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**STUDY
ON
MECHANISM FOR ENSURING JUDICIAL INTEGRITY
TO PROMOTE BUSINESS ENVIRONMENT
IN SOME COUNTRIES
AND LESSONS FOR VIET NAM**



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**EXECUTIVE SUMMARY OF STUDY
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Resolution 49-NQ/TW of the 9th Politburo on Strategy for judicial reform to 2020 (Resolution 49) and Conclusion 84-KL/TW of the Politburo on summary of 15 years of implementation of Resolution 49-NQ/TW (“Conclusion 84”) affirms that “*judicial reform must stem from the requirements of socio-economic development, building a fair, democratic and civilized society; contribute to promote socio-economic development*”¹. Resolution 48-NQ/TW of the 9th Politburo on Strategy for building and completing the legal system of Viet Nam to 2010, with a vision to 2020 (Resolution 48) and Conclusion 83-KL/TW of the Politburo on summary of implementation of Resolution 48-NQ/TW (“Conclusion 83”) is “*building and completing civil and economic laws, focusing on the completion of the socialist-oriented market economy institution*”².

The Court’s activities in resolving disputes to ensure the contract enforcement, ensure the property rights of individuals and organizations are one of the key factors to promote business investment³. The judicial system, especially the courts, plays an important role in socio-economic development⁴. An independent, effective, quality, and transparent judicial system will help drive economic growth through ensuring the contract

¹Resolution 49-NQ/TW of the 9th Politburo on Strategy for judicial reform to 2020.

²Resolution 48-NQ/TW of the 9th Politburo on Strategy for building and completing the legal system of Viet Nam to 2010, with a vision to 2020.

³ Montesquieu mentioned in the book “*The Spirit of Law*” and Adam Smith mentioned in the book “*An inquiry into the Nature and Causes of the Wealth of Nations*”.

⁴ Dam, Kenneth W., *The Judiciary and Economic Development (October 2006)*. U Chicago Law & Economics, Olin Working Paper No. 287, <http://ssrn.com/abstract=892030>.

enforcement, protecting the property of the people⁵ and people trusting to the legal system⁶.

Judicial integrity is a broad concept that needs to be studied in the political, socio-cultural context of Viet Nam and international practice. In Viet Nam, the ideologies, policies and legal regulations set out the matters and mechanisms to ensure the integrity in state activities in general and in judicial activities in particular. A number of policies and legal regulations on judicial integrity ensuring mechanism in Viet Nam have also learnt from experience and recommendations of the international community, such as Bangalore Principles of Judicial Conduct, Beijing Statement of Judicial Independence.

The objective of the Study on Mechanism to Promote Business in Some Countries and Lessons for Viet Nam is to assist the Party and State policy-making agencies in implementing the Strategy for completing the legal system (Resolution 48 and Conclusion 83), Strategy for judicial reform (Resolution 49 and Conclusion 84) to study the international standards and good practices in the world on judicial integrity ensuring mechanism to facilitate the building of the socialist-oriented market economy institution, especially the development of a fair business environment to facilitate the economic development. At the same time, the Study also assesses the advantages and disadvantages of the applicable legal framework of Viet Nam on integrity ensuring mechanism to promote the business environment in consistent with the international standards, such as Bangalore Principles of Judicial Conduct (*Bangalore Principles*), Beijing Statement of Judicial Independence (*Beijing Statement*) and other international practices.

Based on the integrity ensuring mechanisms outlined in accordance with the Bangalore Principles, the Study analyzes how a number of factors

⁵Klerman, Daniel M. (2007), *Legal Infrastructure, Judicial Independence, and Economic Development*. 19 Pacific McGeorge Global Business & Development Law Journal 427-34; USC CLEO Research Paper No. C06-1; 7.8. Daniel M. Klerman, *Legal Infrastructure, Judicial Independence, and Economic Development*, <https://ssrn.com/abstract=877490>; Voigt, Stefan and Gutmann, Jerg and Feld, Lars P., *Economic Growth and Judicial Independence, a Dozen Years On: Cross-Country Evidence Using an Updated Set of Indicators* (19/08/2014), European Journal of Political Economy, Vol. 38, 2015, <https://ssrn.com/abstract=2482982>.

⁶World Bank, *Doing Business, Why does commercial dispute resolution matter?*, page 01.

influencing the judicial integrity mechanism affect the business environment and economic development, in particular, through the indexes of Viet Nam and the world on the business environment. These indexes have been referenced by the Government of Viet Nam to improve the business environment and enhance Viet Nam's competitiveness since 2014.

According to the annual Doing Business report from the World Bank, the Rule of Law Index report, the Corruption Index, the Global Competitiveness Report, and the Index of Economic Freedom, Viet Nam is doing significantly better than other lower-middle income per capita countries (which are in the same group as Viet Nam), and less efficiently than countries that have higher level of economic development with regard to the Enforcing Contract Index, the resolving insolvency, the Government officials in the judicial system do not use public office for private gain, the absence of corruption Index, the Judicial Independence Index, and the Judicial Effectiveness Index. But comparing these indexes of Viet Nam with those of middle or high average income per capita countries (countries that are more developed than Viet Nam), Viet Nam's performance is not as good as such countries. Hence, if Viet Nam wishes to have better economic development and improve the business environment with better competitiveness, it has to improve such indicators pointed out by these indexes.

The Study researched on integrity ensuring mechanisms in three (03) countries, including the Federal Republic of Germany, the Federation of Malaysia and the Republic of Singapore, Viet Nam can compare its similar mechanisms with theirs to find out the issues that need improvement for Viet Nam to promote judicial integrity because these countries are more developed (Singapore, Germany) or similar to Viet Nam (Malaysia). Mechanisms to ensure judicial integrity to be studied include: (1) Mechanism for selection, appointment and promotion of Judges; (2) Personnel Management of the Judicial System; (3) Case Management and Court Administration; (4) Access to Justice and Legal Services; (5) Publicity and Court Automation; (6) Performance Evaluation; (7) Judicial Code of Conduct and Disciplinary Mechanism. These mechanisms are studied in accordance with the UNODC Guidelines.

Through the quantitative analysis of data in world indexes and a comprehensive study of three (03) countries, the Study has shown that judicial integrity, in particular the quality of integrity ensuring mechanisms, is closely related to the economic development and investment growth. In order to successfully implement the missions of economic development and the legal and judicial system reform that the Politburo, and the Central Committee have set out in Resolution 48 and Conclusion 83, Resolution 49 and Conclusion 84, Resolution 10-NQ/TW on Private Sector Development⁷, Resolution 50-NQ/TW on Foreign Investment Cooperation⁸, Resolution 52-NQ/TW on Active Participation in the 4th Industrial Revolution⁹, Resolution 39-NQ/TW on Improving The Efficiency Of Management, Exploitation, Use And Promotion Of Resources Of The Economy¹⁰ and the requirements for improving the business environment and competitiveness of the Government in Resolution 02/NQ-CP in 2020¹¹ and Resolution 02/NQ-CP in 2021¹², etc., Viet Nam needs to further improve its judicial integrity ensuring mechanisms.

Based on the analysis, the Study found that Viet Nam should pay attention to the following issues:

Improve policies, legal normative regulations and mechanisms to ensure the rule of law, pay attention to the independence of the judicial system, ensure the effectiveness of judicial activities and the prevention and fight against corruption. The indexes related to the rule of law principle (World Rule of Law

⁷Resolution 10-NQ/TW dated June 3, 2017 of the 5th Meeting of the Party's 9th Central Committee regarding development of the private sector economy into an important driving force for the socialist-oriented market economy.

⁸Resolution 50-NQ/TW dated August 20, 2019 of the Central Committee on providing orientations for completing institutions and policies, and improving the quality and efficiency of foreign investment cooperation by 2030.

⁹Resolution 52-NQ/TW dated September 27, 2019 of the Politburo on a number of guidelines and policies to actively participate in the Fourth Industrial Revolution.

¹⁰Resolution 39-NQ/TW dated January 15, 2019 of the Central Committee on raising the efficiency of management, exploitation, use and promotion of resources of the economy.

¹¹Resolution 02/NQ-CP of the Government dated January 01, 2020 on ongoing implementation of major duties and measures to improve business environment and enhance national competitiveness in 2020.

¹²Resolution 02/NQ-CP of the Government dated January 01, 2021 on ongoing implementation of major duties and measures to improve business environment and enhance national competitiveness in 2021.

Index, Economic Freedom Index, Global Competitiveness Index 4.0) show that regarding these indicators, Viet Nam is inferior to countries with high level development, which results in the less competitiveness of Viet Nam's business environment. In particular, Viet Nam is far behind in such indicators as Judicial Independence, absence of corruption, Judicial Effectiveness and Government Integrity. Therefore, it is required that Viet Nam must have comprehensive legal and judicial system reform strategies in the next phase in the spirit of inheriting the achievements of Resolution 48 and Resolution 49.

Improve the quality of resolving contractual disputes and insolvency. Although Viet Nam has better quality of resolving contractual disputes and insolvency than many countries with the same development level, it is still inferior to countries with better development level and the three studied countries, which are Singapore, Malaysia and Germany. The improvement of these two indicators is actually the reform of the Court system towards more efficiently, and meeting the demands of the business community.

Based on the above conclusions and with reference to the experience of the three studied countries (Singapore, Malaysia and Germany), this Study proposes the Central Committee of Internal Affairs with its assigned tasks¹³ on a number of specific issues in cooperation with relevant agencies, taking consultation from competent agencies at all levels to complete mechanisms to ensure judicial integrity (particularly the Court system) in Viet Nam, as follows:

1. Select and appoint Judges who are talented and qualified

¹³Decision No. 216-QD/TW of the Central Committee dated January 02, 2020 on functions, duties, powers, organizational structure of the Central Committee of Internal Affairs, Article 2: “*preside over or coordinate with relevant agencies to study, take consultation of the Politburo, Secretariat, Central Steering Committee on prevention and fight against corruption and the Central Steering Committee for Judicial Reforms to lead and direct the amendment, supplement, and remedy of loopholes and shortcomings on mechanism, policies, laws in the field of internal affairs, prevention and fight against corruption and judicial reform*” and “*summarize practices, scientific research, contributing to build theory on internal affairs work, the prevention and fight against corruption and judicial reform*”. The Central Committee of Internal Affairs is also assigned by the Politburo to be focal point to supervise the implementation of Conclusion 84.

a. Expand the source of Judge candidates to select Judges with sufficient qualifications and capacities to serve the judicial system and economic development

The experience of Singapore, Malaysia and Germany indicates that the Court system in these countries has expanded the source of Judge candidates rather than limited within the Court's personnel (such as clerks, Court staff) to select good candidates for the appointment of Judges. The experience of Singapore, Malaysia and Germany also shows that the Judge candidate source which have a source of Judges with diverse knowledge in many fields mainly comes from practising lawyers with high ethical and professional reputation. In order to immediately acquire candidates with good international trade knowledge and experience and well-trained abroad, Singapore's experience reflects that it sets priority to appoint those who have studied in several developed countries such as the United Kingdom, Australia, New Zealand or the United States, or assign qualified Judges to participate in training programs in world-renowned law schools, such as Harvard University or Stanford University. The mechanism for selecting Judges from an open source helps these countries get quality Judges in a quick time and meet the country's socio-economic development goals. Thereby, the integrity for judicial activities is partly assured.

b. Strengthen the process of Judges appointment towards transparency in standards, with competitiveness to select talented and ethical candidates

The process of Judges appointment in the three countries all shows the independence and transparency thereof. Similar to Viet Nam, Singapore and Germany, besides setting the criteria for selecting candidates, there are also requirements for passing exams to become Judges. Thus, if the Judge candidate source is expanded and the competitiveness is promoted, the examinations for Primary Judges, Intermediate Judges or Senior Judges should create equal conditions for those eligible to participate.

2. Ensure the income of Judges so that Judges can be independent and steadfast in protecting justice and upholding the integrity of Judges

Judges' salary and other legitimate incomes in Viet Nam need to be reformed in a breakthrough manner like the studied countries to keep the independence, steadfast protection of justice and integrity of Judges. The salary must be very high compared to other professions as the experience in Singapore and Germany. In case where the salary has not been reformed towards breakthrough manner, there should be essential allowances for Judges, such as housing allowances/benefits in Malaysia and Germany.

3. Develop an appropriate monitoring and discipline mechanism for Judges to ensure the independence of the Court system and the integrity in judicial activities

In order to ensure judicial independence, besides building the capacity of the Judges, expanding the candidate source, increasing the income for Judges, it is also necessary to develop an appropriate monitoring and discipline mechanism applied to Judges. All 3 studied countries have a mechanism to monitor Judges to ensure judicial independence but also to ensure the work performance of Judges.

Firstly, Singapore, Malaysia and Germany all have internal monitoring mechanism and external monitoring mechanism for the activities of Judges and Courts, similar to Viet Nam. However, because the political structure of these countries has a division of power, their monitoring mechanism works well to impact the quality of judicial activities and control the behavior of Judges. Due to the differences in the political structure of Viet Nam, it is required that Viet Nam's monitoring mechanism for Judges must be designed appropriately with its political structure and effectively in monitoring activities and reducing the superficiality and formality.

Secondly, the evaluation, reward and discipline processes and procedures for Judges should be clearly specified so that Judges are not put under pressure or influence that could affect judicial independence and should include the participation of agencies outside the Court system to limit the closeness in evaluating, rewarding and disciplining Judges. Experience in Germany shows

that disciplining Judges is conducted through a hearing panel of judicial body, or in case of involving corruption, it will be considered by an independent anti-corruption agency as in Malaysia, Singapore.

4. Improve the dispute resolution time by Courts, publicize legal proceedings to ensure the transparency thereof as well as control the case settlement time

a. Time for resolution of commercial business disputes in Viet Nam needs to be shortened than that currently and deadline management measures in legal proceedings needs to be enhanced

The time it takes to resolve civil and commercial business cases of the Courts is the most powerful factor affecting people's confidence in the Court system. In Viet Nam, the time period for settling contractual disputes is at medium level, but the process of case settlement has not been publicized as many countries with the same level of development, inferior to Singapore, Malaysia and Germany. Viet Nam needs to quickly apply e-court, simplified proceedings for cases with clear evidence or small value, etc. Improving the case settlement time will also have impact on reducing the costs of dispute resolution, reducing other negative activities in legal proceedings. Experience in Singapore, Malaysia and Germany shows that these countries are applying information technology in the process of case settlement and in Court activities to shorten the time for dispute resolution.

Supreme People's Court needs to have strong measures in enhancing the time limit management of each proceedings step, stage of each case, including: raising the sanctioning level against Judges who have overdue cases, publicizing information on the Court's case settlement and the involved parties in the proceedings, assigning cases in conformity with the Judge's capacity and experience, and so on. In addition, publicizing the case settlement activities of the Courts will help better manage the proceedings deadlines and improve the transparency of the Court operation without affecting the personal secrets and business secrets of the involved parties.

The experience in Singapore, Malaysia and Germany shows that the Court system publishes a lot of information during its operation on the web portal of the Courts. This practice helps the Court system's operations become more transparent and accessible to the people in the age of information technology development. This experience has helped the Court system become "closer to the people". Therefore, the People's Courts at all levels need to improve the efficiency of traditional and online information disclosure methods so that the people and enterprises can better understand the proceedings and the reforms and changes of the tribunal sector relating to proceedings, such as information about the case settlement or adjudication schedule, rate of resolved cases, rate of backlog, disclosure of judgments, and so on.

b. The Court system needs to improve the operation of the judicial administration system to serve the demands of the people and enterprises, and to meet the adjudication supporting activities in the operation of the Courts

The Court system needs to deploy synchronously and uniformly across the country a petition receipt model which is convenient for the people and enterprises in the form of "one-stop judicial administrative model". The experience in pilot application of the "one-stop judicial administrative group" model of a number of Courts have shown the time efficiency and compliance cost efficiency. In addition, in order to receive the petitions quickly and easily for the people and enterprises, the Courts must assist involved parties and lawyers in seeking evidence for case settlement.

Along with the formation of a national unified model of judicial administration, the mode of electronic transactions between the Courts and the people should be promoted because the legal conditions are sufficient, as prescribed in CPC 2015, Guidelines of the Judge Council of the SPC, Law on Electronic Transactions, Law on Information Technology, Civil Code, etc. In the age of information technology, electronic transactions between the courts and the people, enterprises will also increase the publicness and transparency of the Court's operations, promote the Courts to be "closer to the people" and more fair. Singapore's experience in eLitigation system to enable lawyers to interact

in case settlement or Malaysia and Germany's experience with an electronic portal providing judicial support services, information on the case settlement have made the Court's operations become more transparent, and "closer to the people" in the digital age.

5. Develop a system of specialized Courts related to commercial and business activities and enhance the professionalism of the Court system

a. Develop a system of specialized Courts in the field of commercial business and develop a team of Judges specialized in commercial business cases

Professionalism in commercial business dispute resolution is closely linked to the quality and the time of case settlement and can thereby enhance the integrity of the judicial system in accordance with the Bangalore Principles. In the context that Viet Nam has a fast economic growth rate and the wide openness of the economy, it requires Judges to catch up with the development of the economy¹⁴. In addition to the solution of selecting Judges from sources outside the Court system to obtain personnel with knowledge and experience in business operation, settlement of commercial disputes involving foreign elements, the Court system also needs Judges who are intensively trained, with in-depth expertise in commercial business cases, including areas such as corporate operation and organization, finance – credit to support alternative dispute resolution outside the Court system such as commercial arbitration, conciliation. Singapore's experience in selecting Judges or sending Judges to countries with a developed economy and legal system is an experience that can be consulted.

In some localities that are focal points for economic development such as Ha Noi, Da Nang and Ho Chi Minh City, Supreme People's Court may establish more specialized courts in such areas as Bankruptcy Court, Construction Court, Environment Court, Intellectual Property Court, and so on similar to Singapore, Malaysia and Germany. In the studied countries, each

¹⁴ Quoc Binh, *Necessary to control the openness of the economy [Cần kiểm soát độ mở của nền kinh tế]*, Thoi nay newspaper, 22/07/2020, <https://nhandan.com.vn/baothoinay-kinhte/can-kiem-soat-do-mo-cua-nen-kinh-te-610302/>.

country has its own system of specialized courts based on the characteristics and number of cases and the need for commercial business development in that country.

b. Improve case assignment mechanism to support the professionalism and ensure the independence and integrity of the Judges

Automatic random assignment or conditional random assignment of cases depends on legal conditions, judicial tradition or capacity of the Judges. Germany applies conditional random assignment for the purpose of assigning Judges in conformity with their professional qualifications, while Singapore and Malaysia apply automatic random assignment with the assistance of information technology. However, the methods, criteria and conditions for case assignment of all three countries (Singapore, Malaysia and Germany) are public. This is a good experience for Viet Nam's reference.

With the fact that Vietnamese Judges have uneven capacity, the application of conditional random assignment of cases will help the Courts have suitable personnel to resolve specific type of disputes or cases. The Court system needs to publicize the criteria and conditions for case assignment to suit personal capacity¹⁵ to help the Court's operations become more transparent, accountable to the people and enterprises.

Finally, judicial integrity is directly related to the economic development and the business environment. The quality of judicial integrity currently in Viet Nam has not created a "bottleneck" on economic growth, but if Viet Nam wants to continue developing the economy and society faster and stronger, the judiciary integrity needs to be improved to make investors feel secure to invest in Viet Nam./.

¹⁵ Nguyen Hung Quang et al. (2020b), *Report on Good practices of judicial administrative procedure implementation to enhance the integrity of the Courts [Báo cáo Những thực tiễn tốt về thực hiện thủ tục hành chính tư pháp nhằm tăng cường tính liêm chính của Tòa án]*, Supreme People's Court – Project on Promoting a fair business environment in ASEAN – UK Government – UNDP, page 26; Pham Hong Linh (2017), *ibid*, page 11-12; Kha Mien (2017), *ibid*.