

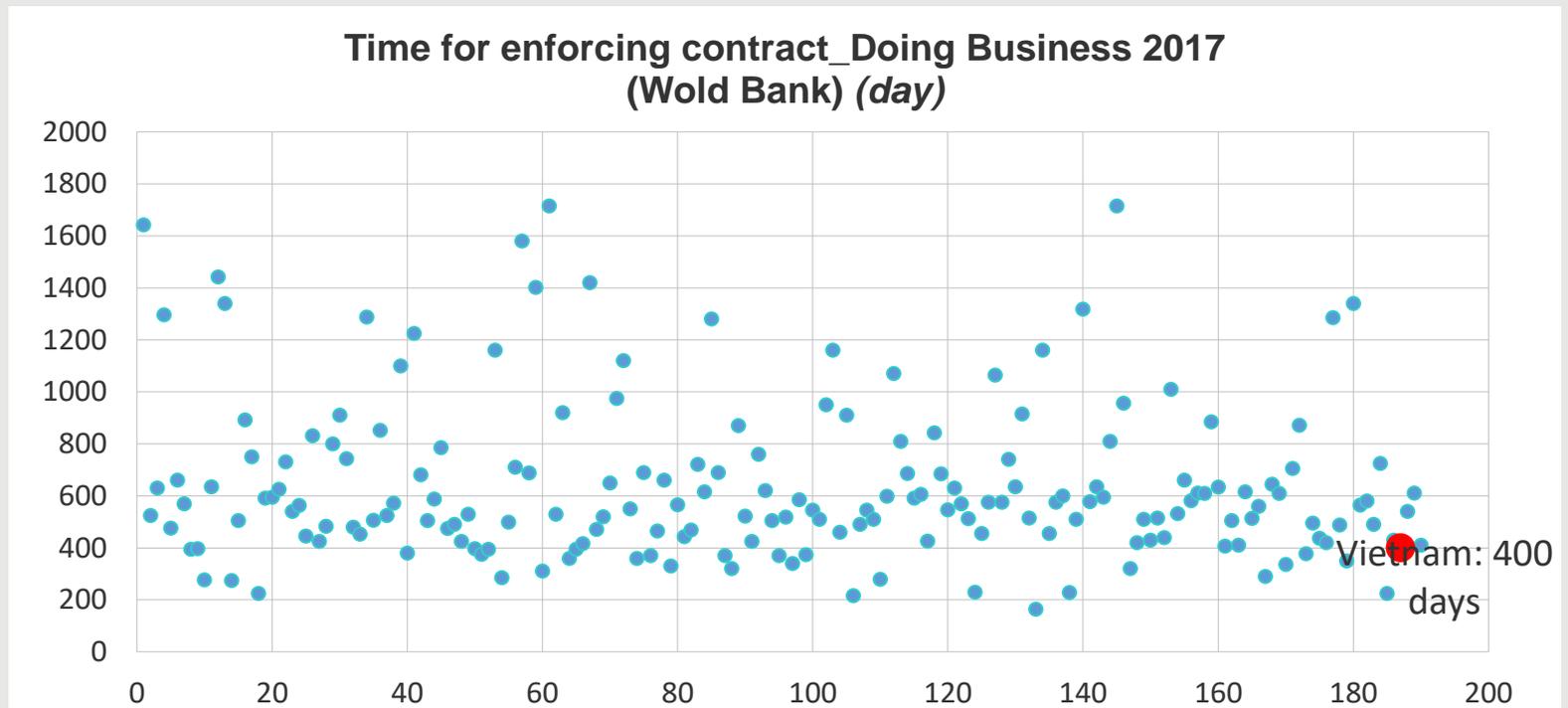


CONTRACT ENFORCEMENT

NGUYEN HUNG QUANG

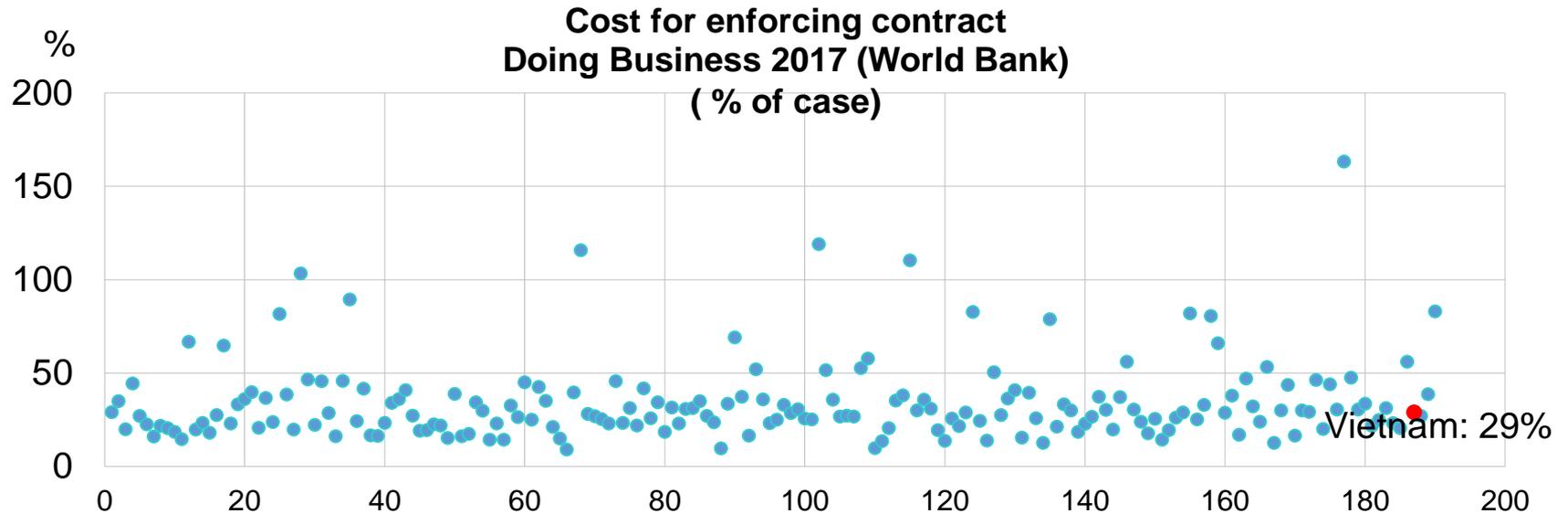
GENERAL COMMENTS

- The legal frame on contract in Vietnam is still in short of consistency, clarity, and contains much overlap;
- The time for settling contractual disputes in Vietnam (400 days) is rather long compared to the referred countries (Singapore, Thailand, Malaysia, Philippine, Indonesia, India and China), especially receiving petition period (13% of total time) and judgement enforcement period (37% of total time);



GENERAL COMMENTS

- The expense for settling disputes at court is rather high (accounting for 29% of the total dispute's value);



- Arbitration mechanism for dispute settlement still faces some difficulties. Vietnamese legal system has not yet recognized commercial mediation as a mechanism for dispute settlement;
- The rate of successful judgment enforcement is still low, which reduces the effectiveness and efficiency of courts and arbitrators' awards

GENERAL COMMENTS

- Procedures for dispute settlement at Vietnamese courts are still complicated, difficult to be predicted or implemented. The simplified proceedings for settling of small claims have not yet implemented in practice;
- ➔ Giving rise to dispute settlement by illegal methods (such as mafia, attempting to smear one's honor or prestige, etc.)
- ➔ Reducing the strictness and clarity of laws.

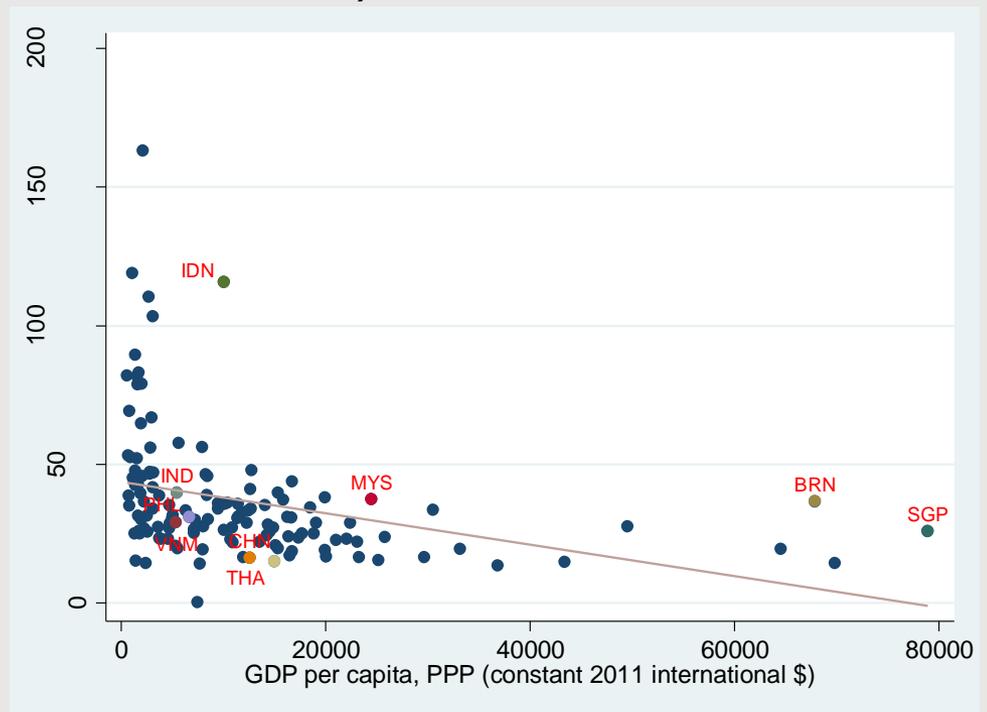
	China	India	Singapore	Thai Lan	Malaysia	Philippine	Indonesia	Viet Nam
Quality of judicial process index	14.5	7.5	15.5	6.5	12	7.5	6.5	6.5
- Court structure and proceedings	4.5	3	5	3	4	3	1.5	3
- Case management	5.5	0.5	4.5	1	3	1.5	2.0	1.5
- Court automation	1.5	2	4	0	2.5	0.5	0.5	0
- Alternative dispute resolution	3	2	2	2.5	2.5	2.5	2.5	2

TESTS

Test 1: Do cost for contract enforcement create a constrain?

Analyzing the costs for dispute settlement with GDP per capita, it shows that Vietnam is better than some countries with same GDP per capita →, it has not created a “constrain” for economic growth of Vietnam at this moment but will be a “constrain” if the GDP growing.

Comparing costs for contractual dispute settlement among countries with low-average income (and Vietnam) and referred countries



Source: Doing Business – World Bank

TEST

Test 2: Does Courts' operation quality affect economic growth or corporates' development quality?

The quality of courts' operation relates to sustainable economic development, such as promoting the credit market.

Such quality of Vietnamese courts generates negative impacts on the growth of enterprises in various economic sectors, as analysed from the Enterprise survey of the World Bank (2009-2015).

TEST

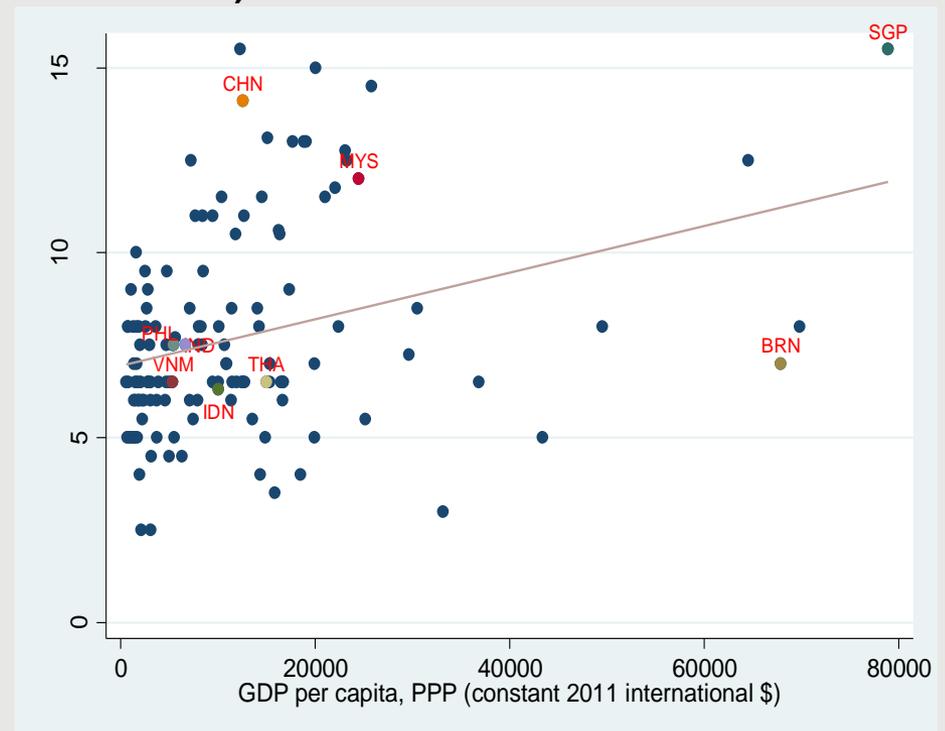
VARIABLES	Court system 1 = = at least a moderate obstacle	Court system 2 = at least a minor obstacle	Fair courts =Disagree
Food_Court system	25.3089***	2.8312***	1.9976***
	(3.653)	(0.740)	(0.094)
Textiles_Court system	74.2313***	12.8606***	5.0028***
	(14.038)	(2.433)	(0.255)
Fur_Court system	2.5435	4.1441***	2.1266***
	(1.783)	(1.081)	(0.121)
Leather_Court system	5.6737***	1.2587***	7.5715***
	(0.999)	(0.417)	(0.458)
Wood_Court system	-	5.8715***	2.7583***
		(0.852)	(0.164)

TEST

Test 3: Is it compulsory that enterprises select illegal methods of dispute settlement to ensure contract enforcement?

- Comparison of judicial quality between Vietnam and the countries of similar GDP per capita proves that Vietnam performs much worse than those countries in terms of this index.
- Cases of debt recovery or contract enforcement by mafia tend to increase through making statistics of cases reported on press and media.

Comparing judicial quality for enforcing contract among countries with low-average income (and Vietnam) and countries of referred countries



Source: *Doing Business* – World Bank

RECOMMENDATIONS

LONG TERM

- Vietnam should develop the legal frame on contracts, including normative system and legal principles of contracts; formulate legal principles on sources of law for supplementing the deficiency of the normative system, for instance: analogy, precedents, good faith;
- The Supreme People's Court should develop methods of case management for better time management in every stage of litigation proceedings; ensuring the independence of judges, guaranteeing transparency in judicial procedures and applying e-court model;
- The Ministry of Justice should have measures for supervising the duration of judgment enforcements and improving the quality of judgment enforcement;

RECOMMENDATIONS

SHORT TERM

- Supreme People's Court should promote time management in court procedures, apply "one door" for judicial administrative activities, and online procedures in the court system;
- Supreme People's Court should publicize court procedure of civil and business cases → supervising the time frame, enhancing transparency of court operations but still ensuring private and business secrets in litigation;
- The tribunal system should apply simplified litigation procedure for small claim cases in accordance with Civil Procedure Code 2015;
- Vietnam should perfect the relevant legal framework to support arbitration and commercial mediation; develop the quantity and quality of professional arbitrators and mediators.

THANK YOU



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