

# NEW POINTS OF VIETNAM LEGAL FRAMEWORK THE PUSH OR CHALLENGE FOR M&A MARKET?

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# NEW POINTS OF VIETNAM LEGAL FRAMEWORK – THE PUSH OF CHALLENGE FOR M&A MARKET

1. Overview on legal framework for M&A
2. Important changes and analysis of their impacts on M&A transactions

# CONTENTS

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# 1. OVERVIEW

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## M&A Activities



Purchasing contributed capital/shares



Capital Admission/Purchase of newly-issued shares



Merger/Consolidation/  
Division/Split of enterprises



Purchase and sale of assets

# 1. OVERVIEW

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## Legal framework for M&A

Investment Law

Investment project

Enterprise Law

Capital contribution, shares

Securities Law

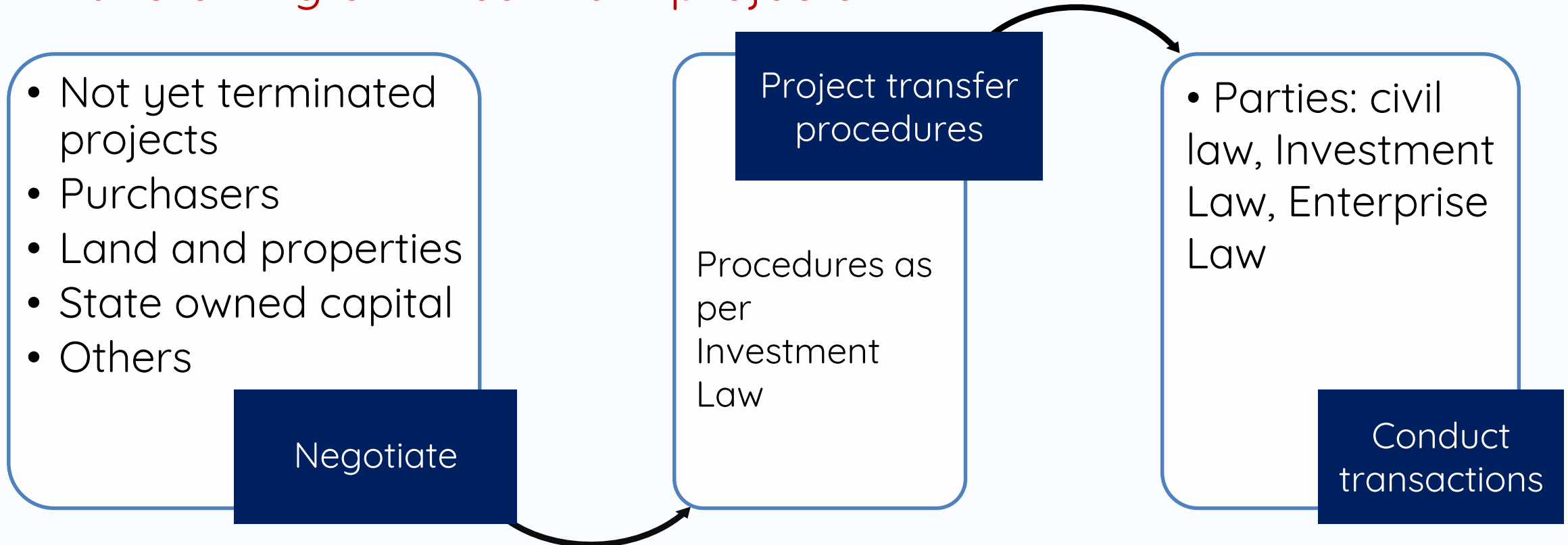
Securities

Competition Law

Economic concentration

# Investment Law

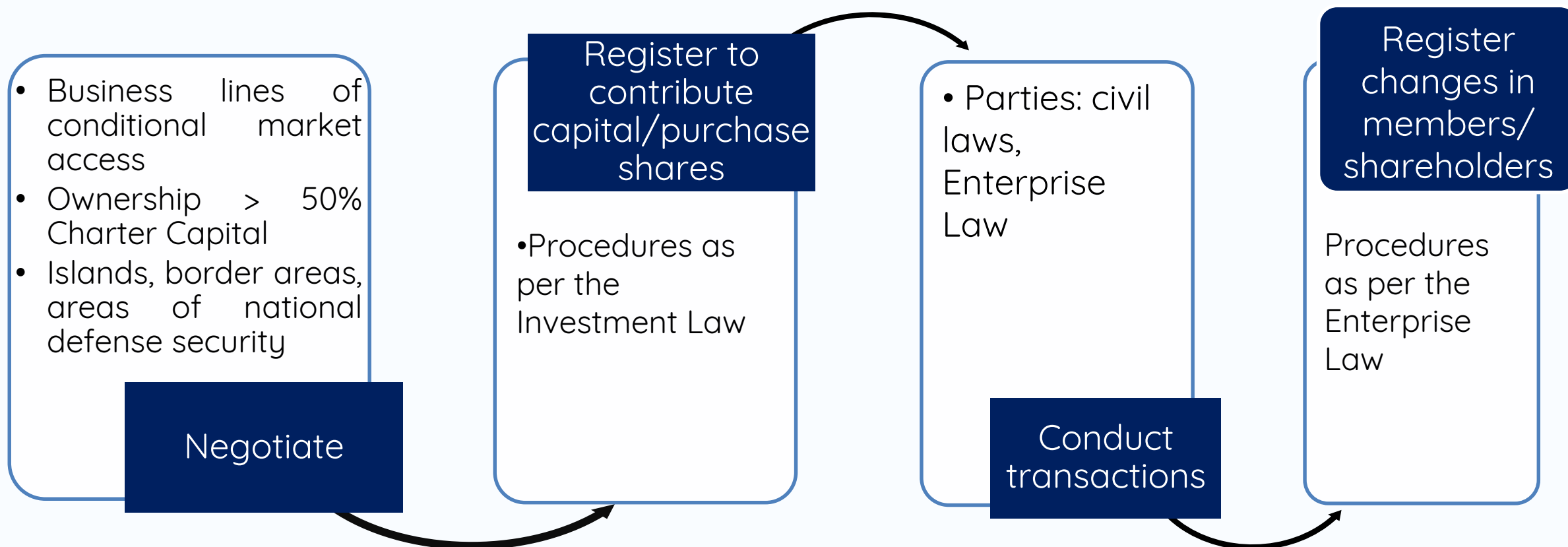
## Transferring of Investment projects





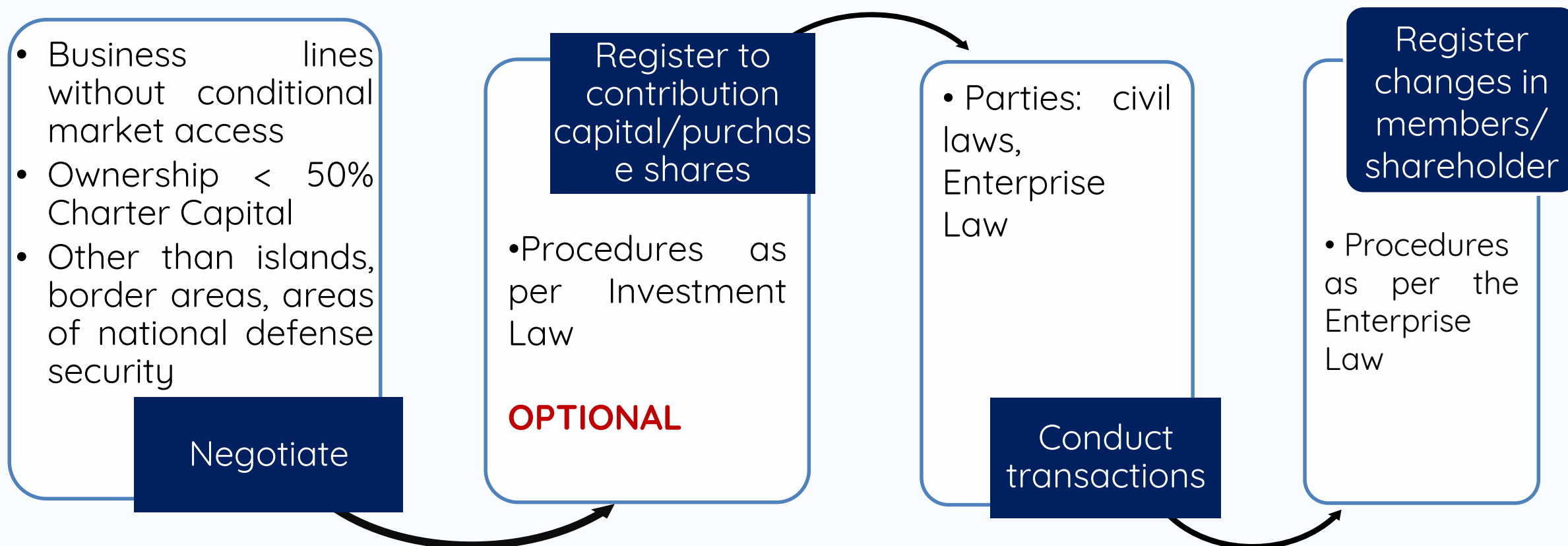
# Investment Law

## Transferring shares and capital contribution to FIs



# Investment Law

## Transferring shares and capital contribution to FIs





# ENTERPRISE LAW

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Transferring capital  
contribution and shares



Parties: civil and  
commercial laws

Negotiate



Parties: Internal  
procedures as per Charter  
and Enterprise Law

Complete

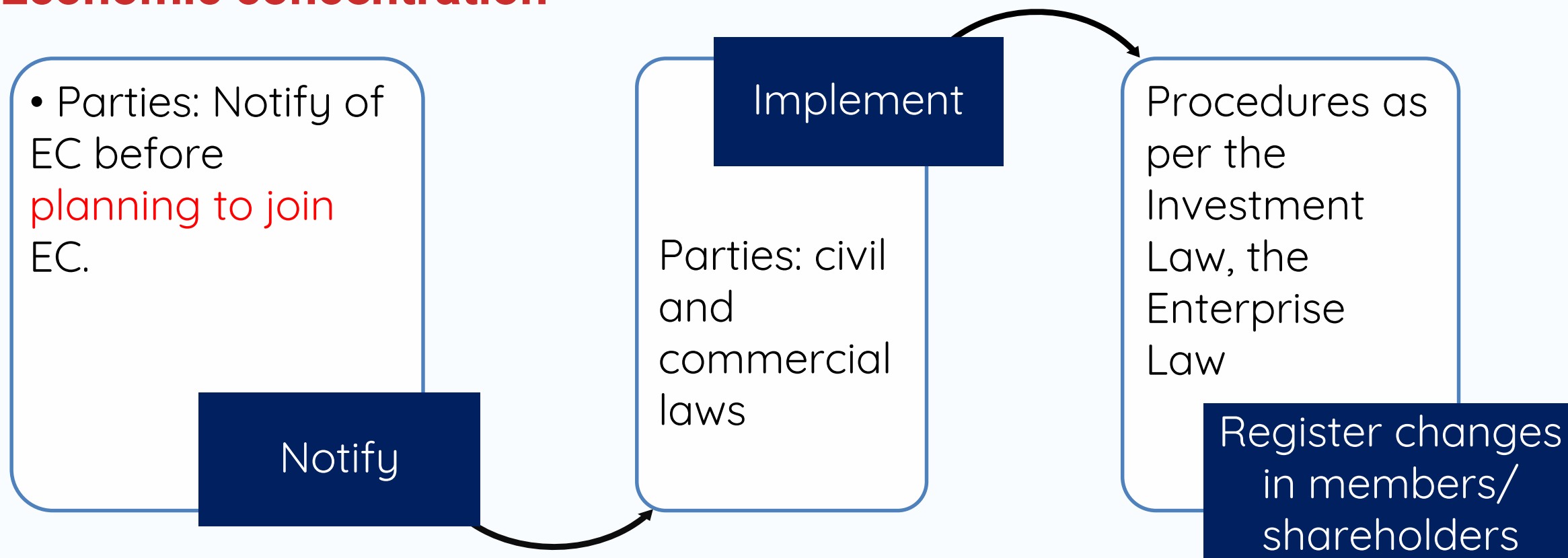


Procedures as per  
Enterprise Law

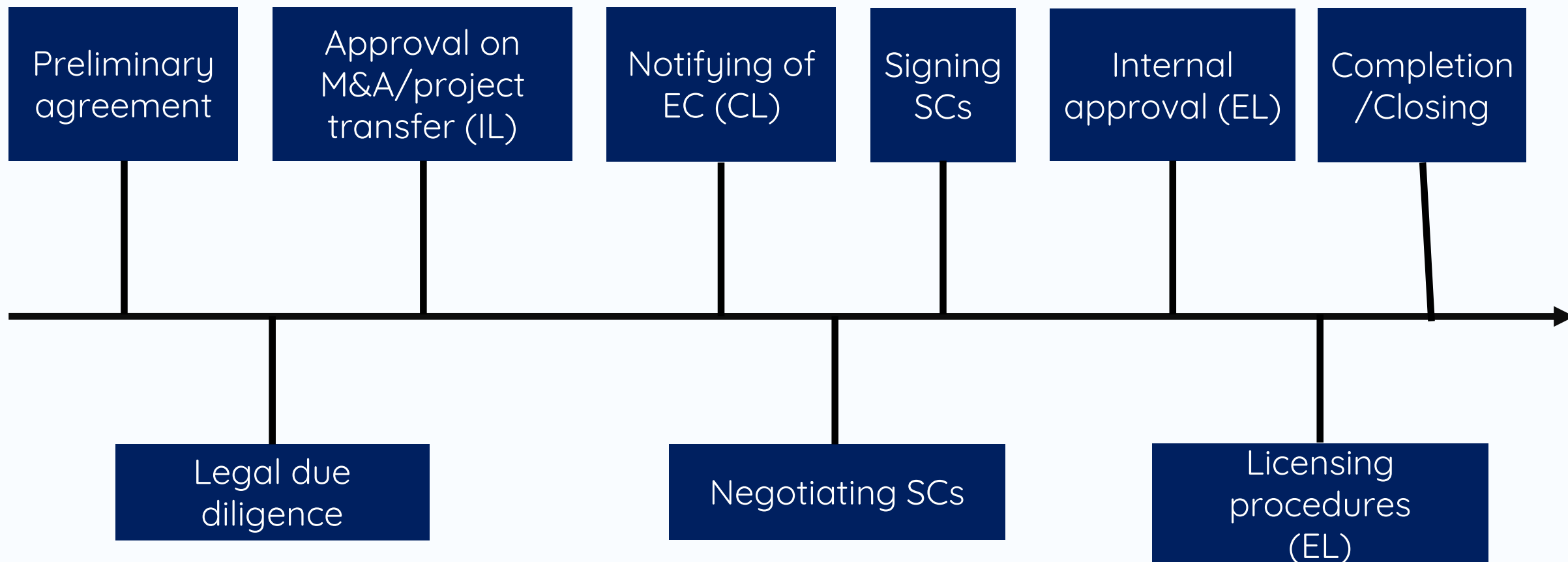
Register changes in  
members/ shareholders

# Competition Law

## Economic concentration



# OVERVIEW



## CONDITIONAL MARKET ACCESS FOR FIs ("List-or-Lose Technique" or "Negative list")

Business lines with market access limitation for FIs:

- a) Business lines that market access is not available;
- b) Business lines with conditional market access.

### ANALYSIS OF IMPACTS

- The investment areas by FIs are clear and transparent.
- The List-or-Lose Technique/Negative list expands the market access opportunities for FIs.

## 2. KEY CHANGES

# KEY CHANGES

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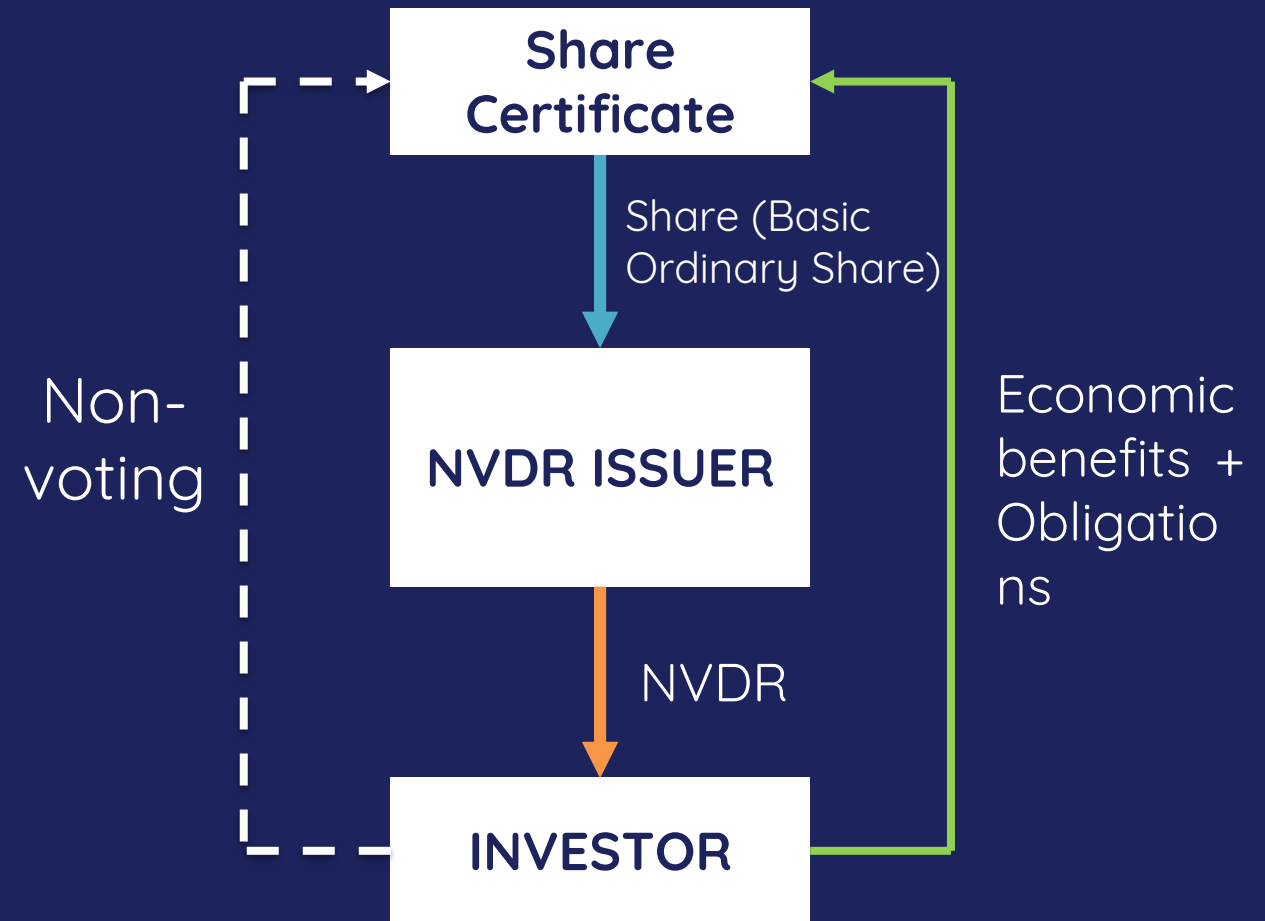
## Strengthening Investors Protection Measures

- Perfecting organizational structure of joint stock company as per international best practice (Audit Committee, Company Secretary, etc.)
- Enhancing shareholders rights in taking legal actions against managers.
- Prescribing more responsibilities and accountabilities for managers.

# Key Changes

## Non-voting Depositary Receipts

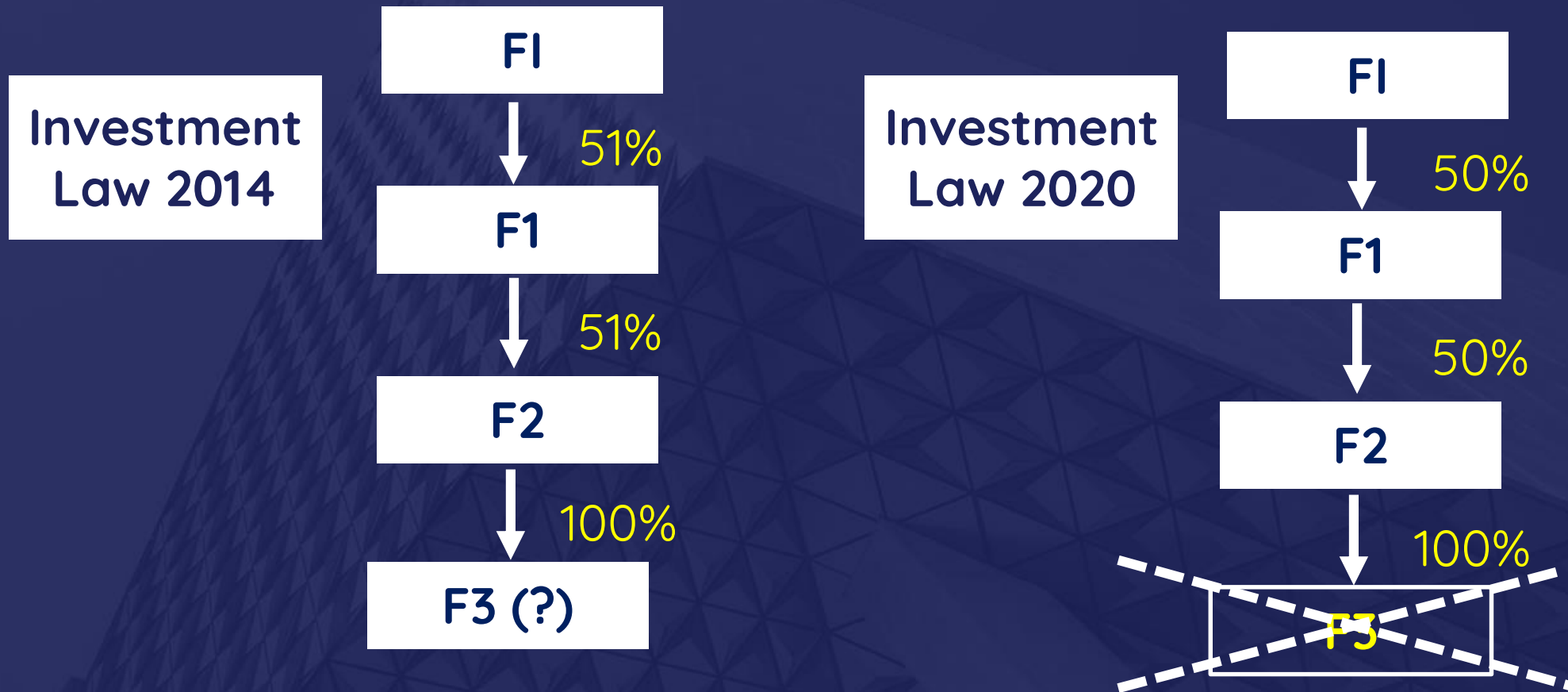
Holders do not have the right to vote but have economic benefits and obligations corresponding to their basic ordinary shares.





# Technical Changes

## Foreign Invested Economic Organizations



# Technical Changes

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## ANALYSIS OF IMPACTS

- Compatible with Enterprise Law
- Putting an end to the controversy about investment procedures for F3 enterprises onwards?

# Technical Changes

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## CONDITIONS FOR FIs TO CONTRIBUTE CAPITAL OR PURCHASE SHARES

- Increasing **ownership ratios** of FIs in economic organizations conducting business lines of conditional market access for FIs;
- Resulting in FIs **holding over 50% of CC** and increasing the percentage of ownership of CC by FIs when they **already hold over 50% of CC**;
- Upon contributing capital, purchasing shares or contributed capital of EOs which have LURCs in **islands and border or coastal communes, wards and towns**; other areas affecting **national defense and security**.

# Analysis of impacts

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- Not required to conduct investment procedures upon transferring contributed capital or shares between FIs but not increasing the ownership percentage of FIs.
- What does it mean by “prejudicing or causing prejudice to national defense and security”? What about “other areas affecting national defense and security”?
- Coordinative mechanism for assessing the impact on national defense and security?
- Implementation issues: “Selecting” investors, conditions on technology, environment, intensive exploitation of natural resources.

# Right to transfer, merge or split investment projects

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## ANALYSIS OF IMPACTS

- Establishing the legal framework for transferring, merging, or splitting projects in the Investment Law.
- Centralizing all functional power in the investment licensing authority.

# Forced termination of projects due to sham transactions

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## PRACTICAL APPLICATION:

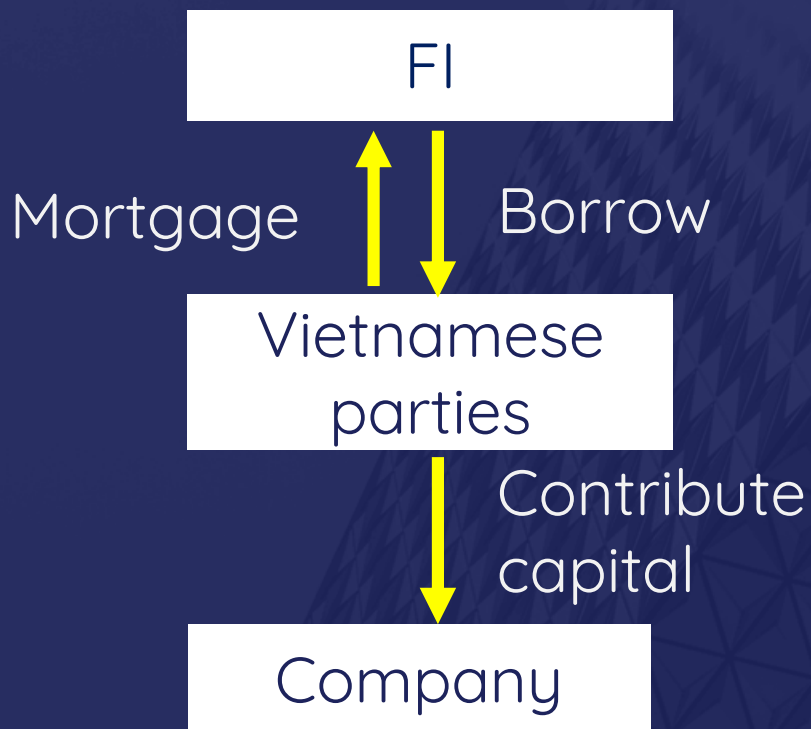
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The licensing authorities require enterprises to provide explanations on land documents when approving M&A transactions for fear of “disguised investment”?



# Technical Changes

## ANALYSIS OF IMPACTS



Criteria for identifying a sham transaction?

Competence for determining a sham civil transaction?

Risks for licensing authorities?



Merging enterprises;



Consolidating enterprises;



Acquiring enterprises;



Joint ventures among enterprises;

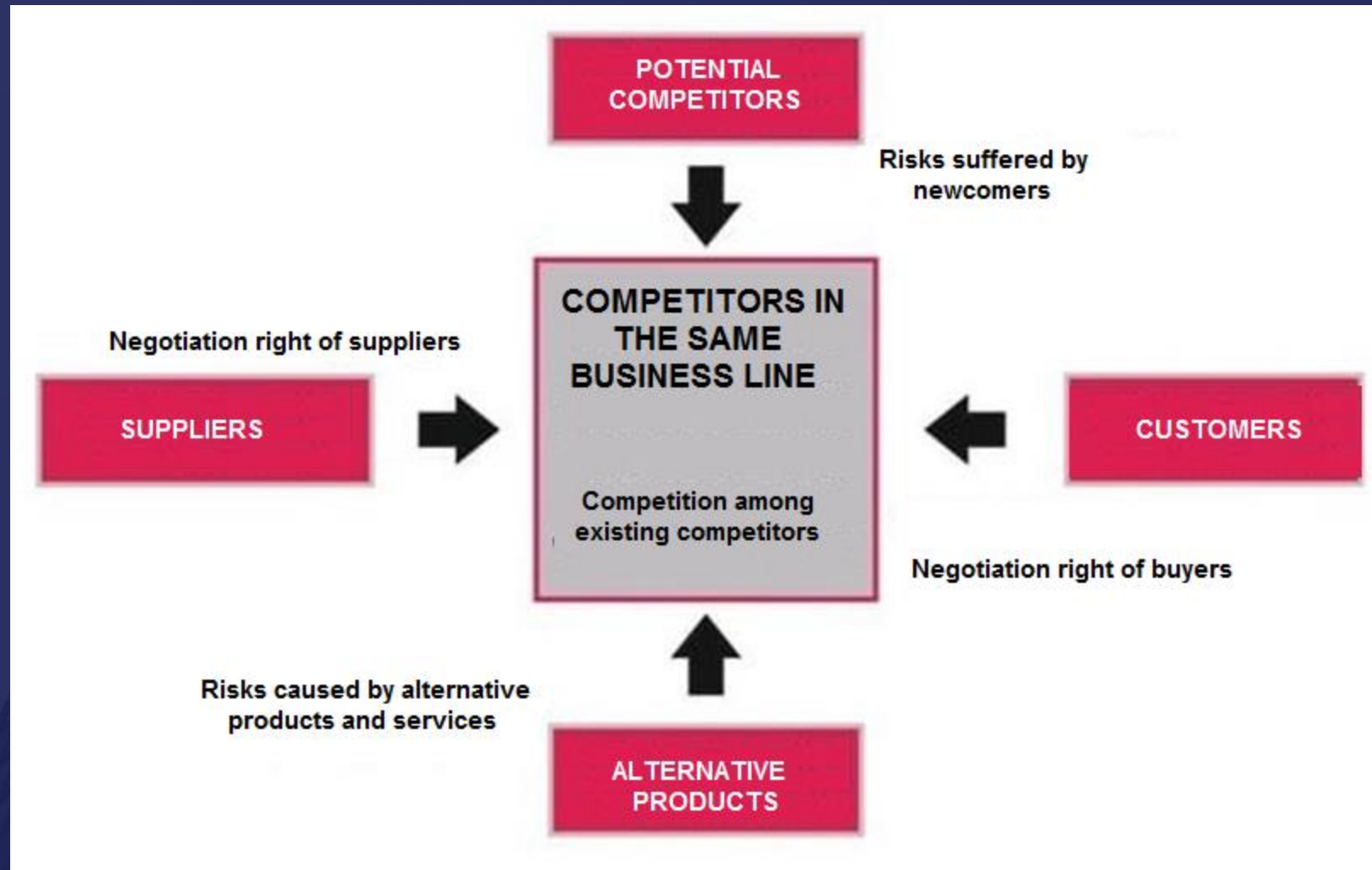


Other forms of economic concentration.

# ECONOMIC CONCENTRATION

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# FIVE FORCES OF COMPETITION MODEL (MICHAEL PORTER)



# KEY CHANGES

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The CL 2018 changes its approach in controlling economic concentration (from “market share” to “elimination of potential competition”).



The tendency of switching from “Illegal per se rule” to “Rule of reason”.



Direct effects on M&A transactions: Economic concentration notification thresholds.

# DECREE 35/2020

## THRESHOLDS FOR NOTIFICATION OF ECONOMIC CONCENTRATION

### Notifying of EC

Total assets (in VN) from VND3,000 billion

Total sales or purchases (in VN market)  
from VND3,000 billion

Transaction value in economic  
concentration **from VND1,000 billion**

Combined market share of the involved  
enterprises **from 20%** in the relevant  
markets

## Analysis of impacts:

- Economic concentration notification threshold is relatively low - What can the competition policy of Vietnam point out?
- National Competition Commission not yet been established.
- Rights of National Competition Commission.
- Cost and time for transactions.
- Conditions for finalizing transactions.



# THANK YOU

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