions of the Enterprise Law 2020, to establish a securities company, investors must also comply with the provisions of the Securities Law 2019. Accordingly, to establish a securities company, the conditions for shareholder structure, capital contribution members must also include at least 02 founding shareholders and capital contributing members being organizations. In case a securities company is organized in the form of a one-member LLC, the owner must be an insurance enterprise, a commercial bank, or a foreign organization that meets the provisions of the Securities Law 2019. In addition, the capital contribution ratio of organizations is at least 65% of charter capital, of which organizations being insurance enterprises and commercial banks own at least 30% of charter capital.^o

In summary, “Vietnam's stock market has grown very impressively in recent years and opened up a lot of opportunities for both domestic and foreign investors” (Nguyen Vinh Hung et al., 2022_1). In the organizational models of securities companies in Vietnam today, most

^o Clause 3, Article 74 of the Securities Law 2019.

securities companies choose to operate under the organizational model of a JSC. However, in both models of the JSC organizational structure of the Enterprise Law 2020, there are still many limitations and shortcomings, so it does not really ensure the safety of small shareholders, investors when choosing these companies for securities trading.

RECOMMENDATIONS

Current, “in the context of judicial reform in Vietnam, the issue of complete law system and expanding the freedom to business has always been paid special attention by the Party and Vietnam State” (Hung , N. V, et al., 2022). In there, “To conduct production and business activities, enterprises need to mobilize many different resources, in which financial resources are indispensable” (Nguyen Dang Nam, 2006). With the role “as a direct channel of capital for the economy” (Nguyen Van Tuyen, 2008), the stock market has contributed to solving the capital mobilization needs of businesses. In particular, as a “trading organization on the stock market” (Pham The Anh, 2007), a securities company increasingly asserts its importance to the stability and development of the stock market. Therefore, perfecting the organizational structure of a securities company is very important to ensure the stable development of Vietnam's stock market. Since then, the author believe that, for the organizational structure of Vietnam's securities companies to operate more effectively, it is necessary to consider the following solutions:

Firstly, it is Necessary to Stipulate that There Must be a Supervisory Board for Securities Companies Doing Business Under the Model of LLC:

As analyzed, the Enterprise Law 2020 has removed the requirement to have a Supervisory Board in the organizational structure of LLC with two or more members and one-member LLC established by organizations. The Securities Law 2019 also does not stipulate that a securities company that organizes and operates under the model of a LLC must establish a Supervisory Board. However, according to the author, this regulation is not really reasonable or appropriate for the needs and requirements of the Vietnamese stock market today. Because, along with the formation of the stock market, most securities trading companies in Vietnam have been established and operated in recent years. Therefore, the professionalism and stability of securities companies in Vietnam compared to other countries in the world and even in Asia are still relatively young and unstable. In fact, the issues of poor management or business ethics of Vietnamese securities companies are always dissected, considered, and discussed. Moreover, “stocks are always a risky investment with lots of risks” (Nguyen Vinh Hung, 2021). It is not

really satisfactory, fosters trust and peace of mind for members and customers of this company if a securities company operating under the model of a LLC has no internal inspection and supervision mechanism. The author contend that mandatory regulations must then be added for securities firms that trade as LLC and are required to have a Supervisory Board. Only in this way can we ensure that important information of a securities company is strictly controlled within the company. This not only helps members have less opportunity to participate in management and leadership of the company, customers and investors can also feel secure and trustworthy, but also contributes to helping the securities company build a name, image, and reputation in the stock market.

Second, Expand and Strengthen the Powers of the Supervisory Board/Internal Audit Committee, Independent Members in Securities Companies Doing Business in the Form Of JSC:

As is known, the Board of Directors is an institution that concentrates a lot of important powers of a JSC. As a result, members of the Board of Directors and those in positions of authority have full power and grounds to manipulate power or personal property. Moreover, with the current organizational structure of JSC in Vietnam: “The power of companies is concentrated mainly on major shareholders and managers” (Friedrich Fubler et al, 1992), contribute to creating easy opportunities for major shareholders or leaders to perform acts for their personal benefit. Violations of members of the Board of Directors and leaders directly seriously affect the legitimate rights and interests of minority shareholders, customers and moreover, directly negatively impact on the stability and sustainability of the Vietnamese stock market. Therefore, the author believe that the role of the Supervisory Board/Audit Committee and independent members become even more important for securities companies. These are the institutions that have the opportunity and the ability to quickly access information from inside the JSC before they are received and controlled by the competent authorities and investors receiving, verifying, and evaluating. However, in order to improve access and necessary powers for these institutions in the course of performing their duties, it is necessary that the Securities Law develop a separate legal regulation in the direction of expanding the powers of these institutions to permit inspection, supervision, and access, as well as requiring members of the Board of Directors or leaders of a Joint-stock securities company to provide sufficient information or important sources of documents. At the same time, the standards of the members of the Supervisory Board/Audit Committee and the independent members should also be more tightly regulated to ensure independence, impartiality, objectivity, and rigor in the process to

perform a mission. In addition, it is also necessary to consider the issue that has been discussed for a long time: “Although Vietnamese Law stipulates that at least 20% of the members of the Board of Directors must be independent members, this is a huge contradiction because shareholders or groups of shareholders holding very few shares are very unlikely to be eligible to become members of the Board of Directors. Because of the principle of voting priority, usually, the shareholders participating in the Board of Directors are major shareholders or large groups of shareholders. Even though these major shareholders do not hold company positions and only participate in the Internal Audit Committee under the Board of Directors, they still more or less want things that benefit them or the rights group for their interests” (Nguyen Vinh Hung, 2019). Therefore, according to the author, for securities companies operating under the legal form of a JSC and choosing an organizational model with independent members on the Board of Directors, it is very necessary to increase the ratio. The minimum ratio of independent members is higher than that of JSC operating in other normal business fields. According to the author, the minimum percentage of independent members in Joint-stock securities companies can be 30% or up to a minimum of 40% of the number of members of the Board of Directors. Because Joint-stock securities companies often have a lot of capital in their hands and have a great impact on the stability of the Vietnamese stock market. Therefore, the more internal inspection and supervision activities of a securities company are strengthened, the more safety is ensured for minority shareholders, customers, securities investors, and the Vietnamese stock market.

In addition, it is also necessary to further strengthen the inspection, examination, and supervision of the entities that manage the securities market in Vietnam, such as the State Securities Commission, the Stock Exchange, the Association of Securities and Exchange Commission, Securities Trading, Independent Auditing Organizations... and the inspection and examination cycle and time for securities companies should be more frequent and continuous than before. Only in this way can we guarantee the steady and long-term growth of securities companies as well as the long-term viability of the Vietnamese stock market.

CONCLUSION

Regulations on the organizational structure of a securities company are directly related to the efficiency of management and administration of this company. Not only that, the organizational structure is strictly regulated, with the inspection and supervision of the Supervisory Board/Internal Audit Committee always ensuring to limit negative and fraudulent

acts of the company's leaders, to better ensure the legitimate rights and interests of the company's members and customers.

LIMITATIONS

The Enterprise Law 2020 and the Securities Law 2019 in Vietnam have not fully realized the importance of the Supervisory Board/Internal Audit Committee in controlling the activities of securities companies. These are important bases to contribute further enhancing the stability and safety of the Vietnamese stock market.

FUTURE SCOPE

Many areas are not covered in this research article such as representation mechanism of securities company, conditions for business registration of securities company, rights and obligations of securities company etc. Therefore, the above discussed uncovered area of this article is known as the future scope.

REFERENCES

- AL-REFIAY, H. A. N., ABDULHUSSEIN, A. S., & AL-SHAIKH, S. S. K. (2022). The Impact of Financial Accounting in Decision Making Processes in Business. *International Journal of Professional Business Review*, 7(4), e0627, pp. 3. <https://doi.org/10.26668/businessreview/2022.v7i4.e627>
- FRIEDRICH FUBLER and JURGEN SIMON (1992). Economic legal issues of the Federal Republic of Germany. *Legal Publishing House*, pp. 50.
- HANOI LAW UNIVERSITY (2012). Textbook of stock law. *Police Publishing House*, pp. 201.
- HANOI LAW UNIVERSITY (2018). Textbook of Vietnam commerce law, volume I. *Justice Publishing House Justice*, pp. 123, 205.
- HUNG , N. V., THINH , T. C., & DUY, N. D. (2022). Cooperative Group In Current Vietnamese Commercial Environment. *International Journal of Professional Business Review*, 7(6), e0509, pp. 01. <https://doi.org/10.26668/businessreview/2022.v7i6.e509>
- LE HOC LAM and LE NGOC DUC (2010). Business law. *Statistical Publishing House*, pp. 105, 135.
- LE MINH TOAN (editor 2006). Vietnam Economic Law. *National Political Publishing House*, pp. 215.

LE THI THU THUY (editor 2015). Textbook of Law on the Securities Market. *Publishing House Vietnam National University, Faculty of Law - Vietnam National University*, pp. 133.

NATIONAL ASSEMBLY. Enterprise Law 2014.

NATIONAL ASSEMBLY. Enterprise Law 2020.

NATIONAL ASSEMBLY. Law on Securities 2019.

NATIONAL ASSEMBLY. The Civil Code Law 2015.

NGUYEN DANG NAM (editor 2006). Stock analysis & investment. *Financial Publishing House*, pp. 319.

NGUYEN NHU PHAT (editor 2011). Textbook of Vietnam Economic Law. *Hanoi Open University Institute, Police Publishing House*, pp. 113 - 114.

NGUYEN THI LAN HUONG (2009). Some comparisons on legal aspect relating Joint Stock corporation in Japanese corporate Law and Vietnamese enterprises Law. *Journal of Science - VNU, Law No. 02*, pp. 88.

NGUYEN THI LAN HUONG (2013). Some legal issues in corporate finance. *National Political Publishing House*, pp. 172, 176.

NGUYEN VAN TUYEN (editor 2008). Textbook of stock law. *Vietnam Education Publishing House*, pp. 6.

NGUYEN VINH HUNG (2019). Organizational Structure of Joint stock company under to Law on Enterprise of 2014. *Legislative Studies, No. 24*, pp. 24, 25, 25, 26, 26, 28.

NGUYEN VINH HUNG (2021). Conditions for initial public offering of shares under the 2019 Securities Law. *Journal of Legislative Research, No. 06*, pp. 47.

NGUYEN VINH HUNG, LE KIM NGUYET and MAI HAI DANG (2022_1). The conditions for the initial public offering of fund certificates in Vietnams Securities law 2019. *Baltic Journal of Law & Politics, A Journal of Vytautas Magnus University VOLUME 15, NUMBER 2 (2022), pp. 1699*, <https://versita.com/menuscript/index.php/Versita/article/view/594/1302>

NGUYEN VINH HUNG, TRAN CONG THINH and DAO XUAN HOI (2022_2), Shortcomings in the Legal System on Securities in Vietnam. *JURNAL CITA HUKUM FSH UIN Syarif Hidayatullah Jakarta, Indonesia, Vol. 10 No. 3 (2022), pp. 612*, <https://journal.uinjkt.ac.id/index.php/citahukum/issue/view/1522>

PHAM DUY NGHIA (2009). Enterprise Law - Situation - Analysis - Comment. *Hanoi National University Publishing House*, pp. 146.

PHAM THE ANH (2007). Stock Investing Handbook. *Youth Publisher*, pp. 20.

VNECONOMY.VN ELECTRONIC WALLPAPER (2021). How is the Supervisory Board disabled?. Access source: <http://vneconomy.vn/doanh-nhan/ban-kiem-soat-bi-vo-hieu-hoanhu-the-nao-20100330111055423.htm> , accessed date: April 17, 2023.