

Protecting Minority Investors

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Dear Sir or Madam,

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 four flagship publications of the World Bank Group that benchmarks business regulations in 189 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 report 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 2016: Measuring Regulatory Quality and Efficiency*, introduced improvements in 6 of 11 *Doing Business* indicator sets. It received over 7,000 media citations within just 3 weeks of its publication on October 27, 2015 and 31.4 million twitter accounts were reached with *Doing Business* mentions within that same time period. The coverage spanned major global, regional and local media outlets, from print and broadcast to the web. The *Doing Business* website had over 1 million page views and nearly 60,000 downloads within 3 weeks after the report's launch.

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 2010, 71 economies have implemented 89 reforms that have strengthened the protection of minority investors. In 2014/15, 14 economies implemented such reforms. Most increased disclosure requirements and expanded shareholders' role in company management.

We are honored to be able to count on your expertise for *Doing Business 2017*. 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, 2015.
- 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

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

Sincerely,

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 **Paperless Option for Complimentary Report and Certificate**

Last year *Doing Business* 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 any reform (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 litigations enter into force **between June 1, 2015 and June 1, 2016**? If yes, please provide the information below.

Name of the legislation:

Date of adoption:

Date of entry into force:

Link to electronic copy:

Description of the reform:

I. GENERAL CORPORATE MATTERS

Buyer Co. ("**Buyer**") is a manufacturing company that has not adopted specific bylaws or articles of association that differ from default corporate law or securities regulations, and does not follow any code of corporate governance, model charter, or code of good practice, unless it is mandatory.

Buyer is assumed to be a publicly traded listed corporation or its functional equivalent under the economy's legislation. Examples include the Joint Stock Company (JSC), Public Limited Company (PLC), C Corporation, Societas Europaea (SE), Aktiengesellschaft (AG) and Soci t  Anonyme/Sociedad An nima (SA).

For a subset of the questions, we also ask what the answer would be if Buyer were incorporated under a different company type, as a private limited company or its functional equivalent. Examples include the Limited Company (Ltd), the Limited Liability Company (LLC), the Sociedad de Responsabilidad Limitada (SRL), Gesellschaft mit beschr nkter Haftung (GmbH), and the Soci t    responsabilit  limit e (SARL).

Gender Diversity

	<i>Last year</i>	<i>This year</i>
Are there work experience and qualification requirements for board nomination?	<i>New question</i>	-Click to Select-
Must board of directors be composed of at least 20% of women?	<i>New question</i>	-Click to Select-
Must hiring policies emphasize gender diversity for executive positions?	<i>New question</i>	-Click to Select-
Are there financial incentives for having women at senior executive or director positions?	<i>New question</i>	-Click to Select-
Are there mandatory contributions or financial sanctions for having no female board members and/or senior executives? If yes, are the proceeds used for women-focused awareness campaigns, mentoring or training programs?	<i>New question</i>	-Click to Select- -Click to Select-

Applicable provisions:

Comments:

1. Shareholder Rights

■ **Does the sale of 51% or more of Buyer's assets require shareholder approval, whether such sale occurred in a single transaction or several transactions taking place within 1 year from the date of the first transaction?**

	<i>Last year</i>	<i>This year</i>
If Buyer is a publicly traded listed corporation		-Click to Select-

If Buyer is a limited company, does the sale of 51% of Buyer's assets require the consent of the majority of members?		-Click to Select-
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Applicable provisions:

Comments (please specify the triggering percentage):

■ Can shareholders who hold 10% of Buyer's share capital call for an extraordinary meeting?

	<i>Last year</i>	<i>This year</i>
If Buyer is a publicly traded listed corporation		-Click to Select-
If Buyer is a limited company, can members owning 10% of Buyer's capital call for a meeting?		-Click to Select-

Applicable provisions:

Comments (please specify the percentage needed):

■ Must Buyer obtain shareholder approval to issue unissued share up to its authorized share capital?

	<i>Last year</i>	<i>This year</i>
If Buyer is a publicly traded listed corporation		-Click to Select-
If Buyer is a limited company, must all members consent before adding or replacing a managing member?		-Click to Select-

Applicable provisions:

Comments:

■ Are shareholders automatically granted subscription (preemption) rights on new shares?

	<i>Last year</i>	<i>This year</i>
If Buyer is a publicly traded listed corporation		-Click to Select-
If Buyer is a limited company, must current members first be offered to increase their stake before bringing in additional members?		-Click to Select-

Applicable provisions:

Comments:

■ Must shareholders approve the election and dismissal of the external auditor?

	<i>Last year</i>	<i>This year</i>
If Buyer is a publicly traded listed corporation		-Click to Select-

Applicable provisions:

Comments:

■ Must changes to the voting rights of a class of shares be approved only by the holders of the affected shares?

	<i>Last year</i>	<i>This year</i>
If Buyer is a publicly traded listed corporation		-Click to Select-

Applicable provisions:

Comments:

2. Ownership and Control

■ Must the CEO and the chair of the board of directors be different persons? (answer yes if the majority of companies follow a 2-tier board structure)

	<i>Last year</i>	<i>This year</i>
If Buyer is a publicly traded listed corporation		-Click to Select-

Applicable provisions:

Comments:

■ Must the board of directors (or supervisory board) include independent and non-executive board members?

- Independent board members are defined as not owning shares in the company, and otherwise not having any material or pecuniary relationship with the company either directly or indirectly through related persons, except for sitting fees.
- Non-executive board members are defined as not being employees of the company or affiliated with the company, either directly or indirectly, and more generally, not being involved in its day-to-day activities.

	<i>Last year</i>	<i>This year</i>
If Buyer is a publicly traded listed corporation		-Click to Select-

Applicable provisions:

Comments:

■ Can shareholders remove members of the board of directors before the end of their term? (members of the supervisory board in a 2-tier structure)

	<i>Last year</i>	<i>This year</i>
If Buyer is a publicly traded listed corporation		-Click to Select-
If Buyer is a limited company, is there a member exit buyout mechanism in case of disagreement?		-Click to Select-

Applicable provisions:

Comments:

■ Must Buyer have a separate audit committee?

An audit committee is defined as a subcommittee of the board of directors, composed exclusively of board members.

	<i>Last year</i>	<i>This year</i>
If Buyer is a publicly traded listed corporation		-Click to Select-

Applicable provisions:

Comments (please specify if it must include independent directors and if it must be chaired by an independent director):

■ 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?

	<i>Last year</i>	<i>This year</i>
If Buyer is a publicly traded company		-Click to Select-
If Buyer is a limited company, is there a percentage of acquired capital which requires a new member to make a tender offer to all remaining members?		-Click to Select-

Applicable provisions:

Comments (please specify the triggering percentage):

■ Must Buyer distribute profits or pay dividends within a set maximum time period from the declaration date?

	<i>Last year</i>	<i>This year</i>
If Buyer is a publicly traded listed corporation		-Click to Select-
If Buyer is a limited Company		-Click to Select-

Applicable provisions:

Comments (please specify the time period):

■ Is a subsidiary prohibited from acquiring shares issued by its parent company?

If not, must the subsidiary dispose of the shares within a year and cannot exercise any voting rights?

	<i>Last year</i>	<i>This year</i>
If Buyer is a publicly traded listed corporation		-Click to Select-

Applicable provisions:

Comments:

3. Corporate Transparency

■ **Must Buyer disclose ultimate beneficial ownership stakes (i.e. direct and/or indirect) representing 5%?**

Including disclosure whenever an existing shareholder has reached 5% through the purchase of additional shares.

	<i>Last year</i>	This year
If Buyer is a publicly traded listed corporation		-Click to Select-

Applicable provisions:

Comments:

■ **Must information on other activities and directorships held by board members, including on their primary employment be disclosed?**

	<i>Last year</i>	This year
If Buyer is a publicly traded listed corporation		-Click to Select-

Applicable provisions:

Comments:

■ **Must the compensation of individual directors and high-ranking officers be disclosed, including bonuses and incentive schemes? (or members of the supervisory board and the management board)**

	<i>Last year</i>	This year
If Buyer is a publicly traded listed corporation		-Click to Select-

Applicable provisions:

Comments:

■ **Must the notice of shareholder meeting be published 30 days in advance and contain sufficient information?**

Sufficient information is defined as clearly stating the matters which are to be brought before the meeting for resolution, and all of the following: i) reference information required regarding any external acts; ii) location, day and time of the meeting; iii) the type of meeting, whether general or extraordinary; iv) requirements relating to participation and exercise of voting rights; v) meeting's agenda; vi) description of the way in which postal voting is processed including the address, physical or electronic, safety measures, the deadline for receiving the voting ballots and the date for their count.

	<i>Last year</i>	This year
If Buyer is a publicly traded listed corporation		-Click to Select-
If Buyer is a limited company, must members meet once a year?		-Click to Select-

Applicable provisions:

Comments:

■ **Can shareholders or members who hold 5% of Buyer's share capital put items on the general meeting agenda?**

	<i>Last year</i>	This year
If Buyer is a publicly traded listed corporation		-Click to Select-
If Buyer is a limited company		-Click to Select-

Applicable provisions:

Comments:

■ **Must annual financial statements be audited by an external auditor?**

	<i>Last year</i>	This year
If Buyer is a publicly traded listed corporation		-Click to Select-
If Buyer is a limited company		-Click to Select-

Applicable provisions:

Comments:

■ **Must audit reports be disclosed to the public?**

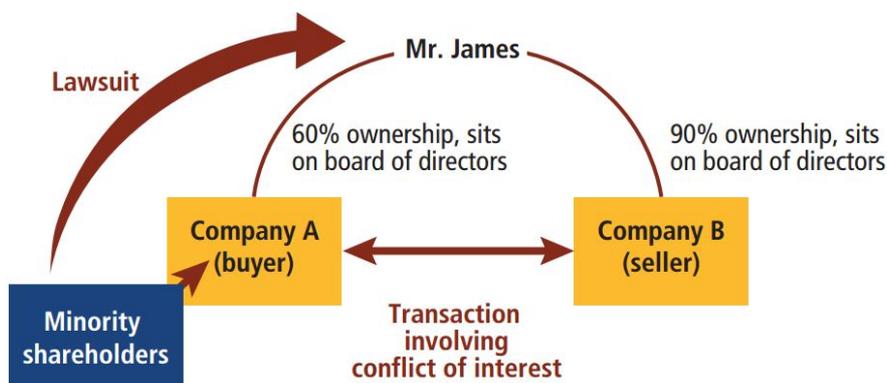
	Last year	This year
If Buyer is a publicly traded listed corporation		-Click to Select-

Applicable provisions:

Comments:

II. CONFLICT OF INTEREST CASE STUDY

- Our manufacturing company Buyer is not state-owned and has issued stock that is publicly traded and is **listed on your country's largest stock exchange**. If there is no stock exchange in your country, or if there are fewer than 10 firms actively traded on your country's stock exchange, please assume that Buyer is a privately held joint-stock company with a large number of shareholders.
- Buyer **does not follow any code of corporate governance**, model charter, or code of good practice, unless it is mandatory (i.e. unless its non-observance results in sanctions from the stock exchange regulator or creates a cause of action for shareholders in civil jurisdictions).
- **Mr. James owns 60% of Buyer. He sits on the 5-member board of directors** together with 2 other directors whom he elected. Please note that Mr. James is not the CEO.
- If your country requires a supervisory board that is appointed at least in part by shareholders, assume that Mr. James has elected 60% of the shareholder-elected members of the supervisory board. Assume also that the 5-member board of directors then includes Mr. James himself as well as 2 other members who were designated or proposed by Mr. James's members on the supervisory board.
- **Mr. James also owns 90% of Seller Co.** ("Seller"), which operates a chain of retail stores. Seller is facing financial problems and recently shut a large number of its stores. As a result, many of its trucks are not being used.
- **Mr. James proposes to Buyer** 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.** Under the final terms of the transaction, Buyer pays Seller a cash amount equal to **10% of Buyer's assets** to acquire the trucks. If Mr. James can lawfully vote on the transaction as a member of Buyer's board of directors or as a shareholder please assume he is the deciding vote in favor of the transaction.
- Assume that 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).
- **The price of the trucks is above market value and the transaction causes damages to Buyer.** Minority shareholders of Buyer sue Mr. James and the parties who approved the transaction.



1. Approval and Disclosure

- Who must provide the final approval to authorize Buyer's acquisition of Seller's trucks?

-Click to Select-

Applicable provisions:

- Must an independent body, external to the company, review the transaction prior to its execution (e.g. external auditor, outside financial advisor, stock exchange or regulator)? If yes, what is its name?

Applicable provisions:

- What information about the Buyer-Seller transaction must Mr. James disclose to the board of directors before the transaction is concluded?

-Click to Select-

Applicable provisions:

- Which information about the Buyer-Seller transaction must be disclosed by Buyer (i) to the public, the regulator or the stock exchange immediately (within 72 hours of closing the transaction), and (ii) in its annual financial statement?

	A description of the assets purchased by Buyer		The nature and amount of consideration paid by Buyer to Seller		Mr. James' ownership interest and/or director position in Buyer		The fact that Mr. James owns 90% of Seller		Applicable provisions	
	Last year	This year	Last year	This year	Last year	This year	Last year	This year	Last year	This year
Within 72 hours to the public		-Click		-Click		-Click		-Click		
Annual financial statement		-Click		-Click		-Click		-Click		

2. Shareholder Action

- Can a shareholder (or a group of shareholders) representing 10% of Buyer's shares sue Mr. James for harm caused to Buyer by the transaction?

-Click to Select-

Applicable provisions:

- What is the lowest degree of wrongdoing or least demanding cause of action that would be sufficient for shareholders to hold Mr. James liable for the damage that the Buyer-Seller transaction causes to the company?

-Click to Select-

Applicable provisions:

- What is the lowest degree of wrongdoing or least demanding cause of action that would be sufficient for shareholders to hold the rest of the board of directors liable for the damage that the Buyer-Seller transaction causes to the company?

-Click to Select-

Applicable provisions:

- If shareholders are successful in their action(s) against Mr. James, what remedies are available?

	<i>Last year</i>	<i>This year</i>
Mr. James pays damages:		-Click to Select-
Mr. James repays personal profits made from the transaction:		-Click to Select-

Applicable provisions:

- Assuming no fraud was committed and that Mr. James complied with all disclosure and approval mechanisms required by law, will Mr. James be fined, sentenced to jail or disqualified (e.g., forbidden by court order from becoming involved in the management of any company for at least 1 year)?

	<i>Last year</i>	<i>This year</i>
Mr. James pays punitive fines to the government:		-Click to Select-
Mr. James is put in jail:		-Click to Select-
Mr. James is disqualified:		-Click to Select-

Applicable provisions:

- Can a court void the transaction upon a successful claim by a shareholder plaintiff?

Applicable provisions:

- 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 provisions:

3. Access to Evidence

- Before filing a suit, can shareholders (or a group of shareholders) owning 10% of Buyer's shares 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 provisions:

- 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 provisions:

■ How specific must the plaintiff's request to the judge be to compel evidence from a defendant or witness in a civil trial?

-Click to Select-

Applicable provisions:

■ Which statements best describe the process of questioning defendants and witnesses in civil trials?

The defendant:

-Click to Select-

Witnesses:

-Click to Select-

Applicable provisions:

■ Regardless of the outcome of a civil action brought by shareholders owning 10% of the company against their company's directors, and provided that it was decided on the merits, must the company or the defendant director reimburse all of plaintiff's legal expenses?

-Click to Select-

■ Are contingent or conditional fees allowed (i.e., plaintiff pays attorney's fees only if damages are awarded from a settlement or favorable verdict in a civil suit)?

-Click to Select-

Applicable provisions:

Comments:

Thank you for completing the Protecting Minority Investors questionnaire. Kindly email it back to protectinginvestors@worldbank.org