

## Protecting Minority Investors

[www.doingbusiness.org](http://www.doingbusiness.org)

Dear Madam or Sir,

We would like to thank you for your participation in the *Doing Business* project. Your expertise in the area of Protecting Minority Investors is essential to the success of the *Doing Business* report, one of the flagship publications of the World Bank Group that benchmarks business regulations in 190 economies worldwide. The protecting minority investors indicator measures legal protections afforded to minority shareholders of domestic corporations, and is one of the 11 indicator sets published by the *Doing Business* report.

The report attracts much attention around the world. The latest edition, *Doing Business 2018: Reforming to Create Jobs*, was the 15th in a series of annual reports measuring the regulations that enhance business activity and those that constrain it. It received over 10,000 media citations within just a week of its publication on October 31, 2017. Within that same period the *Doing Business* website was viewed over a million times and the report was downloaded over 15,000 times. One hundred and nineteen economies implemented a total of 264 reforms easing the process of doing business. Europe and Central Asia continues to be the region with the highest share of economies reforming – i.e. 79%, followed by South Asia and Sub-Saharan Africa.

Governments worldwide read the report with interest every year, and your contribution makes it possible for the *Doing Business* project to disseminate the regulatory best practices that continue to inspire their regulatory reform efforts. Since 2012, economies worldwide have implemented 112 reforms that have strengthened the protection of minority investors. In 2016/17, 21 economies implemented such reforms.

We are honored to be able to count on your expertise for *Doing Business 2019*. Please do the following in completing the questionnaire:

- Review the assumptions of the case study before updating last year's information in the questionnaire.
- Please describe any reform that has affected the rights of minority shareholders since June 1, 2017.
- Be sure to update your name and address if necessary, so that we can mail you a complimentary copy of the report.
- Kindly return the questionnaire to [protectinginvestors@worldbank.org](mailto:protectinginvestors@worldbank.org)

We thank you again for your invaluable contribution to the work of the World Bank Group.

Sincerely,



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**Primary Contributor Information:** Please check the box next to information you **do not** want us to **publish**.

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Last year contributors saved nearly half a million pieces of paper by selecting the paperless report option. We welcome you to join us in conserving resources:

Please e-mail me an electronic copy of the report and my certificate of appreciation, rather than mailing me a paper copy.

Did or will any legal change enter into force between June 1, 2017 and May 1, 2018 (e.g. a new act, code, law, decree, order, supreme court decision, amendment, stock exchange listing rule) affecting the internal governance of corporations, the regulation of related-party transactions, disclosure obligations, liability of company executives or access to evidence in civil litigation?

Name of the legislation:

Link to electronic copy:

Date of adoption:

Date of entry into force:

Description of the reform:

## Research questions – Training and Informing Legal Practitioners

### Attorneys, barristers and lawyers representing clients in court

#### 1. What are the requirements to become licensed to practice law?

A degree in law	-Click to Select-
Passing of an exam	-Click to Select-
Minimum years of professional experience	-Click to Select-
Payment of fee	-Click to Select-
Internship/traineeship	-Click to Select-
Ethics, character or moral assessment	-Click to Select-
Other (please specify)	

#### 2. Are trainings offered to licensed practicing lawyers?

-Click to Select-

#### Is taking some of these trainings mandatory to remain licensed to practice?

-Click to Select-

#### Are specialized trainings on capital markets, financial and securities regulations offered?

-Click to Select-

#### If yes, who administers these specialized trainings?

Universities	-Click to Select-
Courts/ministry of justice	-Click to Select-
Ministry of finance/market authority	-Click to Select-
Bar/lawyer association	-Click to Select-
Private centers	-Click to Select-
Other (please specify)	

#### 3. Do lawyers receive any of the following regarding new legislation, regulations or amendments thereto?

Notification and copy prior to publication	-Click to Select-
Notification upon publication	-Click to Select-
Information/explanatory notes	-Click to Select-
Trainings	-Click to Select-
Other (please specify)	

#### 4. How are new legislation, regulations or amendments affecting companies conveyed to the public?

Official gazette	-Click to Select-
Ministry/regulatory agency's website	-Click to Select-
Bar/lawyer association	-Click to Select-
Public broadcast (e.g. TV, radio)	-Click to Select-
Dissemination campaign (e.g. social media, billboards)	-Click to Select-
None of the above	-Click to Select-
Other (please specify)	

### Judges

#### 1. What is the name of the jurisdiction (court) competent to hear an action initiated by shareholders against board members alleging mismanagement, breach of duties and/or self-dealing?

## 2. What are the requirements to be a judge in this jurisdiction?

A degree in law	-Click to Select-
Passing of an exam	-Click to Select-
Minimum years of professional experience	-Click to Select-
Prior specialization or knowledge in a relevant field	-Click to Select-
Attending at least once a year trainings on business, corporate law, finance or capital markets?	-Click to Select-
Do not know/not publicly available	-Click to Select-
Winning a public election	-Click to Select-
Other (please specify)	

## 3. Are specialized trainings on business, corporate law, finance or capital markets offered to judges and clerks? -Click to Select-

If yes, how often?

## 4. How are new legislation, regulations or amendments affecting companies conveyed to judges in this jurisdiction?

Official gazette	-Click to Select-
Internal circulars	-Click to Select-
Trainings/workshops	-Click to Select-
Meetings with the ministry or agency responsible for the change	-Click to Select-
Lawyers are responsible for bringing forth the most recent applicable legal basis	-Click to Select-
Public broadcast (e.g. TV, radio)	-Click to Select-
Dissemination campaign (e.g. social media, billboards)	-Click to Select-
None of the above	-Click to Select-
Other (please specify)	

## I. Conflict of interest case study

In the following questions, please assume that:

- **Buyer is a joint-stock company.** It is not state-owned and has issued stock that is publicly traded and **listed on your country's largest stock exchange**. If there is no stock exchange or if there are fewer than 10 firms actively traded on the stock exchange, please assume that Buyer is a joint-stock company with many shareholders.
- **Buyer does not follow codes, guidelines, best practices, model charters** unless they are mandatory, and has not adopted specific bylaws or articles of association that go **beyond the minimum requirements** of applicable law.
- **Mr. James owns 60% of Buyer. He sits on the 5-member board of directors** (or management board) together with 2 other directors whom he elected. He is neither CEO nor chair.
- **Mr. James also owns 90% of Seller**, which operates a chain of retail stores. Seller, facing financial difficulties, closed many stores and is no longer using many of its trucks.
- **Mr. James proposes** that Buyer purchase Seller's unused fleet of trucks to expand Buyer's distribution of its products. Buyer agrees and enters into the transaction.
- **All required approvals are obtained and all mandatory disclosures are made.** Buyer pays Seller a cash amount equal to 10% of Buyer's assets to acquire the trucks.
- The transaction is part of Buyer's **ordinary course of business** and is not ultra vires (i.e. is not outside the power or authority of Buyer).
- Shareholders **subsequently discover that the price of the trucks was above market value**. The transaction therefore causes damages to Buyer. Shareholders of Buyer want to sue Mr. James as well as board members who voted in favor.

## 1. Who provides the final authorization before Buyer can acquire Seller's trucks? -Click to Select-

Applicable law:

**2. Must an external independent entity review the terms of the proposed transaction before Buyer can acquire Seller's trucks (e.g. auditor, technical expert, financial advisor, stock exchange or regulator)? If yes, who performs the review?**

Applicable Law:

**3. What information must Mr. James disclose to the board of directors before approving the transaction?**  
-Click to Select-

Applicable Law:

**4. What must Buyer immediately disclose about the transaction to the public, the regulator or the stock exchange (within 72 hours of closing the transaction)?**

	<i>Last year</i>	<i>This year</i>
A description of the assets purchased by Buyer		-Click to Select-
The nature and amount of consideration paid by Buyer to Seller		-Click to Select-
Mr. James' ownership interest and/or director position in Buyer		-Click to Select-
The fact that Mr. James owns 90% of Seller		-Click to Select-

Applicable Law:

**5. What must Buyer disclose about the transaction in its annual financial statement?**

	<i>Last year</i>	<i>This year</i>
A description of the assets purchased by Buyer		-Click to Select-
The nature and amount of consideration paid by Buyer to Seller		-Click to Select-
Mr. James' ownership interest and/or director position in Buyer		-Click to Select-
The fact that Mr. James owns 90% of Seller		-Click to Select-

Applicable Law:

**6. Can shareholders representing 10% sue Mr. James for the losses that the transaction caused to Buyer?**  
-Click to Select-

Applicable Law:

**7. Is evidence of unfairness, a conflict of interest or damages sufficient to hold Mr. James liable for the damage that the transaction causes to the company?** -Click to Select-

Applicable Law:

**8. Is evidence of unfairness, a conflict of interest or damages sufficient to hold the other board members for the damage that the transaction causes to the company?** -Click to Select-

Applicable Law:

**9. If shareholders are successful in their action against Mr. James, what remedies are available?**

	<i>Last year</i>	<i>This year</i>
He pays damages		-Click to Select-
He repays personal profits made from the transaction		-Click to Select-
He is disqualified from serving in the management of any company for 1 year or more		-Click to Select-

Applicable Law:

**10. Is evidence of unfairness, a conflict of interest or damages sufficient to void/rescind the transaction?**

[Click to Select](#)

Applicable Law:

**11. What is the standard of proof** or level of certainty that courts must reach in order to hold defendants liable in a civil action brought by shareholders (e.g., beyond a reasonable doubt, clear and convincing evidence, intimate conviction, preponderance of the evidence, balance of probabilities)?

**For a civil claim?**

**For a criminal claim?**

Applicable law

**12. Before filing a suit, can shareholders representing 10% obtain internal company documents such as minutes of board meetings, contracts and purchase agreements in connection with Buyer's acquisition of the trucks?**

[Click to Select](#)

Applicable Law:

**13. In a civil trial, what is the scope of information that the plaintiff can ask the judge to compel?**

**From the defendant?**  [Click to Select](#)

**From an uncooperative witness?**  [Click to Select](#)

Applicable Law: «DB\_pi\_SuitDocLaw»

**14. What information must plaintiff include in its request to the judge to compel evidence from a defendant or witness in a civil trial?**  [Click to Select](#)

Applicable Law:

**15. How is the process of questioning defendants and witnesses conducted in civil trials?**

**For defendants?**  [Click to Select](#)

**For witnesses?**  [Click to Select](#)

Applicable Law:

**16. Must the company or defendant reimburse legal expenses incurred by shareholders in their action against company directors?** (e.g., court fees, attorney fees and related expenses)  [Click to Select](#)

Applicable Law:

## II. Listed companies

In the following questions, please assume that:

- **Buyer is a publicly traded listed corporation** or its functional equivalent in your country. It is not state-owned and has issued stock that is publicly traded and is listed on your country's largest stock exchange. Examples include the Joint Stock Company (JSC), Public Limited Company (PLC), C Corporation, Societas Europaea (SE), Aktiengesellschaft (AG) and Société Anonyme/Sociedad Anónima (SA).

- It has not adopted specific bylaws or articles of association that go beyond the minimum requirements of corporate law or securities regulations. It does not follow any code of corporate governance, model charter, or code of good practice, unless they are mandatory.
- If there is no stock exchange or if there are fewer than 10 firms actively traded on the stock exchange, please assume that Buyer is a joint-stock company with a large number of shareholders.
- If most companies follow a 1-tier board structure, please assume that "Buyer's board" refers to its board of directors.
- If most companies follow a 2-tier board structure, please assume that "Buyer's board" refers to its supervisory board.

	<i>Last year</i>	<i>This year</i>	<i>Last year law</i>	<i>Applicable law / comment</i>
<b>1. Does the sale of 51% of Buyer's assets require shareholder approval?</b> (whether such sale occurred in a single transaction or several transactions taking place within 1 year from the date of the first transaction)		-Click		
<b>2. Can shareholders who hold 10% of Buyer's share capital call for an extraordinary meeting?</b>		-Click		
<b>3. Must shareholders approve the issuance of new shares and how long is this authorization valid for?</b> (alternatively, must Buyer obtain shareholder approval to issue unissued share up to its authorized share capital?)		-Click		
<b>4. Do shareholders have preemption rights (priority or first refusal) on new shares that cannot be waived by a simple majority vote?</b>		-Click		
<b>5. Must shareholders approve the election and dismissal of the external auditor?</b>		-Click		
<b>6. Can the majority vote of holders of the affected shares prevent changes to the rights of their class of shares?</b>		-Click		
<b>7. Is the CEO (e.g. chief executive, managing director) forbidden from also being chair (or president) of Buyer's board?</b>		-Click		
<b>8. Must Buyer's board include independent and non-executive board members?</b> (i.e. no personal or financial interest and not in a managerial position)		-Click		
<b>9. Can shareholders remove members of Buyer's board without cause before the end of their term?</b> (or if their term limited to 1-year)		-Click		
<b>10. Must Buyer have a separate audit committee?</b> (a subcommittee of Buyer's board, composed exclusively of board members)		-Click		
<b>11. Is there a percentage of acquired shares which triggers a mandatory bid rule, requiring a potential acquirer to make a tender offer to all remaining shareholders?</b>		-Click		
<b>12. Must Buyer distribute profits or pay dividends within a set maximum time period from the declaration date?</b>		-Click		
<b>13. Is a subsidiary prohibited from acquiring shares issued by its parent company?</b> If not, must the subsidiary dispose of the shares within a year and cannot exercise any voting rights?		-Click		



14. Must Buyer disclose ultimate beneficial ownership stakes representing 5% (i.e. direct and/or indirect)?		-Click		
15. Must Buyer disclose information on other activities and directorships held by board members, including on their primary employment?		-Click		
16. Must Buyer disclose on an individual basis the compensation of directors and high-ranking officers, including bonuses and incentive schemes?		-Click		
17. Must Buyer publish the notice of shareholder meeting at least 21 calendar days in advance and include information and deadlines on participating and exercising voting rights remotely (e.g. by proxy, by mail or electronically)?		-Click		
18. Can shareholders who hold 5% of Buyer's share capital add items on the agenda prior to the general meeting?		-Click		
19. Must a certified external accountant audit Buyer's annual financial statements?		-Click		
20. Must Buyer disclose its audit reports to the public?		-Click		

### III. Private limited companies

In the following questions, please assume that Buyer Co. ("**Buyer**") is a manufacturing company. It is incorporated as a **private limited company** or its functional equivalent in your country. Its shares cannot be listed on a stock exchange. Examples include the Private Limited Company (Ltd), Limited Liability Company (LLC), Sociedad de Responsabilidad Limitada (SRL), Gesellschaft mit beschränkter Haftung (GmbH) and Société à responsabilité limitée (SARL).

	<i>Last year</i>	<i>This year</i>	<i>Last year law</i>	<i>Applicable law / comment</i>
1. Do all members have the right to inspect and copy any record maintained by the company regarding the company's activities, financial condition, and other circumstances that are relevant to their rights and duties?		-Click		
2. Does the sale of 51% of Buyer's assets require the consent of the majority of its members? (whether such sale occurred in a single transaction or several transactions taking place within 1 year from the date of the first transaction)		-Click		
3. Can members who represent 10% of Buyer's capital call for a meeting?		-Click		
4. Must all members of Buyer consent to add a new member?		-Click		
5. Must a member of Buyer first offer to sell his or her interest to the existing members before selling to a non-member?		-Click		
6. Must Buyer have a mechanism to resolve fundamental disagreements between members that prevent the company from		-Click		



<b>operating?</b> (e.g. stake repurchase, forced buyback, squeeze out.)				
<b>7. Must a new member who acquires 50% of Buyer make a purchase offer to all remaining members?</b>		-Click		
<b>8. Must Buyer distribute profits or pay dividends at the latest one year from the declaration date?</b>		-Click		
<b>9. Must members of Buyer meet every year?</b>		-Click		
<b>10. Can members who hold a 5% stake in Buyer propose resolutions and add items to the agenda of meetings?</b>		-Click		
<b>11. Must annual financial statements of Buyer be audited by an external auditor?</b> Please specify if this only applies to certain companies based on their size, turnover or assets, etc.		-Click		

**Thank you very much for completing the questionnaire.**

We sincerely appreciate your contribution to the *Doing Business* project. The results will appear in the *Doing Business 2019* report and on our website: [www.doingbusiness.org](http://www.doingbusiness.org). Your work will be gratefully acknowledged.