UNDP

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CENTRAL COMMITTEE OF INTERNAL AFFAIRS

STUDY

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

January 2021

MAJOR CONTENTS OF THE STUDY

International standards on Mechanism for ensuring judicial integrity to promote business environment

Good Practices in some representative countries

Overview of the Mechanism for ensuring judicial integrity in Viet Nam

Conclusions and Recommendations

Background of the Study

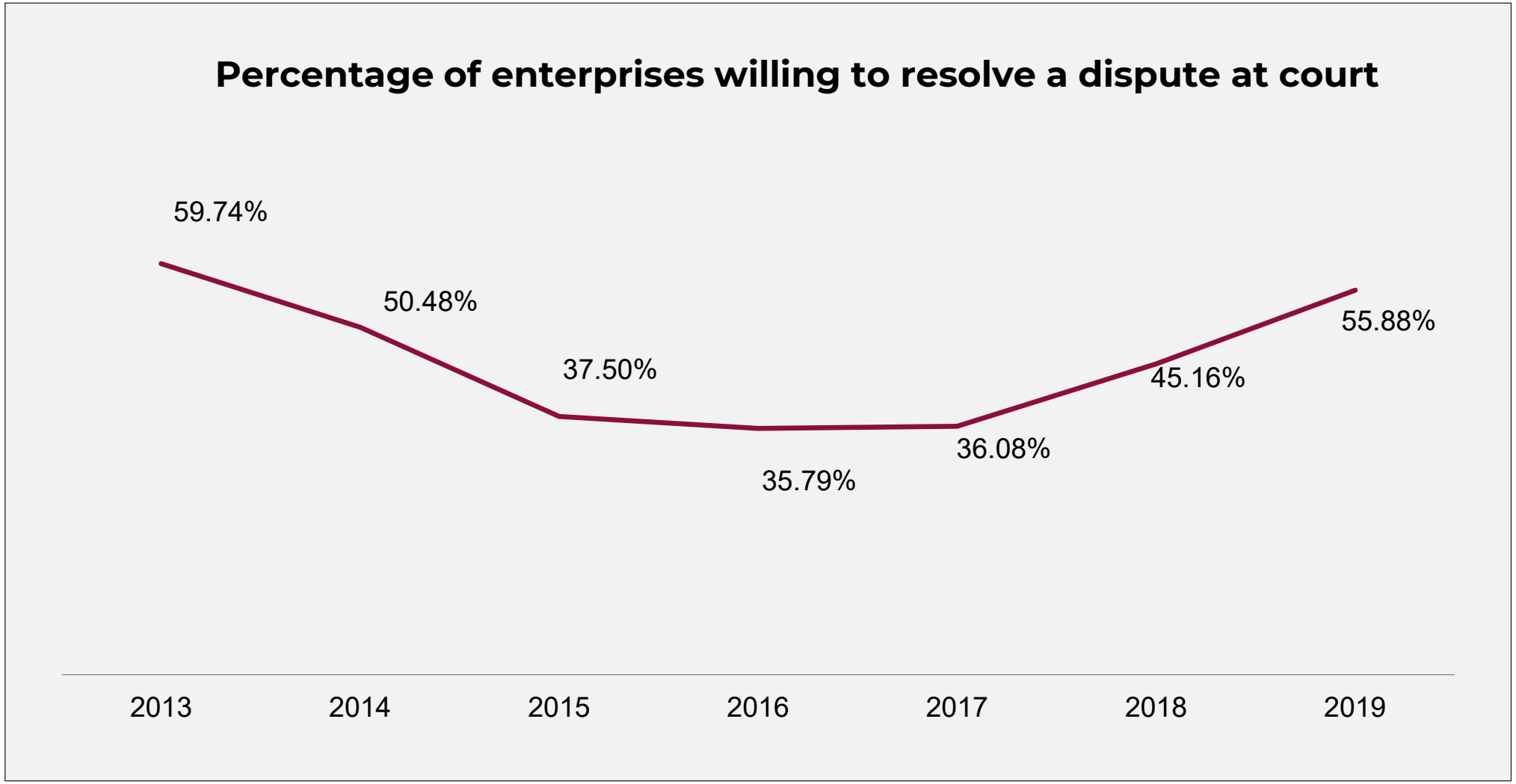
Resolution 49-NQ/TW of the 9th Politburo on Strategy for judicial reform to 2020 and Conclusion 84-KL/TW of the Politburo summarizing 15 years of implementation of Resolution 49-NQ/TW affirm that “Judicial reform must stem from the requirements of socio-economic development, construction of a fair, democratic and civilized society; contribute to promote socio-economic development”

Resolution 48-NQ/TW of the 9th Politburo on the Strategy for building and completing the legal system of Viet Nam to 2010, with a vision to 2020 and Conclusion 83-KL/TW of the Politburo summarizing the implementation of Resolution 48-NQ/TW says “building and completing civil and economic laws, focusing on the completion of the socialist-oriented market economy institution”

Resolution No. 26-NQ/TW on concentration on building a contingent of cadres at all levels, especially at leader level, with sufficient qualities, capabilities and prestige, on a mission level… Particularly, regarding ethics and quality of Judges, President Ho Chi Minh believes that a Judge should "worship Justice, obey the Law, be unbiased and impartial" and “be close to the people, understand the people, help the people and learn from the people"

Background of the Study

Provincial Competitiveness Index - VCCI



Mục tiêu, phạm vi và phương pháp nghiên cứu

Objective and scope of the Study:

Comparison of the mechanism for ensuring judicial integrity to promote business in some countries and lessons for Viet Nam

Methodology:

- Study international standards on judicial integrity.
- Analyze international indicators related to business environment, economic development and integrity
- Study good practices in 03 countries: Germany, Singapore and Malaysia
- Study documents, combining with interviews with experts and practitioners related to mechanisms for ensuring judicial integrity in Viet Nam

MECHANISMS FOR ENSURING JUDICIAL INTEGRITY TO PROMOTE BUSINESS ENVIRONMENT UNDER INTERNATIONAL PRACTICES

Mechanism for ensuring judicial integrity under International Instruments

Bangalore Principles

Public confidence in the judicial system, moral values and judiciary integrity are of paramount importance in a modern democratic society.

Judicial Integrity is essential to the proper functioning of the judiciary

UNODC's Resource Guide on Strengthening Judicial Integrity and Capacity

- Mechanism for recruitment, assessment of professional qualifications and training of judges
- Court functions and personnel management
- Court administration and case management
- Access to justice and legal services
- Court transparency
- Court performance evaluation
- Judicial Code of Conduct and Disciplinary Mechanism

The relationship between Judicial Integrity and Economic Development according to international assessments

1 Word Bank's Doing Business Report

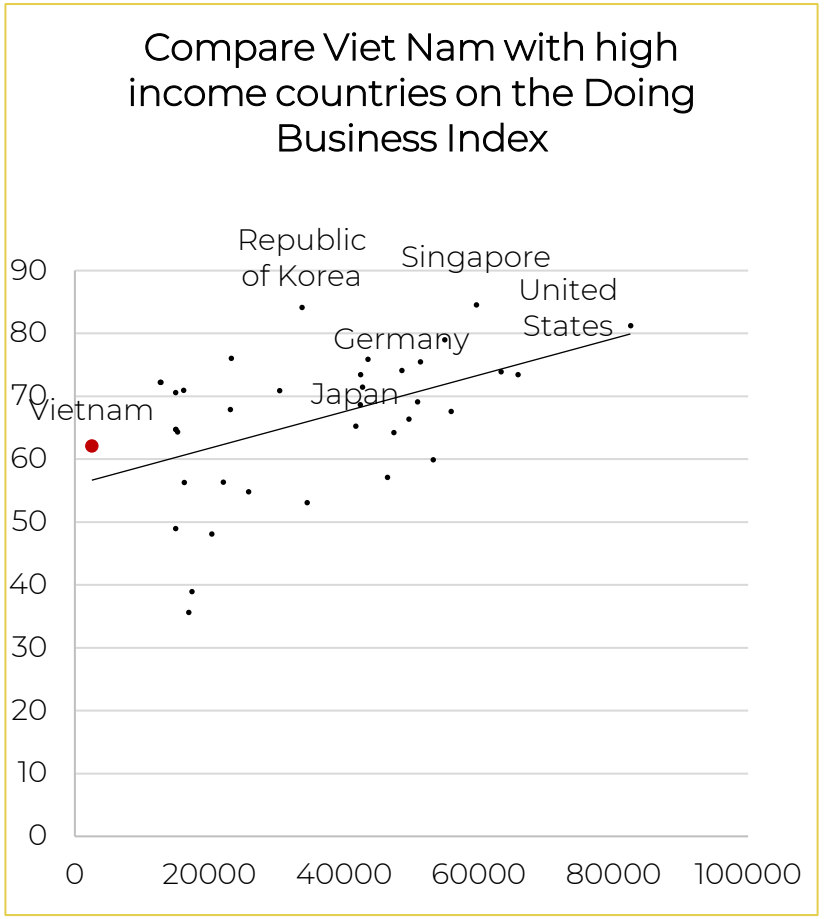
Doing Business Index

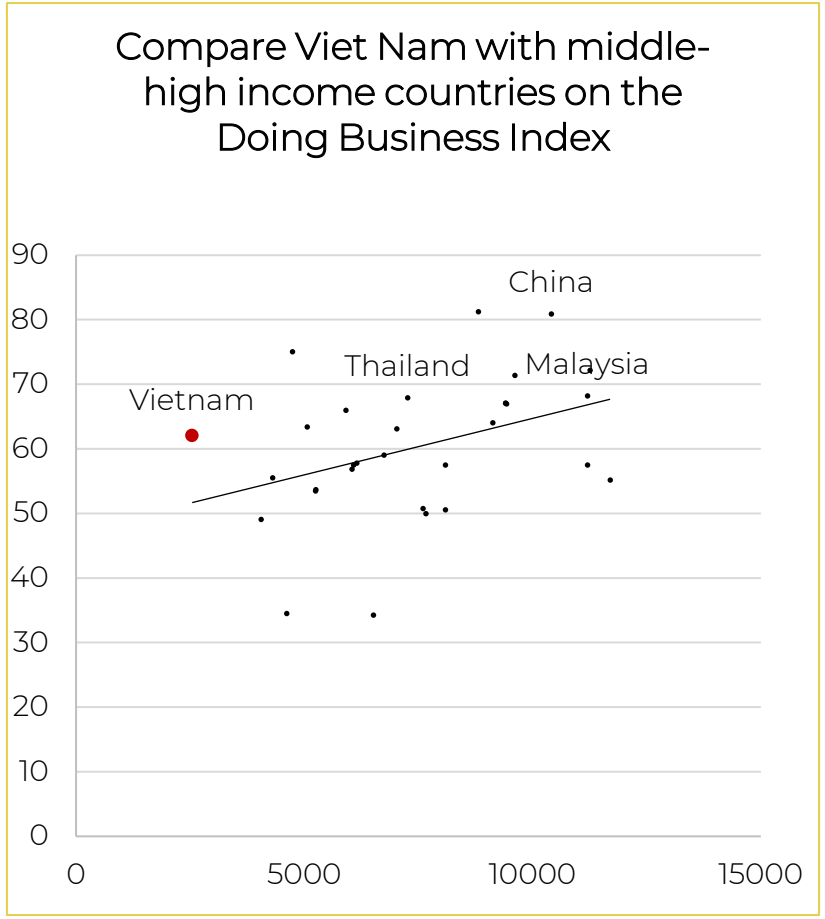
Time for resolving cases	Quality of judicial activities
The Doing Business Index sets out measures of time in each procedural stage of a commercial business case, from the time of filing a request for acceptance of the case, to the time of dispute resolution at court, and to the time of judgment enforcement	The Doing Business Index evaluates the quality of judicial activities, including: - Dispute resolution models - The Court's case management

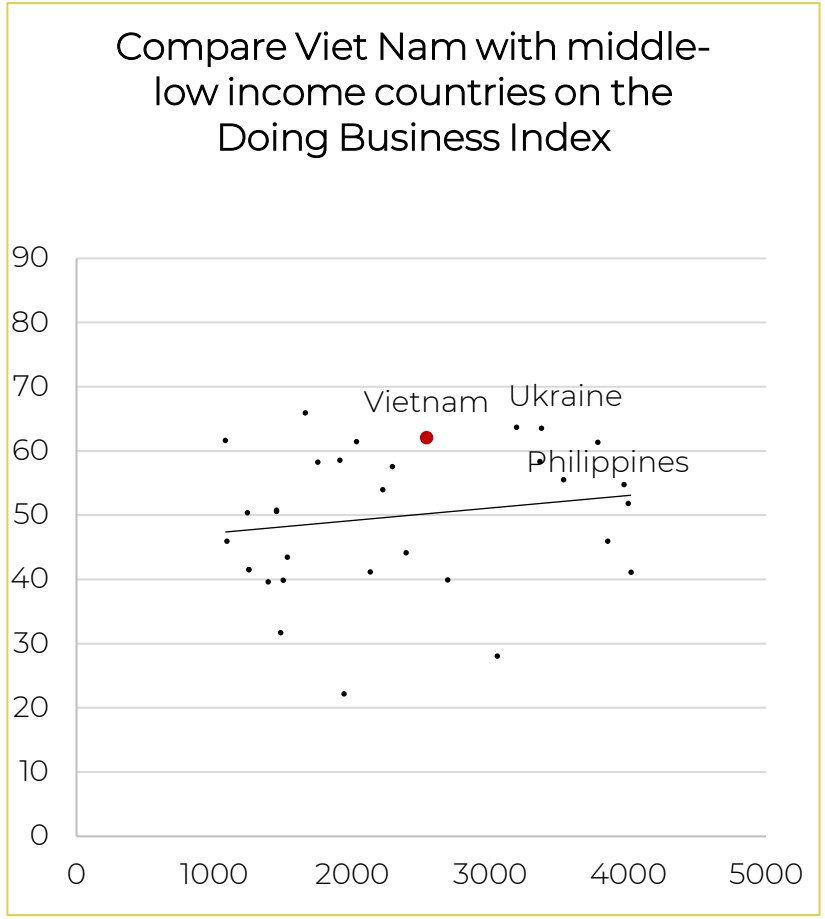
The relationship between Judicial Integrity and Economic Development according to international assessments

1 Word Bank's Doing Business Report

Doing Business Index







The relationship between Judicial Integrity and Economic Development according to international assessments

1 Word Bank's Doing Business Report

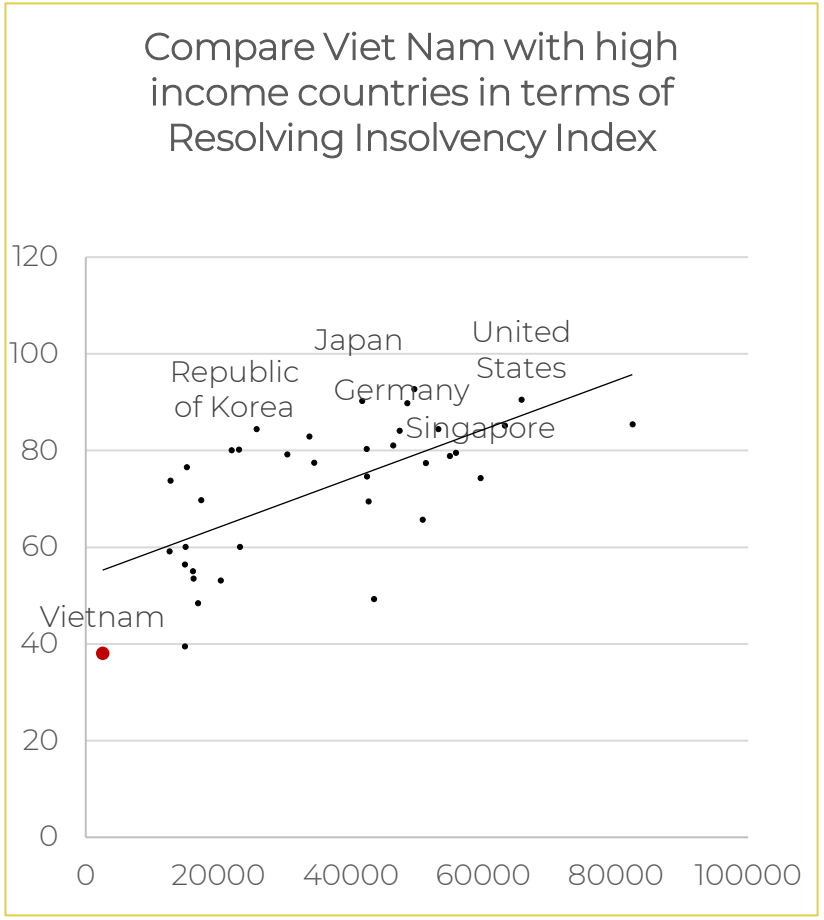
Resolving Insolvency Index

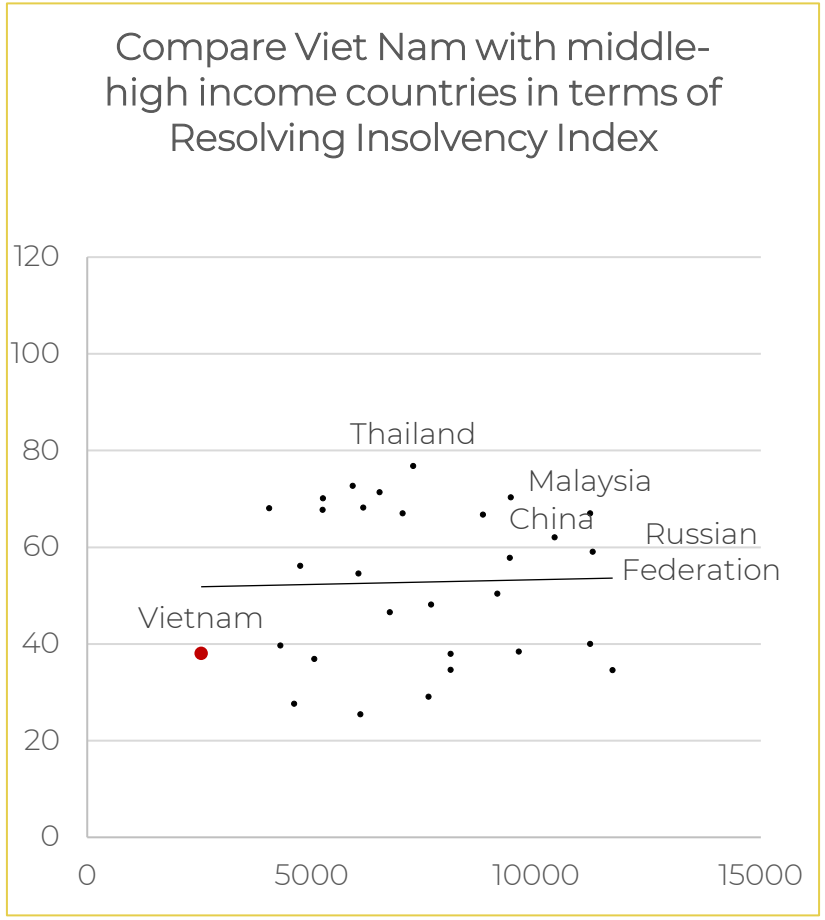
Time for Debt Enforcement (year)	Results
Measured by calendar year	Whether the business will continue to operate with existing problems or sell assets for recovery
Including review of the case (at higher court levels) and time extension requirements.	
Cost for Debt Recovery (% of the asset value)	**Recovery rate for secured creditors**
Measured by percentage of the asset value	Measurement of recoverable assets (converted to money equivalence)
Court fees	Recovered assets calculated based on their present value
Attorney fees	Recovery value subtracting the costs for insolvency proceedings
Fees for asset value assessment and auction	Recovery value subtracting depreciation value
Other fees	The outcome for businesses (continue to exist or close) affects the maximum recoverable value

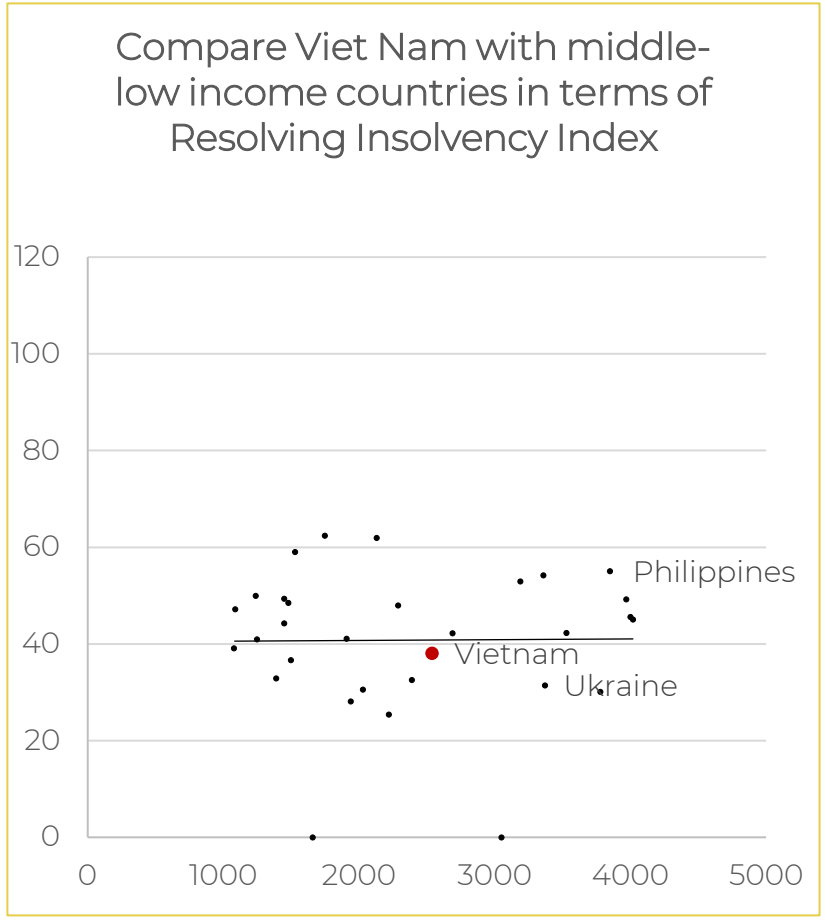
The relationship between Judicial Integrity and Economic Development according to international assessments

1 Word Bank's Doing Business Report

Resolving Insolvency Index



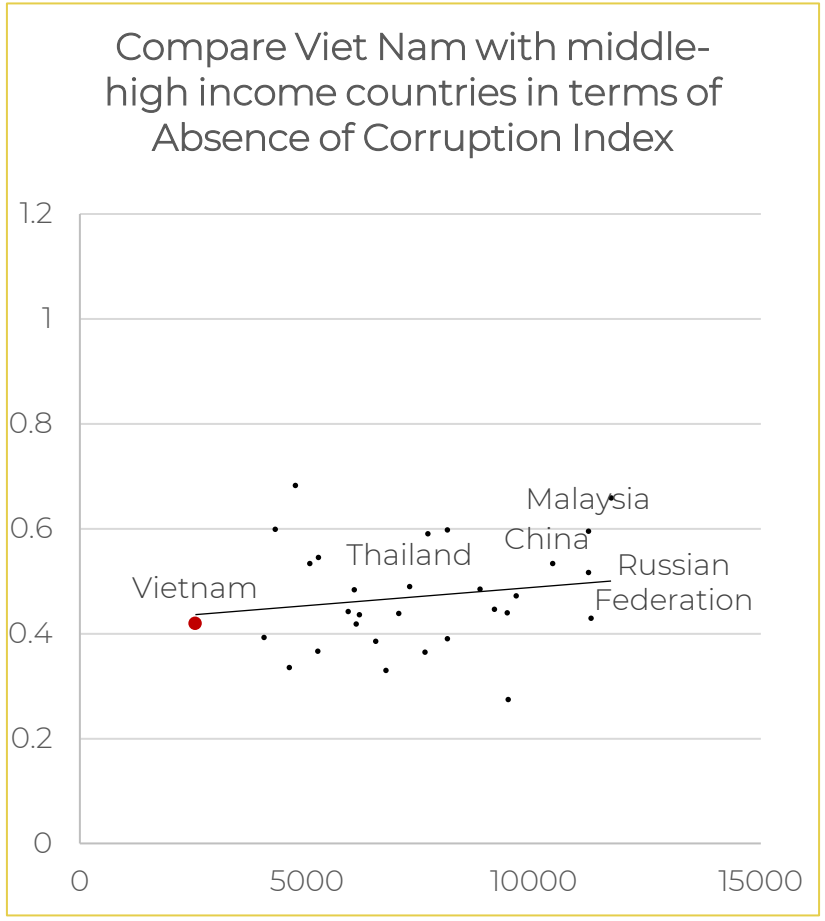


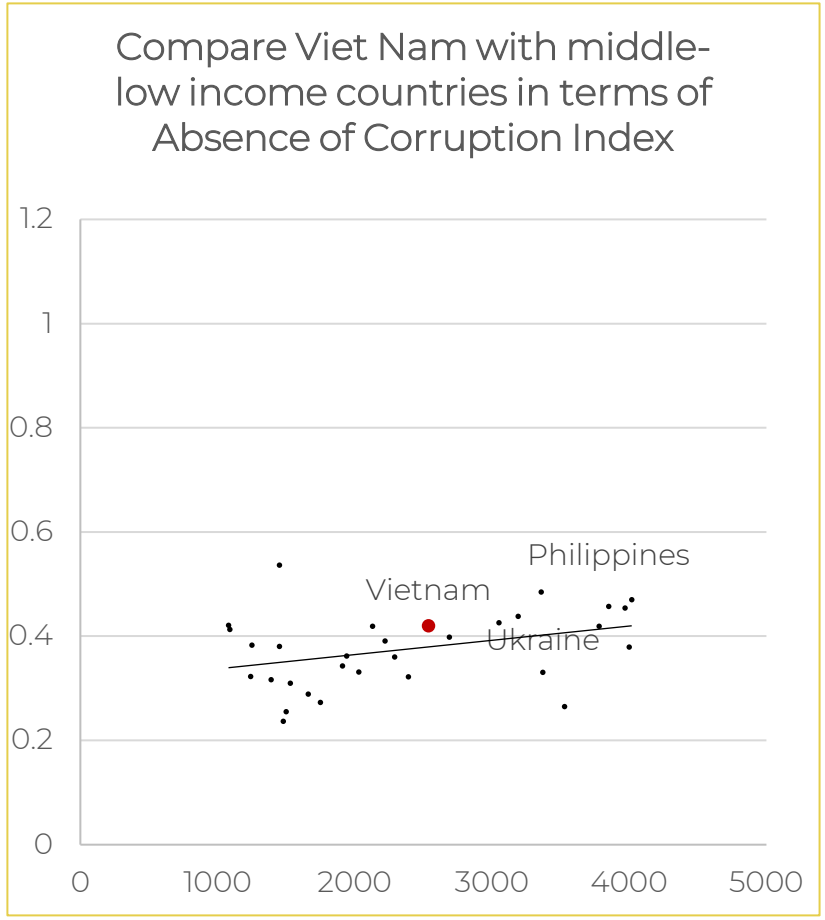


The relationship between Judicial Integrity and Economic Development according to international assessments

2 Rule of Law Index report

Absence of Corruption index



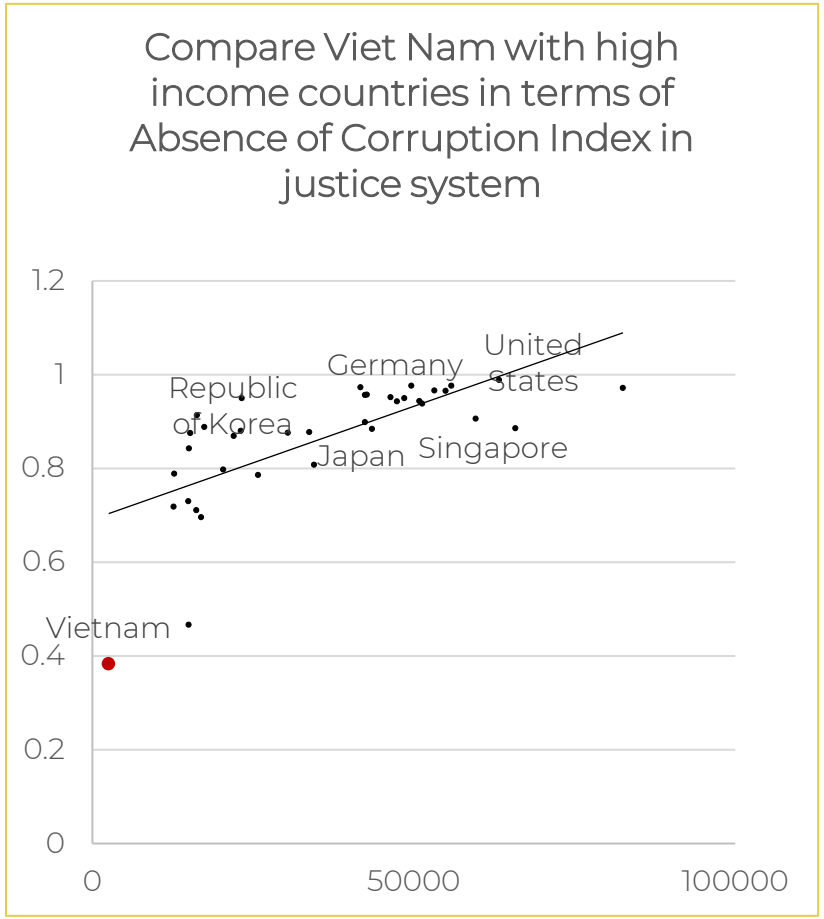


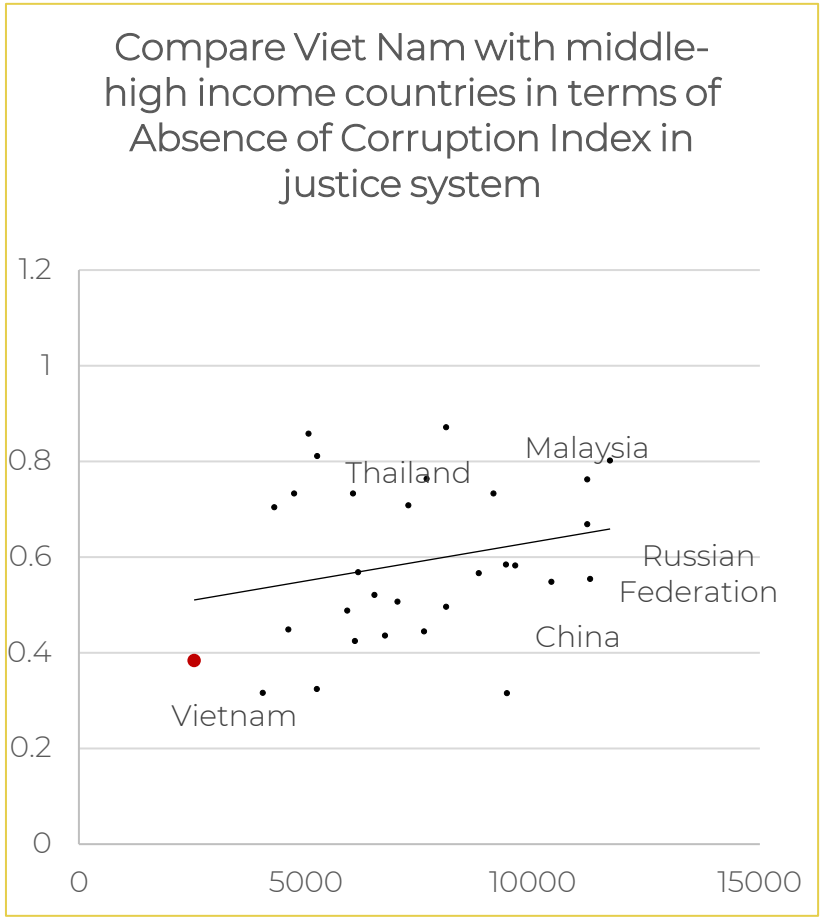
The relationship between Judicial Integrity and Economic Development according to international assessments

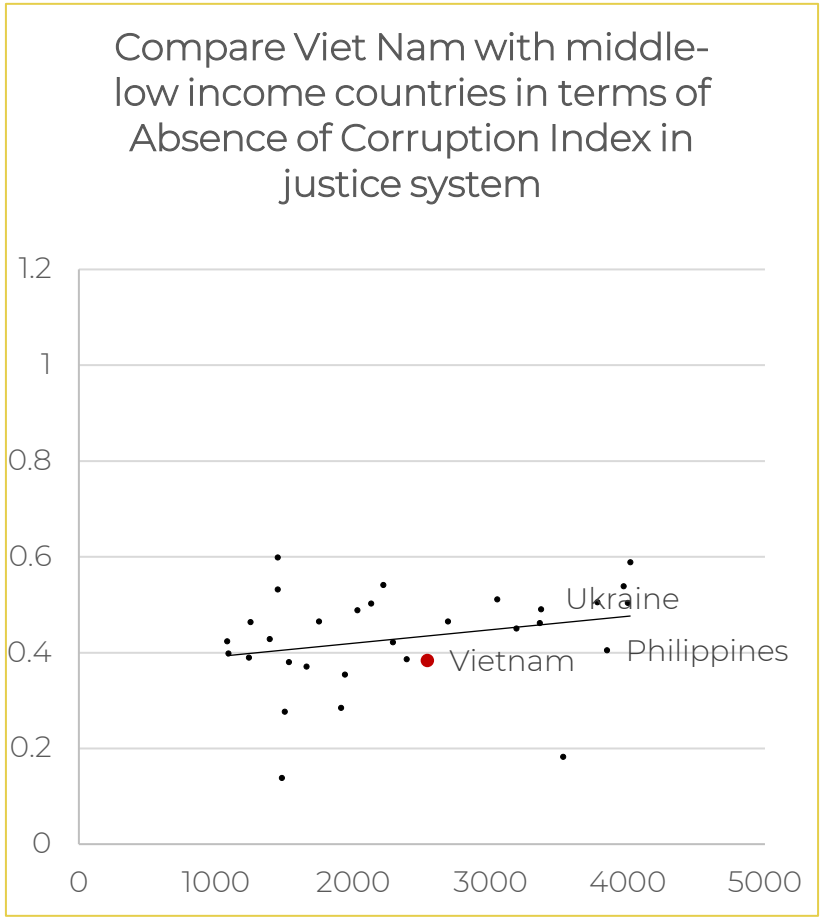
2 Rule of Law Index report

Absence of Corruption index

State officials in the judiciary system refrain themselves from abusing powers for self-interest



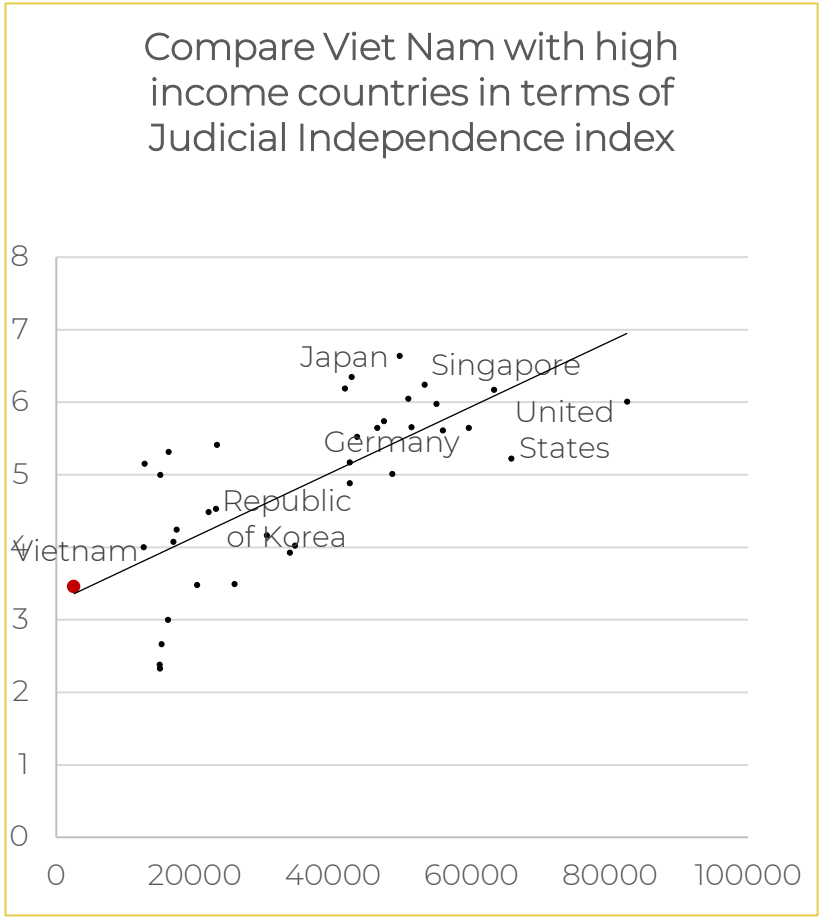


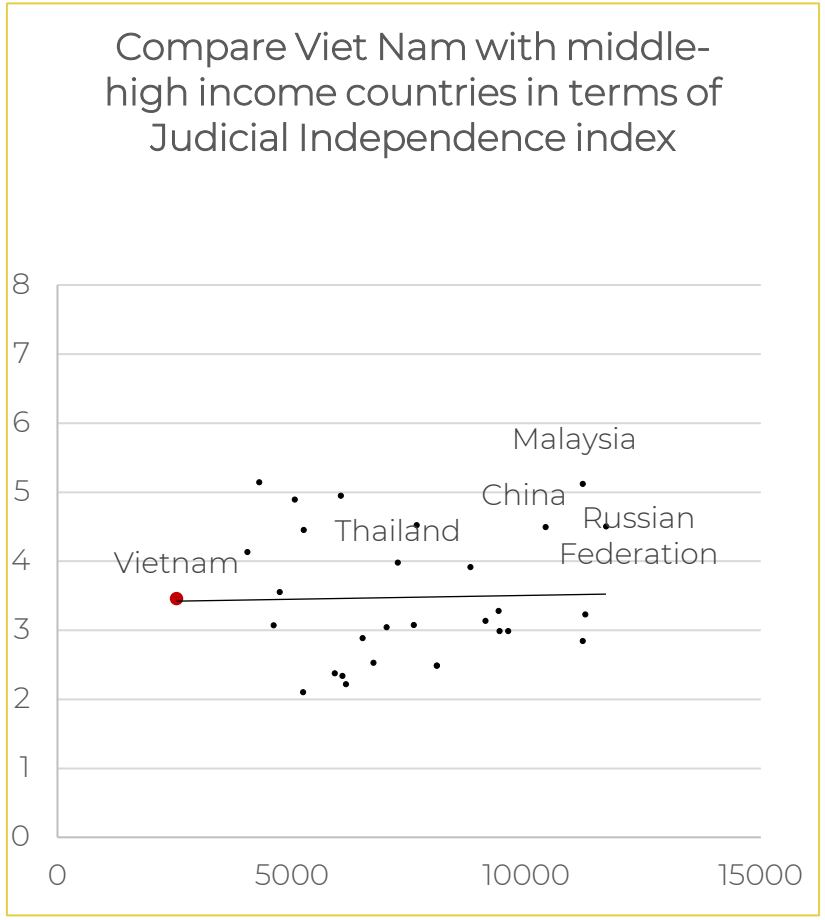


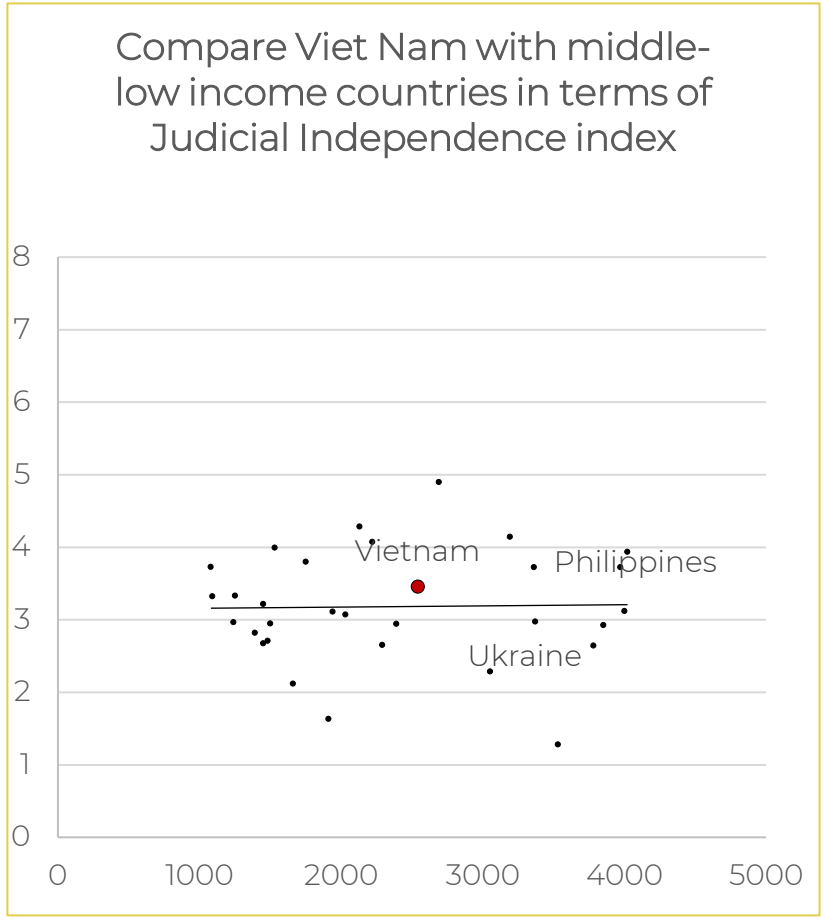
The relationship between Judicial Integrity and Economic Development according to international assessments

3 Global Competitiveness Index from World Economic Forum

Judicial Independent index



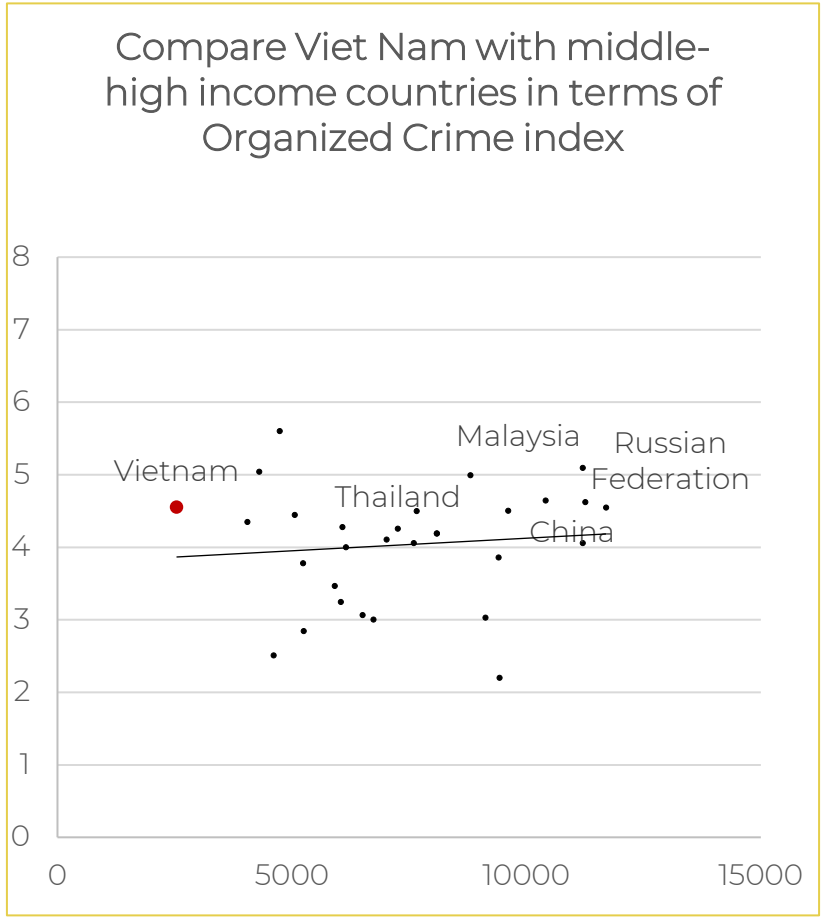


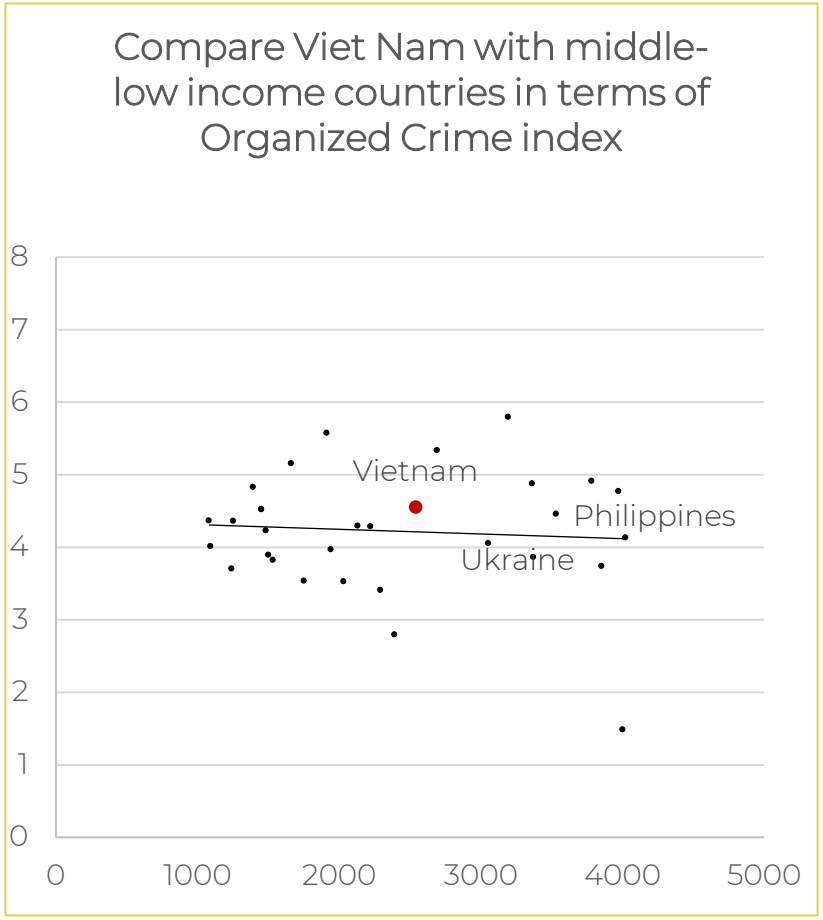


The relationship between Judicial Integrity and Economic Development according to international assessments

3 Global Competitiveness Index from World Economic Forum

Organized Crime index

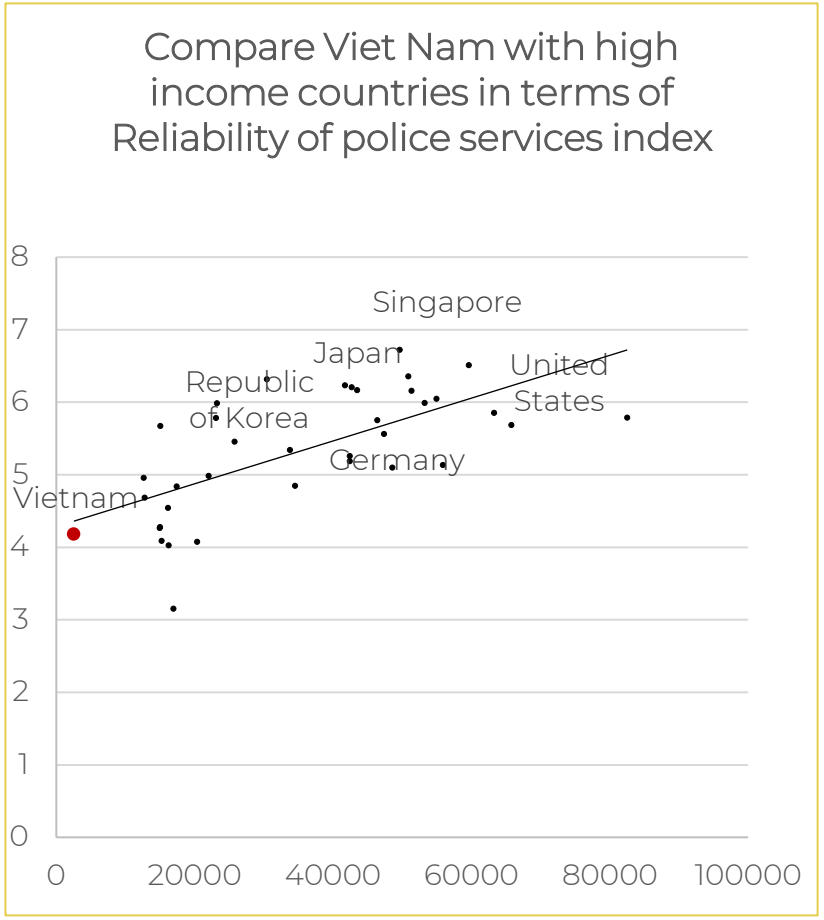


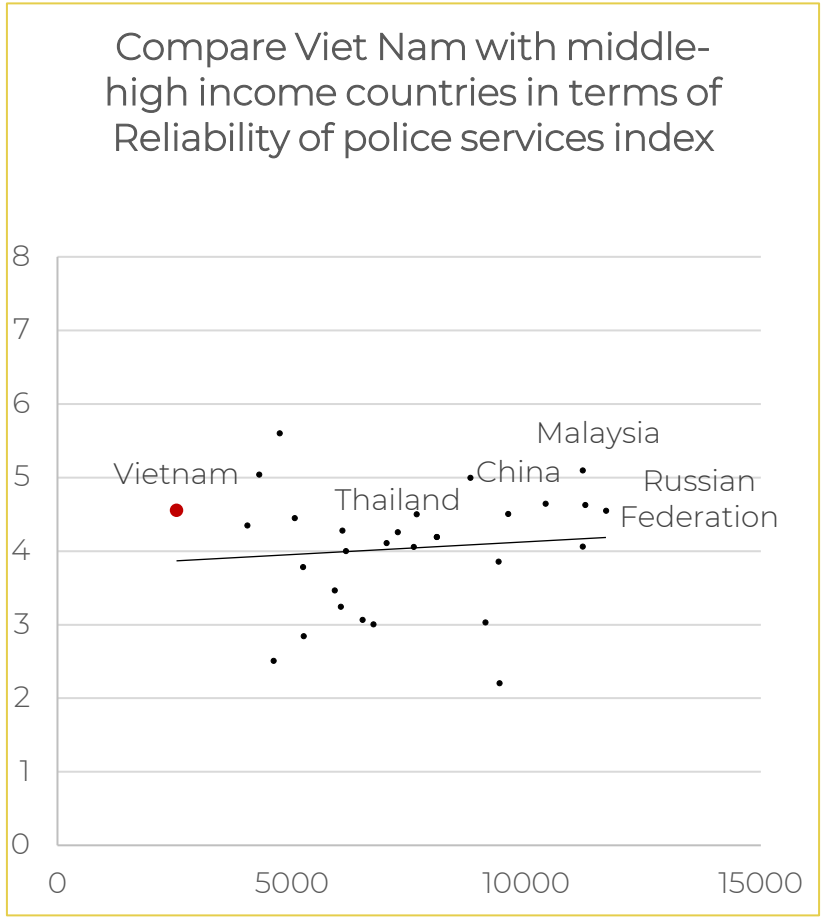


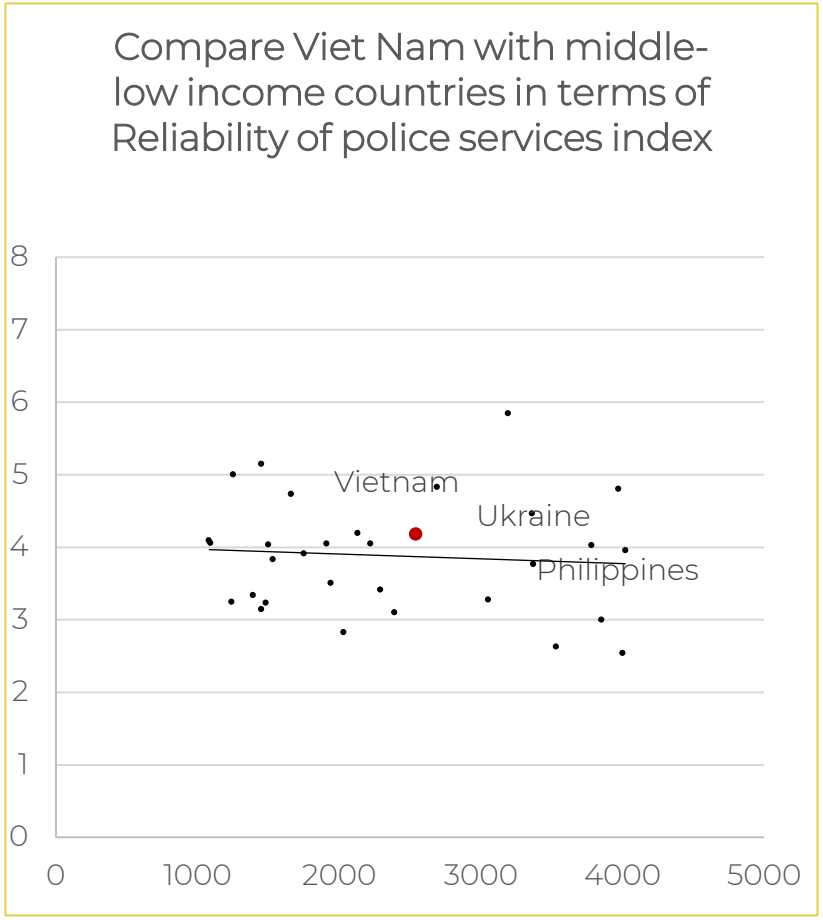
The relationship between Judicial Integrity and Economic Development according to international assessments

3 Global Competitiveness Index from World Economic Forum

Reliability of police services index



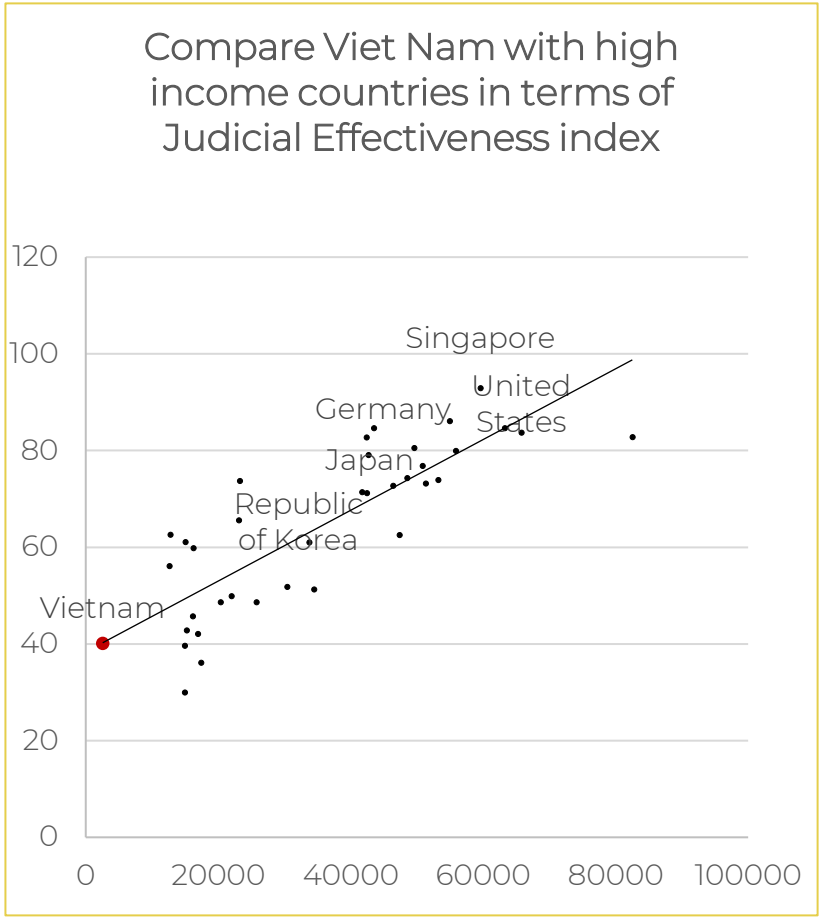


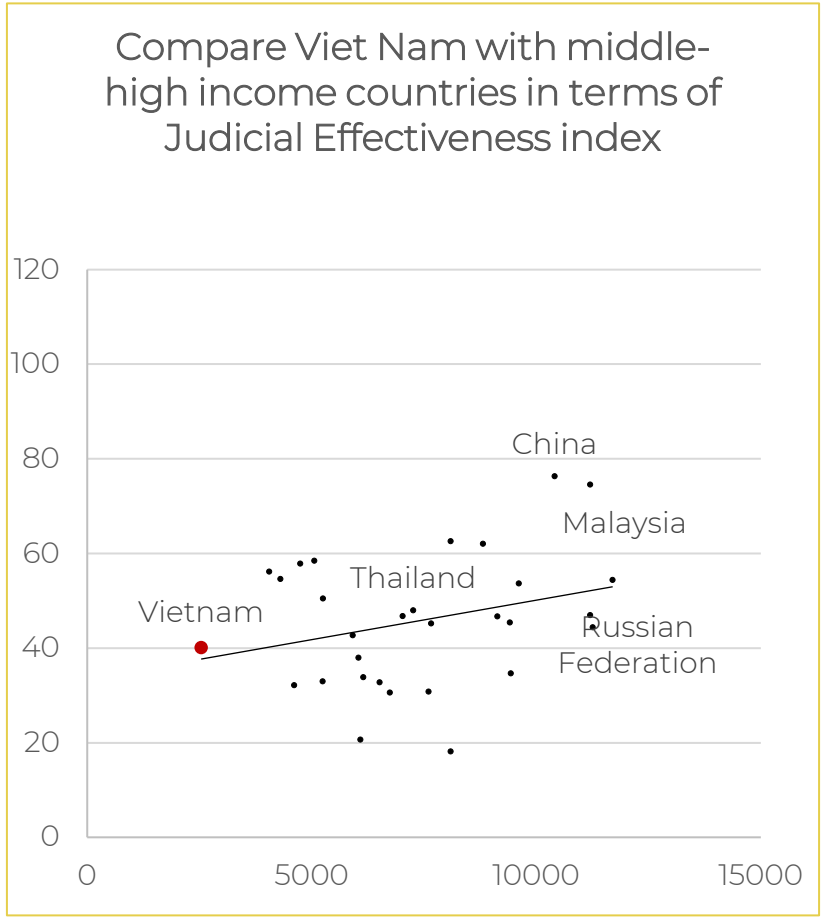


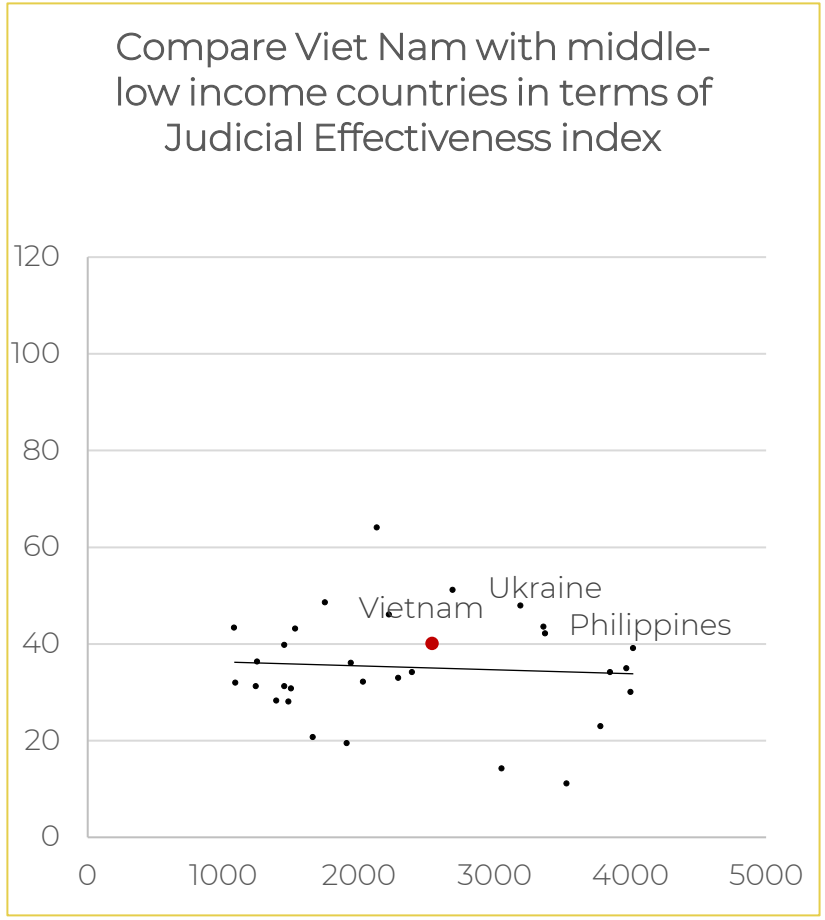
The relationship between Judicial Integrity and Economic Development according to international assessments

4 Economic Freedom index from the Inheritage foundation

Judicial Effectiveness index







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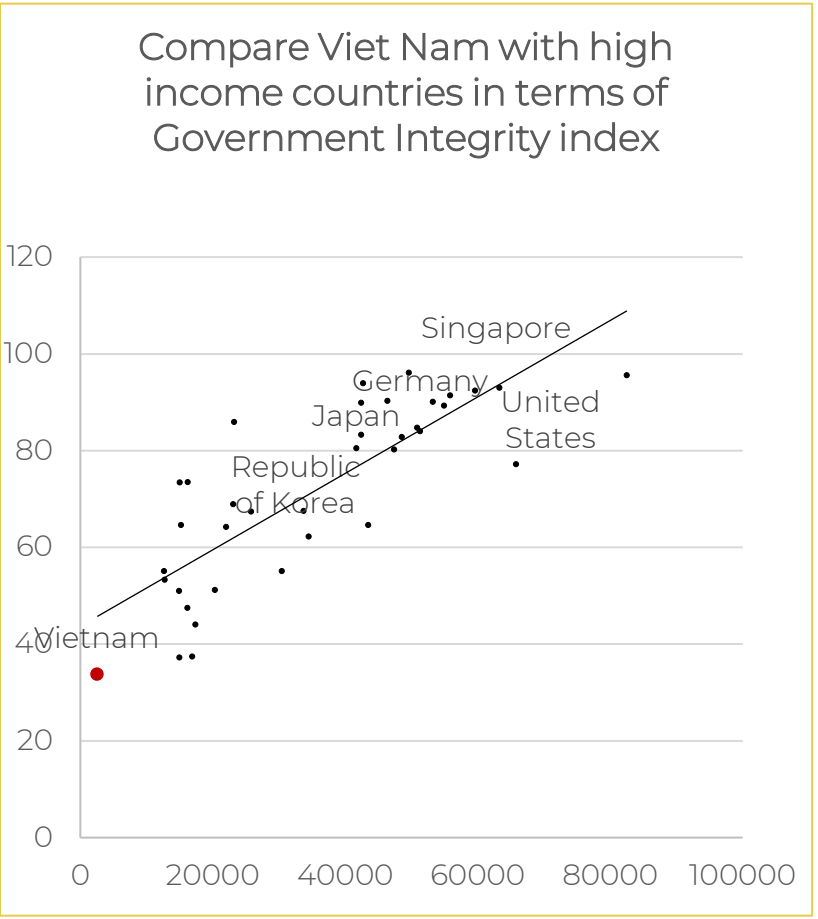

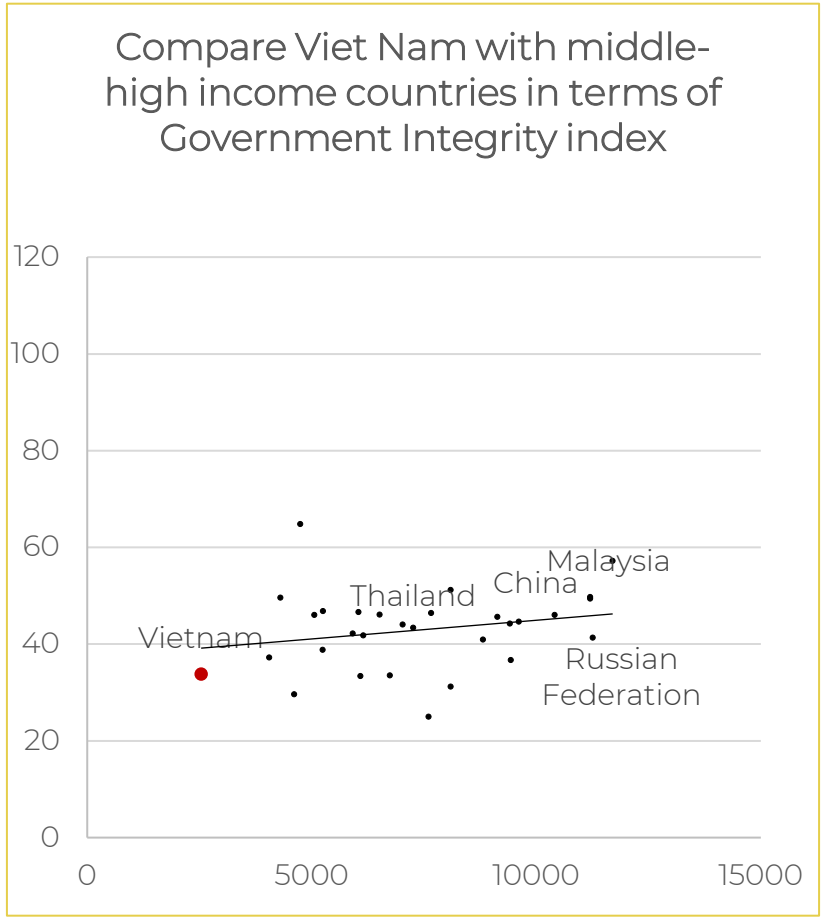

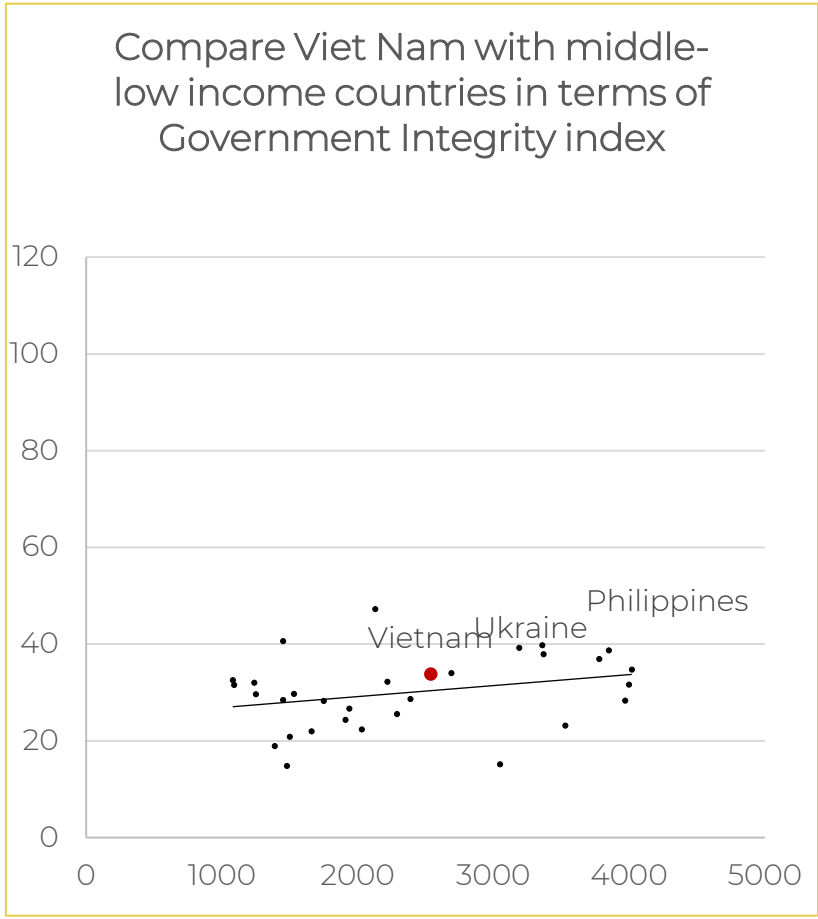

GOOD PRACTICES ON MECHANISM FOR ENSURING JUDICIAL INTEGRITY TO PROMOTE BUSINESS ENVIRONMENT IN SOME COUNTRIES

Singapore

REPORTS	RANKINGS	INDICATORS	INDICATORS POINT
Doing Business Report	2/190	Contract Enforcement	84,5
		Resolving insolvency	74,3
WJP Rule of Law Index	12/128	Absence of Corruption	0,91
		Corruption in judicial sector	0,91
Global Competitiveness Report	1/141	Judicial Independence	5,65
		Organized Crime	6,56
		Reliability of police services	6,51
Index of Economic Freedom	1/186	Judicial Effectiveness	92,9
		Government Integrity	92,4

Singapore

Good Practices:

Improvement of selection, appointment and promotion of Judges

Income of Judges

Improvement of mechanism for supervision and discipline treatment of Judges

Publicization of proceeding activities and assurance of proceeding duration

- Publishing information, procedure, resolution time of cases
- Application of electronic court model (e-court) or court automation proceedings
- Case management and case assignment
- Judgment Publication

Dedicated Court system and assurance of professionalism of Court system

Malaysia

REPORTS	RANKINGS	INDICATORS	INDICATORS POINT
Doing Business Report	12/190	Contract Enforcement	68,2
		Resolving insolvency	67,0
WJP Rule of Law Index	47/128	Absence of Corruption	0,60
		Corruption in judicial sector	0,76
Global Competitiveness Report	27/141	Judicial Independence	5,12
		Organized Crime	5,10
		Reliability of police services	5,43
Index of Economic Freedom	24/186	Judicial Effectiveness	74,6
		Government Integrity	49,4

Malaysia

Good Practices:

- Selection, appointment and training of Judges
- Thu nhập của Thẩm phán
- Mechanism of supervision and discipline of Judges
- Publicization of proceeding activities and assurance of proceeding duration
  - Publishing information, procedure, resolution time of cases
  - Electronic court (e-court)
  - Case management and case assignment
  - Judgment Publication
- Dedicated Court system and assurance of professionalism of Court system

Federal Republic of Germany

REPORTS	RANKINGS	INDICATORS	INDICATORS POINT
Doing Business Report	22/190	Contract Enforcement	74,1
		Resolving insolvency	89,8
WJP Rule of Law Index	6/128	Absence of Corruption	0,82
		Corruption in judicial sector	0,95
Global Competitiveness Report	7/141	Judicial Independence	5,0
		Organized Crime	4,6
		Reliability of police services	5,1
Index of Economic Freedom	27/186	Judicial Effectiveness	74,3
		Government Integrity	82,8

Federal Republic of Germany

Good Practices:

- Selection, appointment and promotion of Judges
- Income of Judges
- Mechanism of supervision and discipline of Judges
- Publicization of proceeding activities and assurance of proceeding duration
  - Publishing information, procedure, resolution time of cases
  - Electronic court model (e-court) or automation court proceeding
  - Case management and case assignment
  - Judgment Publication
- Dedicated Court system and assurance of professionalism of Court system
  - Administrative Court
  - Labor Court
  - Social security Court
  - Financial Court

OVERVIEW OF THE MECHANISM FOR ENSURING JUDICIAL INTEGRITY IN VIET NAM

Indexes relating to judicial performance in Vietnam

REPORTS	RANKINGS	INDICATORS	INDICATORS POINT
Doing Business Report	85/190	Contract Enforcement	62,1
		Resolving insolvency	38,0
WJP Rule of Law Index	70/128	Absence of Corruption	0,42
		Corruption in judicial sector	0,38
Global Competitiveness Report	67/141	Judicial Independence	3,46
		Organized Crime	4,55
		Reliability of police services	4,18
Index of Economic Freedom	105/186	Judicial Effectiveness	40,1
		Government Integrity	33,8

Mechanism of selection, appointment and promotion of Judges

Selection, appointment of Judges:

- Standard for Judge selection is stipulated in Law on Organization of People's Courts 2014;

- No limitation on selection of the candidates who have sufficient ethical qualities and legal knowledge, but the selection and appointment of Judges outside the Court system is only done at the Supreme Court.

Promotion of Judges:

- Judges in Viet Nam are divided into 03 levels: primary, intermediate and advanced level. To be selected and appointed at higher level, a Judge need at least 05 experience years at the previous level and passes promotion exam;

- Judges can be granted with titles, compliments and awards when they are qualified to general standards and requirements in terms of amount and quality of cases adjudicated.

Income of Judges

Salary of Judges in Viet Nam

- According to Decision No. 730/2004/NQ-UBTVQH11 on approving the salaries and allowances for positions held by leading officials of the State.

- The lowest salary of Judges is lower than Gross National Income (GNI) of Viet Nam 2019 and the highest salary is 2.4 times of GNI of Viet Nam 2019.

Bonus of Judges in Viet Nam:

- Good Judges: 3.0 times of minimum wage (approximately VND 4,470,000);

- Typical Judges: 4.0 times of minimum wage (approximately VND 5,960,000);

- Exemplary Judges: 5.0 times of minimum wage (approximately VND 7,450,000).

➢ Judges in Viet Nam have lower income than those in the countries mentioned above

Mechanism for supervision and discipline of Judges

Disciplinary action for Judges

- Law on Cadres and Civil servants;
- Decision No. 120/QD-TANDTC providing for handling the responsibilities of holders of judicial position in the People's court;
- Judges being Party member will also be subject to the disciplinary measures applied to Party members under Article 35 of the Party Charter.

➢ There are numerous provisions constraining Vietnamese Judges in their conducts, but these constraints still need to be improved

Code of Conduct in Judiciary

- Code of conduct of judicial cadres and civil servants promulgated by Chief Justice of the Supreme People's Court along with Decision No. 1253/2008/QD-TANDTC dated September 18, 2008;
- Code of ethic and conduct of Judges promulgated by National Council for Judge Selection and Supervision along with Decision No. 87/QD-HDTC dated on July 04, 2018.

➢ Regular training and professional training for the Code of ethic and conduct in judicial system is not compulsively applied

Publishing judicial conducts and ensuring resolution time

Principle of public trial	Receiving petition and handling cases	Proceeding time management	Assignment of case settlement to Judges	Judgment publication
- Recognized in the Constitution; - In case of private trial, verdicts must be made public.	- Direct submission; - Submission by mail; - Online submission on web portal.	- Long time for dispute resolution - Various methods of time management by different courts; - Simplified procedure only applied in few cases; - Lack of regulation on simplified procedures applied to cases of small value.	02 methods: - Automatic random assignment; - Conditional random assignment	From 2017, Courts' judgements and decisions are public on the portal for publicizing judgments and decisions of the People's Court (http://congbobanan.toaan.gov.vn)

Court system and assurance of professionalism of the court system

Specialist Tribunals

- From 1995, the Court system consisted of: Criminal Court, Civil Court, Administrative Court, Economic Court, Labor Court;

- From 2014, the Court system extends to Family and Juvenile Court.

Tasks of Specialist Tribunals

- Judges at Economic Court, Labor Court, Administrative Court are regularly assigned with criminal, civil, family cases;

- In some case, Judges are assigned cases randomly, and not depending on dedicated tribunal factor.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

Judicial integrity is directly related to economic development and business environment. The quality of judicial integrity in Vietnam did not initiate a “bottleneck” for economic growth but if Vietnam desires to continue to develop its economy and society faster and stronger, judicial integrity needs to improved to encourage investors to be assured of investing in Vietnam.

- *Improvement of policies, legal provision and mechanisms to ensure the rule of law, focusing on independence of judicial system, ensuring the effectiveness of judicial activities and the prevention against corruption.Vietnam needs a comprehensive legal and judicial system reform strategy in the next phrase in the spirit of inheriting the achievements of Resolution No. 48/NQ-TW and Resolution No. 49/NQ-TW.*

- *Improvement of quality of enforcing the evaluated indexes (such as resolving contractual dispute and insolvency, judicial independence, judicial effectiveness, integrity in judicial activities....). These indexes is essentially reformed comprehensively judicial system with the Court is the focus to enhance judicial activities, satisfied to requirement of community of the enterprises and requirement of economic growth and society development of the Government*

Recommendations

1 Selection and appointment of Judges who are talented and qualified

- *Extending the source of appointment of Judges to select judges with sufficient qualities and capacity to help enhance the judicial system and economic development*
- *Strengthening the process of Judges' appointment towards transparency of standards, competition to select talented and ethical candidates*

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

- Salaríes and other legitimate incomes of Judges in Vietnam need to be reformed towards breakthrough as researched countries.

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

- Strengthening internal monitoring mechanism and external monitoring mechanism to Judges' activities and judicial activities.
- Procesing and procedures for evaluation, praise and disciplinary the Judges should be regulated clearly so that Judges are not pressured or impacted that judicial independence and participation may be affected by agencies outside the court system to prevent closedness of the evaluation, praise and disciplinary of Judges

Recommendations

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

- *Dispute resolution duration of commercial business cases in Vietnam should be shortened in compared with current reality and strengthening the time management measures of proceedings.*
- *Court system needs to be enhanced judicial administrative system to satisfied the requirement of individuals and enterprises, satisfied adjudication support in the activities of the Court.*

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

- *Developing a system of specialist tribunals in the field of commercial business and developing a team of specialist Judges to commercial business cases*
- *Enhancement of cases appointment mechanism to support the professionalism and ensure the independence and integrity of the Judges*