

Protecting Minority Investors

www.doingbusiness.org

Dear Contributor,

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 2017: Equal Opportunity for All*, introduced improvements in the paying taxes and protecting minority investors indicators, and included a gender component in 3 of 11 *Doing Business* indicator sets. It received over 7,000 media citations within just a week of its publication on October 25, 2016 and the report was downloaded almost 40,000 times within that same period. A record 137 economies implemented a total of 283 reform. Low and middle income countries carried out more than 75% of these reforms, with Sub-Saharan Africa accounting for 80 of them.

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 89 reforms that have strengthened the protection of minority investors. In 2015/16, 19 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 2018*. 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, 2016.
- 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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Primary Contributor Information: Please check the box next to information you **do not** want us to **publish**.

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Additional Contributor(s): If there are more people whom you would like us to acknowledge, kindly send us an e-mail.

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☐ 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, 2016 and June 1, 2017**? If yes, please provide the information below.

Name of the legislation:

Date of adoption:

Date of entry into force:

Link to electronic copy:

Description:

I. 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. Its shares cannot be listed on a stock exchange. Examples include the Private Limited Company (Ltd), the Limited Liability Company (LLC), the Sociedad de Responsabilidad Limitada (SRL), Gesellschaft mit beschränkter Haftung (GmbH) and the Société à responsabilité limitée (SARL).

	<i>Last year</i>	<i>This year</i>	<i>Last year law</i>	Applicable Law	Comment
New question 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			
Does the sale of 51% or more 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			
Can members who represent 10% of Buyer's capital call for a meeting?		-Click			
Must all members of Buyer consent to add a new member?		-Click			
Must a member of Buyer first offer to sell his or her interest to the existing members before selling to a non-member?		-Click			
Must Buyer have a management deadlock breaking mechanism such as a member exit buyout in case of disagreement?		-Click			
Is there a percentage of acquired capital that requires a new member to make a tender offer to all remaining members of Buyer? If yes, please specify what percentage.		-Click			
Must Buyer distribute profits or pay dividends at the latest one year from the declaration date?		-Click			
Must members of Buyer meet once a year?		-Click			
Must annual financial statements of Buyer be audited by an external auditor?		-Click			

II. Listed companies

In the following questions, please assume that Buyer is a **publicly traded listed corporation** or its functional equivalent. 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 differ from default corporate law or securities regulations. It does not follow any code of corporate governance, model charter, or code of good practice, unless it is 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.

	<i>Last year</i>	<i>This year</i>	<i>Last year law</i>	Applicable Law	Comment
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)		-Click			
Can shareholders who hold 10% of Buyer's share capital call for an extraordinary meeting?		-Click			
Must Buyer obtain shareholder approval to issue unissued share up to its authorized share capital?		-Click			
Are shareholders automatically granted subscription (preemption) rights on new shares?		-Click			
Must shareholders approve the election and dismissal of the external auditor?		-Click			
Can the majority vote of holders of the affected shares prevent changes to the rights of their class of shares?		-Click			
Must the CEO and the chair of the board of directors be different individuals?		-Click			
Must the board of directors (or supervisory board) include independent and non-executive board members?		-Click			
Can shareholders remove members of the board of directors without cause before the end of their term?		-Click			
Must Buyer have a separate audit committee?		-Click			
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?		-Click			
Must Buyer distribute profits or		-Click			

pay dividends within a set maximum time period from the declaration date?

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? -Click

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

Must Buyer disclose information on other activities and directorships held by board members, including on their primary employment? -Click

Must Buyer disclose on an individual basis the compensation of directors and high-ranking officers, including bonuses and incentive schemes? -Click

Must Buyer publish the notice of shareholder meeting 21 calendar days in advance and include information and deadlines on participating and exercising voting rights remotely? -Click

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

Must a certified external accountant audit Buyer's annual financial statements? -Click

Must Buyer disclose its audit reports to the public? -Click

III. Conflict of interest case study

For the following questions, in addition to previous assumptions, please assume the following:

- **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 a large number of 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).
- **It is subsequently discovered 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.

Who provides the final authorization before Buyer can acquire Seller's trucks? [-Click to Select-](#)

Applicable Law:

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)?

Applicable Law:

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 Law:

Which information about the Buyer-Seller transaction must be disclosed by Buyer to the public, the regulator or the stock exchange immediately (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:

Which information about the Buyer-Seller transaction must be disclosed by Buyer 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:

Can shareholders representing 10% sue Mr. James for the losses that the transaction caused to Buyer? [-Click to Select-](#)

Applicable Law:

Which of the following is the least difficult to prove for shareholders and would be sufficient to hold Mr. James liable for the damage that the transaction causes to the company? [-Click to Select-](#)

Applicable Law:

Which of the following is the least difficult to prove for shareholders and would be sufficient to hold the other board members liable for the damage that the transaction causes to the company?

Applicable Law:

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

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

Applicable Law:

Can a court void/rescind the transaction upon a successful claim by shareholder plaintiffs (please select the least difficult argument to prove that would likely succeed)?

Applicable Law:

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?

Applicable Law:

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

From the defendant:

From an uncooperative witness:

Applicable Law:

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

Applicable Law:

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

From the defendant:

From an uncooperative witness:

Applicable Law:

Must the company or defendants reimburse the legal expenses (e.g., court fees, attorney fees and related expenses) of shareholders in their action against company directors?

Applicable Law:

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