

## INSTITUTIONAL BARRIERS AND LEGAL PATHWAYS TO CAPITAL MOBILIZATION: A STUDY OF VIETNAM'S PRIVATE ENTERPRISE FINANCING FRAMEWORK

### *BARREIRAS INSTITUCIONAIS E VIAS JURÍDICAS PARA A MOBILIZAÇÃO DE CAPITAL: UM ESTUDO SOBRE O MARCO REGULATÓRIO DE FINANCIAMENTO DAS EMPRESAS PRIVADAS NO VIETNÃ*

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#### **Abstract**

The private enterprise (PE) sector plays a key role in job creation and the growth of Vietnam's economy. Despite their strategic importance, PE businesses and small and medium-sized enterprises (SMEs) face challenges in accessing formal funding, limiting their potential. This article provides an in-depth analysis of the Vietnamese legal framework that governs PEs' access to capital. The study focuses on systemic inadequacies across four key areas that constitute major barriers: collateral regulation, credit procedures, information transparency requirements, and dispute resolution mechanisms. By examining specific legal tools and implementing them, the study identifies systemic barriers that affect the effective allocation of capital. Based on this analysis, the paper proposes a number of regulatory reforms to promote a more synchronous, transparent, and conducive financial ecosystem. These recommendations aim to unlock capital for PEs, thereby enhancing competitiveness and promoting sustainable economic development in Vietnam.

**Keywords:** Capital Access. Private Enterprises. Legal Framework. Financial Regulation. SMEs. Vietnam.

#### **Resumo**

*O setor da iniciativa privada (IP) desempenha um papel fundamental na criação de empregos e no crescimento da economia do Vietnã. Apesar de sua importância estratégica, as empresas da iniciativa privada e as pequenas e médias empresas (PMEs) enfrentam dificuldades para acessar financiamento formal, o que limita seu potencial. Este artigo apresenta uma análise aprofundada do marco jurídico vietnamita que rege o acesso das empresas da iniciativa privada ao capital. O estudo concentra-se nas inadequações sistêmicas em quatro áreas-chave que constituem os principais obstáculos: regulamentação de garantias, procedimentos de crédito, requisitos de transparência de informações e mecanismos de resolução de disputas. Ao examinar instrumentos jurídicos específicos e sua implementação, o estudo identifica barreiras sistêmicas que afetam a alocação eficaz de capital. Com base nessa análise, o artigo propõe uma série de reformas regulatórias para promover um ecossistema financeiro mais sincronizado, transparente e propício. Essas recomendações visam liberar capital para as empresas de capital de risco, aumentando assim a competitividade e promovendo o desenvolvimento econômico sustentável no Vietnã.*

**Palavras-chave:** Acesso ao Capital. Empresas Privadas. Marco Jurídico. Regulamentação Financeira. PMEs. Vietnã.



## 1 INTRODUCTION

Since the initiation of the Doi Moi policy in 1986, Vietnam has undergone a profound economic transformation, shifting from a centrally planned economy to a socialist-oriented market economy with deepening global integration. One of the most notable achievements of this process is the rise and strong development of the private sector. From a secondary role, the private enterprise (PE) sector has now affirmed its position as an indispensable driver of the national economy.

As of the end of 2023, Vietnam has nearly one million active PEs, employing more than 43 million people, accounting for about 85% of the country's workforce. This sector contributes 46-51% of the country's Gross Domestic Product (GDP) and about 30% of total state budget revenue (Nguyen, 2024). Moreover, with its dynamism and flexibility, PE is at the forefront of creating new products and services, promoting innovation, and enhancing national competitiveness. In order to maintain this growth momentum and reach its full potential, which is considered the lifeline, decide on its capacity to invest in technology, expand production, and compete in the market.

Despite its important role, PE, especially small and medium-sized enterprises (SMEs), account for 98% of all enterprises, but PE is facing a persistent and serious obstacle: difficult access to formal capital (Henschel & Heinze, 2025). A significant barrier still exists: the legitimate need for capital for business activities is not met by the banking and financial system. This situation not only inhibits the development of individual businesses but also negatively impacts Vietnam's macroeconomic growth and stability.

Previous studies in Vietnam have highlighted the difficulties PE faces in accessing capital, often focusing on factors such as business size, financial management capacity, or bank interest rate policies (Huong, 2024; Nguyen *et al.*, 2024). However, one fundamental and far-reaching aspect – the legal framework – has yet to be systematically and comprehensively analyzed. Legal regulations are not static documents; They shape the environment, rules, and costs for all financial transactions. Therefore, inadequacies, omissions, or lack of synchronization in the legal system can be the root cause of barriers to access to capital.

This paper seeks to fill this research gap by focusing on an in-depth analysis of legal aspects. We believe that difficulties in accessing capital are not merely market or internal capacity issues for enterprises but are a direct consequence of inadequate legal frameworks. Accordingly, this study is guided by the central question: *What are the main inadequacies in Vietnam's current legal framework that hinder private enterprises' access to capital, and what specific legal reforms are needed to address these barriers?* To answer this question, the article sets out three specific goals: 1. Systematize the theoretical and practical basis of PE access to capital. 2. Analyze, identify, and evaluate the core shortcomings in Vietnam's legal framework on collateral, credit procedures, information transparency, and dispute resolution. 3. Propose feasible solutions and policy implications to reform the legal framework to create a favorable environment for businesses to access capital.

## 2 THEORETICAL FOUNDATIONS AND LITERATURE REVIEW

### 2.1 Theoretical foundations of corporate finance

The barriers to PE capital access can be explained by classical economic and financial theories.

1. **Asymmetric Information Theory:** Developed by Akerlof, Spence, and Stiglitz (Akerlof & Stiglitz, 2008), this theory holds that in a transaction, one party (e.g., the borrower) generally owns more information than the other (the lender). This leads to two main problems: **unfavorable selection** (the riskiest borrowers are the most active in seeking loans) and **moral risk** (after receiving the loan, the borrower may engage in riskier activities). In response to asymmetric information, banks often require collateral and impose strict credit conditions, inadvertently excluding PEs with good projects but lacking collateral or a transparent credit history;
2. **Dissect Order Theory:** Proposed by Myers and Majluf (1984), this theory suggests that companies prioritize financial resources in a specific order to minimize information costs. First, they use internal funds (retained earnings), then debt, and finally new equity. For PEs, especially for small and medium-sized

enterprises, internal capital sources are often limited, forcing them to turn to debt financing. However, due to asymmetric information, the cost of debt (interest rates, procedures) can be very high, leaving them stranded and unable to grow;

3. **Transaction Cost Economics:** This theory, related to Ronald Coase and Oliver Williamson (2013), argues that every economic transaction incurs costs (including the costs of seeking information, negotiating, contracting, supervising, and enforcing). Complex, opaque, and inefficient regulatory frameworks significantly increase borrowing transaction costs, including due diligence fees, notarization costs, secured interest registration fees, and debt collection costs. When transaction costs are too high, many potential lending transactions will not occur.

These theories provide an important lens through which to understand that legal barriers are not merely administrative regulations; they directly impact the information structure, costs, and risks in the financial markets, which in turn shape PE's access to capital.

## 2.2 Literature review

Challenges in accessing capital for private enterprises, especially small and medium-sized enterprises, have been the subject of extensive study not only in Vietnam but also internationally. A review of these published studies allows us to identify key perspectives, widely recognized findings, and most importantly, the academic gaps that this study aims to address.

### 2.2.1 *The paramount role of legal and institutional frameworks*

Internationally, one school of thought that has been highly influential is "Law and Finance", pioneered by La Porta, Lopez-de-Silanes, Shleifer, and Vishny (commonly known as the LLSV group) in a series of studies from the late 1990s. Their core thesis is that the origin of a country's legal system (e.g., English Common Law vs. French Civil Law) and the level of protection of investor and creditor rights enshrined in the law are fundamental factors that determine the development of that country's financial markets (Porta *et al.*, 1998). Accordingly, a legal system that strongly protects creditors – for

example, through clear collateral regulations and effective debt collection procedures – will encourage credit institutions to be more willing to lend, reduce capital costs, and expand access to credit for businesses.

International organizations such as the World Bank (WB) and the Organisation for Economic Co-operation and Development (OECD) have also always emphasized the importance of institutional foundations for corporate finance. Their report indicates that a vibrant credit market requires three key institutional pillars: (1) Property rights are clearly defined and securely protected, allowing assets to be used as collateral; (2) Effective contract enforcement mechanisms, ensuring that credit agreements are respected and can be enforced; and (3) Transparent information infrastructure, which helps to reduce the problem of asymmetric information (Group, 2017). The empirical study by Beck *et al.* (2005), using large transnational datasets, has provided strong evidence that countries with better creditor protection and more developed credit information systems tend to have more dynamic SME sectors and fewer financial constraints.

However, international studies have also seen more sophisticated developments. Some scholars argue for distinguishing between "**law in books**" and "**law in action**". A legal framework, however perfectly designed in theory, becomes meaningless if the judicial system and enforcement agencies are ineffective (Acemoglu & Johnson, 2005). This emphasizes that the analysis cannot stop at the statutes themselves, but also looks at the mechanisms by which they are implemented.

### 2.2.2 *Research in Vietnam*

In Vietnam, research on access to capital for PE is rich and can be classified into three main groups:

**Analysis from the perspective of lenders (credit institutions):** These studies often focus on risk management and credit due diligence processes in commercial banks. The common argument is that PEs, especially small and medium-sized enterprises, are high-risk customers due to weak corporate governance, non-transparent and unreliable accounting systems, a lack of high-value and legally enforceable collateral, and

unfeasible business plans (Nguyen, 2017). From this perspective, the prudence and strict requirements of banks are reasonable behaviors to protect their capital.

**Analysis from the borrower's perspective (Business):** Studies in this group rely heavily on large-scale surveys to document the difficulties that businesses perceive. The Provincial Competitiveness Index (PCI) report of the Vietnam Chamber of Commerce and Industry (VCCI) is a typical and valuable data source. For many years in a row, the PCI report has shown that "access to credit" remains a major obstacle. Commonly cited barriers include complex and cumbersome lending procedures, exorbitant collateral requirements, unreasonable interest rates and fees, and, at times, informal costs (Son, 2018). The studies of (Nguyen & Luu 2013) and other authors also corroborate these findings.

**Evaluation of Government Support Policies:** This research perspective focuses on analyzing the effectiveness of government programs and policies that support PEs' access to capital, such as the Small and Medium Business Credit Guarantee Fund and preferential interest rate programs. The general conclusion is that these policies have a limited impact, with a low percentage of businesses actually accessing support due to implementation bottlenecks, rigid eligibility criteria, and limited fund resources (Nguyen, 2024).

### *2.2.3 Synthesis and identification of the research gap*

Synthesizing both international and domestic research shows a clear but incomplete picture. Studies in Vietnam have done a great job of describing **the "symptoms"** of the financial gap. We know *what's* going on: businesses lack collateral, banks don't like risk, there are complicated procedures, and support policies are ineffective.

However, there is still a significant research gap. The majority of domestic studies tend to stop at describing these symptoms without systematically analyzing the legal and institutional root causes. While international "Law and Finance" theoretical studies emphasize that legal rules shape actors' behavior in financial markets, few studies in Vietnam rigorously apply this analytical perspective to the contemporary legal context. Questions such as: Why is intangible property difficult to accept as collateral? What

specific provisions in the State Bank's circular create rigidity in credit procedures? What are the inadequacies of the Law on Enforcement of Civil Judgments that make debt collection so prolonged? – There is still a lack of satisfactory answers based on systematic legal analysis. Therefore, this study is determined to fill that gap. This paper will go beyond describing symptoms to diagnose the institutional causes behind them. By systematically analyzing the provisions of the Civil Code, the Law on Credit Institutions, and related guiding documents, this study will provide a legal "reason" that complements the "what" previously established by previous research. This is the core and unique contribution of this article to the field of corporate finance knowledge in Vietnam.

### 3 RESEARCH METHODOLOGY

This study adopts a qualitative approach, mainly based on Theoretical Legal Analysis, and Secondary Data Synthesis and Analysis.

**Theoretical legal analysis:** The authors use this approach to collect, systematize, interpret, and comment on Vietnamese legal documents. The main documents under review include the Civil Code 2015, the Law on Enterprises 2020, the Law on Credit Institutions 2024, the Law on Land 2024, the Law on Securities 2019, and related Decrees and Circulars. The analysis will focus on assessing the clarity, consistency, reasonableness, and feasibility of regulations.

**Synthesis and analysis of secondary data:** To ensure factual relevance, the study uses data from reliable sources such as reports from the General Statistics Office, the State Bank of Vietnam, VCCI, CIEM, international organizations (WB, IFC, IMF), and published academic articles. This data is used to illustrate arguments, demonstrate the impact of legal inadequacies, and provide context for policy recommendations.

This approach combines rigorous legal analysis with relevance to the practical context of the Vietnamese economy.

## 4 FINDING

### 4.1 Current situation and analysis of legal inadequacies hindering capital access

An analysis of Vietnam's regulatory framework reveals that four main groups of issues pose the greatest barriers to PE's access to capital.

#### 4.1.1 Inadequacies in collateral regulation: the dominance of traditional assets

Collateral is the "key" to unlocking bank credit in Vietnam. However, the current legal framework creates a clear bias towards tangible, traditional assets (real estate, machinery) and, at the same time, makes it difficult to use non-traditional assets.

**Legal basis:** *The* Civil Code 2015 (Article 295) stipulates that collateral can be existing or future assets and is not limited to tangible assets. Decree 21/2021/ND-CP also provides detailed guidance on secured transactions, including property rights (such as the right to claim debts and the right to exploit natural resources). In theory, the law is open. However, the regulations related to collateral still have some shortcomings:

1. *Lack of specific regulations for intangible assets:* Although allowed by law, there is a lack of detailed guiding documents on the valuation, registration, and enforcement of high-value intangible assets in the knowledge economy, such as intellectual property rights (trademarks, patents), business exploitation rights (franchise contracts), software value, and customer databases. Lacking a safe, clear legal mechanism for valuing and liquidating these assets in the event of default, credit institutions almost never accept them as independent collateral. This is a serious disadvantage for startups, technology companies, and service businesses whose greatest value lies in intellectual capital rather than factories and land;
2. *Complicated and high procedural costs:* The registration and enforcement process for collateral, especially real estate, is cumbersome, time-consuming, and expensive (notarization fees, security transaction registration fees, appraisal fees). According to the PCI 2023 survey, 35.8% of businesses cite a lack of collateral as the main reason they cannot borrow capital. This number reflects both the lack of

assets and the assets they have that do not meet the requirements, or whose processes are too complex;

3. *Problems with future-formed assets:* Although the Civil Code 2015 allows mortgages of future-formed assets (Article 318), implementation faces many obstacles. For example, in real estate projects, the determination of the time required to register a secured transaction and the mechanism for handling issues when the project encounters difficulties are unclear, creating legal risks for both the lender and the borrower.

The over-reliance on traditional assets due to these inadequacies has created a harsh "filter" that excludes a large number of potential PEs that lack real estate. It distorts capital allocation, causing capital to flow into fixed-asset-intensive industries rather than knowledge-intensive and creative industries.

#### *4.1.2 Inadequacies in credit extension conditions and procedures: inflexibility and high transaction costs*

The regulations of the State Bank of Vietnam (SBV) and the internal procedures of credit institutions (CIs) are often built on a standard model, lacking flexibility to accommodate the diverse characteristics of PE.

**Legal basis:** Circular 39/2016/TT-NHNN (amended by Circular 06/2023/TT-NHNN) is a central legal document regulating lending activities of credit institutions. Article 7 of this Circular requires borrowers to demonstrate financial capacity, have a feasible plan for using capital, and demonstrate their ability to repay debts. Some inadequacies in credit conditions and procedures include:

1. *"One Size Fits All" Approach:* The requirements for loan applications (audited financial statements, detailed business plans, proof of cash flow) are often overwhelming for small and medium-sized, and micro-businesses. These businesses often have simple accounting systems, operate on a family model, and it is difficult to develop a formal business plan that meets banking standards. The rigid application of standards designed for large corporations has inadvertently pushed small businesses out of the formal credit channel;

2. *Conflict between preferential policies and access conditions:* The Government and the SBV regularly issue interest rate support policies for priority sectors or small and medium-sized enterprises. However, credit institutions are responsible for capital safety, and often do not relax conditions on collateral or credit appraisal. As a result, many PEs eligible for incentives do not meet the conditions for accessing loans, making the policy ineffective;
3. *Informal transaction costs:* In addition to formal costs, complex, opaque due diligence processes can create loopholes for informal costs, increasing the total cost of borrowing and creating an uneven playing field.

These rigid regulations and procedures increase transaction costs, lengthen waiting times, and reduce PE's access to capital. This forces them to turn to informal channels such as "black credit," which carry exorbitant interest rates and extremely high legal risks, pushing them into a vicious cycle of debt.

#### *4.1.3 Inadequacies in information transparency: the asymmetric information problem*

The lack of an effective regulatory mechanism to promote and enforce financial transparency among PEs has exacerbated asymmetric information in the credit market.

**Legal basis:** The Law on Accounting and Vietnam Accounting Standards (VAS) regulates the preparation and presentation of financial statements. The Vietnam National Credit Information Center (CIC) under the State Bank is responsible for collecting and providing credit information on borrowers. The inadequacies of information transparency are expressed as follows:

1. *Lack of effective incentives and sanctions:* Current legislation lacks sufficiently strong sanctions or incentives (e.g., tax breaks, interest rate reductions) to encourage businesses to voluntarily comply with accounting standards and honestly disclose their financial statements. Many credit institutions still maintain a dual accounting system: one for the tax authorities and one for internal management, leaving credit institutions without a reliable basis to assess their financial health;
2. *Limitations of credit information systems:* Despite many efforts, databases on PE, especially for microenterprises and start-ups, remain thin and often out of date.

This makes it difficult to widely apply modern credit scoring models. In the absence of reliable information, CIs are forced to revert to the safe option of relying on collateral;

3. *High Compliance Costs:* For small and medium-sized businesses, the cost of hiring independent auditors or building a professional accounting system is a significant burden, making them reluctant to adopt transparency measures.

This "lack of information transparency" forces credit institutions to increase their due diligence costs and to apply higher "risk premiums" to PE interest rates. It also creates a vicious circle: businesses are not transparent, so they are not allowed to borrow capital; And because they can't get loans, they lack the resources to improve governance and transparency.

#### *4.1.4 Inadequacies in dispute resolution and debt recovery mechanisms: risks for lenders*

An effective legal system must not only facilitate contract formation but also ensure contract performance and the prompt disposal of assets in the event of disputes.

**Legal basis:** Civil Procedure Code, Law on Enforcement of Civil Judgments, Law on Credit Institutions 2024. Inadequacies in dispute resolution and debt collection mechanisms include:

1. *End of the Special Bad Debt Settlement Mechanism:* Resolution 42/2017/QH14 on piloting the handling of bad debts, including special provisions allowing credit institutions to quickly seize collateral, expires on January 1, 2024. Although the Law on Credit Institutions 2024 has codified part of the Resolution's spirit, the right to seize assets is no longer as strong as before;
2. *Litigation and judgment enforcement procedures are prolonged:* If there is no special mechanism, the handling of collateral to recover bad debts must return to the normal civil procedure and judgment enforcement process. The process is notoriously complicated, expensive, and lengthy, and can take several years to complete. This delay erodes asset values and increases the cost of capital for credit institutions;

3. *Inefficiency of enforcement agencies*: The capacity and sometimes overload of enforcement agencies also pose obstacles, slowing down the process of liquidating assets and collecting debts for banks.

The increased risk in debt collection makes credit institutions more cautious in granting credit. They will prioritize large, reputable clients with high-quality assets, while further tightening lending conditions for PE, especially for unsecured or non-traditional collateral loans.

## 4.2 Discussion and policy implications

Based on the above analysis, unlocking capital for small businesses requires a comprehensive, coordinated legal reform program.

### 1. *Modernize the Secure Transaction Framework*

*Adequate regulations on intangible assets and property rights*: It is necessary to issue a joint circular or decree (between the Ministry of Justice, the Ministry of Science and Technology, and the SBV) to provide detailed guidance on procedures for valuation, registration, and enforcement of collateral that is intellectual property or other ownership rights. The development of professional valuation organizations for these types of assets should be encouraged.

*Simplify and digitize registration procedures*: Develop a centralized, online, easy-to-search national secure transaction registration system. This will reduce time and costs, increase transparency, and prevent the risk of an asset being pledged multiple times.

### 2. *Promoting flexible and risk-based lending mechanisms*

*Develop differentiated credit regulations*: The SBV should study and issue guidelines that allow credit institutions to apply more flexible appraisal criteria and procedures tailored to different business segments (micro, small, medium).

*Encourage lending based on cash flow and credit scoring*: Create an incentive mechanism (e.g., reduce the risk provision ratio) for credit institutions to develop and apply lending products based on cash flow analysis, business history, reputation, and modern credit scoring models. Instead of relying solely on collateral.

*Developing a regulatory corridor for FinTech and P2P Lending:* Establishing a clear regulatory framework to regulate and promote financial technology (FinTech) companies in providing innovative credit solutions for PE.

### 3. *Improving the Information Infrastructure and Transparency Mechanisms*

*Create incentives for transparency:* Offer specific tax incentives (e.g., CIT reductions) and interest rate reductions to PEs that perform independent financial audits and disclosures.

*Upgrade the National Credit Information Center (CIC):* Expand the scope of CIC's data collection to include not only credit institutions but also tax authorities, social insurance agencies, and utility companies (electricity, water). Apply Big Data and Artificial Intelligence (AI) to build more accurate credit scoring models.

*Encourage private credit rating organizations:* Facilitate the establishment and operation of private credit rating agencies to promote a more diverse and competitive information market.

### 4. *Enhancing the Efficiency of Dispute Resolution and Debt Recovery*

*Re-establish an effective bad debt handling mechanism:* It is necessary to study and learn from the experience of Resolution 42 to systematize necessary and appropriate regulations into relevant laws (the Law on Enforcement of Civil Judgments and the Civil Procedure Code) to create a mechanism for quick debt recovery while still protecting borrowers' legitimate interests.

*Promote alternative dispute resolution (ADR):* Strengthen the legal framework and encourage the use of commercial mediation and arbitration to resolve credit disputes. These methods are typically faster, more flexible, and less expensive than litigation.

*Capacity building of the judiciary:* Enhancing professional training and development for judges and judgment enforcement officers on complex banking and financial issues.

### 5. *Developing Alternative Capital Mobilization Channels*

*In addition to bank credit, other capital channels should be developed, such as* researching a model for a stock exchange dedicated to SMEs with more flexible listing requirements; restructuring and improving the efficiency of local Credit Guarantee Funds for SMEs by simplifying procedures and increasing financial resources; and completing

the legal corridor to encourage the growth of venture capital funds and crowdfunding platforms.

## 5 CONCLUSION

The private sector is an indispensable driver of Vietnam's economy, but its potential is limited by financial barriers. This study argues and demonstrates that this gap is not merely a failure of the market but stems from systemic inadequacies within the national legal framework. By analysing four key areas – collateral, credit procedures, information transparency, and dispute resolution – the paper identified legal bottlenecks that hindered the effective allocation of capital to the PE sector.

The main contribution of this study lies in the systematic analysis that connects specific legal loopholes to the macro-level problem of inefficient capital allocation. In practical terms, the study provides policymakers with a concrete and targeted reform roadmap.

However, this study also has certain limitations. Firstly, the analysis relies heavily on secondary data and doctrinal legal analysis; Future research may use quantitative methods to measure the economic impact of these regulatory barriers. Secondly, the PE sector is very diverse; Further studies can conduct a more detailed analysis of the disparate impact of regulatory barriers on companies in different industries, sizes, and regions.

Despite these limitations, the findings underscore the urgent need for a comprehensive legal reform program. Only through concerted efforts and determination to modernize the financial regulatory framework can Vietnam truly unlock the enormous potential of the private sector and ensure a sustainable and inclusive economic growth path.

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### **Authors' Contribution**

All authors contributed equally to the development of this article.

### **Data availability**

All datasets relevant to this study's findings are fully available within the article.

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