CROSS-OWNERSHIP IN THE BANKING SECTOR OF VIETNAM

Legal regulations on cross-ownership in the banking system under Vietnamese law and experience gained from foreign countries

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Sincerely,

Uyen Mai.

ABBREVIATIONS

B	Billion
CAR	Capital Adequacy Ratio
CI	Credit Institution
JSC	Joint Stock Company
Circular 13	Circular No. 13/2010/TT-NHNN
M	Million
M&A	Mergers and Acquisitions
SBV	State Bank of Vietnam
SOCB	State-owned Commercial Bank
SOE	State-owned Enterprise
VND	Vietnamese Dong
WWII	World War II

ABSTRACT

Cross-ownership in the banking system is recognized when banks hold each other's shares through stock trading or investing in other banks through subsidiaries or entrusting investments through an intermediary. Cross-ownership in the Vietnamese banking system has developed in many forms and is increasingly complex, which has a significant influence on the financial market. Noticeable consequences are the situation of bad debt through creating the invalidation of the bank's safety regulations, such as the regulations on credit limits, debt classification and risk provision; improper evaluation of the bank's resources and resilience. Therefore, the need for a synchronous legal system and strict management measures of the authorities has become more critical in maintaining a healthy and financial system. The purpose of this paper is to carefully analyze the effects of cross-ownership on the banking system of Vietnam. This aim is pursued by investigating and considering potential impacts caused by cross-ownership to the banking sector and comparing with developed countries to identify unique characteristics of cross-ownership formation whilst examining legal approaches amongst similar and different legal systems. This research will conclude on the adequacy of the Vietnamese banking regulations on managing cross-ownership and aims to develop concrete recommendations to improve the regulation of cross-ownership within the banking sector. The points of focus in this research are to determine how cross-ownership impacts important aspects of a bank business model such as share ownership structure, regulatory capital, which leads to a complexity of issues for which the law needs to regulate.

Key words: Cross-ownership; Cross-shareholding; Banking System; Vietnamese Banks.

INTRODUCTION

Cross-ownership (or partial cross-ownership) is the phenomenon when one enterprise owns shares in another enterprise. It can be classified into three types: direct, indirect, and circular ownership.[1] Cross-ownership is a common economic phenomenon in many economies such as Germany, Italy, Japan, and the US. Specifically, according to a research by Lott in 1996, in the sector of computers and cars in the US during the period from 1994 to 1995, about 77% of Intel shares and 71% of Compaq shares were owned by companies which also owned one of the five other companies in the computer sector (such as Apple, Compaq, IBM, Intel, Microsoft, Motorola). Moreover, 56% of Chrysler shares were owned by companies that also had shares in Ford and (or) General Motors.

Contrary to the traditional British-American model where the banking system was relatively isolated from the non-financial banking sector, the banking model in Germany and Japan, which was a counterweight to the previous, where banks held shares in companies, was seen as typical in these countries. In Germany, banks, insurance companies, and investment funds owned up to 37% of the stock value of publicly listed companies in 1998.[2] In Japan, financial institutions (excluding trust funds), held nearly 44% of the stock value of publicly listed companies in 1989, and this number dropped to around 40% in 1998. Major corporations such as Mitsui, Mitsubishi, Sumitomo, Fuji, Sanwa, Dai-Ichi Kangyo, DKB all owned large banks.[3] This model was applied in many countries such as Sweden, South Korea, and later in many Southeast Asian countries such as Thailand and Indonesia. However, since the recession in Japan in the early 1990s and after the Asian financial crisis in 1997, this model was no longer popular.

In recent years, with the development of the banking and financial sector, cross-ownership status in Vietnam has become more complicated, difficult to control, and has many negative consequences for the national economy. Such a phenomenon related to Vietnam's credit system has become a topic of great interest from experts and policymakers. Cross-ownership is seen as one of the major causes of bad debt and the risk of manipulating financial business activities.

Moreover, the system of commercial banks in Vietnam is in the process of comprehensive restructuring towards improving operational efficiency, ensuring safety and sustainable development in the circumstance of integration. One of the outstanding issues in Vietnam's commercial banking system in the recent past is the ownership structure, including cross-ownership. For countries whose economies depend on credit, cross-ownership is considered a completely normal phenomenon. However, in the situation where the inspection and supervision activities are still underdeveloped, the negative impacts of cross-ownership may reduce the efficiency of the economy in general and the banking and financial sector in particular. In addition to moral hazard issues that can create credit risks, cross-ownership can cause implications for the safety of the system.

Although the author agrees with the adverse effects that cross-ownership has caused, it appears that in order to derive the right solution to reduce or limit the harmful effects of cross-ownership

[1] Will be defined in detail in Chapter 1.
[2] Fohlin, C. (2005), *The History of Corporate Ownership and Control in Germany*
[3] Scher (2001), *Bank-firm Cross-shareholding in Japan: What is it, why does it matter, is it winding down?*

on the economy particularly the credit system, we need to first understand the benefits of this phenomenon, at least for the companies involved in the formation of cross-ownership.

As a matter of fact, without economic benefits, this phenomenon could not have lasted for such a long time. Therefore, understanding the benefits in parallel with the impact of cross-ownership will provide a complete picture of the banking system in Vietnam in the presence of cross-ownership. In attempts to undertake this task, the author also takes into consideration the distinct characteristics of each jurisdiction so as to identify underlying characteristics which motivate cross-ownership formation and influence the institutional environment. Further, these characteristics influence legal approaches which are important in addressing fundamental issues aimed at correcting and regulating cross-ownership. The study of cross-ownership characteristics in different countries will provide a comprehensive view of this phenomenon, thereby making more accurate assessments and proposing more reasonable solutions to the situation of cross-ownership in the national context with specific characteristics.

This paper ties together the principle of the existence of cross-ownership and its both positive and negative influence on the financial sector of Vietnam, examines the superiority of cross-ownership over other ownership structures and considers the development of relationship banking practices within that circumstance. The paper also seeks to point out and explain the similarities as well as differences of cross-ownership between Vietnam and other countries which are under more development. Also, it offers several feasible solutions that can work in the long term aimed at bettering the banking industry.

The necessity of the research

In recent years, cross-ownership issues related to credit institutions in Vietnam are becoming more and more popular. In addition to the positive aspects, in the current context, cross-ownership is one of the primary reasons that may lead to negative impacts on the banking system such as lending based on relationships, capital arrangement for investment projects that are not transparent, or for the purpose of acquiring banks.

Although the adverse effects caused by cross-ownership were soon recognized in several pieces of research and journals, most of these studies were conducted a long while ago, when cross-ownership was quite young in the Vietnamese banking industry and the legal corridor to manage enough problem was not tight enough. Being aware of that, the writer wishes to implement this research in a new context, updating the latest developments and additional legal regulations to improve the management mechanism for cross-ownership, minimizing negative impacts and improving the efficiency of banking and financial activities.

Research question and objectives

This paper ties together the principle of the existence of cross-ownership and its both positive and negative influence on the financial sector of Vietnam, examines the superiority of cross-ownership over other ownership structures and considers the development of relationship banking practices within that circumstance. The paper also seeks to point out and explain the similarities as well as differences of cross-ownership between Vietnam and other countries which are under more development. Also, it offers several feasible solutions that can work in the long term aimed at bettering the banking industry.

In order to achieve the goal of the study, the main research question in this paper is designed to ask, “How does Vietnamese law regulate cross-ownership within the banking sector?”.

To make way for the answer, a research sub-question is asked:

1. “How can the consequences of cross-ownership on the banking system of Vietnam be minimized through the application of legal mechanisms?”

2. “How to improve the institutional environment, eliminate the constituent and supportive elements of cross-ownership which create disadvantages for banks with cross-ownership structures?”

It is essential to highlight that, within this dissertation, the author does not propose recommendations with a focus on how to eliminate cross-ownership in the Vietnamese banking system but seeks to address the more fundamental issues which serve to provide legislative solutions to regulating this activity.

In line with the research aims and questions, this research sets out to achieve three (3) main objectives, including:

1. Assess cross-ownership status in the banking sector of Vietnam as well as the monitoring and consequences of such a phenomenon;

2. Research and summarize international experience on cross-ownership;

3. Provide institutional recommendations to enhance the effectiveness of the operation of the banking system in Vietnam

Chapter structure

1. Chapter 1 is conducted by using hypothetical examples to demonstrate the concept of cross-ownership and its related properties.

2. Chapter 2 stipulates the formation and development of cross-ownership in the banking system of Vietnam and provides legal analysis of the regulations for cross-ownership.

3. Chapter 3 outlines characteristics of cross-ownership in Japan, Germany, and Italy and raises recommendations for Vietnam on managing cross-ownership in the banking sector.

Data collection

In this study, the data collection approach predominantly consists of primary data such as data from academic publications, journals, and legal sources such as legislation on credit institutions and other relevant studies that have been published. More specifically regarding the domestic information on Vietnam, the thesis primarily uses data on official data sources and information including bank and business reports such as financial statements, annual reports, prospectus,

governance reports; statistical data and historical data such as credit data, stock transaction data published by state management agencies (such as Government, SBV, Ministry of Finance, State Securities Commission; credit institutions, businesses, securities companies, and some reliable media). The advantage of these official sources of information is that they can be verified. However, they do not necessarily reflect fully and honestly the cross-ownership status in the Vietnamese banking system as what confidential information does, which is inherently diverse and complex. Nonetheless, the author believes that such information provides sufficient indicators to identify and analyze the nature of cross-ownership issues, on the basis of which makes reasonable recommendations. Although the use of official information is a priority, in some cases, it is necessary to carefully review other sources of additional information published in the mass media such as professional journals and articles. In this study, Japan, Germany, and Italy were put under comparison because cross-ownership structures in these countries were highly relevant to the banking system and state ownership, which is similar to the case of Vietnam. Data for these countries mostly consists of academic publications on the topic.

LITERATURE REVIEW

Cross-ownership in Vietnam has only been formed for more than fifteen years (2005-2007), which can be considered young compared to the long-running activities in this area in developed countries such as Japan, Germany or Italy. This economic and social fact has led to the difference in the number of researches on this phenomenon in Vietnam and other countries.

To begin with, there are a number of studies which have been conducted within this domain. Some typical titles that can be mentioned here are "*The History of Corporate Ownership and Control in Germany*" by Caroline Fohlin (2005) which tied together historical and contemporary concerns, examining both the overall evolution of ownership structures and the development of relationship banking practices within that framework. To sum up, she argued that German ownership structures did not, in times of stability, produce negative impacts predicted in most of the "law and finance" literature. Indeed, the long-run perspective on Germany, particularly the significant change in the concentration of companies and industry, together with positive findings on corporate operations before the World War I (WWI) and after the World War II (WWII), raised doubts that civil law traditions per se weakened market functioning;

Francesco Trivieri (2005) studied cross-ownership and its effect on the Italian banking industry and concluded that cross-ownership among Italian banking groups might cause a severe threat to competition in the national credit sector. Therefore, it was essential to take initiatives to eliminate the maze of cross-ownership in the Italian banking system, thereby building a more competitive environment for the players and improving the outcome of the restructuring process that the Italian banking sector was still experiencing;

Donato, F. and R. Tiscini (2009) in their piece entitled "*Cross-ownership and interlocking directorates between banks and listed firms: an empirical analysis of the effects on debt leverage and cost of debt in the Italian case*" examined the effects of "bank-firm connection" on the conditions of the credit relationship. The author provided two explanations for the existence of these impacts: the first considered "bank-firm connection" as a way to reduce information asymmetry and transfer financial capabilities into the firm, thus creating favorable conditions for a lower cost of capital and allowing the sustainability of a higher debt level. The other explanation referred to the benefits the bank had when participating in a firm's equity. Obtaining a higher level of information and a higher ability to negotiate with the firm, the bank affected the firm's decision on making profit, rising, the price of lending, and controlling the indebtedness level. The authors' findings confirmed the second explanation and indicated that bank-firm connections play more for the interests of banks rather than that of firms, which therefore alluded to conflicts of interests among parties;

Scher, M. (2001) who examined the functions of cross-shareholding, as it involved Japan's commercial banks in the 1990s in his paper entitled "*Bank-firm cross-shareholding in Japan: what it is, why does it matter, is it winding down?*" by. The author derived two important purposes of cross-shareholding, which were: maintaining the stability of business relationships, which were transactional relations between the partner companies in the cross-shareholding, and, maintaining the standards of capital adequacy. It seemed that firms were buying bank shares only when they were in difficulty and needed to preserve their relationship with a bank.

Thus, cross-shareholding provided implicit relational contracts, a function that still had a role in the business society of Japan. Also, Scher revealed that banks in Japan had increasing difficulty meeting the ratio of capital to assets stipulated under the Basel Accord due to stock prices falling which derived from unprecedented poor loans, which turned into bad debt that needed to be covered out of capital. As a result, banks were put under pressure to curtail lending, which dramatically hit smaller domestic firms with fewer financing alternatives, reducing their earnings capacity. Stock prices, therefore, further reduced the value of bank capital owing to the cross-shareholding;

Gilo, D., Spiegel, Y. (2003) examined cross-ownership and tacit collusion and stated that competing firms could facilitate tacit collusion by making passive investments in rivals. Their study showed that although there were cases in which passive investments in rivals did not influence the ability of firms to engage in tacit collusion, an approach by the board to such investments might be misled. It was because, they explained that passive investments in rivals might well facilitate tacit collusion, especially when those investments were (i) multilateral, (ii) in firms that were not industry mavericks, (iii) spread equally among rivals, and (iv) made by the most efficient firm in its most efficient rivals. In addition, they concluded that direct investments by firms' controllers in rivals might either replace investments by the firms themselves or facilitate collusion further, especially when the controllers had small stakes in their firms.

In Vietnam, some notable research regarding cross-ownership and relevant issues include "*Vấn đề sở hữu và đầu tư chéo trong quá trình tái cơ cấu hệ thống ngân hàng tại Việt Nam*" (*Cross-ownership and cross-investment in the restructuring of the banking system in Vietnam*) by Dinh Tuan Minh (2013), "*Sở hữu chồng chéo giữa các tổ chức tín dụng và tập đoàn kinh tế tại Việt Nam: Đánh giá và các khuyến nghị thể chế*" (*Cross-ownership between credit institutions and economic groups in Vietnam: Assessment and institutional recommendations*) by Vu Thanh Tu Anh, Tran Thi Que Giang, Dinh Cong Khai, Nguyen Duc Mau, Nguyen Xuan Thanh, Do Thien Anh Tuan (2013), "*Sở hữu chéo trong lĩnh vực ngân hàng theo pháp luật Việt Nam hiện nay" (Cross-ownership in the banking sector in accordance with Vietnamese laws)* by Vu Thi Dao (2014). These studies discussed the causes, benefits, and drawbacks brought by cross-ownership to the banking area in Vietnam and also suggested some solutions to both promote positive effects and, at the same time, minimize risks that originate from cross-ownership.

Also, there are articles on the matter of cross-ownership such as "*Corporate Control with Cross-Ownership" (2012) and "Cross-Ownership: A Device for Management Entrenchment?"* (2016) by Marc Levy and Ariane Szafarz, the first one helped clarify the interpretation of cross-ownership from a governance standpoint, and the latter one paved the way to improve regulatory appraisal of management entrenchment through cross-ownership by proposing a game-theoretical method to measure the extent of shareholder expropriation. Besides, an examination of common arrangements for separating control from cash flow rights in which cross-ownership is one of the structures was taken in "*Stock Pyramids, Cross-Ownership, and Dual Class Equity: The Creation and Agency Costs of Separating Control from Cash Flow Rights*" (2000) by Lucian A. Bebchuk, Reinier Kraakman and George G. Triantis.

All those studies, journals, and articles have revealed typical and valuable analyses of cross-ownership in general and the experience in dealing with adverse impacts caused by it in particular.

CHAPTER 1: THE CONCEPT OF CROSS-OWNERSHIP IN THE BANKING SECTOR

As outlined in the literature review, cross-ownership can result in a number of issues such as debt leverage, decrease in the competitiveness, or invalidating the standards of capital adequacy, which can impact the banking institutions. In order to assess the current stage of cross-ownership in Vietnam, this research first begins by introducing the concept of cross-ownership and its related properties from both a theoretical and legal perspective. From this perspective, the chapter highlights the benefits and risks brought by cross-ownership within the context of several countries and then, in a narrower context, provides specific causes that led to the formation of cross-ownership in Vietnam will also be put under discussion.

I. The definition of "cross-ownership"

1. Theoretical perspective

a. The definition

According to Mark Scher (2001), "*a practice called 'cross-shareholding' has been a common practice in Japan for pairs of firms to exchange equity shares in each other. Sometimes the firms have been in the same industrial group, sometimes they are suppliers and customers, and sometimes creditors and borrowers.*"[4]

Apparently, cross-ownership is a complex and multifaceted relationship. Essentially, it is a concept which indicates a phenomenon that occurs when company A holds shares in company B and company B also holds shares in company A. In other words, cross-ownership is the phenomenon of mutual shareholdings between companies. In the simplest form, the subject of cross-ownership only includes two companies. However, as will be presented, there are other forms which are more complex.

However, not all cases of mutual shareholding between companies are cross-ownership. It is vital to distinguish cross-ownership from the case of companies holding each other's shares in financial investment activities. Specifically, it is called cross-ownership only when the ownership is at a certain percentage enough to be able to participate in the board of directors or the executive committee, or otherwise, they still have control over each other's planning and governance. Such a difference helps identify financial investment activities where mutual shareholdings in the portfolios are unavoidable. In this case, the investment in the stock portfolio of companies is carried out with the main purpose of buying and selling for a price difference (capital gain) rather than to control the company's activities.

In Europe and the United States, cross-ownership is commonly used in media and telecommunications to refer to a phenomenon when a media company owns two or more companies in the same industry which are directly involved in creating monopoly and competition restriction. According to Marc Edge, "*It is a business strategy driven by advances*

[4] Mark, S. (2001), *Bank firm cross shareholding in Japan: what it is, why does it matter, is it winding down?,* DESA discussion paper, No. 15

in technology and also a public policy issue due to concerns over increased concentration of ownership."[5] In the field of corporate governance, scholars studying the separation of ownership and control of a corporate entity defined cross-ownership in a way as stipulated above. However, it is also mentioned in a broader sense by which a central business holds ownership of many other businesses which have mutual ownership. According to Bebchuk et al (2000)[6], this model differs from the pyramidal model due to the fact that the firms engaged are horizontally interlinked in order to reinforce the power of the central entity. Thus, the right to vote to control a group is still scattered among entities in the group rather than solely exercising the right to a company or an owner.

In countries where civil law applies, cross-ownership is often associated with *pyramidal ownership*[7] (Thesmar, 2001)[8], which conceals the primary control links. Although both forms are considered a device to perform control over firms with low cash-flow, the difference between these two forms of ownership lies in how relationships are organized. While the pyramid structures include top-down relationships, cross-ownership structures, which does not follow the traditional rule of one-sided control, include closed rings.

Cross-ownership is often used to reinforce the relationship between businesses, especially banks. Cross-ownership has grown in popularity in many countries around the world, mainly in countries with credit markets and commercial banking systems with bigger scale and more important role compared to the stock market, such as Germany, Japan, Italy, India, China. In Japan, for instance, a traditional cross-ownership type after the Second World War is called Japanese main banking system and another type with rapid growth between businesses and non-banking businesses. Meanwhile, in countries like the United States and Britain, whose financial markets are at a high level of development and the economy is capital-based, cross-ownership is rarely used to strengthen the relationship between businesses.

Due to the difference between the activities of enterprises in the ordinary business areas and the operation of credit institutions and commercial banks, the cross-ownership in the banking sector has several fundamental characteristics. Accordingly, cross-ownership in the banking system originates from cross-ownership in the enterprise system, characterized by the participation of commercial banks in the share ownership system among members. Thus, *cross-ownership in the banking system is recognized when banks hold each other's shares through*

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[5] Marc Edge (2008), *Cross-ownership*, in Wolfgang Donsbach, Ed., International Encyclopedia of Communication, Sam Houston State University, pp. 1079 – 1082

[6] Lucian A. Bebchuk, Reinier Kraakman, George Triantis (2000), *Stock Pyramids, Cross-Ownership, and Dual Class Equity: The Mechanisms and Agency Costs of Separating Control from Cash-Flow Rights*

[7] Pyramidal ownership in corporate finance is the creation of a speculative capital structure by establishing a parent company or a chain of parent companies to control other companies or take over business operations with only a small amount of investment capital or even without capital, at the same time to ensure for itself the majority of profit surplus and corporate value (Benjamin Graham and David L. Dodd (1934), *Security Analysis, Chapter 48: Some aspects of Corporate Pyramiding*). In the situation of pyramidal ownership, entities have a relationship with each other in the form of a top-down control relationship (La Porta, R., F. Lopez-de-Silanes and A. Shleifer (1999), *Corporate Ownership Around the World, Journal of Finance 54*). Accordingly, the ultimate owner is usually in the top position and the underlying business classes are intermediate owners who both own and be owned. The ultimate owner is considered a shareholder who has complete control of a firm without being under the control of any other shareholder. In short, based on the pyramidal ownership structure, the ultimate owners may still hold control of a certain firm without necessarily having to spend the corresponding amount to maintain the actual ownership rate in such a firm.

[8] Thesmar, D. (2001) *The governance of subsidiaries: How pyramidal ownership magnifies the separation of ownership and control*

stock trading or investing in other banks through subsidiaries or entrusting investments through an intermediary.

b. Types of cross-ownership

Understanding existent types of cross-ownership is important as it helps recognize unique charateristics of each type, through which suitable management for each typw is designed. There are several types of cross-ownership such as direct cross-ownership and indirect cross-ownership which includes cirrcular ownership and network ownership.

- Direct cross-ownership: is considered the simplest form where the subject includes only two companies. According to this form, shares of a firm are held directly by another firm and vice versa. For example, bank A holds 25% stake in bank B, at the same time, bank B holds 10% shares of bank A.

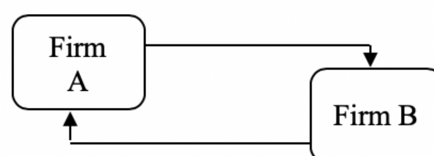


Figure 1

- Indirect cross-ownership: shares of a firm are held by other firms whose mutual ownership is based on direct cross-ownership, creating a complex holding network. Indirect cross-ownership may exist under the following forms:

- Circular ownership: Firm A owns shares in firm B, while Firm B owns shares in Firm C, and comes in turn, Firm C holds shares in Firm A. The ring can be extended with many more intermediary companies. In the situation of circular ownership, it is not easy to identify the starting point and the ending point of the cross-ownership relationship. Also, it is much more challenging to determine the actual share ownership ratio of companies. For instance, although Fim A does not directly own Firm C, but because Company B, which is owned by Firm A, directly owns Firm C, it is inferred that Firm A is actually owning the Firm C. However, what makes it complicated is that Firm C also owns Firm A, so the determination of the actual ownership ratio (or voting right) of Firm A in Firm C is not only adjusted through Firm B but must also be offset by the mutual ownership ratio between Firm A and C. In sum, it is difficult to determine the actual ownership ratio of companies in the circular ownership. However, it is not the most sophisticated form of cross-ownership.

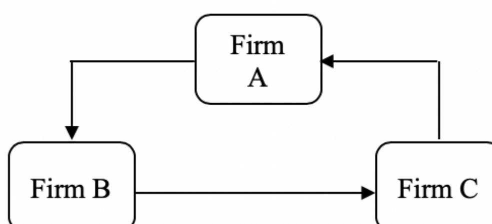


Figure 2

- Network ownership: In the case of this form, ownership relations between involved firms become intertwined with direct and indirect ownership, making it as complex as a matrix. As shown in Figure 3, interrelationships exist not only between pairs of firms A-B, B-C, C-D, A-D but also between firms A-C, B-D. However, the relationships as mentioned earlier are only direct ones. Taking into account the indirect ownership relationships, it can be seen that Firm A has direct ownership relationship with Firm C as not only pointed, but also indirectly owns Firm C through direct ownership with Firm D which itself also has direct ownership in company C. This ownership network is convoluted, making it extremely difficult to determine the actual control of a company over another company. It is not even possible in the context of non-transparent information.

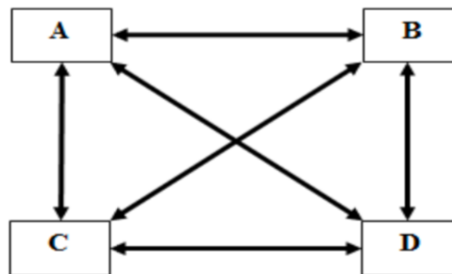


Figure 3

In addition, there are other types of indirect cross-ownership which are highly complex due to the high level of sophistication in establishing ownership relationships such as:

- Radiation ownership:

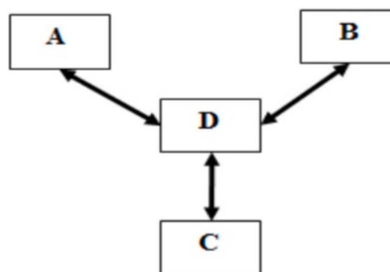
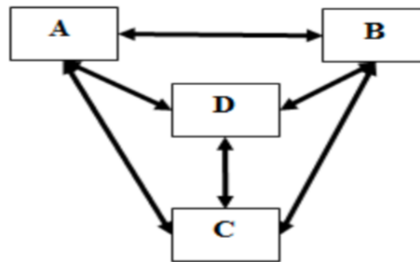


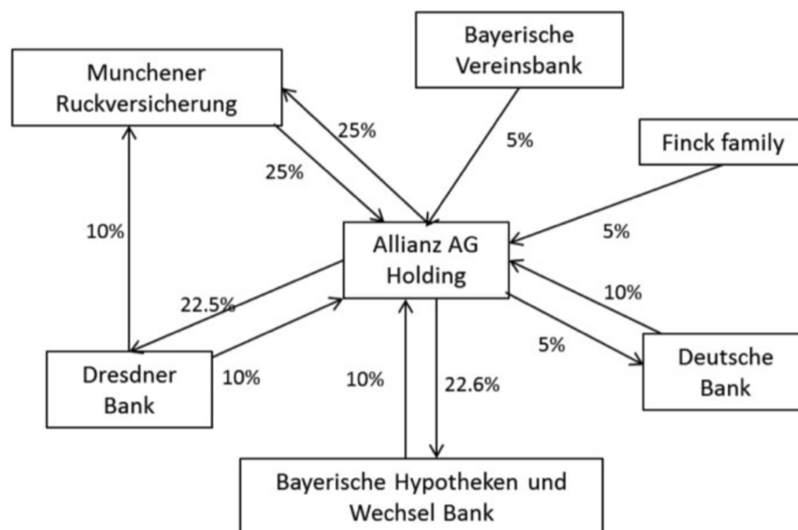
Figure 4

- Modified radiation ownership:



Source: Guo and Yakura (2010)[9]

Figure 5



Source: La Porta, Lopez-de-Silanes, and Shleifer (1999)[10]

Figure 6. Modified Radiation ownership structure in Allianz in 1998

2. Legal perspective

Now that we have defined various types of ownership structures it is imperitive to discuss the implications of cross-ownership on institutional and legal aspects of institutions from the perspective of Vietnamese law. Cross-ownership appears in Vietnamese law under Clause 2, Article 189 of the *Law on Enterprises 2014*:

[9] Li Guo and Shinksuke Yakura (2010), *The Cross Holding of Company Shares: A Preliminary Legal Study of Japan and China*

[10] La Porta, R., Lopez-de-Silanes, F., and Shleifer, A. (1999) *Corporate ownership around the world*, Journal of Finance

"***Article 189.*** *Parent companies, subsidiaries*
[…]
2. A subsidiary may not contribute capital to or purchase shares of the parent company. The subsidiaries of the same parent company may neither contribute capital nor purchase shares to cross-own one another. […]"[11]

However, this Article only stipulates cases where cross-ownership is not allowed without giving a definition of cross-ownership. In order to explain this issue, Clause 2, Article 16 of **Decree 96/2015/ND-CP** dated October 19, 2015 by the Prime Minister detailing a number of articles of the Law on Enterprises has defined cross-ownership as follows:

"***Article 16.*** *Limitation on cross-ownership among companies*
[…]
2. Cross-ownership means the concurrent mutual ownership of contributed capital and shares by two enterprises. […]"[12]

As can be seen, according to the above provisions, the current law only prohibits direct cross-ownership, and does not provide any regulations regarding the indirect forms of cross-ownership. Such regulations are considered lacking in strictness and may give rise to shortcomings because, in reality, there are many cases where, in essence, cash flow is cross-ownership, but the form of transaction is not cross-ownership. For example, a parent company A contributes capital or purchases over 50% of shares of its subsidiary B. B invests in Investment Fund so that the Fund contributes capital or purchases shares A. The regulations should be made clearer to determine whether this is cross-ownership.

II. Advantages and disadvantages of cross-ownership for the commercial banking system

Like many other economic phenomena, cross-ownership itself is not good or bad as it brings with it both benefits and drawbacks. To elaborate, depending on the specific purpose and circumstances (such as the internal governance environment and the regulatory environment outside the enterprise), many good (or bad) aspects of cross-ownership can emerge. This section analyzes the primary benefits and risks arising from cross-ownership.

A review of the literature on cross-ownership has allowed the author to develop seven (7) advantages which serve as a motivator and influencer of cross-ownership strutures. Altogether these advantages are creating an advantage from the combination of economic resources among commercial banks; helping commercial banks to be protected from hostile takeovers; supporting the formation of strategic alliances and risk sharing; reducing information asymmetry between banks and firms; helping banks mobilize long-term capital with high stability as well as easily cooperate to finance large projects; helping neutralize certain government regulations; and raising external capital. Now that the benefits are outlined, the author provides a critical analysis on these advanatages so as to provide justification.

[11] Vietnam's Law on Enterprises 2014, Article 189, Clause 2
[12] Vietnam's Decree 96/2015/ND-CP dated Octorber 19, 2015 by the Prime Minister detailing a number of articles of the Law on Enterprises, Article 16, Clause 2

1. Advantages

Firstly, cross-ownership has the potential to create an advantage from the combination of economic resources among commercial banks. A bank that can overcome the fierce competition from rivals needs to have a separate business model to help promote its competitiveness on the playground.

Let us have a quick look at the characteristics of the main bank[13] and the benefits brought by the relationship between the main bank and other banks in the cross-ownership ring. Generally, according to Paul Sheehan (2012), some characteristics can be found in a main bank relationship including[14]:

- It (the main bank) has a long-term relationship with the firm;
- It has the largest share of lending to the firm;
- It has the largest share of deposit balances from the corporate in such a relationship, has the responsibility to process the corporate's transactions with other firms;
- It guarantees the corporate's foreign bonds or works as a trustee for its domestic or foreign bonds.
- It is an important or a principal (but not controlling) shareholder of the firm.
- It provides help regarding management to the firm through advisory services or placing retiring employees of the bank in executive positions of the firm.

From the characteristics shown above, there can be seen the benefits generated from the relationship between the main bank and other banks in the cross-ownership ring. Briefly as follows:

- The relationship with the main bank allows banks in the cross-ownership ring to mobilize capital more quickly and at lower costs;
- The main bank can perform the role of supervising the operations of banks in the ring, through which the quality of corporate governance is improved;
- The main bank can rescue the remaining banks in case of difficulties through financial support.

Thus, if a commercial bank cooperates with other banks, especially main banks, it will, as a result, receive support in technology, information and human resource sharing, image promotion, and financial support. Thereby, it helps increase the bank's operational efficiency as well as competitiveness, bringing benefits to investors. To sum up, it cannot be denied that cross-ownership can create an integrated advantage of economic resources, increase the profitability of the business and significantly improve the results of business operations.

Secondly, cross-ownership helps commercial banks to be protected from hostile takeovers from other organizations, including the competitors. It enhances the strength of the entire

[13] Aoki, M., Hugh P., and Paul S. (1994), *The Japanese Main Bank System: An Introductory Overview*, in M. Aoki and H. Patrick, The Japanese Main Bank System: Its Relevancy for Developing and Transforming Economies, pp. 1- 50. Oxford: Oxford University Press

[14] Paul Sheehan (2012), *The Main Bank System and its Role in the Japanese Economic Miracle*, Yale University

conglomerate, thereby avoiding the risk of being hostilely taken by other firms. The strategic complement from each member to another in the affiliate eliminates outside interference, helps maintain a stable ownership structure, restricts unwanted contradictions or disputes coming from outside. On the other hand, if banks are faced with the pressure of being hostilely taken, the will have to focus on temporary strategy such as taking measures to increase profits in the short term instead of focusing on long-term goals. According to Adams (1999), the principal purpose of a cross-ownership system is likely to counter the risk of being hostilely taken by competitors.[15]

Furthermore, in the case of cross-ownership between a commercial bank and its investors, the two parties may negotiate to work together to counteract the acts of acquisition and merger from the opponents. Studies of Sheard (1989) and Morck and Nakamura (1999) on cross-ownership in Japan have shown that cross-ownership is effective in preventing unfriendly takeovers through the role of stable investors.[16] According to Morishima (2000), they are the shareholders who "have no intention whatsoever of letting go of the shares that they " and "anticipated keeping their shares throughout their lives."[17] Specifically, stable shareholders are shareholders who meet the following criteria:

- Having a close relationship with the firm's Executive Board;
- Making a commitment not to sell shares to a third party who acts against the Executive Board, usually the party intending to acquire the business;
- Committing that in the case of selling shares, they will notify the firm of their specific purposes.

Benefits brought by stable shareholders to the firms:

- Firms can minimize the risk of hostile takeovers;
- The Executive Board can focus on long-term strategy, serving the goal of bringing maximum benefits to shareholders, contributing to the competitiveness of the domestic business system.

Thirdly, cross-ownership supports the formation of strategic alliances and risk sharing. A strategic alliance is created when many banks formulate a common development strategy. Such a strategy includes close cooperation between banks, creating new value on the basis of cooperation, sharing benefits and risks. One or more banks in the ring will act as the guarantor of the risks of the remaining banks. The close relationship of ownership and control with banks through holding shares creates an effect on the level of trust for the bank itself and then on the external financial institutions.

Also, cross-ownership helps create a shared resource such as capital, customers, and governance[18], thereby helping to promote economies of scale and economies of scope for partners in the ring. These partners can take advantage of each other to reduce the average cost

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[15] Adams (1999), *Cross-holding in Germany*, Journal of Institutional and Theoretical Economics, Vol. 155, No. 1.
[16] Randall Morck, Masao Nakamura and Anil Shivdasani (1999), *Banks, Ownership Structure, and Firm Value in Japan*
[17] Michio Morishima (2000), Japan at a Deadlock
[18] See more in Jie (Jack) He, Jiekun Huang and Shan Zhao (2017)'s post, How Institutional Cross-Ownership Can Improve Corporate Governance, Columbia Law School's Blog on Corporations and the capital markets

and maintain the competitiveness of the conglomerate. Some of the benefits can be mentioned, such as sharing customer information or helping to introduce and cross-sell each other's products. Due to the common interest, cross-ownership also helps to tighten the relationship between business partners, minimizing negative impacts originating from external events or in the context of sudden macroeconomic changes which is detrimental to business operations.

Fourthly, from the perspective of the bank-firm relationship, cross-ownership helps reduce information asymmetry between banks and firms, thereby strengthening the bank's monitoring functions and helping to reduce transaction costs for the economy. As the owner, the bank can collect information about organization and governance, as well as financial efficiency and risks that firms face. This helps banks significantly reduce information asymmetry in their credit operations. The costs for collecting and processing corporate information for banks will be reduced, thereby reducing the cost of financing for businesses. However, this is also the flip side of cross-ownership when these benefits are distributed only to entities involved in the cross-ownership ring but, at the same time, create costs for other entities outside the system. Such an issue will be further analyzed in the section of the disadvantages.

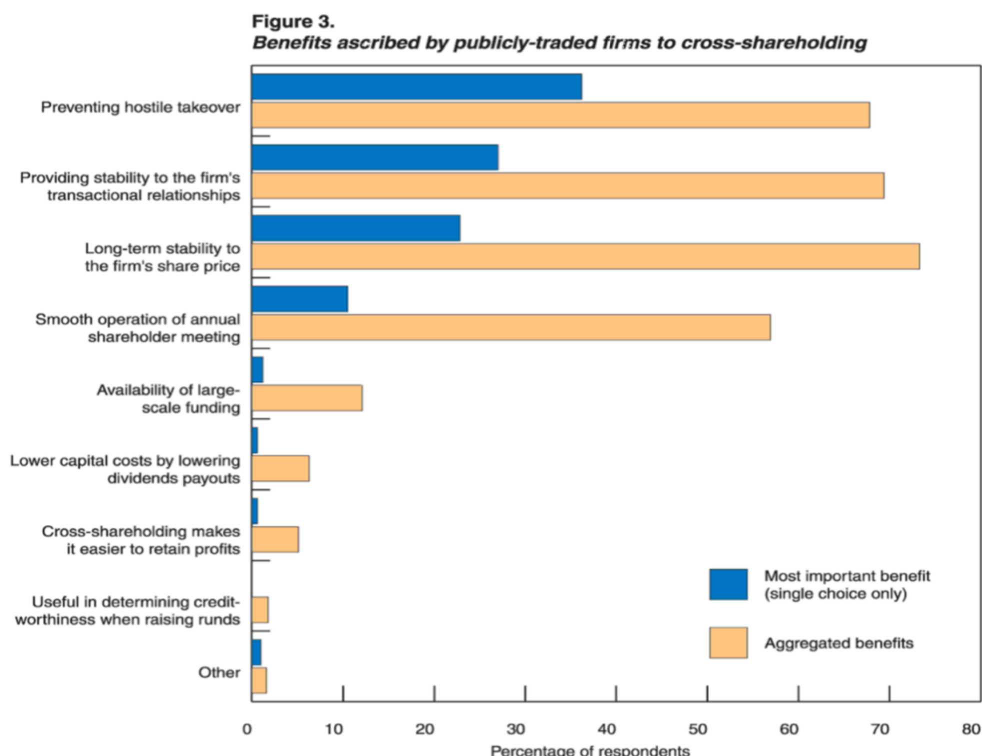
Fifthly, cross-ownership can help banks mobilize long-term capital with high stability as well as easily cooperate in financing large projects, requiring the participation of many banks. Enterprises in the cross-ownership ring are those who are able to invest more in banks when the bank issues new shares to maintain ownership and control.

Sixthly, cross-ownership is believed to be able to help neutralize certain government regulations[19], such as banking supervision regulations, thus providing partial benefits to the group but not necessarily is a common benefit for the whole economy. However, if government regulations are unreasonable or repressive, disabling these regulations will benefit not only the conglomerate but also the economy as a whole from an economic efficiency perspective.

Seventhly, cross-ownership in which foreign financial institutions invest in domestic banks will bring many positive factors. An abundant amount of capital from outside sources will support banks in improving financial capacity. Moreover, the sharing of technology, information, and human resources will bring certain advantages in business operations for domestic banks.

In addition, cross-ownership also has other positive effects such as reducing capital mobilization costs by reducing dividend payment pressure, maintaining the confidentiality of private bank information as well as of the whole cross-ownership ring, enhancing reputation and image of firms, banks, and conglomerates in the involved market.

[19] Vu Thanh Tu Anh, Tran Thi Que Giang, Dinh Cong Khai, Nguyen Duc Mau, Nguyen Xuan Thanh, Do Thien Anh Tuan (2013), *Sở hữu chồng chéo giữa các tổ chức tín dụng và tập đoàn kinh tế tại Việt Nam: Đánh giá và các khuyến nghị thể chế*" (*Cross-ownership between credit institutions and economic groups in Vietnam: Assessment and institutional recommendations*), Fullbright Economics Teaching Program



Source: Fujo Sogo and Kenkyujo (1993)

Figure 7. *Benefits ascribed by publicly-traded firms to cross-shareholding*

Thus, it can be inferred that cross-ownership itself can bring certain benefits. However, the benefits of cross-ownership indicated are primarily the profits that only partners in the ring can approach. Meanwhile, the interests that cross-ownership brings to the entire economy are very limited or unclear. Also, in many cases, cross-ownership can bring about risks and costs to entities outside the ring and harm the competitive environment of the economy as a whole. The following section draws some of the risks that may originate from cross-ownership.

2. Disadvantages

Firstly, cross-ownership increases virtual capital, violating regulations on real capital and credit. Because in essence, cross-ownership is the phenomenon when a firm holds its stock through holding shares of the related firm. By being invested by member enterprises, the total charter capital of banks and firms increases but only an amount of virtual capital flows continuously between firms in the cross-ownership ring. Therefore, the amount of initial equity may increase many times, but the real capital is still the same. In Germany, the amount of equity in listed companies is higher than the actually contributed capital of 25% due to cross-ownership.[20]

The following example illustrates the phenomenon of increasing the bank's virtual charter capital. Consider the balance sheets of two banks, Bank A and Bank B, Bank A has an equity structure of VND 10 billion, Bank B has an equity structure of VND 5 billion. The goal here is

[20] Adams, M. (1999), *Cross Holdings in Germany*, Journal of Institutional and Theoretical Economics, Vol. 155, No. 1

to demonstrate the effect of a bank's charter capital when the banks proceed to transaction with each other.

Table 1. The increase in the bank's virtual charter capital

Bank A		Bank B	
• Equity: VND 10B • Credit: VND 90B	• Shares: 10 • Mobilized capital: VND 90B	• Equity: VND 5B • Credit: VND 45B	• Shares: 5 • Mobilized capital: VND 45B
After bank B issues VND 5B of shares to bank A, the balance sheet of the two banks will be as follows:			
Bank A		**Bank B**	
• Equity: VND 5B • B shares: 5 • Credit: VND 90B	• Shares: 10 • Mobilized capital: 90B VND	• Equity: VND 10B • Credit: VND 45B	• Shares: 10 • Shareholder A: 5 • Other shareholders: 5 • Mobilized capital: VND 45B
Next, bank B uses VND 10B to buy 10% of newly issued shares of bank A. The balance sheet of the two banks will be as follows:			
Bank A		**Bank B**	
• Equity: VND 15B • B shares: 5 • Credit: VND 90B	• Shares: 20 • Shareholder B: 10 • Other shareholders: 10 • Mobilized capital: VND 90B	• Equity: VND 0 • A shares: 10 • Credit: VND 45B	• Shares: 10 • Shareholder A: 5 • Other shareholders: 5 • Mobilized capital: VND 45B

The ownership structure is being used here is the direct cross-ownership. As can be seen, the equity of both banks has increased from VND 15 billion to VND 30 billion after two transactions in stocks, equivalent to 100% of the initial investment into the two banks. However, the real capital has not increased, and this is not reflected in the balance sheets of both banks. In reality, banks have to use charter capital to invest in other banks, thereby limiting this phenomenon to a certain level. However, banks can lend to a firm that the bank can control so that it can invest in a partner bank. For example, in this case, bank A can lend money to firm C to buy shares of bank B and vice versa. Since then, the amount of capital contributed to banks by major shareholders in banks A and B have been returned to these shareholders.

As a result, cross-ownership is likely to distort corporate value, making it more difficult to assess the actual financial capacity of the business, thereby leading to incorrect investment decisions (M&A valuation). This is explained by the fact that the increase in the capital

adequacy ratio (CAR)[21] is not real, which makes the regulations on CAR not sufficient to promote the safety of the banking system. Accordingly, the provisions on lending to related people, limited investment capital contribution or maximum debt-to-equity ratio[22] of a bank become invalid.

The next example explains how cross-ownership can help return the capital back to shareholders. By taking advantage of the direct structure of cross-ownership, major shareholders can conduct deals through which they receive back a proportion of the capital invested into the banks, hurting the interests of shareholders who do not join the ring.

Table 2. Return of capital to shareholders through cross-ownership

<table>
<tr><th colspan="2">Bank A</th><th colspan="2">Bank B</th></tr>
<tr><td>Equity: VND 10B</td><td>Shares: 10</td><td>Equity: VND 10B</td><td>Shares: 10</td></tr>
<tr><td colspan="4">After Bank A buys 20% of Bank B’s shares, the balance sheet will be as follows:</td></tr>
<tr><td>• Equity: VND 8B
• B shares: 2</td><td>Shares: 10</td><td>Equity: 10</td><td>Shares: 10
• Shareholder A: 2
• Other shareholders: 8</td></tr>
<tr><td colspan="4">Next, Bank B buys 10% of Bank A’s shares. The balance sheet will be as follows:</td></tr>
<tr><td>• Equity: VND 8B
• B shares: 2</td><td>Shares: 10
• Shareholder B: 1
• Other shareholders: 9</td><td>• Equity: 9
• A shares: 1</td><td>Shares: 10
• Shareholder A: 2
• Other shareholders: 8</td></tr>
</table>

As shown, shareholders of both banks A and B received a capital of up to VND three (3) billion out of the initial VND twenty (20) billion, equivalent to 15% of the capital invested in the two banks (through deals with major shareholders, instead of small shareholders). However, this is not stipulated in the balance sheets of both banks.

[21] CAR is a measurement of the available capital of a bank which is expressed as a percentage of a bank's risk-weighted credit exposures. It is also known as capital-to-risk weighted assets ratio (CRAR) and is used to protect depositors and promote the stability and efficiency of financial systems around the world. The Formula for CAR is: CAR = [(Tier-1 capital + Tier-2 capital) / (Risk Weighted Assets)] x 100%. Tier-1 capital absorbs losses without a bank being required to cease trading, Tier-2 capital absorbs losses in the event of a winding-up and so provides a lesser degree of protection to depositors.
Currently, the minimum ratio of capital to risk-weighted assets is 8%under Basel II and 10.5% under Basel III. Presently, the minimum CAR required for banks in Vietnam is 9% (pursuant to Circular No. 02/VBHN-NHNN dated 10/01/2018). Under Circular 41/2016/TT-NHNN, which takes effect from 01/01/2020, the minimum CAR will be 8%, reduced under Basel II standards.

[22] Debt-to-equity ratio (DER) is used to evaluate a company's financial leverage. It is a measure of the degree to which a company is financing its operations through debt versus wholly owned funds. More specifically, it reflects the ability of shareholder equity to cover all outstanding debts in the event of a business downturn. Normally, a high DER means that the company often pays for its activities through debt. This will lead to unstable income, as the company often has to pay the accrued interest.

As a matter of fact, cross-ownership negatively affects small shareholders or shareholders who do not participate in the cross-ownership conglomerate in terms of ownership and control levels as the virtual capital of firms increases continuously while the proportion of capital resources of those shareholders decreases. Dividends received by the mentioned shareholders will be diluted due to the increase in the number of shares.

Secondly, while cross-ownership can help strengthen the ability to monitor as analyzed in the benefits section above, it can also impede monitoring. For instance, to create favorable conditions for partners in the cross-ownership ring, internal transactions are not evaluated carefully, and the constraints will be ignored or overlooked. This is very dangerous for the banking system in deciding to fund partners in their ownership group. Activities of banks, especially credit activities, are always bound by many strict standards. The central bank often sets monitoring requirements and standards, from internal control to inspection and monitoring from outside. However, cross-ownership may cause the bank to ignore these seemingly strict monitoring standards, such as the standards and conditions for granting credit to customers owned by the group. This risk, if happens, will not only affect the financial health of each bank itself but also will be the risk of both the financial system and of strangling the competitiveness of the economy.

Thirdly, cross-ownership encourages monopoly, reducing the level of competition among banks. Although cross-ownership creates a sustainable link between banks to counter the mergers and acquisitions, in a negative aspect it causes monopoly. The higher the degree of association between banks in cross-ownership group, the more restrictive measures will increase in both frequency and level. Accordingly, the reduced competition can potentially limit foreign capital and technology to the domestic banking system. Market rules show that in a market where two competitors establish cross-ownership relationships, the price and profitability of the business increases while the output is lower, and the corresponding consumer surplus is lower than market equilibrium. In addition, the cross-ownership makes the goal of maximizing value for enterprises fade away but aims at serving the interests of a particular group of people. Therefore, cross-ownership will reduce the competition between banks by creating an underground link between businesses and those who suffer from losses are none other than depositors and customers of commercial banks.

Fourthly, cross-ownership negatively affects corporate governance environment in the bank because of the significant power of certain interest groups in making decisions on behalf of the company. For instance, one study found that the general meeting of shareholders and supervisory board will be effectively reduced as the ownership and control role of small shareholders becomes seriously vague.[23] Authoritarian decisions appear while minority and independent ideas are often overlooked. The risk is that these decisions are usually adopted without being put under discussion and debate, and do not benefit the entire shareholders of the company, especially minority shareholders. In the long run, the interests of minority shareholders will be marginalized by corporate governance decisions. Adams (1999) believes that cross-ownership is a tool to protect the power position of a certain group of governors. They are the major shareholders who hold the majority of the bank's shares through cross-ownership to increase the level of control over the operation of the firm, dominate the bank's

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[23] Xiaoyan Wang, Jiurong Song, Chris Deeley (2012), *Research on the Double edged sword effect of cross-shareholding in China*

decisions, thereby causing damages to small shareholders and limit potential investors to in banks.

The example below explains the method utilized by major shareholders to increase the level of control. Through cross-ownership, these shareholders can enter into a collusion where they conduct transactions to acquire shares from small shareholders in each bank, thereby decreasing the share capital held by small shareholders and increasing the level of control of major shareholders.

Table 3. The increase in the level of control of major shareholders through cross-ownership

<table>
<tr><th colspan="2">Bank A</th><th colspan="2">Bank B</th></tr>
<tr><td>Equity: VND 100B</td><td>Shares: 100
• Shareholder C: 25
• Shareholder B: 25
• Other shareholders: 50</td><td>Equity: VND 100B</td><td>Shares: 100
• Shareholder E: 25
• Shareholder F: 25
• Other shareholders: 50</td></tr>
<tr><td colspan="4">Assume that C and D, as well as E and F, want to increase their level of control at banks A and B but do not have enough capital to afford up to 75% of shares in each bank.

C and D ask bank A to buy 25% of bank B's shares from small shareholders. Meanwhile, E and F ask bank B to buy 25% of bank A's shares from small shareholders. After these two transactions, the results will be as follows:</td></tr>
<tr><th colspan="2">Bank A</th><th colspan="2">Bank B</th></tr>
<tr><td>• Equity: VND 75B
• B shares: 25</td><td>Shares: 100
• Shareholder C: 25
• Shareholder B: 25
• Other shareholders: 25</td><td>• Equity: VND 75B
• A shares: 25</td><td>Shares: 100
• Shareholder E: 25
• Shareholder F: 25
• Other shareholders: 25</td></tr>
<tr><td colspan="4">As can be seen, the share capital of both banks has not increased (VND 100 billion), while the control level of shareholders C and D, and E and F have increased as these two groups have collusion. Because banks A and B hold 25% of shares of the other bank, the shareholders C and D, and E and F hold up to 75% of shares in each bank. This is a solution that banks often carry out to increase the ability to control without having to spend more capital.</td></tr>
</table>

Fifthly, a chain crisis may happen when one or more banks in the cross-ownership group face risks and (or) fall into bankruptcy, causing the level of risk to spread in the banking system

increases. If the cross-ownership alliance is envisioned as a chain of links including members, when a link fails, the remaining links, as a matter of course, will also be negatively affected.

Initially, the stability of each bank had a high impact on the stability of other banks in the cross-ownership group in the market. In other words members are interdependent. The level of dependence will increase when the amount of shares held directly or indirectly increases. As a result, the profit and net asset value of each bank in the cross-ownership ring will be highly sensitive to the level of stock price volatility of other banks. If stock prices rise, members will record a potential profit, and vice versa, if stock prices fall, members will record an unrealized loss. Since the stock market tends to be more sensitive with negative signals than positive signals, the spread of risk in the stock market when a member is not performing well will take place quickly. The level of influence is higher for members that are deeply involved in the cross-ownership ring.

Sixthly, cross-ownership with local interests within the group can reduce the level of information transparency, including operational information, administrative information, and financial information. It has the effect of weakening the competitiveness of the economy, not motivating innovation and creativity, continuing to pursue outdated business strategies, nurturing bad ideas and protecting local benefits. As a result, it is likely that external investors will be apprehensive about a lack of transparency in the business environment, reducing the attraction of investment in sectors that are affected by this situation.

Seventhly, in order to maintain the status of cross-ownership, property rights must also be maintained. As a result, shareholders often hold each other's shares for a certain period and stocks are rarely traded, or if traded, they are usually traded in a package instead of being widely sold to the public with scattered value. In this case, not only will the stock's liquidity be reduced but large-scale transactions often cause market turmoil, creating a tool for the beneficiaries to take advantage of to manipulate the market, causing a negative impact on the stock market. Such inefficient stock markets cannot encourage outside investors, as well as limit the level of active participation of long-term investors.

Eighthly, the bank may convert bad debts into other assets with a seemingly higher level of asset quality through transactions with member firms. By selling a bad debt to a member enterprise, and recording it as a receivable based on an incorrect valuation at the market price, the bad debt on the balance sheet will be converted into another form of property. However, such a bad debt has not been dealt with or transferred out of the banking system, but still retains its influence on the bank's operations.

In case the cross-ownership conglomerate has more than one bank, the risk may occur to the Deposit Insurance Agency and the State Bank. Since the two organizations tend to intervene to prevent bankruptcy, the conglomerate is likely to shift valuable assets from weak banks to big banks. In the opposite direction, poor quality credits will be transferred at book prices but not market prices. In case the weak bank is at risk of bankruptcy and receives assistance from the State's agencies, the interests of the whole alliance based on the consolidation will increase, and the damaged person will be none other than the taxpayer.

Ninthly, as mentioned, cross-ownership creates complex and indirect proprietary matrices. Meanwhile, the control rights of a shareholder or group of shareholders are not only direct

ownership rights of that shareholder in the enterprise but also other indirect ownership rights created by those shareholders or groups of shareholders through cross-ownership. Thus, the allocation of voting votes in the enterprise becomes no longer fair, breaking the one-share-one-vote principle. Disadvantages will often fall into minority shareholders because regulations on ownership limits or voting under the law as well as in the company's charter become meaningless.

Tenthly, in the event that the main bank in the cross-ownership group and other outside the group provide credit to member enterprises, the main bank will encounter conflicts of interest. When the main bank is aware of the financial situation or business activities of its member enterprises to whom they lent capital, the main bank can take advantage of this insider information to carry out debt recovery and (or) implement risk prevention measures before other banks that also provided credit to the firm.

With the role of restructuring the enterprise, the bank will promote its advantages as a predecessor such as withdrawing investment capital, recovering security assets, or continuing to pump capital and apply looser credit terms to support the firms. Only when the main bank officially recognizes that the member enterprise has fallen into a problematic and stagnant situation which is unable to recover, then the bank performs its so-called "rescue role".[24] However, no matter which role it is, the creditor or the owner, the bank is in front of an inevitable conflict of interests. This contradiction negatively affects relationships in the cross-ownership group when other members find the main bank's interest as a lender inconsistent with its interests as an investor.

Finally, it cannot be denied that cross-ownership can help enhance mutual support between partners in the ring. However, in many ways it creates interdependence. Such dependence can make partners less motivated to develop, reduce dynamism and creativity, and restrain competition. This leads to a decrease in productivity, an increase in production expenses and product costs and a reduction in the competitiveness of the economy. Furthermore, business, investment, and financial decisions can be more reckless, resulting in low profitability and high level of risk. It also creates excellent economic inertia since suppliers are slow to improve technology, design and product quality, while distributors do not diversify sources of supply.

This section has analyzed some of the advantages and disadvantages that cross-ownership brings. The basis for this phenomenon to exist is the benefits that it creates to the participants in the ownership group. However, from the perspective of the financial-bank system that needs stability, there is an ability to give rise to risks and costs for the whole economy. Depending on the extent, scope, and nature of cross-ownership as well as the environment in which it exists, its impact on the economy is different. For the banking and financial sector, due to the characteristics of the industry and the experience drawn from the history of financial and banking breakdowns, management agencies often formulate and promulgate monitoring standards frameworks with the aim to create a financial-banking system that operates efficiently, safely, and appropriately with its functions. However, for banks, because compliance with these regulations often incurs some compliance costs and limits their profit-seeking activities, they often choose to circumvent the rules. Such circumvention is likely to

[24] Mark Scher. (2001*), Bank firm cross shareholding in Japan: what it is, why does it matter, is it winding down?*, DESA discussion paper, No. 15, pp. 9

benefit each bank and its shareholders, who have control of the bank, but not necessarily bring the overall benefits to both the banking system and the economy. In this case, the government has reasons to intervene once it realizes that the financial system is at risk and the economy is negatively affected. However, the government does not necessarily seek to eliminate cross-ownership as it is too costly but not sure to be effective. Instead, the challenge is how to design governance and regulatory environment to balance the benefits and the risks brought by cross-ownership.

III. Causes of cross-ownership in the Vietnamese banking system

It is true that cross-ownership is an objective attribute of the economy, however, in the current context of Vietnam, cross-ownership is derived from seven (7) primary causes namely: the loose monetary policy in the period of 2006-2010; the decision to convert thirteen (13) rural banks into urban banks in the period 2005-2007; the requirement for minimum charter capital of a bank so that it is allowed to operate; the underdevelopment of the capital market; loopholes in the banking regulations of Vietnam; the lack of senior manager resources in Vietnamese commercial banks; and the weakness in the establishment phase of commercial banks led them to the need of help from the State or state-owned enterprises. Over time, this relationship becomes complicated and difficult to remove.

Firstly, one of two major macroeconomic causes is the loose monetary policy in the period of 2006-2010. Except for the last six months of 2008, the State Bank always maintained the refinance rate from 5% to 7.5%[25], which was relatively low, in the whole period of 2005-2009, making the average mobilizing interest rate of banks are maintained at a correspondingly low level, from 7 to 8.5%[26] in this period.

"Black credit" growth made it difficult for companies to access bank loans. In order to meet the demand for large-scale credit, firms needed to link or own banks to ensure uninterrupted capital supply. Similarly, banks were also under pressure of credit growth, so they tended to lend familiar firms to reduce the duration to review and assess applications. When the credit needs of a group of firms were too large, owning only one bank will be difficult to meet demand, leading banks to link together into groups and be bound by ownership. From here, the ownership relationship between banks and banks, banks and firms, banks with firms with individual investors appeared. In other words, black credit growth is the most suitable environment to nurture and promote cross-ownership in the banking system.

Secondly, another macroeconomic cause was the decision to convert thirteen (13) rural banks into urban banks in the period 2005-2007. Before the conversion, these banks had a charter capital of only a few dozen to several hundred billion dongs (VND 1 billion was equivalent to about USD 62,500 in 2005, according to the exchange rate of Vietcombank). However, as regulated, the minimum charter capital requirement to operate in the banking and financial sector was VND 3,000 billion in 2011, these commercial banks were forced to increase their equity by ten (10) to twenty (20) times in only five years. The consequence of having to grow at a rapid rate for these banks was that they had to grow their assets at all costs to correspond

[25] Dinh Tuan Minh (2013), *Vấn đề sở hữu và đầu tư chéo trong quá trình tái cơ cấu hệ thống ngân hàng tại Việt Nam* (*Cross-ownership and cross-investment in the restructuring of the banking system in Vietnam*)
[26] Dinh Tuan Minh (2013), *Vấn đề sở hữu và đầu tư chéo trong quá trình tái cơ cấu hệ thống ngân hàng tại Việt Nam* (*Cross-ownership and cross-investment in the restructuring of the banking system in Vietnam*)

to the increase in equity. In order to increase equity at such a tremendous rate in the short term, these banks found no other choice than to rely on the contributions of state and private corporations and turn themselves into "backyards" of those groups. Another problem following the bank's rapid increase in equity was that the corporations behind these banks also had to borrow from other banks to meet the requirements. So, as a result, in order to meet the demand for loans, ownership relations between the parties were established.

Table 4. List of rural banks converted into urban banks

No.	Rural Banks	Banks' Name after Conversion	Year of Conversion	Charter Capital at the Time of Conversion (VND billion)
1	Da Nang	Viet A	2003	190
2	An Binh	An Binh (ABBank)	2005	165
3	Ninh Binh	Global Petro (GPBank)	2006	500
4	Nhon Ai	Sai Gon – Ha Noi (SHB)	2006	500
5	Song Kien	Nam Viet (NaviBank)	2006	500
6	Kien Long	Kien Long	2006	290
7	Hai Hung	Ocean Bank	2007	1,000
8	Dong Thap Muoi	Petrolimex Group (PGBank)	2007	500
9	Co Do	Western Bank	2007	200
10	Rach Kien	Construction (VNCB)	2007	504
11	DaiA	Dai A (DaiA Bank)	2007	500
12	My Xuyen	Me Kong (MDB)	2008	500

Source: RongViet Research Integration

Among the above banks, only three (03) banks An Binh (ABBank), Saigon - Hanoi (SHB) and Kien Long (KienlongBank) are still operating in the original direction and legal form. Other banks can be divided into two groups: weak banks that were bought at VND 0 and banks that were merged.

Thirdly, the government required that in order to operate in the sectors of banking and financial operations, commercial banks have to meet the minimum charter capital of VND 3,000 billion. It is explained that, in order to ensure that banks, when established and put into operation, have sufficient capital necessary for banking activities which are often risky, the Governments often

stipulate the minimum charter capital according to specific routes that banks must achieve.[27] In favorable conditions, banks with functional financial capacity and business capability can issue shares on the stock market to domestic and foreign investors, attracting foreign strategic investors. However, in the context of the financial and banking market having unfavorable movements with weak banks, potential investors will limit their investment in banks. Stemming from this difficulty, banks have come up with solutions to meet the requirements of the Government, including establishing a cross-ownership conglomerate. In this conglomerate, the bank may lend to an enterprise which is under its control. Such an enterprise afterward uses the borrowed capital to carry out the reverse investment through the purchase of newly issued shares of the bank. Since the capital used for corporate lending can come from the capital mobilized from the economy, the amount of capital used for this activity is sufficient to meet the Government's regulations on minimum charter capital.

In Vietnam, intending to improve financial capacity, the State Bank has stipulated that commercial banks must have a minimum charter capital of VND 3,000 billion.[28] The capital raising pressure was extremely high because banks mainly mobilized capital through issuing shares, selling to foreign strategic investors or (and) investment funds, but the stock market after 2008 fell into a slump that made capital growth fall into a stalemate. That is also the reason why the Government extended the capital raising time until the end of 2011, but in fact, the stock market in 2011 also declined more seriously, especially the situation of long-term loss of liquidity, so the additional issuance, listing or calling for the participation of strategic shareholders in and outside the country was difficult. It can be explained that the pressure to increase capital resonated with the problematic situation of capital mobilization to force bank owners to find ways to manage, one of those ways was to raise capital through cross-ownership. Many big banks, though not subject to the pressure of increasing capital to meet the regulations, also continuously announced to increase their capital from one thousand to several thousand billion dongs.

Fourthly, the underdevelopment of the capital market has made cross-ownership increase due to capital pressure on banks and credit institutions. The level of development of the Vietnamese stock market is limited, leading to the low possibility of providing long-term capital to the enterprises, creating pressure on long-term funding to the banking system. The implementation of the role of providing medium and long-term capital for the enterprise system leads to a significant increase in credit and liquidity risks for the banking system. By providing a large amount of capital to firms as well as to ensure the safety and profitability of their business operations, banks need to engage more deeply in the business of the borrowers. In addition, the demand of firms for a stable and long-term capital supply created additional impetus for banks and firms to seek solutions to enhance the relationship between the parties, leading to the formation of cross-ownership.

[27] Minimum initial capital for financial institutions in several countries: Austria: EUR5 million; Germany: EUR730,000 for investment banks, EUR5 million for CRR credit institutions; Indonesia: IDR3 trillion for newly established commercial bank doing conventional banking. (According to Baker McKenzie's combined statistics Global Financial Services Regulatory Guide)

[28] VND 3,000 billion is over USD 129 million

Fifthly, banking regulations in Vietnam still have many loopholes leading to banks taking this as an advantage to violate and form cross-ownership in the banking sector. Specifically, as stipulated in the *Ordinance on Banks, Credit Cooperatives and Financial Companies 1990*[29]:

"*Credit institutions can only use their own capital and reserve funds to finance or buy shares, but not to exceed more than 10% of the capital of a company or enterprise with which it contributes capital or buys shares*".[30]

The *Law on Credit Institutions 1997*[31] mentioned very generally about the limit of capital contribution and share purchase:

"*The level of capital contribution and share purchase by a credit institution in an enterprise, the aggregate level of capital contribution and share purchase by a credit institution in all enterprises shall not be allowed to exceed the maximum level set by the Governor of the State Bank for each type of credit institution.*"[32]

It was not until 2005 that the State Bank issued regulations on safety ratios in allowing credit institutions to use charter capital and reserve funds to invest in enterprises, investment funds or invest in other credit institutions (trade investments) in the form of investment capital, joint ventures, and share purchase. Only when the *Circular No. 13/2010/TT-NHNN*[33] stipulating prudential ratios in operations od credit institutions dated 20/5/2010 took effect, does the State Bank have more unambiguous provisions on these activities such as:

"*Capital contribution, share purchase means the use by a credit institution of its charter capital and reserve fund for contribution to the charter capital or purchase of shares of enterprises, subsidiary companies, joint-venture companies, associated companies or other credit institutions; for allocation of charter capital to its affiliated companies; and for contribution to investment funds and executing investment projects: including entrustment of capital to other legal entities, organizations or enterprises for making investments in the above forms.*"[34]

Thus, it can be inferred that there is a delay in issuing the necessary legal documents to manage and control financial and banking activities in general and cross-border books in particular.

Another gap of regulations on cross-ownership was found in the *Regulation on the Domestic Issuance of Valuable Papers by Credit Institutions*[35] issued together with *Decision No. 07/2008/QD-NHNN* dated 24/03/2008. In this document, the State Bank did not have specific provisions for each type of credit institution in terms of provisions on buyers of valuable papers.[36]

In addition, there are still certain gaps in the current Law on Credit Institutions 2017. Many rules in the law are still unclear in distinguishing between two types of banks which are

[29] This legal document is no longer valid
[30] Article 28 of the mentioned Ordinance
[31] This legal document is no longer valid
[32] Article 80 of the mentioned Law
[33] This legal document is no longer valid
[34] Section 8, Article 2 of the mentioned Circular
[35] This legal document is no longer valid
[36] Article 3 of the mentioned Regulation

investment banks and traditional commercial banks. The legal regulations lack the clarity between the function of each bank type, which makes many commercial banks that have performed the operations that should only be implemented by investment banks. Commercial banks are allowed to establish affiliated subsidiaries in the fields of securities, insurance, financial leasing and holding shares of enterprises with securities investment functions, holding shares of their own.

Sixthly, the next reason is the lack of senior manager resources in Vietnamese commercial banks as a characteristic of developing countries.[37] This situation occurs in two aspects. The first is between a loan bank and a lending bank. The shortage of human resources for financial management at small-scale banks makes large banks with financial potential when giving the loan want to participate in the management board or the supervisory board of the borrower so as to monitor the use of capital and business activities. This purpose can be achieved through holding shares, participating in the management or corporate supervisory board. The goal of the lender is mainly to ensure that this bank loan is used for the right purpose, effectively and to build a strong relationship between the lender and the borrower. At the same time, the bank's holdings of shares in businesses where it provides credit will reduce the status of asymmetric information, gain competitive advantages over other creditors, thereby reducing risks in credit granting activities and increasing competitiveness with rival banks.

From the other viewpoint, the shortage of human resources for management exists within the bank itself. When the number of credit institutions increases sharply, the demand for senior management personnel also increases. However, domestic human resources could not meet the demand, leading the bank's controlling shareholders to be unable to entrust complete management to the managers. The owner must rely on family relationships to run the bank. However, according to the provisions of the current Law on Credit Institutions, the use of family relations to manage banks is limited. In order to circumvent regulations, bankers tend to establish cross-ownership so that they are able to manage the bank's operations via companies run by family members.

Seventhly, implementing the direction of the State management agencies, some state-owned banks invested capital in commercial banks or joint-venture banks with different objectives such as supporting newly established banks in developing or expanding the network. For many years before the establishment of a joint stock banking system was implemented[38], the presence of state-owned banks was aimed at limiting activities beyond the legal framework, if any, and fundamental weaknesses from the newly established joint stock banks. In that context, such caution was necessary. Moreover, from a business perspective, large state-owned banks shared their business and management experience and even shared human resources with all the banks they contributed. However, along with the time and development of the Vietnamese banking system, the influence of cross-ownership forms has also changed. This is also one of the reasons for cross-ownership between banks with state capital and commercial banks or joint-venture banks.

[37] Dinh Tuan Minh (2013), *Vấn đề sở hữu và đầu tư chéo trong quá trình tái cơ cấu hệ thống ngân hàng tại Việt Nam* (*Cross-ownership and cross-investment in the restructuring of the banking system in Vietnam*)
[38] After the Ordinance on Banks, Credit Cooperatives and Financial Companies 1990 took effect

CONCLUSION

Along with economic development, financial institutions such as commercial banks, insurance companies, financial companies, and corporations want to establish long-term businesses, and investment relationships on the basis of mutual benefits. If properly utilized, cross-ownership brings considerable benefits to the economy as a whole as well as to members participating in cross-ownership alliances in particular. However, when cross-ownership becomes too familiar with the goals of serving a specific benefit group instead of serving the community and related subjects or becomes too complicated which is beyond the control of the State then firstly, the financial system and then the economy will have to suffer significant damages. In other words, cross-ownership in the commercial banking system has specific positive and negative effects on entities in the economy. In addition to the positive effects such as creating an advantage from the combination of economic resources among commercial banks, helping commercial banks to be protected from hostile takeovers, supporting the formation of strategic alliances and risk sharing, reducing information asymmetry between banks and firms, helping banks mobilize long-term capital with high stability as well as easily cooperate to finance large projects, helping neutralize certain government regulations and raising external capital, cross-ownership still has many negative impacts such as increasing virtual capital, weakening the monitoring role toward internal transactions, encouraging monopoly, affecting corporate governance environment in the bank, creating crisis chain in the banking system, reducing the level of information transparency and stock's liquidity, hiding bad debts and creating interdependence among banks and firms. Adverse effects of cross-ownership are the reasons why it is essential to have mechanisms and measures to control cross-ownership properly so that the stability in the operation of credit institutions is ensured. Therefore, what is in question is that the State must perform its role of managing and controlling cross-ownership at a reasonable level, taking advantage of the benefits it brings to achieve the highest economic efficiency and, at the same time, controlling the potential risks.

CHAPTER 2: CURRENT SITUATION AND REGULATIONS UNDER VIETNAMESE LAW ON CROSS-OWNERSHIP IN THE VIETNAMESE BANKING SECTOR

Now that we have discussed the concept of cross-ownership and its related properties as well as the causes of cross-ownership in Vietnam, this Chapter continues the discussion by providing a historical review of events and factors which gave rise to the development of the legal system which now regulates cross-ownership in Vietnam.

To achieve this, the Chapter is divided into two parts: the first part provides an overall picture of significant milestones, formation, and types of ownership existing in Vietnam. After concluding on this, the second part provides a critical analysis of the initial and following regulations which regulate cross-ownership in the banking sector of Vietnam.

I. Current situation of cross-ownership in the Vietnamese banking sector

1. Milestones of Vietnam's banking industry after more than forty years of national unification

After the reunification in 1975, Vietnam entered a period of peace, with many guidelines and policies focusing on economic recovery after the war. In such a process, the banking industry has made remarkable strides as a "lifeline" of the economy. The legislative development regarding the baking sector can be marked by three phases: the monetary policy, the appearance of multiple ownership models and the restructuring of the commercial banks.

The unity of money and banks in the whole country

In 1975, the National Bank of Vietnam in the South was nationalized and merged into the State Bank of Vietnam (SBV) system. The Politburo decided to issue the currency of Vietnamese banks in the South, exchange the currency of the old regime at the rate of one (01) dong of the new currency equal to five hundred (500) dong of the old currency. In 1978, the SBV conducted a second exchange of money, recovering the old currency all over the country and issuing the new currency, unifying the use of only one currency.

Since its establishment until the end of the 1980s, the SBV system had operated as a budget tool, had not yet implemented currency trading on the market principle. Before 1989, Vietnam's banking system had only SBV from the central to local branches. The State Bank issued a national currency, distributed credit according to the targets of the state plan, acted as treasury, budgeted revenue and expenditure under the order of the Ministry of Finance; performed payment operations between state-owned enterprises and foreign payment.

The collapse of the credit fund system in the late 1980s led to the qualitative change in banking operations, gradually shifting to the market mechanism. This is also an expensive lesson for the development of the banking system of Vietnam later on.

The transition to a two-tier banking system with multiple ownership models

In 1989, after several landmark renovation policies, the Council of Ministers handed over to the current SBV's General Director, together with an independent expert group to draft two banking ordinances, under the direct guidance of the Vice Chairman of the Council.

When in force in May 1990, the Ordinance on the State Bank of Vietnam and the Ordinance on Banks, Credit Cooperatives and Financial Companies created a legal basis for reorganizing the SBV according to the central bank model and restructured SOCBs towards multi-purpose business. For the first time, a series of private joint stock banks were allowed to be established, Vietnam opened its doors to foreign banks to set up joint ventures or open branches. This is one of the first two legal commitments that have a breakthrough role, promoting Vietnam to transform rapidly and extensively into the market economy.

Many second tier specialized banks with different types of ownership structures were created in this period, for instance, SOCBs, joint-stock banks, joint-venture banks, branches or representative offices of foreign banks, credit cooperatives, people's credit funds, financial companies and so on. In 1995, the National Assembly passed a resolution to abolish turnover tax for banking activities and to establish banks to serve the poor.

During the inception phase, the Vietnamese banking sector was inevitably immature but thanks to the caution and carefulness from the Government Standing, the liberalization process was gradually relaxed. This process helped the banking industry to have notable successes, thereby meeting the needs of rapid and stable economic growth, whilst overcoming domestic and regional economic shocks.

Twice of restructuring commercial banks

In 1997, the Law on the State Bank of Vietnam and the Law on Credit Institutions were passed, creating a more fundamental legal foundation for the banking system to continue to operate under the market mechanism and international integration.

This was also the year of the financial crisis in East Asia which had a negative impact on the Vietnamese banking system. After this period, many weak commercial joint stock banks were rearranged. The number of joint stock banks decreased from more than fifty (50) to thirty-seven (37) banks by the end of 2004.

Since then, the banking industry has experienced many significant milestones. In 1999, Vietnam Deposit Insurance was established. In 2000, the financial and operational restructuring of SOCBs and joint-stock commercial banks was carried out, notably the establishment of asset management companies at commercial banks.

In 2001, the Vietnam-US Trade Agreement was signed, in which Vietnamese banking and financial markets were gradually opened for US businesses. In 2002, the liberalization of Vietnamese dong lending interest rates began which was the last step to fully liberalize credit market interest rates in both inputs and outputs. 2003 marked the implementation of an in-depth restructuring in accordance with international standards for commercial banks, the establishment of Social Policy Bank, proceeding to separate policy credit from commercial credit.

Since 2008, the global financial crisis has a high impact on the national economy, including the banking system. After a period of development, the banking system revealed major weaknesses including cross-ownership and bad debt (bad debt ratio was up to 17% at the time), threatening the safety of the system, acting as "blood clots" clogging the economy.

In early 2012, the Prime Minister issued Decision No. 254/QD-TTg on restructuring credit institutions. Since then, the implementation of the restructuring process of banks has been still slow and not as expected, but has achieved quite clear results such as keeping the system stable, stabilizing the market, bringing interest rates to positive realities, gradually reducing bad debt ratio to 2.09% in 2018.[39]

Looking back on history, it can be seen that the banking system is always associated with the ups and downs of the economy. Therefore, the strict monitoring of operation and operational efficiency of the credit system and the banks should be a top priority. Close supervision from management agencies and related entities will help the bank to adjust timely while limiting the possibility of spreading the impact when circumstances require the elimination of a chain link.

2. The formation and development of cross-ownership in the banking industry in Vietnam

Cross-ownership in the banking system in Vietnam began to emerge in the 1990s, shortly after the two-tier banking system was officially born. Initially, cross-ownership in the banking system was formed with the primary purpose of supporting the operation of some small banks, but then this phenomenon has flourished with many different forms and purposes.

In 1990, when the Ordinance on Banks, Credit Cooperatives and Financial Companies was issued, Vietnam's banking sector had only four (4) state-owned commercial banks (SOCBs) which were Bank for Foreign Trade of Vietnam (Vietcombank), Bank for Investment and Development of Vietnam (BIDV), Bank for Industry and Trade (Vietinbank) and Bank for Agriculture and Rural Development (Agribank). After this period, the banking system witnessed a wave of the rapid establishment of urban and rural joint stock commercial banks. After having a new legal foundation, in 1991 there were four (4) joint stock banks in addition and one (1) newly established joint venture bank. By 1993, the number of joint-stock banks in Vietnam had reached 45, and for the first time, eight (8) foreign bank branches were operating in Vietnam. The number of joint stock banks continued to rise, peaking at fifty-six (56) banks before the East Asian financial crisis in 1997-1998, then reduced to 37 at the time of WTO accession 2006. Also in this period when Vietnam was still not open to the type of bank with 100% foreign capital, branches of foreign bank were continuously established.[40]

However, the scale of banks were generally small. Therefore the State advocated to have its representatives in each bank and therefore large state-owned banks were selected to contribute

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[39] These were the results stated in the preliminary conference held by the SBV in 28/08/2018, after one year of implementing the Resolution No. 42/2017/QH14 of the National Assembly and Decision No. 1058/QĐ-TTg of the Prime Minister on the settlement of bad debts and the restructuring of the banking system.

[40] Data were taken from Nguyen Xuan Thanh and Do Thien Anh Tuan (2013), *Nhận diện thực trạng và đánh giá ảnh hưởng của sở hữu chéo trong hệ thống tài chính* (*Identifying the situation and assessing the impact of cross-ownership in the financial system*). Proceedings of Workshop on Risks of cross-ownership and cross-investment - Situation and solutions for Vietnam's financial market organized by the State Bank of Vietnam on July 31, 2013 in Hanoi

capital as state shareholders. The presence of state-owned banks aimed to limit activities beyond the legal framework, if any, as well as the initial weaknesses of newly established joint stock banks. In such a context, caution was necessary. Furthermore, from a business perspective, large state-owned banks shared their experience in business and management and even shared human resources with the banks they contributed to improving the operational capacity in small banks. Thus, it can be seen that cross-ownership relationship in the banking system during this period was formed mainly from the limitations in banking operations of commercial banks, not originating from profit targets or acquiring or takeovers.

After the impact of the Asian financial crisis in 1997 - 1998, the number of banks in Vietnam decreased markedly. Many commercial banks had to restructure, merge or stop operating. After joining WTO in 2007, the Vietnamese banking system received more accession of 100% foreign capital banks.[41] Also, in 2008, along with the massive transformation of the rural joint stock commercial banks into the type of urban banks after Decree 141 in 2006[42], the State Bank also licensed to establish three (3) new banks urban joint stock commercial banks including Bao Viet, Tien Phong, and Lien Viet. It is worth noting that the founding shareholders of these banks were mostly state-owned economic groups or state-owned enterprises that had been equitized, but the State still accounted for the dominant proportion.[43] In addition to banks, the system of Vietnamese credit institutions also had financial companies, financial leasing companies, and many people's credit funds. These types of intermediary financial institutions were directly managed and monitored by the SBV.

The rapid increase in quantity, and thus the requirement to expand the capital size of the banking system, had led to the formation of cross-ownership and multilateral structures between banks - firms and between banks – banks. State-owned corporations and joint-stock companies massively made multidisciplinary investments, including capital contribution to establish banks. The parent company establishing banks only needed to contribute capital with the par value of 01 dong, then put these banks on the stock exchange. The stock price increased by 2-3 dong, the parent company would take advantage of selling shares to collect the profit and initial capital contribution while maintaining the control rate. With this form, the parent company had a bank that acted as a source of active capital mobilization in the market, financing investment projects without going through any other financial intermediary. However, it is this model that led the economy to harmful consequences such as low-quality credits were pumped to the market, businesses that did not have such a relationship with banks had limited access to credit and banks were at considerable risk with substantial bad debts. Therefore, recently, there has been pressure to force enterprises to divest into banks, as is the case of EVN and An Binh Bank, PVN and Ocean Bank and so on.

In the period 2006 - 2007, a series of rural banks were transformed into urban banks, and it became common for large banks to contribute capital to small banks. In order to become a shareholder of another bank, the bank could set up subsidiaries, joint ventures, and associates.

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[41] There were 05 banks with 100% foreign capital that were licensed to operate: ANZ Vietnam, HSBC, Standard Chartered, Shinhan Vietnam, and Hong Leong Bank

[42] Decree No: 141/2006/ND-CP promulgating the list of legal capital levels of credit institutions

[43] Note that in this period, the Decision No. 24/2007/QĐ-NHNN did not provide any conditions to limit the right to contribute capital to banks for state-owned enterprises. However, Circular No. 09/2010/TT-NHNN dated March 26, 2010 supplementing provisions for SOE shareholders was to be approved in writing by the Prime Minister to contribute capital to establish a bank (Clause 2 Article 5).

These companies also became shareholders of the new bank or contributed capital by using loan capital with collateral was shares of the bank invested. The case of Vietbank which was established in February 2007 can be considered as an example. The group of majority shareholders in this bank contributed capital with loans in some credit institutions, a part of which was from ACB Bank. In the guarantee portfolio, there were also shares of Vietbank. ACB itself was also a major institutional shareholder holding 10% of Vietbank bank shares. At that time, this form of capital contribution became popular, causing a series of small banks to be born, credit growth was fierce and leaving consequences that are hard to solve. Over time, not only big banks invest in small banks but also small banks and firms invest in big banks in order to become dominant shareholders.

According to the report of the National Assembly's Economic Committee, in 2012, about forty (40) state and private enterprises owned more than 5% of joint stock banks. The interrelated relationship between banks with state capital is a typical example:

- Vietinbank was owned by State Bank 60.3%, Tokyo-Mitsubishi 20%, and IFC 6.7%. Vietinbank itself owned 50% of Indovina Bank, 11% of SaigonBank;
- BIDV which was 95.8% owned by State Bank had 50% of VID Public Bank, 51% of Vietnam-Russia joint venture Bank, 50% of Vietnam-Laos Bank;
- Vietcombank which was owned by State Bank 77.1% and Mizuho 15%, had 5.3% of SaigonBank, 8,2% of Eximbank, 11% of Military Bank, 5.1% of OCB Bank.[44]

By the end of 2016, Vietcombank was the bank with the most significant capital in credit institutions, including four (4) banks, one (1) financial company, and seven (7) other organizations with a total investment of VND 2,829 billion[45]. Specifically, as of 31/12/2016, Vietcombank was holding 8.19% stake in Eximbank, equivalent to about VND 582 billion[46]. Besides, Vietcombank had more than 7% of its capital in Military Bank (MBB), equivalent to VND 1,242 billion[47]. This was the largest capital contribution among four (4) banks in which Vietcombank was a shareholder. At OCB Bank, Vietcombank owned 4.72% of capital and at Saigonbank was 4.3%, but these two investments were quite small which were slightly over VND 100 billion[48]. In addition, Vietcombank also owned 10.91% of capital in VietCredit Finance Company and more than 10% in Petrolimex Insurance Joint Stock Company (PJICO).

Table 5. Vietcombank's contribution in other organizations by the end of 2016

Enterprise	Sector	Ratio of Contribution (%)	In Cash (VND Billion)
Eximbank	Banking	8.19	582
SaigonBank	Banking	4.30	123
MBB	Banking	7.04	1,242
OCB	Banking	4.72	145
PJICO	Insurance	10.04	68

[44] National Assembly Economic Committee (2012), *Macroeconomic Report 2012*, Hanoi
[45] More than US$121 million
[46] Nearly US$25 million
[47] More than US$53 million
[48] More than US$4M

PCB	Credit Information Services	6.64	8
VietCredit	Financial Services	10.91	71

Source: Cafef.vn

It cannot be denied that cross-ownership in a certain aspect will benefit the participants and help take advantage of the capital in the economy as a whole. However, cross-ownership has resulted in a number of consequences for the commercial banking sector in Vietnam, especially the situation of bad debt. For instance, a number of concerns such as the invalidation of banks safety regulation on credit limits, debt classification, and risk provision and rules on capital adequacy; incorrect evaluation of the bank's resources and resilience and the destabilization of the market.

Firstly, cross-ownership invalidates the bank's safety regulations, such as the regulations on credit limits, debt classification, and risk provision. As regulated, an individual shareholder shall not own more than 5% of a credit institution's charter capital, the threshold for an institutional shareholder is 15%.[49] This is intended to limit the illegal takeover of banks. However, cross-ownership allows a commercial bank that has a large percentage of shares in other commercial banks can legally pressure by voting in the Board of Directors with the position of a strategic shareholder to make the bank provide investment capital for projects of their "backyard" banks or enterprises. The risk is that the regulations are ignored, the screening apparatus according to the criteria of investment efficiency of commercial banks may be paralyzed or become a useless form. Credits granted to state-owned enterprises by SOCBs exceeding the credit limit approved by the State Bank is also a typical example. In addition, regulations on cases of no credit, or credit restrictions are also misleading. Lack of control of lending may increase sharply. For example, when a large credit institution takes a controlling stake in another bank and turns it into its "backyard", it can force the bank to issue credits to unsafe projects or to businesses that are related. Furthermore, when business customers cannot pay their debts to banks, instead of arranging such loans to bad debts and deducting provisions according to regulations, a bank hides its bad debts by not declaring them but to have another that bank that is owned by the other bank lend to reverse the debt, which is one of the reasons why the State Bank is faced with difficulties in determining the exact amount of bad debts of the whole banking system.

Apart from that, cross-ownership can also disable the regulation of minimum capital adequacy ratio (CAR). Almost all banks have a CAR ratio higher than the minimum of 9% following the SBV's regulations, except Agribank in the period of 2009-2011. Particularly, some banks had a high CAR to an unrealistic level. As Gia Dinh Bank was 54.92% in 2010, the Mekong Development Bank (MKB) was 37.3% in 2010, or even SCB before merging in 2009 also reached 50.2%[50]. In fact, these were all weak banks. Concerning compliance with the CAR, cross-ownership status now also helps the bank incorrectly assess the risk-bearing assets, thereby dramatically increasing the CAR ratio. The current regulation lists loans for securities

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[49] Article 55, Clause 1 & 2 of the Law on Credit Institutions 2017

[50] Vu Thanh Tu Anh, Tran Thi Que Giang, Dinh Cong Khai, Nguyen Duc Mau, Nguyen Xuan Thanh, Do Thien Anh Tuan (2013), "*Sở hữu chồng chéo giữa các tổ chức tín dụng và tập đoàn kinh tế tại Việt Nam: Đánh giá và các khuyến nghị thể chế*" (*Cross-ownership between credit institutions and economic groups in Vietnam: Assessment and institutional recommendations*)

investment and real estate business in a group with a risk factor of up to 200%[51]. In reality, many banks have lent a significant portion of their capital to securities and real estate investments through their subsidiaries and affiliates. However, cross-ownership makes it complicated to assess the ultimate purpose of loans so that loans can be classified as less risky. The risk of being underestimated also means that the CAR coefficients cannot reflect the so-called bank's capital adequacy which is a standard that is strictly regulated by the world's banking governance practices.

Secondly, the bank's resources and resilience are not correctly evaluated. Cross-ownership is a primary reason for commercial banks to complete capital raising requirements. Banks can circumvent the law through borrowing from this bank to the other bank and vice versa. Thus, both related banks can report capital increase, but the increase is virtual. In some cases, banks raise capital through intermediaries. Specifically, a financial investment company is a major shareholder of two banks. The bank entrusted a loan to the other bank through the investment company. The borrowed bank thereby meets the increasing capital requirement, and the lending bank is counted as credit growth, although such credit has not been put into production. As a result, the actual amount of capital between the two banks remains the same but is shown to increase in the books. This is further exemplified when banks have to raise capital as well as investment companies and trust funds increase accordingly.

According to *Decree No. 141/2006/ND-CP* promulgating the list of legal capital levels of credit institutions, the actual charter capital of banks must reach VND 1,000 billion in 2008 and VND 3,000 billion[52] by 2010. Through cross-ownership, shareholders of Bank A can borrow money from Bank B through a financial investment company to contribute capital to bank A and vice versa. In another case, Bank A invests in Bank B; Bank B invests in Bank C and Bank C, in return, invests in Bank A. This has created a flow of capital that is supposed to be an original contribution to the system but is, in fact, a mutual loan between banks. In the past four years, a number of commercial banks have raised their charter capital to VND 3,000 billion. However, in reality, the scale of the new capital added to the banking system has not been clarified. With the increase in the charter capital, banks are allowed to mobilize more deposits in the population and trillions of new deposits can be used to fund majority shareholders' backyard projects. In addition, cross-ownership distorts the risk assessment of the banking system because many indicators are based on equity such as the adequacy ratio (CAR), or the ratio of equity to total assets, meanwhile, the equity of banks is not, in fact, such a scale but includes virtual capital due to cross-ownership. Inaccurate indicators lead to improper banking governance as well as inaccurate monitoring of the financial system. This is particularly dangerous because the risks in the financial sector are widespread and severe consequences for the whole economy.

Thirdly, cross-ownership can lead to an individual investor or an interest group can turn the initial small capital multiplied many times, enough to acquire the bank, thereby destabilizing the market. Specifically, although having the same portfolio management function, the fund management company and the securities company are not allowed to bring stocks to pledge, while ordinary companies and financial investment companies are eligible to do this. For instance, to demonstrate this, consider the hypothetical: A financial investment company with

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[51] Circular No. 06/2016/TT-NHNN on the prudential ratios and limits for the operation of credit institutions and foreign bank branches
[52] Over US$43M and US$129M, respectively

a capital of VND 600 billion acquires 50% of Company A’s shares and brings these shares to a mortgage of VND 400 billion. After that, it uses VND 400 billion to acquire shares of Company B. If VND 400 billion is not enough, it will call for Company A to join in buying at least 50% of the shares in order to dominate Company B. Next, it utilizes the mortgage of VND 400 billion on the shares of B to buy Company C. In case of insufficiency of money, A and B shall give “help” because both companies have been dominated. Eventually, A, B, C join forces to acquire the bank. Once the takeover is completed, the financial company will take money from the bank for its subsidiaries.

3. Typical groups of cross-ownership in the banking sector in Vietnam

According to the SBV (2013), there have been six (6) different ownership groups in the banking system:

- Ownership of domestic and foreign banks in joint venture banks;
- Ownership of foreign strategic shareholders at domestic commercial banks;
- Fund management companies as shareholders in banks;
- Ownership of SOCBs in joint-stock commercial banks;
- Mutual ownership between joint-stock commercial banks;
- Ownership of joint stock banks by corporations, state-owned and private corporations.

To sum up, although cross-ownership in the Vietnamese banking system has not taken place for a long time, it has developed in many forms and is increasingly complex, with a significant influence on the financial market. Therefore, the need for a synchronous legal system and strict management measures of the authorities has been more and more urgent to keep the economy healthy.

II. Regulations on cross-ownership under Vietnamese law

The regulations related to cross-ownership in Vietnam actually appeared before the 2000s. However, the low legislative technique plus the rapid and increasingly complex development of banking and financial activities has given rise to the need to update and renew regulations to suit the actual situation of the banking industry. This section is divided into two parts, the firts part provides initial regulations which have dealt with capital contribution and share purchase, cross-investment, and credit provision. The second part introduces the the highlights of the following regulations with the Circular No. 36/2014/TT-NHNN and the revised Law on Credit Institutions 2010.

1. Initial regulations

1.1. On the limit on capital contribution and share purchase

In 1997, the Law on the State Bank of Vietnam and the Law on Credit Institutions were established to replace the Ordinance on Banks, Credit Cooperatives and Financial Companies 1990 in order to create a basis for reforming the commercial banking system. Although there were many new and improved points compared to the Banking Ordinance of 1990, the provisions on capital contribution and ownership of credit institutions mentioned in the *Law on Credit Institutions 1997* were not sufficient. Specifically, *Article 69* stipulated:

"*Credit institutions are entitled to use their statutory capital and the reserve funds for contributing capital to or purchasing shares of enterprises and other credit institutions in accordance with the provisions of law.* ",

Article 80.

"*The level of capital contribution and share purchase by a credit institution in an enterprise, the aggregate level of capital contribution and share purchase by a credit institution in all enterprises shall not be allowed to exceed the maximum level set by the Governor of the State Bank for each type of credit institution.*"

The amended version of the Law on Credit Institutions 1997 supplemented:

"*Foreign credit institutions that contribute their capital to, and/or purchase shares from, credit institutions operating in Vietnam according to the Government's regulations.*"[53]

These regulations made way for more diversified ownership components in credit institutions in Vietnam but also facilitated banks to buy shares of other banks and credit institutions through many ways, which led to many potential risks.

By 1997, there were eighty-four (84) banks in Vietnam including five (5) SOCBs, 51 joint-stock commercial banks, four (4) joint-venture banks, and twenty-four (24) foreign bank branches. However, the competitiveness is not high due to the small scale of the banks. Some joint stock commercial banks went through mergers, leading to the fall in the number of joint-stock commercial banks to 39 banks. The establishment of a scheme to restructure SOCBs with Vietcombank to be the first equitized bank in 2005 reduced the ratio of state ownership and increased the ratio of private ownership in the banking system. However, the project was only for the purpose of raising the owners' equity, had yet to mention the management and administration capacity. Moreover, the rapid transformation of rural joint-stock commercial banks under the *Decision No. 1577/QD-NHNN* in 2006 plus the requirement for these banks to increase charter capital by many times under the Decree No. 141/ND-CP/2006 while the capital market was still limited was also the motivation for banks to circumvent regulations on capital contribution and share purchase so that they were considered to have met such requirement.

Table 5. List of legal capital levels of credit institutions

No.	**Types of credit institution**	**Legal capital level applicable till the year of**	
		2008	**2010**
I	**Banks**		
1	Commercial Banks		
a	State-run commercial bank	VND 3,000 B	VND 3,000 B
b	Joint-stock commercial bank	VND 1,000 B	VND 3,000 B
c	Joint-venture bank	VND 1,000 B	VND 3,000 B

[53] Article 1, Clause 3 of the Law amending and supplementing a number os articles of the Law on Credit Institutions 1997

d	100% foreign-invested bank	VND 1,000 B	VND 3,000 B
e	Branch of a foreign bank	USD 15 M	USD 15 M
2	Policy bank	VND 5,000 B	VND 5,000 B
3	Investment bank	VND 3,000 B	VND 3,000 B
4	Development bank	VND 5,000 B	VND 5,000 B
5	Cooperation bank	VND 1,000 B	VND 3,000 B
6	Peoples credit fund		
a	Central peoples credit fund	VND 1, 000 B	VND 3,000 B
b	Grassroots peoples credit fund	VND 0.1 B	VND 0.1 B
II	**Non-bank credit institutions**		
1	Financial company	VND 300 B	VND 500 B
2	Financial leasing company	VND 100 B	VND 150 B

(Source: Promulgated together with the Decree No. 141/2006/ND-CP 22/11/2006)

In 2010, in order to strengthen the legal frame in the context of diversified ownership components as mentioned above, the State Bank issued *Circular No. 13/2010/TT-NHNN* regulating prudential ratios in the operation of credit institutions and specific provisions relating to ownership among credit institutions. These regulations have clarified the ownership ratio of a credit institution in another and limited the amount of charter capital allowed for capital contribution and share purchase of a credit institution.

"***Article 16.*** *Limits on capital contribution and share purchase*

1. The level of capital contribution and share purchase of a credit institution with respect to an enterprise, an investment fund, an investment project or another credit institution must not exceed 11% of the charter capital of the latter, except the case of founding an affiliated company under law.

The total capital contribution and share purchase of a credit institution and its subsidiaries, joint-venture companies and associated companies in a single enterprise, investment fund, investment project or another credit institution must not exceed 11% of the charter capital of the latter.

2. Total capital contribution and share purchase of a credit institution:

a) in all of its affiliated companies must not exceed 25% of its charter capital and reserve fund;

b) in all enterprises, investment funds, investment projects or other credit institutions and in its affiliated companies must not exceed 40% of its charter capital and reserve fund, in which the total capital contribution and share purchase of the credit institution in its affiliated companies must not exceed the percentage specified at Point a, Clause 2 of this Article."[54]

Subsequently, the *Law on Credit Institutions 2010*, replacing the Law on Credit Institutions 1997, made significant changes in terms of conditions to limit capital contribution, cross-investment, and cross-ownership related credit. Specifically, limits on capital contribution and

[54] Circular No. 13/2010/TT-NHNN

share purchase have been more strictly regulated as shown in *Articles 55, 103,110, 129* and *135*. In which, the ratio of capital contribution and share purchase of credit institutions are calculated based on consolidation (including capital contribution, share purchase of subsidiaries and associated companies according to their respective ownership ratios).

Article 55 of the above mentioned Law also changed the limit of ownership of shares of credit institutions for individual shareholders from 10% to 5%, institutional shareholders from 20% to 15% (except for some particular cases indicated by the Law). Shareholders and related persons of such shareholders must not own more than 20% of the charter capital of a credit institution. The above ownership ratios include the entrusted capital for other organizations and individuals to buy shares. Furthermore, according to *Article 103*, commercial banks are only allowed to use charter capital and reserve funds to contribute capital and acquire shares in other enterprises.

Article 129 prescribes that the level of capital contribution and share purchase of a credit institution and its subsidiaries and affiliated companies in a single enterprise operating in the sectors of insurance, securities, foreign remittance, foreign exchange trading, gold trading, factoring, issue of credit cards, consumer credit, intermediary payment services and credit information and other fields must not exceed 11% of the charter capital of the latter. The total level of capital contribution and share purchase of a commercial bank to enterprises, including its subsidiaries and affiliated companies, must not exceed 40% of its charter capital and reserve fund. Meanwhile, the total capital contribution and share purchase of a financial company must not exceed 60% of its charter capital and reserve fund.

Such provisions have been partly restraining the over-control between commercial banks and the capital-receiving companies, which causes an imbalance in the capital of commercial banks, reducing bad debt rates, ensuring reserve funds at a safe level in case of risks.

1.2.On cross-ownership, cross-investment

In order to control cross-ownership and cross-investment in the banking sector, the SBV has determined that the goal of cross-ownership management is to contribute to ensuring the safe, healthy and transparent operations of credit institutions and reflecting the true financial capacity of credit institutions.

Article 129 and *Article 135* of the Law on Credit Institutions 2010 provide strict regulations for cross-ownership activities between credit institutions, subsidiaries, associates and controlling companies. Accordingly, credit institutions may not contribute capital to or purchase shares of enterprises or other credit institutions being their shareholders or capital contributors.

"***Article 135.***

1. A subsidiary and an affiliated company of a single controlling company may neither contribute capital to, nor purchase shares of, each other.

2. A subsidiary or affiliated company of a credit institution may neither contribute capital to, nor purchase shares of, such credit institution.

3. A credit institution being a subsidiary or affiliated company of a controlling company may neither contribute capital to, nor purchase shares of, such controlling company."

However, due to historical factor, in fact, there is still a number of credit institutions that contribute capital to many other credit institutions or have ownership of each other's shares (these phenomena occurred before the Law on Credit Institutions 2010 took effect) or there are some cases where a credit institution, via its subsidiaries, owns shares of other credit institutions.

1.3.On credit provision

It cannot be denied that, together with the regulations on capital contribution and share purchase, the introduction of regulations to strictly manage credit providion is an important point of the legal framework for cross-ownership. Accordingly, credit provision should be implemented in a transparent manner which ensures strict conditions of the credit system such as conditions for creditees and the disallowance of credit provision in case a controlling company is involved.

The Law on Credit Institutions 2010 supplemented provisions on rights and responsibilities of controlling companies (companies that directly or indirectly owns more than 20% of the charter capital or the total voting shares of or has the right to control a commercial bank)[55] in order to limit credit relations and cross-contribute capital between credit institutions and companies with relation to capital, to avoid risks to commercial banks due to the interference of controlling companies.

In order to achieve this goal, the Law on Credit Institutions 2010 introduced regulations to ensure the transparency between the controlling company and commercial banks, between the commercial bank and its subsidiaries. A subsidiary and an affiliated company of a single controlling company may neither contribute capital to, nor purchase shares of, each other. A subsidiary or an affiliated company of a credit institution may neither contribute capital to, nor purchase shares of, such credit institution. A credit institution being a subsidiary or an affiliated company of a controlling company may neither contribute capital to, nor purchase shares of, such a controlling company.[56]

According to *Article 127*, banks are not allowed to grant unsecured credits or credits with preferential conditions for auditing organizations and auditors who are auditing credit institutions, inspectors who are inspecting the credit institution, chief accountants, major shareholders, founding shareholders, credit appraisers, and approvers, subsidiaries, associates that credit institution holds control and so on. The granting of credit to these subjects must be approved and publicized by the Board of Directors, the Members' Council of the credit institution within the credit institution. The total credit outstanding balance for a subsidiary, associate company of a credit institution or enterprise with which the credit institution holds control shall not exceed 10% of the credit institution's equity. The total level of credit granted to all subsidiaries, associates or enterprises where credit institutions hold control shall not exceed 20% of the credit institution's equity.

[55] Article 134 of the Law on Credit Institutions 2010
[56] Article 135 of the Law on Credit Institutions 2010

2. Following regulations

With the goal of implementing the Scheme on restructuring credit institutions associated with settlement of bad debts in the period 2016-2020, according to the Prime Minister's Decision No. 1058/QD-TTg dated 19/07/2017, aiming to improve the efficiency in the operation of Vietnam's commercial banking system, ensuring the safety and the sustainable development in the context of new integration, state agencies have adjusted and issued new legal rules in the field of bank to develop an appropriate legal framework so as to overcome the current shortcomings, including negative impacts originating from cross-ownership. This section of the research mainly analyzes cross-ownership related regulations under the Law on Amendments to some Articles of the Law on Credit Institutions 2010 (hereinafter referred to as Law on Credit Institutions 2017) and the Circular No. 36/2014/TT-NHNN (hereinafter referred to as Circular 36) on stipulating minimum safety limits and ratios for transactions performed by credit institutions and branches of foreign banks.

2.1. Circular No. 36/2014/TT-NHNN on stipulating minimum safety limits and ratios for transactions performed by credit institutions and branches of foreign banks

Before the Circular 36 was enacted

The fact shows that cross-ownership relationships in Vietnam's commercial banking system are formed intertwined between SOCBs, joint-stock commercial banks, foreign commercial banks, financial funds, state-owned enterprises, and private companies. For example, at the end of 2011, eight (8) joint-stock commercial banks had stock relations with four (4) SOCBs. Typically, Vietcombank, as of March 2017, owned 11% at Military Bank (MBB), 8.2% at Eximbank, 4.7% at Orient Bank (OCB) and 5.3% at Saigon Bank. Meanwhile, on the status of mutual ownership between joint-stock commercial banks, there were at least six (6) joint-stock commercial banks with shareholders being another joint stock commercial bank. For example, Eximbank owned 10.6% of shares in Sacombank, 8.5% of shares in Viet A Bank.[57]

After the Circular 36 was enacted

The prominent provisions of Circular 36 for cross-ownership lied in *Article 20*. Accordingly, commercial banks are:

- only entitled to purchase or hold stocks of no more than two (2) other credit institutions, except for the case in which such credit institutions are subsidiaries of these commercial banks;
- only entitled to purchase or hold stocks of another credit institution at the rate of below 5% of voting stocks of these credit institutions;
- not allowed to delegate their staff to participate in the Management Board of credit institutions whose stocks have been purchased and held by commercial banks.

[57] Data taken from the SBV's official website, sbv.gov.vn

The introduction of the 5% figure has set the task as well as the target for credit institutions having excess share ownership in other credit institutions to divest or credit institutions that are being held by another credit institution with more than 5% of the charter capital to plan on increasing capital urgently.

Since the beginning of 2016, the most successful transfer of bank shares to reduce cross-ownership belonged to Maritime Bank (MSB) when successfully selling 64.2 million MBB shares (4%) to the group of foreign investors of Dragon Capital fund on 19/02/2016. As a result, MSB earned nearly VND 1,000 billion, while reducing its ownership at Military Bank (MB) from 8.96% to 5.25%. Another case of divestment is VietinBank's. In May 2016, in order to meet the provisions of Circular 36, VietinBank auctioned 16,875 million shares of SaigonBank (5.48%) to reduce ownership to 4.91% from 10.39%. Vietcombank divested from Saigonbank and VietCredit (11/2017) and auctioned shares of Orient Bank (OCB) on 17/04/2018. Eximbank sold off shares in Sacombank and was no longer a major shareholder from 05/01/2018.

Another measure to respond to the requirement of Circular 36 is to increase charter capital through two paths: calling for investors to contribute more capital through issuing additional shares and making mergers and acquisitions (M&A). M&A has been considered the easiest method.

Table 6. M&A between commercial banks in Vietnam

Year	Before M&A	After M&A	Type of M&A
2011	FicomBank (FCB), SaiGonBank (SCB), TinNghia Bank	SaiGon Bank (SCB)	Consolidation
2011	HabuBank (HBB), SaiGon-HaNoi Bank (SHB)	SaiGon-HaNoi Bank (SHB)	Merger
2013	DaiABank, HDBank	HD Bank	Merger
2015	MHB Bank, BIDV	BIDV	Merger
2015	VietinBank, Petrolimex Bank (PGBank)	VietinBank	Merger
2015	SouthernBank, SacomBank	SacomBank	Merger
2015	MekongBank (MDB), MaritimeBank (MSB)	Maritime Bank (MSB)	Merger

M&A deals took place not only between banks to eliminate direct cross-ownership, meeting the ceiling requirement of 5% of Circular 36 but also between banks and financial companies.

Table 7. M&A deals between banks and financial companies

Year	Deal	Implementation
2013	WesternBank merged with PetroVietnam Finance Corporation (PVFC)	Completed

2013	HDBank acquired SGVF	Completed
2014	VPBank acquired CMF	Completed
2015	VVF merged with SaiGon-HaNoi Bank (SHB)	Completed
2015	MaritimeBank (MSB) acquired Vietnam Textile & Garment Finance (VTFC)	Completed
2015	Techcombank acquired Vietnam Chemical Finance (VCFC)	Completed
2015	MBBank participated in restructuring Song Da Finance (SDFC) towards M&A	Completed

[58]

2.2.Law on Credit Institutions 2017

Intending to implement the Scheme on restructuring credit institutions associated with the settlement of bad debts in the period 2016-2020, according to the Prime Minister's Decision No. 1058/QD-TTg dated 19/07/2017, the National Assembly passed the Law on Credit Institutions 2017 with the following changes regarding cross-ownership:

Regarding the improvement of management and administration capacity of credit institutions:

The Law does not allow the Director General (Director), Deputy Director General (Deputy Director) and holders of equivalent titles of a credit institution to be concurrently the Member of the Board of Directors or Members' Council or Control Board of another credit institution, unless the latter is its subsidiary or to be the Director General (Director) or Deputy General Director (Deputy Director) of another enterprise.[59] This is to prevent the abuse of rights when a person, at the same time, acts as an administrator, executive at a credit institution and an enterprise to carry out investment activities, granting credit on a non-market-based basis, which may create significant risks for the operation of credit institutions.

Regarding the transparency of contributed capital and cross-ownership handling:

Firstly, the Law added the responsibilities of credit institutions to notify the State Bank of information on the relevant benefits of their managers and operators.[60] Such information is utilized as the input data for supervision and inspection activities of the State Bank, especially in the compliance with regulations on the limit of ownership of shares, credit limits and restrictions on credit granting to their managers, executive or related persons.

Secondly, the Law added regulations on requesting shareholders (i) not to use credit granted by the credit institution or foreign bank's branch to buy or receive shares from the credit institution and (ii) not to contribute capital or buy shares of a credit institution under the name of other

[58] Data taken from the SBV's official website, sbv.gov.vn
[59] Article 34, Clause 4 of the Law on Credit Institutions 2017
[60] Article 39, Clause 4 of the Law on Credit Institutions 2017

individuals or legal entities in any shape or form.[61] This regulation is intended to handle the increase in virtual capital (by borrowing from other credit institutions), restricting cross-ownership in banking operations, dealing with the situation of having other people hold shares in a credit institution to circumvent regulations on share ownership limits.

Thirdly, the Law added a restriction on the ownership limit of shareholders in credit institutions to prevent shareholders and (or) groups of shareholders from abusing the position of major shareholders to serve related benefits. Accordingly, from 15/01/2018, a major shareholder and his related persons at a credit institution must not own 5% or more of another credit institution[62].

Fourthly, the Law completed the regulations on non-credit, credit limits and credit restrictions stipulated under the Law on Credit Institutions 2010, accurately as follows: (i) buying and investing in corporate bonds are considered as credit granting activities to comply with the regulations on cases of ineligibility for credit, credit restrictions under Articles 126 and 127 of the 2010 Law; (ii) the purchase and investment in corporate bonds issued by customers and their related persons is seen as credit granting activities to comply with the provisions on credit limits under Clauses 1 and 2 Article 128 of the 2010 Law; (iii) credit institutions or foreign bank's branches must not provide credit for the purpose of contributing capital or buying shares of another credit institution.

[61] Article 54, Clause 1, Point c of the Law on Credit Institutions 2017
[62] Article 55, Clause 3 of the Law on Credit Institutions 2017

CONCLUSION

Cross-ownership in the banking system is an objective attribute and has existed for a long time in many economies around the world. Regarding the case of Vietnam, cross-ownership formation has the participation of historical factors as the policies of the State since the reunification of the country and the currency crises. Besides, part of the reason stems from the limitations in the operational capacity of banks at the early stage, which led to these banks needing help and support from the State, thereby creating complex ownership relationships between banks and businesses, both private and public. Cross-ownership has caused many consequences for the Vietnamese commercial banking system, especially the situation of bad debt through creating the invalidation of the bank's safety regulations, such as the regulations on credit limits, debt classification and risk provision; improper evaluation of the bank's resources and resilience or making way for an individual or an interest group to benefit and destabilize the market. There have been six (6) different ownership groups recorded in the banking system, including (i) ownership of domestic and foreign banks in joint venture banks, (ii) ownership of foreign strategic shareholders at domestic commercial banks, (iii) fund management companies as shareholders in banks, (iv) Ownership of SOCBs in joint-stock commercial banks, (v) mutual ownership between joint-stock commercial banks, (vi) ownership of joint stock banks by corporations, state-owned and private corporations.

In order to prevent cross-ownership from getting more and more complicated, regulations have been passed. These include the initial rules which limit on capital contribution and share purchase, as well as rules on capital relationship and cross-investment between credit institutions, subsidiaries, associates and controlling companies, and on credit provision. After that, based on the existing legal framework, competent authorities have adjusted or issued several new regulations to suit the situation and actual developments. The highlight that can be mentioned is the regulation under Circular 36 which does not allow commercial banks to purchase or hold stocks of more than two (2) other credit institutions at the rate of more than 5% in each credit institution.

The other following regulations are located under the amendment of the Law on Credit Institutions which proposed the improvement of management and administration capacity of credit institutions as well as dealing with the transparency of contributed capital and cross-ownership handling. These regulations have made significant improvements, but after a period of application in practice, some shortcomings have been recorded such as the lack of separation of the operation of commercial banks and investment banks as well as not providing a specific mechanism for information disclosure. The following part of the thesis will make recommendations based on these shortcomings.

CHAPTER 3: EXPERIENCE DRAWN FROM OTHER COUNTRIES AND PROPOSED RECOMMENDATIONS FOR VIETNAM

Now that we have concluded on major developments which characterize cross-ownership in Vietnam, the research objective is to now draw on experiences of other countries so as to formulate legislative recommendations for Vietnam. To achieve this, the author introduces experiences in Japan, Germany, and Italy, where, like Vietnam, cross-ownership structures were highly relevant to the banking system and state ownership.

The post-war period is known for significant changes which impacted the development of cross-ownership within these countries. Hence, through the prism of the post World War II, the author critically analyzes changes within the financial sector of these countries so as to highlight important and significant events which shaped the size, and investment and development of cross-ownership. The author first discusses cross-ownership formation, development, peak period, and the stage of regression from the perspective of Japan, Germany, and Italy.

Other studies have adopted similar approaches in highlighting developments in this sector, and have formed essential conclusions about the underlying reasons which motivate cross-ownership. For instance, research by La Porta et al. (1999) and Classens et al. (2000) concluded that the use of pyramidal ownership structure and cross-ownership structure to acquire power is quite common in the world. This section aims to highlight unique characteristics, which define and shape cross-ownership, and as a result, aims to highlight approaches used to regulating cross-ownership.

I. Japan

1. The formation and development of cross-ownership in Japan

Japan is a developed country whose economy is based on the banking system as the amount of capital provided by the banking system to the economy accounts for a large proportion of the total investment capital. The phenomenon of cross-ownership in Japan is quite common and is divided into two phases: before and after the WWII. This section will focus on analyzing the post-WWII period, where there were more prominent and significant events.

The period after the second World War includes specific stages: the stage of formation (1950-1960); the stage of active development (1960-1970); the stage of peak (1970-1980); and the stage of regression (1990 to present). These periods were defined by changes in capital requirements, changes in ownership structures, and changes in share prices.

The stage of formation (1950-1960)

The stage of formation is a period which is defined by economic instability, significant legal developments, and changing control structures which influenced developments in cross-ownership. For instance, after WWII, Japan began to restore the economy amid the

disintegration of Zaibatsu[63] corporations. Zaibatsu is a corporation, often organized in a family-style, holding companies that are in control of other companies. The Japanese Antitrust Act of 1947 officially removed the Zaibatsu model and aimed at diversity in corporate ownership structures. The Act prohibited the establishment of joint stock companies, prohibited non-financial companies from owning shares in other companies, and limited the ownership of financial companies to no more than 5% of the other companies' shares. As a result, the proportion of individual shareholders increased significantly.

Along with the increase in individual shareholders, the phenomenon of mutual ownership among Japanese companies also began to take shape and expand. However, the role of individual investors in this period was still minimal and unstable due to psychological as well as the ability to resist the risk of unstable macroeconomy and finance. By 1953, the revised Antitrust Law began to allow companies to invest in stocks of other companies, including banks and insurance companies. This led to the resurgence of former Zaibatsu such as Sumitomo, Mitsui, Mitsubishi, which were restructured towards establishing a group of companies with business companies and banks being centers. The dependence of companies on the banking system during the period of economic growth in the late 1950s and early 1960s led to the formation of six new industrial clusters, Keiretsu[64], including Mitsubishi and Mitsui, Sumitomo, Fuyo, Dai-Ichi Kangyo, and Sanwa. The Keiretsus not only participated in owning vertically integrated companies but also increased their ownership of banks and financial institutions. In response, financial and banking corporations also took ownership of companies in industry and commerce. This result marks the first phase of cross-ownership formation in Japan after WWII.

The stage of active development (1960-1970)

The popularity of cross-ownership was accelerated by the fall in stock prices in the years 1964-1965 and the crisis of the fourth largest securities company in Japan, Yamaichi. In order to promote the recovery of the stock market, two special institutions namely Japan Cooperative Securities Co. and Japan Securities Holding Association were established by the Government to buy stocks in the market, and then resell to affiliates and banks. Also, Japan's participation in the Organization for Economic Cooperation and Development (OECD) in 1946 required the Government to relax regulations on the financial market gradually. This result provided an opportunity for hostile acquisitions to take place, especially for foreign investors.

Table 8. Six largest keiretsus in Japan after WWII

Keiretsu	Banks	Companies Involved
Mitsubishi	Mitsubishi Bank (to 1996), Bank of Tokyo-Mitsubishi (1996-2005), Bank of Tokyo-	Mitsubishi Corporation, Kirin Brewery, Mitsubishi Electric, Mitsubishi Fuso, Mitsubishi Motors, Mippon Yusen, Nippon Oil, Tokio Marine and Fire

[63] Zaibatsu is the term used to refer to the financial and industrial corporations in Japan during the Meiji period until the end of the WWII. The Zaibatsu had great influence and could control important parts of the Japanese economy. Among the Zaibatsu of the time, the four most powerful were Sumitomo, Mitsui, Mitsubishi and Yasuda.
[64] A keiretsu is a set of companies with interlocking business relationships and shareholdings. The keiretsu maintained dominance over the Japanese economy between the 1950s and the early 2000s.

	Mitsubishi UFJ (2006-present)	Insurance, Nikon, Mitsubishi Chemical, Mitsubishi Estate, Mitsubishi Heavy Industries, Mitsubishi Rayon Co., Ltd., Mitsubishi Materials Corp., Mitsubishi Paper Mills Ltd., Pacific Consultants International Ltd.
Mitsui	Mitsui Bank (to 1990), Sakura Bank(1990-2001), Sumitomo Mitsui Bank (2001-present)	Fuji Photo Film, Mitsui Real Estate, Mitsukoshi, Suntory, Toshiba, Toyota
Sumitomo	Sumitomo Bank (to 2001), Sumitomo Mitsui Bank (2001-present)	Asahi Breweries, Hanshin Railway, Keihan Railway, Mazda, Nankai Railway, NEC, Nipp Koei, Sumitomo Real Estate
Fuyo	Fuji Bank (to 2000), Mizuho Bank (2000-present)	Canon, Hitachi, Marubeni, Matsuya, Nissan, Rocoh, Tobu Railway, Yamaha
Dai-Ichi Kangyo	Dai-Ichi Kangyo Bank (to 2000), Mizuho Bank (2000- present)	Fujitsu, Hitachi, Isuzu, Itochu, Tokyo Electric Power
Sanwa ('Midorikai')	Sanwa Bank (to 2002), UFJ Bank (2002-2006), Bank of Tokyo-Mitsubishi UFJ (2006-present)	Hankyu Railway, Keisei Railway, Kobe Steel, Konica Minolta, Kyocera, Orix, Shin- Maywa, Takashimaya

Source: Li Guo and Shinksuke Yakura (2010)[65]

In such a context, Japanese companies tried to protect themselves from the risk of being acquired by increasing cross-ownership with other companies such as Keiretsus and Main banks. In a typical model of a Keiretsu, there was always a central bank which was named after the Keiretsu, surrounded by large industrial corporations (see Table 8). These banks acted as credit sponsors and financial service provider to companies in the ownership ring.

In addition, Article 280 of the Commercial Law was amended in the direction that businesses could sell newly issued shares to specific individuals and organizations. These stocks were sold first to businesses in the group, thereby consolidating solidity and concentration for cross-ownership groups, strengthening the zaibatsus, supporting new industrial clusters like Sanwa, Dai-Ichi Kangyo, and Fuji. All of the events mentioned above made the situation of cross-ownership in Japan in this period increase rapidly.

The stage of peak (1970-1980)

[65] Li Guo and Shinksuke Yakura (2010), *The Cross Holding of Company Shares: A Preliminary Legal Study of Japan and China*

After the oil price shock in 1973, inflation in Japan increased, businesses proceeded to issue shares in large quantities and were invested by banks. The share ownership ratio of financial companies in enterprises increased significantly. This situation made cross-ownership in Japan increasingly large in size and level.

After many objections, the revised Antitrust Act was adopted and entered into force in 1977. Accordingly, the bank's ownership ratio in enterprises decreased from 10% to 5%. However, during this time, the stock market's climax encouraged both businesses and banks to issue new shares. Although the issuance of new shares was aimed at increasing the ratio of high liquidity stocks in the market, the fact that these stocks were held by the businesses that had a close relationship. When the stock market declined, cross-ownership did not decrease but, in contrast, increased significantly. This is because in the previous period, many businesses invested in the direction of speculation in stocks through products provided by brokers allowed them to make investment decisions on their own. When the market fell, they could not sell their holdings and became long-term investors in the firms.

The stage of regression (1990 to present)

After the collapse of the economic bubble in Japan in the early 1990s, stock prices also plummeted due to the wave of sell-offs of many companies. This also reduced cross-ownership rates among companies as well as between banks and companies. The wave of sell-offs broke out in 1993 and accelerated in 1997 as well as after the 1997-1998 East Asian crisis caused Japan's economy to deteriorate. Cross-ownership rates decreased in both aspects: scale and frequency.

Although cross-ownership has declined during the 1997 financial crisis, cross-ownership in Japan still showed the outstanding feature that banks contributed up to half of the cross-ownership ratio, in which, the percentage of shares held by banks in enterprises was 5.03%. Japanese businesses also held stakes in banks with a percentage of 1.83%. This shows the vital role of banks in cross-ownership systems in Japan.

2. The legal framework for cross-ownership control in Japan

Restrictions on share ownership

Except for a number of exceptions under the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade 1947 and cases approved by the Fair Trade Commission, companies engaged in banking or insurance businesses may not acquire or hold voting rights in another company in Japan if it results in its holding more than 5% (10% for a company engaged in insurance business).[66] That is, the ownership of cross-shares is limited by the statutory ratio and under the supervision of the Fair Trade Commission.

Stock relations between the parent company and its subsidiaries

[66] Article 11 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade 1947

According to Japanese legislators, the subsidiary's holdings of the parent company mean that the subsidiary has the right to decide independently. Therefore, the parent company cannot exercise the right to govern according to the law. Therefore, the revised Japanese Commercial Law in 1981 prohibited the subsidiary from owning shares the parent company, unless there is no exception such as: In case of separation, consolidation, transfer of the entire business of the company; In case of conversion and stock transfer; In case the subsidiary needs to own shares to vote at the parent company. Subsidiaries owning shares of the parent company must handle the owned shares for a certain period of time. Otherwise, the members of the Board of Directors of the subsidiary will be sanctioned. Shares of subsidiaries may be sold to a third party or acquired by the parent company's Board of Directors.

In the case of the parent company-subsidiaries with a foreign element, the Law does not prohibit subsidiaries established under Japanese law to own shares of a foreign parent company. In contrast, overseas subsidiaries are not allowed to own shares of the parent company in Japan.

Restrictions on the voting rights of related companies

The Commercial Law stipulates restrictions on voting rights in the case of related companies mutually owning shares as follows: If Company A owns more than 25% of the voting shares of another JSC or over 25% of the contributed capital with voting rights of an LLC, the latter two may not exercise the right to vote based on the shares they own in company A. This means that when a company owns a certain percentage of shares in another company, it has the right to influence by exercising voting rights while the remaining cross-holding company is not entitled to such right.

In addition to the abovementioned measures, the Government of Japan has issued stricter regulations regarding investment in the direction of reducing cross-ownership. Several critical legal documents since 1981 stipulate restrictions on holding shares and exercising shareholder rights with the following specific provisions:

- Article 135 of the Companies Act: Subsidiaries are not allowed to invest in shares of its parent company;

- Article 308, Section 1 of the Companies Act: Shareholders are entitled to one vote for each one share they hold at the shareholders meeting;

- Article 16-3, Section 1 of the Banking Act: A bank or its subsidiaries are not allowed to invest in shares of a company exceeding 5% of voting rights;

- Article 107, Section 1 of the Insurance Business Act: An insurance company or its subsidiaries are not allowed to invest in shares of a company exceeding 5% of voting rights.

In general, the above measures and legal documents have left a positive impact on cross-ownership, the banking system, and the Japanese economy in the long term. Due to the collapse of the relationship with the main bank, businesses were forced to seek more effective methods of capital mobilization. At the same time, banks, when no longer receiving the support of the

Government, were forced to face difficult challenges in business operations. Under these conditions, both businesses and banks made efforts to optimize the performance of the executive board, increasing the competitiveness of the two groups of entities in the international market. As for the stock market, although there were periods negatively affected in the short term, in general, the process of cross-ownership regression did not cause too much severe impact on the real value of the businesses but making the level of market efficiency increase.

II. Germany

1. The characteristics of cross-ownership in Germany

Cross-ownership in Germany was not primarily reflected by the bank's direct holdings of the business but through the proxy representation[67] of customers who deposited stocks at the bank and through the participation of the bank to the supervisory board of the business. Research by Fohlin (2005)[68] shows that 52.56% of 5107 businesses in Germany had supervisory board members as bank managers, while only 5.19% of businesses whose directors were also bank supervisors.[69]

The fact that the representative of the bank was a member of the supervisory board of the firm shows the close relationship between the bank and the firm in Germany. Moreover, from the mid-1970s to the early 1990s, the percentage of small shareholders attending the general meeting of shareholders was meager and tended to decrease, especially in large enterprises. Even small shareholders tended to make decisions based on the bank's decisions in voting. Although acting as the representative for small investors that had stocks in the bank, the bank's decisions tended to follow the executive board's proposals. As a result, the level of influence of banks as investors, lenders, and representatives in enterprises increased significantly.

Overall, the bank and cross-ownership model in Germany, a country where the credit market grew stronger than the stock market, had some key characteristics as follows:

- Multi-functional banks: German law allows banks to hold shares in businesses. Holding stake in the business allowed the bank to create a certain influence on the executive board in making business decisions. By the end of 2005, multi-functional banks accounted for 80% of the financial institutions and 79% of the total revenue of the system.[70]

[67] By using proxy votes, banks could exercise the right to vote based on the shares of their retail customers. Experimental studies of Baums and Fraune (1994) and Gottschalk (1988) show that banks could perform their right to vote up to 60%, not to mention that they themselves directly or indirectly owned up to 25% in industrial companies. This made German banks very powerful for industrial companies. In some cases, voting rights of a bank amounted to 90% (Basf and Bayer cases), even 95% in public companies (Siemens, Hoechst and Mannesmann cases). (Reported from Onetti A. and Pisoni A. (2009), *Ownership and Control in Germany: Do Cross-Shareholdings Reflect Bank Control on Large Companies*?)

[68] Fohlin (2005), *The History of Corporate Ownership and Control in Germany*

[69] It is worth noting that most large German companies shared human resources. For example, Allianz was founded in 1890 by Carl von Thieme, former director of Münchener Rück Versicherung, along with banker Wilhelm von Finck. Similarly, one of the key founders of Deutsche Bank is Georg von Siemens, who was also the founder of Siemens Group.

[70] Fohlin (2005), *The History of Corporate Ownership and Control in Germany*

- High concentration: In the banking system in Germany, four major players were Deutsche Bank, Dresdner Bank, Commerzbank, and Bayerische Hypo-und Vereinsbank, accounting for 20% of the total revenue of the system while the remaining banks were commercial banks, savings banks, and small-scale cooperative banks.[71]

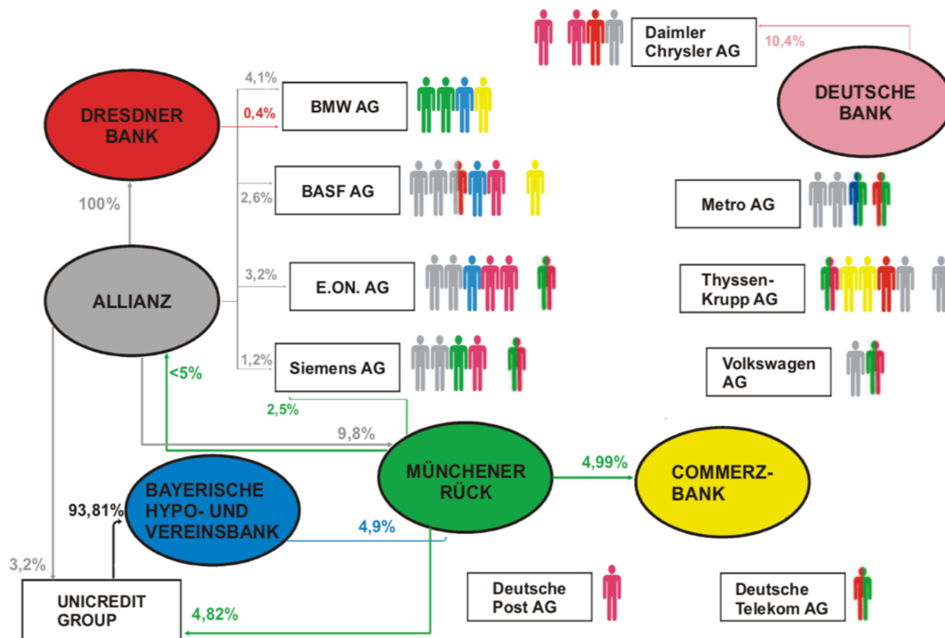
- *Hausbank*[72]: The relationship between banks and businesses was a long-term relationship, in which a bank played a more important role than the other banks. In other words, a bank would provide the majority of loans and manage most of the related financial activities of the business in the medium and long term. In return, the company only used financial products provided by this bank. Through lending and holding shares in businesses, banks could interfere with corporate governance decisions.

- Cross-ownership: Businesses in Germany, both in industry and finance, tended to invest in shares of other businesses. The relationship of shares was a close and two-way relationship, creating a cross-ownership system between firms - banks - firms, contributing to stabilizing the relationship between businesses and leading to general development strategies that could benefit the parties in the group. In Germany, only certain restrictions on cross-ownership were applied in cases where two organizations holding more than 25% of each other's shares were not allowed to exercise voting rights over that 25%.

- Management Board: In contrast to other Western economies, businesses in Germany had a two-tier board in which the supervisory board was responsible for appointing members of the board of management and approving important decisions of the firms. The cross-ownership system led to a coordination system at the level of supervisory boards of firms and banks and often involved the same group of people. This collaborative relationship represented the close connection and dependence among the board members of different firms and thus led to a close relationship between companies in strategy formulation. The fact that enterprises appointed their members to supervisory boards of other firms, although not holding shares in such firms, was a common phenomenon in Germany.

[71] http://siteresources.worldbank.org/INTLAWJUSTICE/Resources/BankRestructuring.pdf

[72] This model had the same appearance as the main bank model in Japan as mentioned above but called Hausbank



Source: Onetti A. and Pisoni A. (2009)[73]

Figure 8. The network of cross-shareholdings among the top 10 German firms (2005)

From these features, it can be seen that the investors' transfer of voting rights to the bank allowed the bank to participate directly in the selection of members of the supervisory board, thereby indirectly controlling the board of management. In addition, banks also tended to pursue close and long-term relationships with business customers by establishing a direct relationship with executive board members and supervisors. As a result, the level of uncertainty about corporate loans is mitigated, minimizing moral hazard and bad decisions, and encouraging the source of long-term loans from banks for businesses. However, there were also criticisms of such a cross-ownership model in Germany as banks could use their advantages to make decisions that benefit themselves rather than the firms.

2. The legal framework for cross-ownership control in Germany

The German Government did not prohibit cross-ownership because cross-ownership was one of the crucial solutions to strengthen the relationship between businesses, between banks, and between businesses and banks. It also was a typical feature in the financial model in Germany. However, the German Government has also implemented several measures to control cross-ownership status as follows:

- By adopting the Law on Control and Transparency in Enterprises in 05/1998, it was intended to strengthen the investor's position by asking enterprises to provide more information. Specifically, the Law required banks holding more than 5% of voting rights of listed companies or joining the group issuing shares for listed companies, must notify customers how the bank implemented the voting rights. However, the actual

[73] Onetti A. and Pisoni A. (2009), Ownership and Control in Germany: Do Cross-Shareholdings Reflect Bank Control on Large Companies?

implementation in Germany shows that such Law was not valid because the implementation process was not strict.

- Article 135 of the amended Stock Corporation Act. Accordingly, banks are not allowed to vote on behalf of their depositors at the company when the bank holds more than 5% of the shares in that company unless it receives specific instructions from the customer or it waives its voting rights. In addition, the bank is required to notify at the annual report the activities of the representative appointed by the bank to the supervisory board and executive board of the enterprise.

Thanks to the two measures above, the ability to influence a business's decisions through the implementation of the bank's voting rights has been significantly reduced.

- New regulations on German corporate governance rules, which came into effect in 02/2002, also limit the nomination of a bank representative to the control board of the company where the bank owns the shares. Accordingly, a person must not hold more than five (5) positions, instead of ten (10) positions like the previous rules, in the control board of listed companies.[74]

- In 2000, Schröder's Government implemented a tax reform policy, which reduced tax rates on securities transactions, such as reducing tax rates to 25% for retained earnings (from 40%) and distributed profits (from 30%). At the same time, the capital gains tax applied to companies investing in other domestic companies were also abolished. These tax reform policies led banks to reduce their shareholding in industrial companies due to the strategy of repositioning business models of banks towards investment banking and asset management operations.

III. Italy

In the early 1990s, many economic and financial reforms changed the face of the Italian banking industry. New laws on the reform of the financial sector in general and banks, in particular, were conducted within the framework of the general European policies after the Maastricht Treaty[75] came into existence.

In that context, there were two essential processes that played a central role in transforming the ownership structure of Italian banks, namely the government selling shares held in banks and the M&A process took place actively in the banking and financial sector. These processes commenced in 1993 and were mostly completed during 1998-2001. The process of reducing state ownership in banks was primarily conducted through separate agreements with groups of major shareholders who played a role in controlling the financial market of Italy. It was this process, along with many M&A deals involving large Italian banks, that led to a situation where only a limited group of shareholders controlled most of the shares in almost all Italian banking corporations. This result increased the complexity of ownership structures in general and cross-ownership in particular in the Italian banking system.

[74] Caroline Fohlin (2005), The history of coporate ownership and control in Germany

[75] The Maastricht Treaty on the European Union (EU) and led to the existence of the European common currency. The Treaty was signed on 07/02/1992 in Maastricht, the Netherlands and came into effect on 01/11/1993.

Regarding the impact of cross-ownership in the banking and financial sector in Italy, many studies show that cross-ownership is a cause that hinders the competitive environment and competitiveness of banks[76]. According to Messori (1999)[77], and Inzerillo and Messori (2000)[78], it is necessary to have solutions to separate complex networks of cross-ownership in the Italian banking system to help create a more positive competitive environment between banks, thereby helping to improve the efficiency of the restructuring process of Italian banking sector, which was considered weak compared to the banking system of Germany, France or England.

To sum up, in the long term, the state management agencies should only implement solutions to limit unwanted cross-ownership relationships but not ban them entirely because cross-ownership is an inevitable phenomenon that arose in the process of economic development. Besides the negative side, it also contributes many positive effects. The fact has shown that cross-ownership between banks and businesses in Germany and Japan has helped these countries achieve significant economic achievements. Carrying out a complete ban on cross-ownership does not seem feasible, and the cost of implementing this prohibition will be enormous because of the difficulty in finding out who is the actual shareholder and the ownership ratio in reality.

In addition to the above countries, many other countries also set limits regarding cross-ownership issues in one way or another. For example, in France, both holding shares and exercising ownership between two joint stock companies are limited to 10%, although not completely prohibited. However, if a company is not a joint stock company, cross-ownership is prohibited by law and vice versa, if both companies are not joint-stock companies, the law does not prohibit cross-ownership. In the United States, cross-ownership, in general, is not prohibited. However, ownership performance was limited in the case of vertical cross-ownership. Previously, the Glass-Steagall Act prohibited banks from conducting business and investment activities, as well as holding shares in other business entities. Although this law was abolished in 1999, restrictions were still in effect for commercial banks holding shares of non-financial companies. Therefore, banks are less motivated to hold shares of other companies for the purpose of cross-ownership[79]. In the UK, vertical cross-ownership, i.e., within corporations, is generally prohibited.

IV. Proposed recommendations for Vietnam

Experience from Japan, Germany, and other countries show that cross-ownership is not formed within a couple of days by administrative regulations and, in the other direction, no administrative regulation can immediately remove cross-ownership nor completely prohibit cross-ownership. Cross-ownership in Japan and Germany was intentionally formed, in a relatively healthy and appropriate institutional environment, which had brought positive results for these two economies. However, over time, while the advantages of the model became minor, the negative consequences were increasing. Even when realizing the limitations of this model, Japanese and German politicians could not raise an administrative or policy mandate that allowed them to eliminate cross-ownership quickly. Only when the economic and institutional

[76] Trivieri F. (2005), *Does cross-ownership affect competition? Evidence from Italian Banking Industry*
[77] Reported from Trivieri F. (2005)
[78] Reported from Trivieri F. (2005)
[79] Cara Lown et al. (2000), *The Changing Landscape of the Financial Service Industry: What Lies Ahead?*

context was no longer favorable for cross-ownership, enterprises themselves would decide to reduce or erase cross-ownership.

Cross-ownership in Vietnam itself is a consequence of a series of improper policies to manage and regulate, and then became a tool for interest groups to acquire personal power, influence, and profiteering. The characteristics of the structure of the Vietnamese banking system explain why cross-ownership can become a useful tool for interest groups to overcome the monitoring barrier of the financial system. Therefore, the recommendations mentioned in this section will not focus on how to eliminate cross-ownership in the Vietnamese banking system but to address the more fundamental issue, which is how to improve the institutional environment, eliminate the constituent and supportive elements of cross-ownership in creating disadvantages for the system. In this regard, the author posit that improvements can be obtained through enhanced rules on monitoring and disclosure, and stonger regulations on capital ratios, more pronounced rules which target key issues such as shareholder voting. Such aspects are elaborated below to formulate recommendations, which target these themes.

1. Building a specific legal framework for cross-ownership and strengthening state management on cross-ownership in the banking sector

Effectively regulating cross-ownership in Vietnam can only be attained through drafting specific legislation to regulate cross-ownership, stronger regulations on cross-ownership relations, and through enhanced monitoring. There are a few concerns regarding the case of Vietnam, which may hinder this as currently as there is no official legal documents with specific regulations on cross-ownership. As a result of this, it is necessary to conduct inspection and proposals to handle ownership relations with a ratio exceeding the prescribed level. At the same time, it is vital to review existing issues in the legal documents, which creates loopholes for ownership to have a higher rate than allowed.

It is also recommended that, inspection performance should be carried out to identify existing cross-ownership relations in the banking system between credit institutions and between credit institutions and enterprises, then regulations need to be issued to reduce ownership rates to the appropriate level to minimize the negative impact on the banking system. In order to facilitate the first step in controlling cross-ownership, the establishment a cross-ownership supervisory board and of a company specializing in future stock trading is essential.

The implementation of cross-ownership handling steps should follow a reasonable roadmap to step by step limit the negative impacts on the banking sector in particular and the economy in general. Therefore, it is necessary to jointly combine economic measures with adjustments by policies and laws to bring about efficiency. However, the viewpoint of cross-ownership handling of the State Bank must be very cautious about stabilizing the system of credit institutions with comprehensive handling solutions, but also taking into account the characteristics of each specific credit institution.

2. Reviewing and always grasping the ownership ratios in credit institutions

2.1.Reviewing of mutual ownership of credit institutions

As no specific legislations exist on cross-ownership, it is vital that reviews should be conducted on mutual ownership due to uncertainities, which can make way for risks to arise such as violations. An anlysis of the regulations provides evidence of this, for instance, according to Article 129 Clause 5 of the Law on Credit Institutions:

“Credit institutions may not contribute capital to, or purchase shares of, enterprises or other credit institutions being their shareholders or capital contributors.”

The implication of this regulation is to: (i) prevent credit institutions from directly owning each other, (ii) prevent credit institutions from contributing capital to buy shares of enterprises that are shareholders of such the credit institution. In both cases, because the SBV has not issued any specific guidelines, the possibility of violation of this regulation may be high. In case of violation, the SBV may instruct one of the two credit institutions to divest from the other credit institutions by transferring to a third party or the divested credit institution to buy back the shares using its charter capital. However, the SBV's instruction should be based on the ability to ensure the capital adequacy ratio of credit institutions in order to maintain the stability in the operation of the Cis and not give rise to other problems regarding the CAR.

2.2.Reviewing the ownership relationship between subsidiaries and affiliates of CIs (CIs act as controlling companies of these two companies)

In a narrower perspective than the issue of mutual ownership between credit institutions, reviewing ownership relationships between subsidiaries and affiliates of CIs is also important.

The mutual ownership by subsidiaries and affiliates of the same controlling CI facilitates can lead the competent agencies to experience control issues because the capital is jointly owned by institutional shareholders, thus can be transferred back and forth between the institutions, or, in some circumstances, it can even be running out of the legal holders to projects serving personal interests. Under Article 135 of the Law on Credit Institutions, the inspection agency needs to determine whether there is a violation in the implementation of this regulation.

Besides, it is necessary to review the ownership ratios of individual shareholders and institutional shareholders at CIs; review individual shareholders and institutional shareholders who perform ownership at CIs and have outstanding loans at these CIs and other CIs.

3. Clarifying the ownership structure, the ultimate owner and accountability

The clarification of the ownership structure, ultimate owner and accountability can possibly increase transparency of the credit system, thus better protecting the investors, especially small investors who have limited opportunities in accessing information.

Many shortcomings in complying with regulations to ensure the operational safety of the banking system did not originate from cross-ownership structure itself. In most cases, if the definition of "related party" and "related customer groups" as well as the requirement to disclose information, sanctions for violating laws had been strictly enforced, many negative consequences could have been avoided. The current regulation on bank shareholders’ related party does not cover all cases whereby cross-ownership is hidden. For example, the following cases show the need to reconsider the concept of the people involved.

- Firstly, family or blood relations. ACB case[80] shows that a shareholder who is the wife of a major shareholder of this bank owned 4.99% of VietBank's shares. This allowed ACB to have control equivalent to 14.99%, not only 10% as announced. Thus, shareholders of the major shareholder group of a bank must be considered as related persons of such a bank.

- Secondly, the ownership relationship between shareholders and businesses also created a channel for cross-ownership among banks. For example, when calculating Eximbank's ownership rate in Sacombank, it is necessary to add the ownership rate of Saigon Exim Financial Investment JSC which was holding 5.17% of Sacombank since this company was an affiliate of Eximbank.

- Thirdly, economic relations such as partnerships between suppliers and customers, trust relationships for business investment, and even credit relations. For instance, if a customer is a debtor of a bank, and they both have ownership in another business or bank. In this case, it is likely that the bank's borrower may be governed by its creditor to influence the other businesses or banks.

In order to accurately identify the bank ownership structure, in addition to expanding the concept of the related party, it is necessary to lower the bank ownership rate under which the owner must disclose information. According to current regulations, related organizations, individuals, and groups holding 5% or more of the voting shares of a bank must report the ownership ratio to the management agencies. However, because an individual is not allowed to own more than 5% of a bank's capital[81], there are very few individual shareholders of the bank that must disclose information about their ownership ratio. By arranging ten (10) related people for each person to hold 4.99%, the ultimate owner will get 49.9% of a bank’s shares to control that bank completely. With such provisions, the Law ignored a large number of individual shareholders of the bank who do not have to disclose. The regulation on information disclosure when holding 5% of shares of a public JSC may be appropriate, but for a public bank, it is not. A bank usually has substantial equity, so 5% is a considerable amount. Therefore, the Law on Credit Institutions needs to redefine the information disclosure limits in accordance with the framework for monitoring banking operation, instead of applying the same criteria as for other public JSCs.

Regarding the accountability of bank leaders, the owner of the bank's shares must explain to the state supervisory agency about his capital. Major shareholders or authorized bank managers shall be accountable to other shareholders, especially small shareholders, for the bank's performance. When the supervisory regulations of the State and the internal governance rules of the bank clearly define the responsibilities of the leaders, managers, executives, and supervisors of the bank, the hidden ownership status may be significantly improved. While the State needs transparent and strict legal regulations to monitor the behavior of bank leaders in compliance with laws, shareholders, especially small shareholders, need to be provided with

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[80] At Vietnam Thuong Tin Commercial Joint Stock Bank (Vietbank), in addition to the 10% of shares held by ACB as announced, the wife of a founding member and major shareholder of ACB, was also a member of the Board of Directors and was holding 4.99% shares of Vietbank (not enough to be bound as a major shareholder and to disclose information).

[81] Article 55 of the Law on Credit Institutions 2010, amended in 2017

complete and up-to-date information and have a favorable mechanism to monitor and evaluate the financial performance of those authorized to lead the company. When legitimacy, ownership structure, as well as ultimate ownership, are clarified, the benefits from using cross-ownership to acquire power and avoid legal regulations will be no longer significant. On the contrary, the cross-ownership structure can cause additional costs to comply with regulations towards international standards. Owners themselves will consider divesting capital to focus on owning one bank or restructuring through M&A activities to reduce cross-ownership.

4. Completing safety ratios under the Law on Credit Institutions, based on Basel II and towards Basel III

In addition to the CAR, other safety coefficients in Circular 36 also need to be adjusted in accordance with the Law on Credit Institutions which was amended in 2017 in the new situation, such as regulations on capital contribution limits and share purchases; credit limit for related groups, limit for use of capital and lending for financial and securities investment activities. The strategy to restructure the banking system that is under implementation needs to be directed to meet the standards and models of modern banking monitoring that the world has been applying, rather than banking supervision regulations that have been outdated that Vietnam still applied in recent times.

Obtaining these safeguards not only aims to reduce the motivation for cross-ownership and cross-investment between banks and between banks and businesses but more importantly, it directs the banking system to higher safety standards, meeting the requirements of high competitiveness and international integration. Once banks meet the safety requirements, the negative impact of cross-ownership, as well as cross-investment, is minimized, the positive aspects of cross-ownership are even promoted. As can be seen from the Japanese experience, the important role of cross-ownership structure in the Japanese banking system contributed positively to achieving the goals of industrial policy in the 1950s and 1970s. However, it must be recognized that the context of Japanese industrial policy is now different, and Japan's institutional conditions are very different from that of Vietnam. Vietnam does not necessarily need to go back to Japan's industrialization path nor to design a Main Bank system like Japan. Instead, what should be done first of all for the Vietnamese banking system is to urgently complete regulations to ensure banking safety to create a sufficient legal basis for the supervision and inspection of the bank, as well as a scientific basis for restructuring the banking system towards a healthier and more efficient way.

5. Respecting the "one share one vote" rule

World experience shows that most countries under the civil law system have underdeveloped capital markets. Instead, the banks play an important role in providing capital to businesses. In this environment, the business size is often small; The structure of ownership is mainly concentrated, in which the role of families and private economic groups is prominent. This type of ownership has both advantages and disadvantages. On the one hand, the concentration of ownership is the legitimate motive of investors who want to protect themselves in a less transparent institutional environment, and the rights of shareholders are not well protected. On the other hand, shareholders who hold control may act for personal interests that cause damage to small shareholders. This is particularly worrisome when shareholders take control by using power-grabbing tools that do not correspond to the amount of investment. Therefore, the

regulatory policy, although not entitled to, and, cannot prevent the concentration of ownership, but it is essential to minimize the violation of regulations "one share-one vote". Monitoring and management policies related to bank ownership structure should limit the use of dual shares, pyramidal ownership structures or cross-ownership structures to separate ownership and control rights, thereby prevent the acquisition of power, market domination and personal gain by natural persons and legal entities.

In order to achieve such a goal, strict antitrust laws are needed; ownership structures have to be under control in order to accurately grasp the status of the ownership structure of the system; and restrictions on the control rights of natural persons and legal entities using cross-ownership to acquire power. If natural persons and legal entities realize that cross-ownership may not even give them financial benefits corresponding to what they have thrown out (for example, rigorous taxation mechanisms of return from cross-ownership) and the power through indirect ownership is limited corresponding to the actual ownership rate, they will themselves have the option of increasing or cutting off cross-ownership accurately. In addition, it is necessary to have policies to reduce transaction costs for small shareholders in performing their ownership and help them more actively participate in monitoring and controlling major shareholders as well as those who are hired to run the bank. Some examples of policies for small shareholders are those that allow for remote voting or easier and faster authorization; set up organizations to protect the interests of small shareholders[82].

6. Eliminating the ownership of the State and State-owned enterprises in commercial banks

Due to holding shares, SOEs can easily borrow from commercial banks they own. The problem is that these loan transactions often violate the monitoring framework, or they are even not monitored. In order to avoid non-commercial loan decisions and the lack of rigour in approving credit as well as bad debts, one of the urgent tasks is to abolish state ownership in commercial banks. It will not be worrying if the enterprise owns a bank in the form of investment shares with negligible proportions (not enough to have the power to dominate the Bank's management decision) with only the purpose of diversifying and expecting to benefit from the bank's value growth. However, in Vietnam, when businesses own banks, the goal is not only profit but mainly using the bank's financial leverage to mobilize capital for their operations. When it is impossible to borrow more than the direct credit limit from the bank that they own, businesses and banks together create sophisticated cross-ownership networks and unique financial products that can drive capital move in the direction that the business owner wants. This creates inadequacies in the ownership structure as well as many negative consequences for the financial system in Vietnam. When SOEs own commercial banks, the issue of designated loans does not only happen to SOCBs but also many other commercial joint stock banks. Thus, eliminating the ownership of state-owned corporations in commercial banks not only reduces the dependence of banks (for the expectation of being supported by the State or gaining the privilege when violating legal regulations) but also reduce the motivation to constitute a cross-ownership structure between businesses and financial institutions.

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[82] Vu Thanh Tu Anh, Tran Thi Que Giang, Dinh Cong Khai, Nguyen Duc Mau, Nguyen Xuan Thanh, Do Thien Anh Tuan (2013), *Sở hữu chồng chéo giữa các tổ chức tín dụng và tập đoàn kinh tế tại Việt Nam: Đánh giá và các khuyến nghị thể chế (Cross-ownership between credit institutions and economic groups in Vietnam: Assessment and institutional recommendations)*

In the recent past, under pressure from the public, several SOEs announced their divestment. However, in fact, these enterprises delayed divestment because of unfavorable market conditions. Japan, when enacting a law restricting cross-ownership in 2001, also met similar resistance[83]. The experience gained from Japanese was to establish a company to buy shares of the bank (Banks' Shareholdings Purchase Corporation - BSPC). Enterprises that violated the restrictions on cross-ownership must divest by selling shares to BSPC, then BSPC would sell them to outside investors according to a specified route.

7. Completing legal provisions for information disclosure on ownership rates

Information disclosure requirements for credit institutions in general and commercial banks, in particular, are fundamental because depositors are not motivated and do not have the capacity to monitor bank operations. Once the bank's risk and asset quality information are publicly available, depositors will be able to evaluate banks, which limits the banks' participation in risky activities. Moreover, improved quality of information will make investment decisions more accurate, minimizing the status of asymmetric information. Information disclosure requirements were also carefully noted in Basel II when one of the three pillars focused on improving market discipline, requiring banks to disclose the level of credit risk and reserves and capital.

Specific regulations on the subjects, contents, and scope of information disclosure according to Circular 155/2015/TT-BTC are helpful, especially the Circular has supplemented the content on transactions and ownership of major shareholders and related people into the Report of Corporate Governance. In the long term, to ensure that the capital source of shareholders investing in credit institutions is legal and genuinely reflect their financial capacity, the SBV, when considering the increase of chartered capital of credit institutions, should strengthen the verification of the sources of money of shareholders and their related people when contributing capital, buying shares at credit institutions.

8. Separating the functions of commercial banks and investment banks

Circular 13 has stipulated that the operation of investment banks and commercial banks must be separated. Accordingly, a bank is not allowed to grant credit to its affiliated companies, which are securities trading businesses. However, Article 103 on capital contribution, share purchase and Article 107 stipulating other business activities of commercial banks in the Law on Credit Institutions 2017 partially erases the boundary between the functions of the two types of banks. So this is one of the loopholes that facilitate cross-ownership, causing mistakes in ensuring the operational safety of CIs, thereby increasing the risk to market areas (banks, securities, insurance) on the national financial market. Separating these two functions will prevent overlapping investments between businesses and banks and between banks.

In the coming time, Vietnamese law needs to add provisions according to which banks entrust investment capital through fund management companies, not entrust capital to other objects. Also, the monitoring of the operations of fund management companies when receiving trust funds and managing the portfolio must be strengthened. For securities companies, deposit

[83] Japan Financial Supervisory Agency. *Banks and Other Financial Institutions: Banks' shareholdings restriction and Banks' Shareholdings Purchase Corparation*.

operations must be supervised according to the prescribed rates. In the long term, the State management agency should bring the financial investment company into the subject of the Law on Securities, which is a conditional business. Accordingly, Vietnam needs to apply the model of the US, which is to completely separate the operation model of investment bank from commercial banks. Accordingly, investment bank is only allowed to broker securities, support businesses to raise capital through issuing securities and perform services related to that activity in addition to the existing functions such as capital arrangement financial advice for businesses in the process of M&A; Investment banks only mobilize capital in the form of shares, issue securities and are not allowed to mobilize capital in the form of deposit accounts from residents and commercial organizations. In contrast, commercial banks are financial intermediaries institutions that mobilize capital in the form of deposit accounts from residents, economic organizations and lend to all organizations and individuals in society and other financial services and products that are not the functions of investment banks.

9. Strengthening financial monitoring for the banking system

Inspection and supervision activities are an indispensable part of the banking system management framework of any country in the world. Because of the shortcomings of the current supervision and inspection system, it is necessary to complete the legal framework to improve the efficiency of the State Bank's supervision and inspection. The SBV has gradually set standards close to the international standards of system safety but has not yet come to reality because these standards have not been associated with technology-compatible monitoring systems.

Therefore, it is vital to build a mechanism to monitor the operation of the interbank market and improve the legal framework for establishing trust ranking organizations for credit institutions. On the other hand, the State Bank should develop and train a team of inspectors and supervisors with high professional qualifications and good professional ethics.

Besides, although the regulatory system in the banking sector now has regulations on the maximum shareholding rate of individuals as well as organizations in commercial banks. However, to make it more effective, the law should supplement more specific and clear provisions on maximum share ownership with each type of shareholders. For example, individual shareholders can be divided into more details, such as individuals who participate in management and individuals who do not. Institutional shareholders can be divided into groups such as financial institutions, non-financial organizations, state-owned enterprises.

CONCLUSION

Cross-ownership in the banking system is an objective property and has existed for a long time in many economies around the world, especially in countries where the financial system develops based on banking operations (bank-based), typically Germany and Japan. Evidence from Germany and Japan has shown that cross-ownership between banks and businesses was an essential factor that promoted the success of industrialization in both countries. Meanwhile, the cross-ownership relationship between banks and businesses is not very popular in the UK or the US because these countries have long-term market-oriented development finance (market-based). After studying the experiences in controlling and managing cross-ownership in countries like Japan and Germany, this paper proposes the following recommendations: (i) Buiding a specific legal framework for cross-ownership and strengthening state management on cross-ownership in the banking sector; (ii) Reviewing and always grasping the ownership ratios in credit institutions, specifically reviewing of mutual ownership of credit institutions, reviewing the ownership relationship between subsidiaries and affiliates of Cis, reviewing the ownership ratios of individual shareholders and institutional shareholders at Cis and reviewing individual shareholders and institutional shareholders who perform ownership at CIs and have outstanding loans at these CIs and other Cis; (iii) Clarifying the ownership structure, the ultimate owner and accountability; (iv) Completing safety ratios in accordance with the Law on Credit Institutions, based on Basel II and towards Basel III; (v) Respecting the "one share one vote" rule; (vi) Eliminating the ownership of the State and State-onwed enterprises in commercial banks; (vii) Completing legal provisions for information disclosure on ownership rates; (viii) separating the functions of commercial banks and investment banks and; (ix) strengthening the financial monitoring for the banking system.

In the above-mentioned solutions, the primary issue is to prevent the act of deliberately violating, while eliminating the personal gain from cross-ownership. In order to achieve this, the coordination between the State Bank and relevant agencies is required in issuing legal documents as well as supervising the implementation of the provisions.

SUMMARY OF RESEARCH

Since the end of 2006, the Vietnamese economy has started to accelerate. The stock market has also become active due to the effects of international economic integration. At the same time, the financial and banking sector also began to expand actively on capital, credit, assets, and operation network to meet new competition requirements of the integration period. Also, in this period, many state-owned corporations were massively upgraded to become corporations, allowed by the Government to conduct multi-sectoral business, including finance and banking. Meanwhile, besides the establishment of a branch, the establishment of new banks was also implemented by the State Bank after a long pause, resulting in many new banks, both domestic and foreign.

At the end of 2006, the Government recognized the need to have healthy banks to meet the requirements of integration and competition. However, the concept about a big bank at such time was quite simple, mainly based on equity, which resulted in the establishment of Decree No. 141/2006/ND-CP regulating the legal capital levels for Credit institutions.

A review of global banking and supervision practices indicate that a bank with the most substantial equity is not always the bank with the most reliable financial capacity. Increasing the scale of capital must be accompanied by an increase in the bank governance capacity and the monitoring system. As it relates to cross-ownership regulations in Vietnam, Decree 141 did not impose a requirement to increase bank governance capacity but instead imposed a hasty capital raising roadmap. Further, Vietnam's monitoring system for the financial sector, in general, and for banks, in particular, were limited and suffered many shortcomings. As it relates to the regulations on cross-ownership, legal developments were slow, as evidenced by the banking monitoring framework, which was only upgraded from 2010 according to Circular No. 13/2010/TT-NHNN. Notwithstanding these legislative developments, legislation was also lagging behind developments as Circular No. 13/2010/TT-NHNN was mainly based on the spirit of the Basel I Treaty in 1988.

The year 2008 was marked by significant legal developments due to economic volatility caused by the 2008 financial crisis. For instance, after a period of rapid growth, the asset price bubble resulted in tremendous economic volatility, which caused the SBV to respond by implementing urgent measures to curb inflation. Under these conditions, the stock market began to decline, and the issuance of shares to raise banking capital also created more difficulties. More specifically, at the end of 2008, the SBV required Vietnamese banks to increase their charter capital. When the deadline (end of 2008) to increase charter capital was close, banks used cross-ownership to circumvent the law by increasing virtual capital as a method to comply with SBV capital regulations. This resulted in the creation of multiple ownership links, which helped banks avoid SBV's monitoring activities.

As it relates to cross-ownership in other countries understudy, the author derived some critical conclusions on the development and creation of cross-ownership in Japan, Germany, and Italy. For instance, experience gained from Japan shows that cross-ownership was a typical feature that played an important role in the period when Japan implemented industrialization policies in the 1950s-1970s. However, it should not be confused that cross-ownership played a decisive role in the success of Japan's industrialization. Such success was achieved because Japan designed an appropriate industrialization policy accompanying with the domestic economic conditions which were associated with the international economic context at that time. The case of Germany also has many similarities to Japan. Meanwhile, the Italian case shows how cross-

ownership contributed to weakening the country's financial sector in the context of Italy's entry into the EU with very high competition standards.

Regarding the case of Vietnam, as the current industrial policies are still not sufficient, the use of Japanese cross-ownership structure to serve the industrialization intentions is hazardous and unsure. Given the sources of risks which can arise due to cross-ownership structures, the author suggests that Vietnam's cross-ownership legislation can be improved in the following ways:: (i) Buiding a specific legal framework for cross-ownership and strengthening state management on cross-ownership in the banking sector; (ii) Reviewing and always grasping the ownership ratios in credit institutions; (iii) Clarifying the ownership structure, the ultimate owner and accountability; (iv) Completing safety ratios in accordance with the Law on Credit Institutions, based on Basel II and towards Basel III; (v) Respecting the "one share one vote" rule; (vi) Eliminating the ownership of the State and State-owned enterprises in commercial banks; (vii) Completing legal provisions for information disclosure on ownership rates; (viii) separating the functions of commercial banks and investment banks and; (ix) strengthening the financial monitoring for the banking system.

The above recommendations are only suggestive rather than exhaustive. In the future, it is necessary to conduct more in-depth studies on banking governance both at the macro level (for regulating agencies) and at the micro level (for the bank itself). Further, attention should also be placed on risk management issues and various aspects related to the bank's management and administration team (bank ownership structure; the structure of organization and operation; and responsibilities of the board of managers and so on).

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