Corporate Governance Manual 2025

State Securities Commission of Vietnam

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Corporate Governance

Manual

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International Finance Corporation (IFC) — a member of the World Bank Group — is the largest global development institution focused on the private sector in emerging markets. We work in more than 100 countries, using our capital, expertise, and influence to create markets and opportunities in developing countries. In fiscal year 2024, IFC committed a record US$56 billion to private companies and financial institutions in developing countries, leveraging private sector solutions and mobilizing private capital to create a world free of poverty on a livable planet. For more information, *visit www.ifc.org*.

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The Viet Nam Corporate Governance Manual (the Manual) was originally commissioned by IFC and the SSC as part of the Viet Nam Corporate Governance Program that IFC implemented in Viet Nam since 2008. With the issuance of the Enterprise Law (2020), the Securities Law (2019) in Viet Nam and the promulgation of the G20/OECD Corporate Governance Principles in 2023, revision of the Manual was necessary. As such, this Manual provides updated comprehensive corporate governance-related knowledge as well as experiences, local and international, to help public companies improve their corporate governance practices. This updated version was developed under the Viet Nam Integrated Environmental, Social, Governance (ESG) Program supported by the Swiss State Secretariat for Economic Affairs (SECO) and within the cooperation framework between the SSC and IFC with the aim of promoting sustainable business standards and green financing towards a low-carbon economy in Viet Nam.

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State Securities Commission of Vietnam

FOREWORD

After 25 years' development, Viet Nam's stock market has become an important medium- and long-term source of capital to drive the economy and national socio-economic development. Featuring just three listed companies at the stock market's inception in 2000, 25 years later it is home to nearly 1,800 public and listed enterprises with a capitalization of VND7,066 trillion, with an average daily trading value of about US$1 billion.

In step with development of the stock market, public and listed companies are also displaying strong growth – particularly those with foreign partners as strategic investors. Against this backdrop, corporate governance remains a critical issue for market participants. Good corporate governance not only promotes and achieves operational and business efficiency, it unlocks access to capital markets, reduces capital costs and increases asset values of companies, while also enhancing their reputation. Therefore, when drafting the Securities Law in 2019, the State Securities Commission proposed a group of policies on corporate governance to legally formalize corporate governance requirements, in accordance with the G20/OECD Principles of Corporate Governance 2015, to enhance the transparency and professionalism of public companies.

As the capital market regulator accountable for developing and supervising the stock market's journey towards international standards and best practices in corporate governance, the State Securities Commission in partnership with IFC, supported by the Swiss State Secretariat for Economic Affairs (SECO), has published this 2025 edition of the Corporate Governance Manual. This latest iteration provides timely and important updates and features the latest international corporate governance best practices to support Vietnamese public companies in enhancing their corporate governance knowledge and practices.

In the coming time, with its development roadmap towards integration with international standards, improving corporate governance will become even more critical than ever if Viet Nam's stock market is to transition from a frontier to an emerging market. This means enterprises must apply and uphold the best corporate governance practices to enhance management efficiency and protect the interests of shareholders.

We believe this Manual will serve as a valuable corporate governance tool for corporate leadership to improve operational efficiency and maximize the use of resources in business. Public and listed companies are recommended to refer to the knowledge and best practice examples featured in this Manual as models for organizing and operating companies. Public companies have a key role to play in implementing corporate governance principles and helping capital market regulators strengthen the application of international corporate governance standards and best practices. Together, this will ensure transparency and fairness in the securities market, thereby improving the quality of securities traded and attracting more capital into this important channel for national development.

Vu T. Chan Phuong
SSC Chair

FOREWORD

As a global investor, IFC has witnessed first-hand the critical role that good corporate governance plays in improving long-term company performance and overall private sector development. High standards of governance contribute to more effective Boards and better management, which can lead to improved decision-making, better operational efficiency, and reduced risk. This, in turn, can help companies attract investment, strengthen shareholder value, and mitigate potential threats. Sound governance standards must be important underpinnings of Viet Nam's capital market, which serve as a crucial enabler of the country's continued economic growth.

As Viet Nam sets out on its transition to a low-carbon economy, a host of sustainability-related issues are driving risks and unlocking opportunities for all business leaders. Boards of directors play a vital role in providing leadership at the highest corporate level to navigate around and resolve sustainability challenges. To provide effective oversight of a company, Board members can best meet their fiduciary duty by first ensuring they understand their company's sustainability strategy and performance, before providing appropriate strategic oversight and course corrections as needed.

By updating this Manual, we want to contribute to the growing body of literature on the topic of corporate governance in Viet Nam. We hope that this Manual will be used by shareholders, managers and Board members to recognize the benefits that good governance can bring to your company.

I hope this Manual will be part of your corporate governance journey towards improved governance standards and practices and, ultimately, reduced risk and the long-term prosperity of your business.

Looking ahead, by adopting the best practice examples in this Manual, you will also have an opportunity to help lead the market and demonstrate that good governance is the key to unlocking a future of sustainable growth and shared success.

Thomas J. Jacobs
IFC Country Manager for Viet Nam, Lao PDR and Cambodia

Purpose and Target Audience

This Manual provides executives, and shareholders of Vietnamese public companies with a comprehensive summary of the corporate governance framework and practices prevalent in Viet Nam today. Importantly, this Manual also features international best practices and knowledge to serve as a practical toolkit to support companies in their corporate governance journey. This 2025 edition of the Manual provides readers with important updates from the fields of global corporate governance best practices and Viet Nam's legislative environment, including:

- A fresh overview of the legislative and regulatory requirements related to corporate governance and internationally recognized corporate governance principles.
- Recommendations on how to fulfill the evolving governance obligations of public and listed companies.
- Practical examples of how corporate governance standards can be implemented in today's environment, and guidance for executives and directors in meeting their obligations with respect to the governance of the enterprise.
- General outlines of authorities, obligations, and procedures of the governing bodies of public and listed companies.

This Manual also provides government officials, lawyers, judges, investors and others with a framework for assessing the level of corporate governance practices in Vietnamese and Viet Nam-based companies. Finally, it serves as a reference tool for educational institutions that will train the next generation of Vietnamese managers, investors, and policy makers on good corporate governance practices.

How to Use this Manual

This Manual is divided into 13 chapters:

Chapter 1: An Introduction To Corporate Governance

Chapter 2: Company Governance Structure

Chapter 3: Internal Corporate Documents

Chapter 4: An Introduction to Shareholder Rights

Chapter 5: General Meeting of Shareholders

Chapter 6: Board of Directors

Chapter 7: Management Board

Chapter 8: Corporate Secretary

Chapter 9: Control Environment

Chapter 10: Information Disclosure

Chapter 11: Related Party Transactions

Chapter 12: Dividends

Chapter 13: Charter Capital

The 13 chapters of the Manual focus on key corporate governance issues. All issues are closely examined through Vietnamese law and regulations and when applicable, internationally recognized best practices. While it is recommended to read the entire Manual to gain a full understanding of the corporate governance framework in Viet Nam, it is not necessary to read all the chapters in chronological order. The reader is encouraged to begin with a topic of interest and follow the links and references included in the text for guidance to other chapters.

Examples, illustrations and checklists are included to make the Manual clear and user friendly. The following tools will reappear at various intervals in the text:

The Chairperson's Checklist

- Intended to help the Chair of the Board of Directors focus Board discussions on key corporate governance issues faced by companies.

Best Practices

- Best Practices summarizes OECD Principles of Corporate Governance, as well as leading national standards from other countries.

List of References (with Abbreviations)

Law on Credit Institutions 2024	Law No. 32/2024/QH15 (January 18, 2024) of the National Assembly on credit institutions.
Law on Credit Institutions 2017	Law No. 17/2017/QH14 (November 20, 2017) of the National Assembly on amending and supplementing a number of articles of the Law on Credit Institutions.
Law on Credit Institutions 2010	Law No. 47/2010/QH12 (June 29, 2010) of the National Assembly on credit institutions.
Penal Code 2017	Law No. 12/2017/QH14 (June 20, 2017) of the National Assembly on amending the Penal Code No. 100/2015/QH13.
Penal Code 2015	Law No. 100/2015/QH13 (November 27, 2015) of the National Assembly on the Criminal Code.
Law on Competition 2018	Law No. 23/2018/QH14 (June 12, 2018) of the National Assembly on competition.
Labor Code 2019	Law No. 45/2019/QH14 (November 20, 2019) of the National Assembly on Labor Code.
Law on Intellectual Property 2005	Law No. 50/2005/QH11 (December 12, 2005) of the National Assembly on intellectual property.
Law on Securities (LOS) 2019	Law No. 54/2019/QH14 (November 26, 2019) of the National Assembly on securities.
Law on Securities (LOS) 2006	Law No. 70/2006/QH11 (June 29, 2006) of the National Assembly on securities.
Law on Enterprises (LOE) 2020	Law No. 59/2020/QH14 (June 17, 2020) of the National Assembly on enterprises.
Law on Enterprises (LOE) 2014	Law No. 68/2014/QH13 (November 26, 2014) of the National Assembly on the enterprises.
Law on Bankruptcy (LOB) 2014	Law No. 51/2014/QH13 (June 19, 2014) of the National Assembly on bankruptcy.

Law on Independent Audit (LOIA) 2011	Law No. 67/2011/QH12 (March 29, 2011) of the National Assembly on independent audits.
Law on Accounting (LOA) 2015	Law No. 88/2015/QH13 (November 20, 2015) of the National Assembly on accounting.
Law on Insurance Business 2010	Law No. 61/2010/QH12 (December 6, 2011) of the National Assembly amending and supplementing a number of articles of the Law on Insurance Business.
Law on Insurance Business 2000	Law No. 24/2000/QH10 (December 9, 2000) of the National Assembly on insurance business.
	Law No. 42/2019/QH14 (June 14, 2019) of the National Assembly on amending and supplementing a number of articles of the Law on Insurance Business and the Law on Intellectual Property.
Decree 01	Decree No. 01/2021/ND-CP (January 4, 2021) of the Government on enterprise registration.
Decree 47	Decree No. 47/2021/ND-CP (April 1, 2021) of the Government detailing a number of articles of the Law on Enterprises.
Decree 128	Decree No. 128/2021/ND-CP of the Government (December 30, 2021) amending and supplementing a number of articles of Decree No. 156/2020/ND-CP (December 31, 2020) on sanctioning of administrative violations in the domains of securities and securities market.
Decree 140	Decree No. 140/2020/ND-CP of the Government (November 30, 2020) on amending and supplementing a number of articles of Decree No. 126/2017/ND-CP (November 16, 2017) on transformation of State enterprises and single member limited liability companies with 100 percent State enterprise-invested charter capital into joint stock companies. Decree No. 91/2015/ND-CP (October 13, 2015) on investment of

	State capital in enterprises and management and use of capital and assets at enterprises and Decree No. 32/2018/ND-CP (March 8, 2018) on amending and supplementing a number of Articles of Decree No. 91/2015/ND-CP.
Decree 153	Decree No. 153/2020/ND-CP of the Government (December 31, 2020) on private placement of corporate bonds and trading of privately placed corporate bonds in the domestic market and offering of corporate bonds to the international market.
Decree 155	Decree No. 155/2020/ND-CP of the Government (December 31, 2020) on detailing and guiding implementation of a number of articles of the Law on Securities.
Decree 156	Decree No. 156/2020/ND-CP of the Government (December 31, 2020) on providing for the sanctioning of administrative violations in the domains of securities and securities market.
Decree 158	Decree No. 158/2020/ND-CP of the Government (December 31, 2020) on derivatives and the derivatives market.
Decree 05	Decree No. 05/2019/ND-CP (January 22, 2019) of the Government on internal audits
Decree 80	Decree No. 80/2019/ND-CP of the Government (November 1, 2019) on amending and supplementing a number of articles of Government Decree No. 73/2016/ND-CP (July 1, 2016), detailing the Law on Insurance Business and the Law Amending and supplementing a number of articles of the Law on Insurance Business and Government Decree No. 98/2013/ND-CP (August 28, 2013), on sanctioning of administrative violations in insurance business and lottery business, which had a number of articles amended and supplemented under Government Decree No. 48/2018/ND-CP (March 21, 2018).

Decree 41	Decree No. 41/2018/NĐ-CP (March 12, 2018) of the Government on penalizing administrative violations in accounting and independent audits.
Decree 131	Decree No. 131/2018/ND-CP of the Government (September 29, 2018) on defining functions, tasks, powers and organizational structure of the commission for the management of State capital at enterprises.
Decree 151	Decree No. 151/2018/ND-CP of the Government (November 7, 2018) on amendments to some decrees on business conditions under the management of the Ministry of Finance.
Decree 93	Decree No. 93/2017/ND-CP of the Government (August 7, 2017) regarding the financial regime for credit institutions, foreign bank branches and financial supervision, evaluation of efficiency of State capital investment in credit institutions with 100 percent charter capital held by the State and the State-owned credit institutions.
Decree 126	Decree No. 126/2017/ND-CP (November 16, 2017) of the Government on conversion from State-owned enterprises and single-member limited liability companies with 100 percent of charter capital invested by State-owned enterprises into joint stock companies.
Decree 84	Decree No. 84/2016/ND-CP of the Government (July 1, 2016) defining criteria and conditions for certified public accountants and audit organizations.
Decree 73	Decree No. 73/2016/ND-CP of the Government (July 1, 2016) on details of implementation of the Law on Insurance Business and the Law on Amendments to certain articles of the Law on Insurance Business.

Decree 17	Decree No. 17/2012/ND-CP (March 13, 2012) of the Government detailing and guiding implementation of a number of articles of the Law on Independent Audit.
Decree 16	Decree No. 16/2011/ND-CP (February 22, 2011) of the Government on amending and supplementing Government Decree No. 105/2004/ND-CP (March 30, 2004) on independent audits.
Decree 27	Decree No. 27/2007/ND-CP (February 23, 2007) on e-transactions in financial activities.
Circular 08	Circular No. 08/2021/TT-BTC of the Ministry of Finance (January 25, 2021) on promulgation of Vietnamese Standards on Internal Audit and principles of professional ethics for internal audits.
Circular 66	Circular No. 66/2020/TT-BTC of the Ministry of Finance (July 10, 2020) introducing sample regulations on internal audits for corporate use.
Circular 73	Circular No. 73/2020/TT-BTC of the Ministry of Finance (August 7, 2020) on amending, supplementing a number of articles of Circular No. 134/2017/TT-BTC the Ministry of Finance (December 19, 2017) guiding e-transactions in the securities market.
Circular 96	Circular No. 96/2020/TT-BTC of the Ministry of Finance (November 16, 2020) guiding the disclosure of information on the securities market.
Circular 116	Circular No. 116/2020/TT-BTC of the Ministry of Finance (December 31, 2020) guiding a number of articles on public company governance as prescribed in Government Decree No. 155/2020/ND-CP (December 31, 2020), on detailing and guiding implementation of a number of articles of the Law on Securities (Model Charter).

Circular 118	Circular No. 118/2020/TT-BTC of the Ministry of Finance (December 31, 2020) guiding a number of contents on issuance, public offer of securities, repurchase of shares, registration of a public company and cancellation of public company status (prospectus).
Circular 13	Circular No. 13/2018/TT-NHNN of the State Bank of Viet Nam (May 18, 2018) on internal control systems of commercial banks and foreign bank branches.
Circular 22	Circular No. 22/2018/TT-NHNN of the State Bank of Viet Nam (September 5, 2018) on guidelines for procedures and application for approval for provisional lists of personnel of commercial banks, non-bank credit institutions and foreign bank branches.
Circular 134	Circular No. 134/2017/TT-BTC of the Ministry of Finance (December 19, 2017) guiding e-transactions in the securities market.
Circular 111	Circular No. 111/2013/TT-BTC of the Ministry of Finance (August 15, 2013) guiding the Law on Personal Income Tax, the Law Amending and Supplementing a number of articles of the Law on Personal Income Tax and Government Decree No. 65/2013/ND-CP detailing a number of articles of the Law on Personal Income Tax and the Law Amending and Supplementing a number of articles of the Law on Personal Income Tax.
Circular 44	Circular No. 44/2011/TT-NHNN of the State Bank of Viet Nam (December 29, 2011) providing for the internal control system and internal audit of credit institutions, foreign bank branches.

Circular 19	Circular No. 19/2003/TT-BTC of the Ministry of Finance (March 20, 2003) guiding the increase and reduction of charter capital and the management of treasury shares in joint stock companies.
Decision 13	Decision No. 13/2007/QD-BTC of the Ministry of Finance (March 13, 2007) issuing model prospectus in application files for registration of a public offer of securities or for registration of securities listing on the stock exchange/securities trading center.
Decision 7	Decision No. 07/2002/QD-VPCP of the Office of Government (November 19, 2002) promulgating the model charter applicable to listed companies.

Abbreviations and Acronyms

ACGS	ASEAN Corporate Governance Scorecard
AGM	Annual General Meeting of Shareholders
AICPA	American Institute of Certified Public Accountants
BoD	Board of Directors
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CG	Corporate Governance
CII	Council of International Investors
CL	Company Law
CMSC	Commission for Management of State Capital at Enterprises
COSO	Committee of Sponsoring Organizations of the Treadway Commission
CPA	Certified Public Accountant
DoA	Delegation of Authority
E&S	Environmental and Social
EGM	Extraordinary General Meeting of Shareholders
ESG	Environment Social Governance
EU	European Union
FASB	Financial Accounting Standards Board
FIEs	Foreign-Invested Enterprises
GCGF	Global Corporate Governance Forum
GMS	General Meeting of Shareholders
GRI	Global Reporting Initiative
HNX	Hanoi Stock Exchange
HOSE	Ho Chi Minh Stock Exchange
IAS	International Accounting Standard
IFC	International Finance Corporation
IFRS	International Financial Reporting Standards

IIA	Institute of Internal Auditors
IIRC	Integrated Reporting Council
IOSCO	International Organization of Securities Commissions
IPO	Initial Public Offering
ISA	International Standards on Auditing
LCI	Law on Credit Institutions
LDI	Law on Domestic Investment
LFI	Law on Foreign Investment
LIB	Law on Insurance Business
LLCs	Limited Liability Companies
LOA	Law on Accounting
LOB	Law on Bankruptcy
LOC	Law on Competition
LOE	Law on Enterprises
LOI	Law on Investment
LOIA	Law on Independent Audit
LOS	Law on Securities
LOSOE	Law on State-Owned Enterprises
LPE	Law on Private Enterprises
LREB	Law on Real Estate Business
LSB	Law on State Bank
MD&A	Management Discussion and Analysis
Model Charter	Issued together with Circular No. 116/2020/TT-BTC
MOF	Ministry of Finance
MOLISA	Ministry of Labor, Invalids and Social Affairs
MPI	Ministry of Planning and Investment
MPS	Ministry of Public Security
NACD	National Association of Corporate Directors
NASDAQ	National Association of Securities Dealers Automated Quotation

NEDS	Non-executive directors
NGOs	Non-Governmental Organizations
OECD	Organisation for Economic Cooperation and Development
OECD Principles	OECD Principles of Corporate Governance
RPT	Related Party Transactions
SASB	Sustainable Assurance Standards Board
SBV	State Bank of Viet Nam
SCIC	State Capital Investment Corporation
SOEs	State-Owned Enterprises
SSC	State Securities Commission of Viet Nam
TCFD	Task Force on Climate-related Financial Disclosures
Upcom	Unlisted Public Company Market
US	United States
UK	United Kingdom
VAFI	Viet Nam Association of Financial Investors
VAS	Vietnamese Accounting Standard
VIOD	Viet Nam Institute of Directors
VNX	Viet Nam Stock Exchange
VSDC	Viet Nam Securities Depository and Clearing Corporation
WTO	World Trade Organization

Acknowledgements

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The preparation and publication of this Manual would not have been possible without the efforts of a number of highly dedicated people. The Manual's text was updated by a project team at SSC and IFC including:

- Vu Chi Dzung, Director of International Cooperation Department, SSC
- Nguyen Thi Thu Thuy, Deputy Director of International Cooperation Department, SSC
- Hoang Thuy Duong, Officer of International Cooperation Department, SSC
- Dao Thi Bich Xuyen, Officer of International Cooperation Department, SSC
- Kate Lazarus, Asia ESG Advisory Lead, IFC
- Huong Nguyen, ESG Officer, IFC
- Leyal Savas, Senior ESG Officer, IFC
- Nga Pham, ESG Consultant, IFC
- Simon Drought, Editor, IFC

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TABLE OF CONTENTS

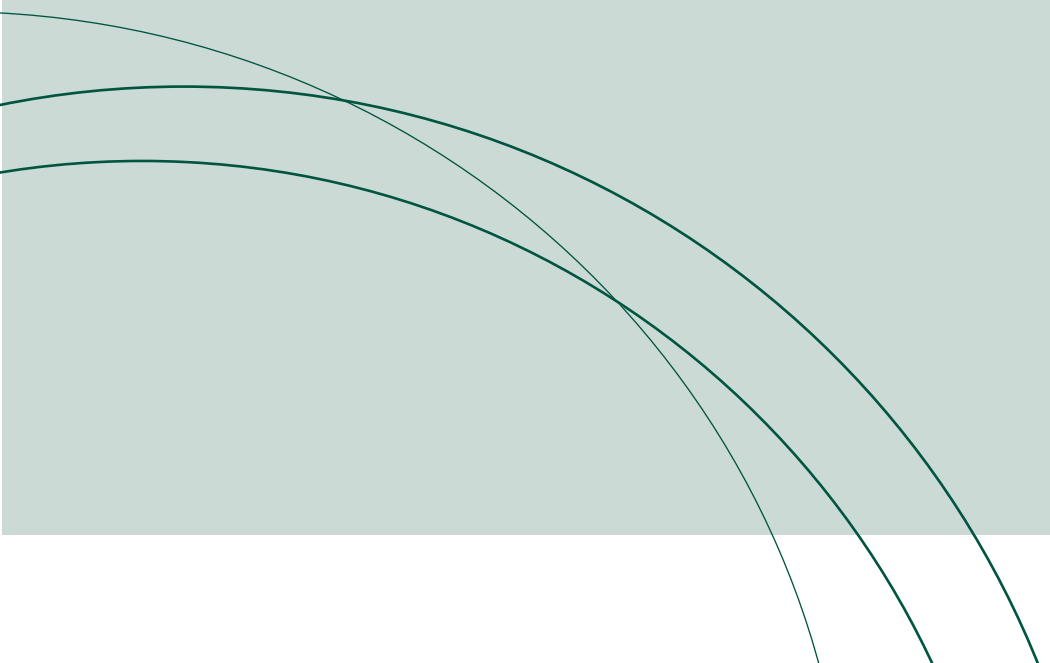

Table of Contents

Corporate Governance - Manual

Chapter 6. BOARD OF DIRECTORS

Chapter 8. CORPORATE SECRETARY

Chapter 9. CONTROL ENVIRONMENT

Chapter 10. INFORMATION DISCLOSURE

Chapter 11. RELATED PARTY TRANSACTIONS (RPTs)

Chapter 12. DIVIDENDS

Chapter 13. CHARTER CAPITAL

NOTES

Chapter 1

AN INTRODUCTION TO CORPORATE GOVERNANCE

1 | An Introduction To Corporate Governance

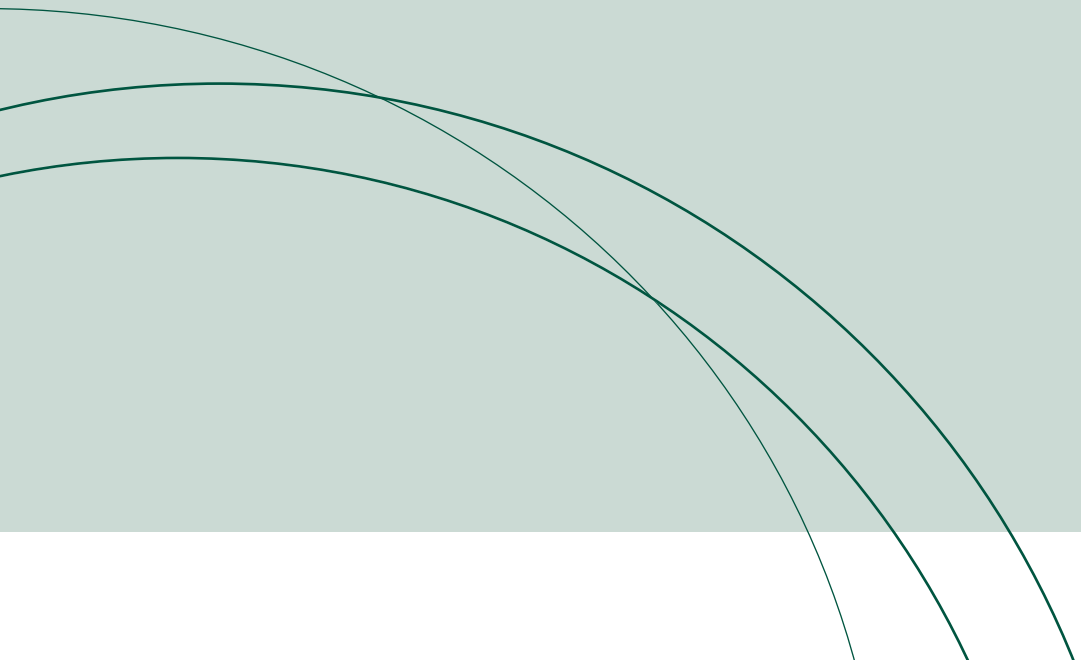

Table of Contents

Chairperson Checklist

- ☑ Do the General Meeting of Shareholders (GMS), Board of Directors (BoD), Supervisory Board members and executive bodies understand the concept of corporate governance and its significance to the company and its shareholders?
- ☑ Are key officers familiar with the G20/OECD Principles of Corporate Governance and the legal and regulatory framework on corporate governance applicable to companies in Viet Nam?
- ☑ Has the company adopted its own Environmental, Social and Governance (ESG) code?
- ☑ Have steps been taken to improve the company's ESG practices in accordance with this code?
- ☑ Does the BoD understand its roles and responsibilities?
- ☑ Is the BoD qualified and adequately structured to oversee the company's strategy, management, and performance?
- ☑ Does the company have a robust internal control and risk management framework?
- ☑ Does the company follow mandatory corporate governance requirements and disclose information on compliance to shareholders and stakeholders in the annual report?
- ☑ Has the company included a report on its corporate governance structure and practices in the annual report?
- ☑ Does the company follow the Viet Nam Corporate Governance Code of Best Practices and disclose the implementation status in the annual report?
- ☑ Does the company treat minority shareholders' rights and other stakeholders equitably?
- ☑ Does the BoD provide oversight over stakeholder mapping, stakeholder engagement policy and grievance mechanisms?
- ☑ Is the company familiar with the main institutions active in the field of corporate governance that can serve as external resources?

1.1. An Introduction to Corporate Governance

Effective corporate governance practices are pivotal for the success of any organization. A sound corporate governance system builds the cornerstone for a company's reputation, integrity, and sustainability as it safeguards the interests of stakeholders. Good corporate governance fosters an environment of trust and confidence among employees, investors, business partners, customers and the wider community, ultimately contributing to the long-term value of the organization.

In the last few decades, Viet Nam has witnessed notable improvements in the awareness and practices of good corporate governance, enabled by the development of the regulatory and business environment. This rising recognition of corporate governance's importance stems from the pivotal role of the private sector in driving economic growth and job creation. This momentum started to build in 1990 with the enactment of the Vietnamese Company Law and Sole Proprietorship Law. In 2005, these two laws merged with the Law on State-Owned Enterprises to form the comprehensive Law on Enterprises.

The upsurge in the number of companies established across the country came with pressure to access credit to fuel such growth. Therefore, the establishment of the Ho Chi Minh Securities Exchange (HOSE) and Hanoi Securities Exchange (HNX) in 2000 and 2005 respectively, contributed significantly to the growth of the capital market and enhanced access to capital for businesses. Stringent requirements on companies seeking listing set by regulators also encouraged and accelerated the adoption of good corporate governance practices among companies in Viet Nam.

As a result, the country's business landscape has experienced a paradigm shift towards greater transparency, accountability, and more robust corporate governance.

This chapter defines corporate governance, presents the business case for implementation of good corporate governance practices, and provides an overview of the legal, regulatory and institutional frameworks relevant to corporate governance in Viet Nam today.

1.2. Definition of Corporate Governance

1.2.1. Definition

There is no single universal definition of corporate governance that can be applied to all situations and jurisdictions. Variations arise depending on the institution, national context, and legal traditions, giving rise to diverse interpretations and practices.

IFC, in its Corporate Governance Methodology, defines corporate governance as "the structures and processes by which companies are directed and controlled".[1] The Organisation for Economic Cooperation and Development (OECD), which published its Principles of Corporate Governance in 1999 and reviewed the principles in 2004, 2015 and 2023, offers a more detailed definition in its latest edition:

"Corporate governance involves a set of relationships between a company's management, Board, shareholders and stakeholders. Corporate governance also provides the structure and systems through which the company is directed and its objectives are set, and the means of attaining those objectives and monitoring performance are determined."[2]

Bob Tricker, the person who first coined the term "corporate governance", offered a much broader definition of corporate governance in his most recent book.[3] Tricker defined corporate governance as the way power is exercised over a corporate entity and held accountable. This definition focuses on the governing body's responsibility for corporate performance as well as corporate compliance. Governing bodies are given different names – such as the BoD, the council or the committee – depending on the type of corporate entity and their jurisdiction.

Most definitions that center on the company itself (an internal perspective) have certain elements in common, which can be summarized as follows:

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1 *https://www.ifc.org/en/what-we-do/sector-expertise/corporate-governance*

2 *OECD (2023), G20/OECD Principles of Corporate Governance 2023, OECD Publishing, Paris, https://doi.org/10.1787/ed750b30-en. (Page 6)*

3 *Tricker, Bob. (2023). The Practice of Corporate Governance (1st ed., Vol. 1). Milton: CRC Press.*

- **Corporate governance is a system of relationships, defined by structures and processes.** For example, the relationship between shareholders (as the providers of capital) and the company management. Through their relationships, shareholders and management share a mutual interest in maximizing the rate of return on shareholders' investment. Other specific relationships exist between a company's BoD, management or other supervisory bodies, its shareholders and other stakeholders. Management must provide shareholders with financial and operational reports on a regular basis and in a transparent manner. Shareholders also elect a supervisory body, often referred to as the BoD and/or Supervisory Board, to represent their interests. This body performs a supervisory function over management. As such, management is accountable to the BoD, which in turn must be accountable to all shareholders through the GMS. The structures and processes that define these relationships typically center on specific performance management, monitoring and reporting mechanisms. An effective corporate governance framework can enable companies to identify and address the concerns of shareholders and various stakeholders, while also bolstering their prospects for long-term success.

- **These relationships may involve parties with different and, sometimes, conflicting interests.** The various company organs – such as the GMS, BoD, and/or the Chief Executive Officer (CEO) and management (or other executive bodies) – can hold different interests at any given time. Conflicting interests typically exist between shareholders (principals) and managers (agents), also known as the principal-agent problem of the Agency Theory.[4] A principal-agent problem occurs when there is separation between ownership and management. For example, although shareholders are interested in maximizing shareholder value, the management may have other objectives (such as maximizing their salaries), which sometimes leads to excessive risk-taking at the expense of the company's long-term interest. Conflicts may also exist within each governing body, such as between

4 *The principal-agent problem is defined as follows by the Oxford Dictionary of Economics: "The problem of how Person (A) can motivate Person (B) to act for (A's) benefit rather than following his self-interest." In a company setting, Person (A) is the investor (or principal) and (B) the manager (or agent). Managers at times may follow different goals than investors (e.g. building business empires rather than creating shareholder value), act dishonestly and, at times, even in an incompetent manner. This essentially creates three types of agency costs: (i) divergence costs (i.e. managers that do not maximize the investors' wealth); (ii) monitoring costs (investors have to develop and implement control structures), including replacement costs; and (iii) incentive costs (costs incurred by investors to remunerate and incentivize their managers). The core role of a corporate governance system is to reduce total agency costs, thus maximizing the value of the company to investors.*

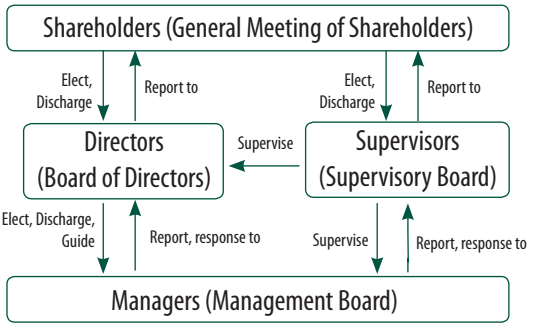
different types of shareholders (majority vs. minority, controlling vs. non-controlling, individual vs. institutional) and directors (executive vs. non-executive, outsider vs. insider, independent vs. dependent). These tensions need to be carefully monitored and balanced.

- **All parties are involved in the direction and control of the company**. The GMS, representing shareholders, makes fundamental decisions such as those concerning the distribution of profits. The BoD is generally responsible for guidance and oversight, setting company strategy and controlling managers. The management runs day-to-day operations, such as implementing strategy, drafting business plans, managing human resources, developing marketing and sales strategies, and managing assets.

- **Corporate governance is designed to effectively distribute rights and responsibilities in order to promote stable, long-term value to shareholders and other stakeholders.** For instance, with appropriate balancing of the interests between shareholders, the BoD and management, minority shareholders will have the means to prevent a controlling shareholder from gaining undue benefits through related party transactions, tunneling, or other similar activity.[5]

The basic corporate governance system and the relationships between the governing bodies are depicted in Figure 1.

Figure 1. The Corporate Governance System



5 *Corporate Governance: A Framework for Implementation, the World Bank. See also: http://www-wds. worldbank.org/external/default/main?pagePK=64193027&piPK=64187937&theSitePK=523679&menuPK =64187510&searchMenuPK=64187283&siteName=WDS&entityID=000094946_00082605593465.*

The external aspect of corporate governance, on the other hand, concentrates on relationships between the company and its stakeholders. Stakeholders are those individuals or institutions that have an interest or concern in the activities, performance, or outcomes of the company. Stakeholders may have various degrees of influence and impact, which may arise through legislation or contracts, or by way of social or geographic relationships. Stakeholders can be both internal and external to the organization, such as investors, employees, creditors, suppliers, consumers, regulatory bodies, State agencies as well as the local community or environment in which a company operates. Companies that maintain a strong track record of corporate governance often enjoy improved access to capital under more favorable terms compared to those with weaker records or those operating in markets characterized by lower corporate governance standards.

Many international codes, including the OECD Principles, discuss the role of stakeholders in the governance process. It was once debated that stakeholders have no claim on the company other than those specifically set forth in law or contract. This view is found in many countries with a common law tradition, such as Australia, the United Kingdom and the United States. More recently there has been a paradigm shift, even in these major markets realizing that companies fulfil an important social purpose, have a societal impact, and accordingly must act in the broader interests of society. This view used to be dominant in countries with a civil law tradition, mostly in continental Europe, such as France, Germany, the Netherlands, and their former regions of influence, recognizes that companies should fulfil stakeholder interests to maintain their social licence. Developments in corporate governance practices around the globe have advanced our thinking about the centrality of stakeholder engagement to all other aspects of environmental and social performance. The risks associated with poor stakeholder relations – and the opportunities provided by constructive ones – are now better understood by the private sector and financial investors alike. For Viet Nam, the environmental and social factors and stakeholders' interests have gained more attention.

In 2018, IFC updated its Corporate Governance Methodology to include the governance of environmental and social (E&S) risks, following findings from an internal study of IFC's investment portfolio that demonstrated a well-functioning corporate governance framework is essential for the implementation of E&S practices. In 2023, IFC developed a corporate

governance approach specifically tailored to managing and overseeing climate-related risks and opportunities.[6]

Best practice

Corporate governance aims to facilitate access to external capital, including equity and credit, while also promoting optimal investments in a company's human and physical assets by its shareholders. Success depends on collaboration among various resource providers, such as investors, employees, creditors, customers, and other stakeholders. Recognizing stakeholders' value, companies should foster cooperative efforts for long-term prosperity. The governance framework should acknowledge stakeholders' interests and their role in the company's sustained success. The rights and interests of stakeholders that are established by law or through mutual agreements are to be respected.

- Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.
- Stakeholder engagement should be a broad, more inclusive, and continuous process between a company and those potentially impacted.[7]
- Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis.
- Mechanisms for employee participation should be permitted to develop.
- Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about perceived illegal or unethical practices to the Board and to the competent public authorities and their rights should not be compromised for doing this.
- The corporate governance framework should be complemented by an effective, efficient insolvency framework and by effective enforcement of creditor rights.

1.2.2. A Brief History of Corporate Governance

Corporate governance systems have evolved over centuries, often in response to corporate failures or systemic crises. The first significant example was the collapse of the British South Sea Company in 1720. This created the well-documented South Sea Bubble which revolutionized business laws and

6 *IFC (2023) Climate Governance Progression Matrix: https://www.ifc.org/content/dam/ifc/doc/2023-delta/climate-governance-matrix-may2023.pdf*

7 *IFC (2007) Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets: https://www.ifc.org/content/dam/ifc/doc/mgrt/ifc-stakeholderengagement1.pdf*

practices in England. Similarly, much of U.S. securities law was put in place following the stock market crash of 1929. There has been no shortage of other crises, such as the secondary banking crisis of the 1970s in the United Kingdom, the savings and loan debacle of the 1980s in the U.S., the 1998 financial crisis in Russia, the 1997-1998 financial crisis in Asia (the effects of which were particularly severe in Indonesia, Republic of Korea and Thailand), and the global financial crisis of 2008.

The history of corporate governance has also been punctuated by a series of high-profile company failures. In the United Kingdom, the early 1990s saw the collapse of Barings Bank. The new century likewise opened with the dizzying fall of Enron in the U.S., the near-bankruptcy of Vivendi Universal in France, the scandal at Parmalat in Italy, the trading fraud at Société Générale in France, and the multi-billion dollar Madoff Ponzi scheme. Governments responded to each of these corporate failures – often resulting from lack of oversight, incompetence, or outright fraud – by implementing new governance frameworks, such as the United States' Sarbanes-Oxley Act for Public Company Accounting Reform and Investor Protection as well as other similar national corporate governance codes. Also notable is the current trend towards imposing stricter regulatory oversight on banking and financial institutions in many countries.

Table 1 illustrates some highlights in the history of corporate governance, largely from the western world.

Table 1. A Brief History of International Corporate Governance

1600s:	**East India Company** introduces a Court of Directors, separating ownership and control (U.K., the Netherlands)
1776:	**Adam Smith** in the "Wealth of Nations" warns of weak controls over and incentives for management (U.K.)
1844:	First Joint Stock Company Act (U.K.)
1931:	**Berle and Means** publishes its seminal work "The Modern Corporation and Private Property" (U.S.)
1933-34:	The Securities Act of 1933 is the first act to regulate the securities markets, notably registration disclosure. The 1934 Act delegates responsibility for enforcement to the SEC (U.S.)
1968:	EU adopts its first company law directive (EU)
1987:	**Treadway Commission** reports on fraudulent financial reporting, confirming the role and status of audit committees and develops a framework for internal control, or COSO, published in 1992 (U.S.)
Early 1990s:	Polly Peck (£1.3 billion in losses), BCCI and Maxwell (£480 million) **business empires collapse**, calling for improved corporate governance practices to protect investors (U.K.)
1992:	**Cadbury Committee** publishes the first code on corporate governance and in 1993, companies listed on the **U.K.'s** stock exchanges are required to disclose governance on a "comply or explain" basis (U.K.)
1994:	Publication of the **King Report** (S. Africa)
1994, 1995:	**Rutteman** (on Internal Controls and Financial Reporting), **Greenbury** (on Executive Remuneration), and **Hampel** (on Corporate Governance) reports are published (U.K.)
1995:	Publication of the **Vienot Report** (France)
1996:	Publication of the **Peters Report** (the Netherlands)
1998:	Publication of the **Combined Code** (U.K.)
1999:	OECD publishes the first international benchmark, the **OECD Principles of Corporate Governance**
1999:	Publication of the **Turnbull** guidance on internal controls (U.K.)
1999:	National Assembly of Viet Nam adopts the **Law on Enterprises**, which replaces the Company Law and the Law on Private Enterprises
2000:	National Assembly of Viet Nam amends the **Foreign Investment Law** of 1996

2000:	National Assembly of Viet Nam adopts the **Law on Insurance Business**
2001:	**Enron Corporation**, then the seventh largest listed company in the U.S., declares bankruptcy (U.S.)
2001:	**Lamfalussy Report** on the Regulation of European Securities Markets (EU) is published
2002:	Publication of the German Corporate Governance Code (Germany)
2002:	**Enron** collapse and other corporate scandals lead to the **Sarbanes-Oxley Act** (U.S.); the **Winter Report** on company law reform in Europe is published (EU)
2003:	**Higgs Report** on non-executive directors is published (U.K.)
2003:	National Assembly of Viet Nam adopts the **Law on SOEs** to replace the Law on SOEs of 1995
2004:	Parmalat scandal shakes Italy, with possible EU-wide repercussions (EU)
2008:	IFC introduces the Corporate Governance Methodology, an approach to evaluate and improve the corporate governance of a company to identify, reduce, and manage risk[8]
2015:	Updated Principles (G20/OECD Principles of Corporate Governance) endorsed by the OECD Council and the G20 Leaders' Summit
2018:	IFC updates the Corporate Governance Methodology to include a new parameter on the Governance of Stakeholder Engagement
2021:	ISO 37000:2021 Governance of organizations — Guidance on the governance of organizations[9]
2023:	OECD revises the G20/OECD Principles of Corporate Governance.

Viet Nam's legal framework for corporate governance has evolved significantly over the years. Before 1987, State-owned enterprises were the sole corporate entities. The Foreign Investment Law of 1987 introduced corporate governance concepts for foreign-invested enterprises. Private sector companies were recognized in 1990 with the Company Law and Sole Proprietorship Law. The 1999 Law on Enterprises spurred domestic private sector growth by

8 *IFC's Corporate Governance Methodology and related tools: https://www.ifc.org/en/what-we-do/sector-expertise/corporate-governance/cg-methodology-tools*

9 *ISO 37000:2021 provides principles and key aspects of practices to guide governing bodies and governing groups on how to meet their responsibilities so that the governed organizations can fulfil their purpose. It is also intended for stakeholders involved in, or impacted by, the organization and its governance. It is applicable to all organizations regardless of type, size, location, structure or purpose. https://www.iso.org/standard/65036.html*

liberalizing business and ownership rights. Corporate governance was not a priority at this stage. Post-2006, Viet Nam focused on legal reforms for World Trade Organization compliance. In 2020, the revised Law on Enterprises emphasized corporate governance, narrowing the gap with international standards. Other laws, including the Law on Securities and Independent Audit, have further improved the legal framework for corporate governance. Details are provided in Table 2.

Table 2. A Brief History of Corporate Governance Development in Viet Nam

1987:	National Assembly of Viet Nam adopts the Foreign Investment Law
1990:	National Assembly of Viet Nam adopts the Company Law[10] and the Law on Private Enterprises[11]
1995:	National Assembly of Viet Nam adopts the Law on SOEs[12]
1996:	National Assembly of Viet Nam adopts the **Foreign Investment Law**, which replaces the Foreign Investment Law of 1987
1997:	National Assembly of Viet Nam adopts the **Law on State Bank** and the **Law on Credit Institutions**
2002:	Government Office of Viet Nam issues the first **Model Charter** of listed companies[13]
2004:	National Assembly of Viet Nam adopts the **Law on Competition**
2004:	National Assembly of Viet Nam amends the **Law on State Bank** of 1997 and the **Law on Credit Institutions** of 1997
2005:	National Assembly of Viet Nam adopts the **Law on Enterprises** and the **Law on Investment**, which replaces: (i) Foreign Investment Law, (ii) Law on Enterprises of 1999, and (iii) Law on SOEs[14]
2006:	National Assembly of Viet Nam adopts the **Law on Securities**
2007:	Ministry of Finance (MOF) of Viet Nam adopts the **CG Regulations** and the **Model Charter**[15]
2010:	MOF of Viet Nam adopts **Circular 09/2010/TT-BTC**[16] governing the disclosure of information on the securities market.

10 *Adopted on December 21, 1990.*
11 *Adopted on December 21, 1990.*
12 *Adopted on April 20, 1995.*
13 *Decision 07/2002/VPCP, applicable to listed companies with effect from January 1, 2003.*
14 *The Law on SOEs was phased out until July 1, 2010 to give time for the equalization of all state-owned enterprises. See Article 166 of the LOE.*
15 *The Model Charter issued together with Decision No. 15 of the MOF (March 19, 2007). However, they expired and were replaced by new versions in 2020.*
16 *Circular 09/2010/TT-BTC expired and was replaced by new regulations in 2020.*

2010:	National Assembly of Viet Nam adopts the **Law on State Bank** and **Law on Credit Institutions**
2014:	National Assembly of Viet Nam adopts the **Law on Enterprises (No. 68/2014/QH13)**
2017:	National Assembly of Viet Nam adopts the **Law on Credit Institutions (No. 17/2017/QH14)**
2017:	Decree No. 71/2017/ND-CP guiding the corporate governance for public companies
2019:	National Assembly of Viet Nam adopts the **Law on Securities** (No. 54/2019/QH14); SSC and IFC introduces the **Viet Nam Corporate Governance Code of Best Practices**
2020:	National Assembly of Viet Nam adopts the **Law on Enterprises (No. 59/2020/QH14),** which improves the rights of minor shareholders, and allows limited liability companies to issue bonds for raising capital
2020:	Decree No. 155/2020/ND-CP guiding implementation of several articles of the Law on Securities provides several articles related to corporate governance and its guidelines on **Model Charter** (Circular No. 116/2020/TT-BTC) are circulated to all public companies
2020:	Circular No. 96/2020/TT-BTC) replacing Circular No. 155/2015/TT-BTC adds more obligations and requirements of information disclosure in an adequate, accurate and timely manner
2024:	National Assembly of Viet Nam adopts the **Law on Credit Institutions (No. 32/2024/QH15).**

1.2.3. International Standards and Frameworks of Corporate Governance

The past decade witnessed the development of numerous codes of corporate governance principles worldwide. More than 200 codes have been written across 103 countries and regions, some of which are designed to have international application. Most such codes focus on the role of the executive bodies and/or BoD in a company.

Among these, only the G20/OECD Principles of Corporate Governance address both policymakers and businesses, and focus on the entire governance framework (shareholder rights, stakeholders, disclosure and Board practices). The principles were first published in 1999 and revised in 2004, 2015, and 2023. Emphasizing that investment is a powerful driver of growth, the principles

address the complexity of the investment chain, corporate and financial sectors, the changing role of stock exchanges, emergence of new investors and trading practices. In its latest edition, the principles offer guidance on companies' sustainability and resilience to help manage environmental and social risks, with insights into disclosure, the roles and rights of shareholders as well as stakeholders and the responsibilities of company Boards.

The G20/OECD Principles have since gained worldwide acceptance as a reference point for good corporate governance. Although the OECD Principles primarily focus on publicly-traded companies, both financial and non-financial, they provide a useful benchmark for improving corporate governance practices of privately-held companies. Many national corporate governance codes, including Viet Nam's, were developed based on the G20/OECD Principles.

The core values of corporate governance are[17]:

- Fairness: The corporate governance framework should protect shareholder rights and ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violations of their rights.
- Responsibility: The corporate governance framework should recognize the rights of stakeholders as established by law, and encourage active cooperation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.
- Transparency: The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the company, including financial status, governance structure, performance and ownership.
- Accountability: The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the Board, and the Board's accountability to the company and shareholders.

17 *https://www.diligent.com/resources/guides/corporate-governance*

In 2023, the OECD issued the OECD Corporate Governance Factbook, which provides easily accessible and up-to-date information about the institutional, legal and regulatory frameworks for corporate governance across 49 jurisdictions worldwide. The factbook complements the G20/OECD Principles of Corporate Governance and can be used by governments, regulators and the private sector to compare their own frameworks with those of other countries and gain information on practices in specific jurisdictions. The 2021 edition of the factbook includes new material on the global market landscape, including how capital markets evolved during the COVID-19 pandemic, new coverage on the oversight of audits, proxy advisory services, gender balance on Boards, as well as significant updates across many other issue areas, reflecting dynamic changes to regulatory and institutional frameworks around the world.[18] In its 2023 edition, the factbook places special emphasis on several updated facets of the revised principles, encompassing corporate sustainability, the application of digital tools in shareholder meetings, and the regulatory structures governing company groups. The report acknowledges shifts in corporate governance norms and the evolving anticipation of stakeholders regarding ESG practices.

Built on the OECD's principles, IFC developed the Corporate Governance Methodology[19] to provide frameworks and tools that companies, legislators, regulators, and capital-market gatekeepers can use when developing corporate governance codes, listing rules, and disclosure frameworks. It recognizes that there is no "one-size-fits-all" corporate governance approach for all companies. Therefore, the methodology is customized to address unique challenges based on company or ownership types (listed companies, family or founder-owned, financial institutions, state-owned enterprises, funds as well as small and medium enterprises).

18 *OECD Corporate Governance Factbook – 2021. https://www.oecd.org/corporate/corporate-governance-factbook.htm*

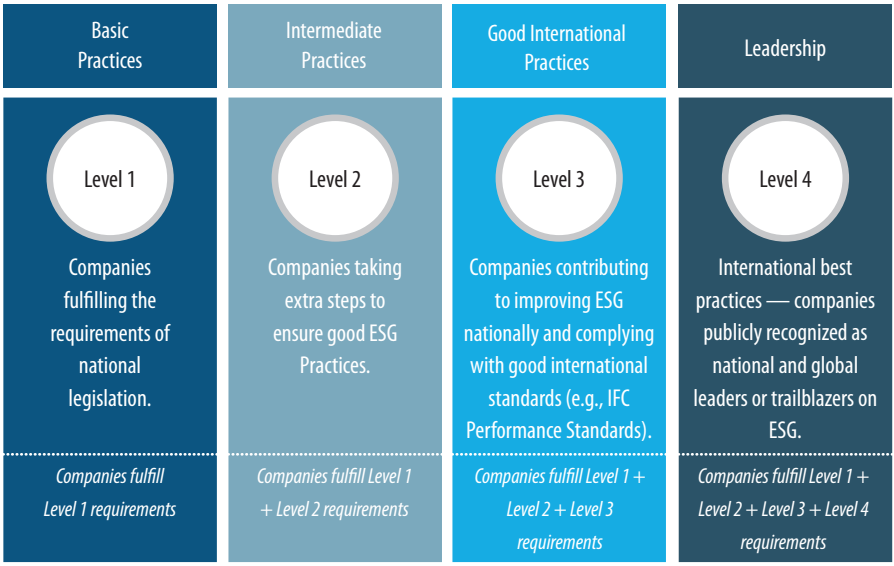
19 *https://www.ifc.org/en/what-we-do/sector-expertise/corporate-governance/cg-methodology-tools*

Figure 2. IFC's Corporate Governance Progression Matrix

The main tool of the Corporate Governance Methodology is a Progression Matrix to assess how a company performs in the parameters, as detailed in Figure 2. The Progression Matrix is organized by four levels of company maturity and complexity and emphasizes the importance placed on ongoing improvements in a company's governance practices, ranging from *Basic* to *Leadership* (See Figure 3).

IFC's Corporate Governance Progression Matrix provides further details of key indicators for each level of corporate governance.

Figure 3. Levels of Company Maturity in Corporate Governance Practices



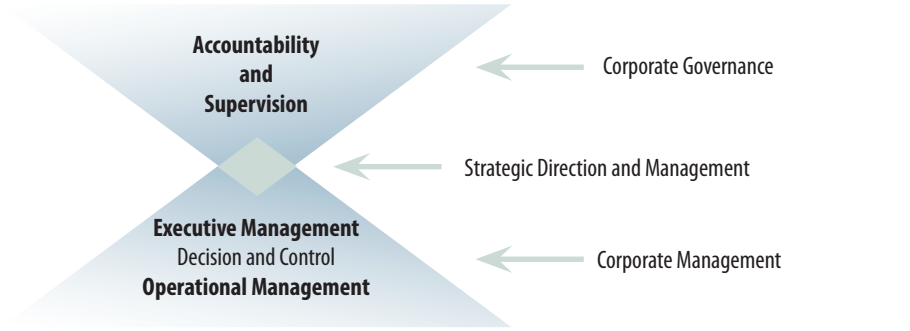
As part of its on going efforts to promote climate governance standards in the private sector, IFC has developed a Climate Governance Progression Matrix[20] based on the Corporate Governance Methodology. This tool assists BoD in identifying and overseeing climate-related risks and opportunities.

1.2.4. Distinguishing between Corporate Governance and Management

Corporate governance focuses on a company's structure and processes to ensure fair, responsible, transparent and accountable corporate behavior. It must be distinguished from public governance, which deals with governance structures and systems within the public sector. Corporate governance is also distinct from corporate management, which focuses on the tools required to operate a business. The Board sets the strategy by reviewing and providing guidance to the executive team. Figure 4 illustrates the difference between corporate governance and corporate management.

20 *https://www.ifc.org/en/insights-reports/2023/publications-climate-governance-matrix-tip-sheet*

Figure 4. Corporate Governance vs Management



Source: Robert I. Tricker, Corporate Governance, 1984

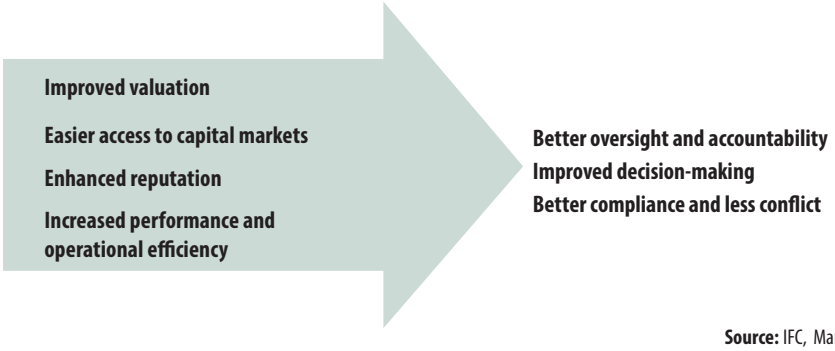
Corporate governance also differs from concepts such as good corporate citizenship and corporate social responsibility. While good corporate governance can undoubtedly reinforce ethical and responsible business practices by fostering robust management systems, it exists as a distinct set of principles with the primary objective of guaranteeing the company's long-term sustainability in the best interests of its shareholders and stakeholders.

1.3. The Business Case for Corporate Governance

Good corporate governance promotes sustainable business growth by facilitating companies' access to capital and protecting the rights of shareholders and other stakeholders. Companies that insist upon the highest standards of governance and integrity by management reduce many of the risks inherent in investment. In doing so, these companies are better able to secure reliable access to capital at a lower cost and, as a result, tend to outperform less well-governed peers over the long-term.

Generally, well-governed companies are better contributors to the national economy and society. They tend to deliver greater value to shareholders, workers, communities, and countries in contrast to poorly-governed companies, which are more likely to undermine confidence in securities markets. Some of the building blocks or levels, and specific benefits of good governance, are discussed in further detail below.

Figure 5. Benefits of Good Corporate Governance



Source: IFC, March, 2004

1.3.1. Increased Performance and Operational Efficiency

There are several ways in which good corporate governance can enhance performance and operational efficiency, as illustrated in Figure 5.

An improvement in the company's governance practices leads to a better oversight and accountability system, thereby minimizing the risk of fraud or self-dealing by the company's staff. Accountability for corporate

actions, combined with effective risk management and internal controls, can bring potential problems to the forefront before a full-blown crisis.

Adherence to good corporate governance standards strengthens the decision-making process. For example, managers, directors and shareholders are more likely to make better informed and timely decisions when the company's governance structure clearly defines their respective roles and responsibilities, and when internal communication within the company operates effectively. High-quality corporate governance streamlines the company's business processes, improving operational performance and lowering capital expenditures[21], which may contribute to the growth of sales and profits.

An effective governance system also helps to ensure compliance with applicable laws and regulations, thus allowing companies to avoid costly litigation, including costs related to shareholder claims as well as other disputes resulting from fraud, conflicts of interest, corruption and bribery, and insider trading. Good corporate governance can help facilitate the resolution of corporate conflicts between minority and controlling shareholders, executives and shareholders, and between shareholders and stakeholders. In addition, company officers will be able to minimize the risk of personal liability.

1.3.2. Access to Capital Markets

Corporate governance practices can unlock access to capital, as well-governed firms provide investors with greater confidence in their ability to generate returns and protect shareholder rights. From an investor's point of view, the better a company's corporate governance structure and practices, the more likely that assets will be used in the interests of the company and not tunnelled or otherwise misused by managers. Corporate governance practices can also take on a particular importance in emerging markets, where shareholders do not always benefit from the same protections available in more developed economies and where political or economic instability and institutional weakness contribute to elevated levels of perceived investment risk. This holds particularly true in emerging market countries where regulations and enforcement are at times inconsistent, and courts do not always provide investors with effective recourse when their rights are violated.

21 *Paul A. Gompers, Joy L. Ishii and Andrew Metrick, Corporate Governance and Equity Prices, NBER Working Paper No. w8449, August 2001.*

This means that even modest improvements in corporate governance, relative to other companies, can make a large difference for investors and decrease the cost of capital.

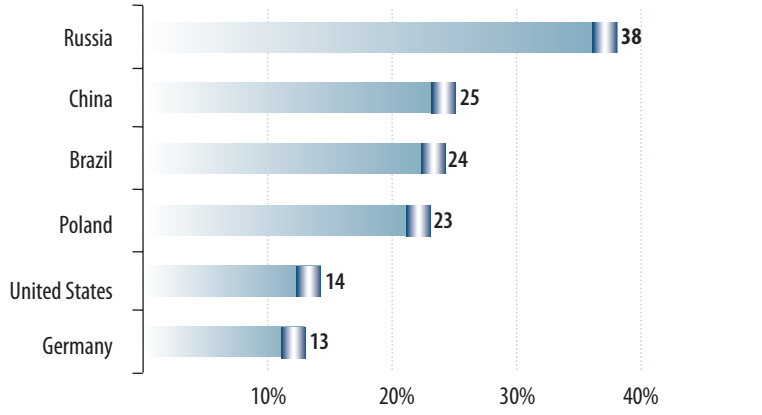
In emerging markets, firm-level corporate governance quality significantly reduces the cost of equity. This corporate governance effect is even more pronounced in countries that provide relatively poor legal protection.[22]

Good corporate governance also promotes transparency, which provides investors with an opportunity to gain insight into the company's business operations and financial data. Even if the information disclosed by the company is negative, shareholders will benefit from the decreased risk of uncertainty.

Figure 6 demonstrates that a significant percentage of institutional investors are willing to pay a premium to invest in a well-governed company, according to the Global Investor Opinion Survey conducted by McKinsey and Company. For example, this premium amounts to 25 percent for Chinese companies. The size of the premium for good governance seems to reflect the extent to which they believe there is room for improvement. A lower premium for Germany and the United States suggests that companies in these markets have addressed fundamental corporate governance issues whereas in other markets, a higher premium would be rewarded for companies with more robust governance practices, such as having a strong Board, effective disclosure and stronger protection of shareholder rights.

22 *A study of 559 companies in 17 emerging markets by Chen, Kevin C.W., Chen, Zhihong, & Wei, K.C. John. (2009). Legal protection of investors, corporate governance, and the cost of equity capital. Journal of Corporate Finance (Amsterdam, Netherlands), 15(3), 273-289.*

Figure 6. Premium for Better Corporate Governance (%)



Source: McKinsey & Company, Global Investor Opinion Survey, July 2002

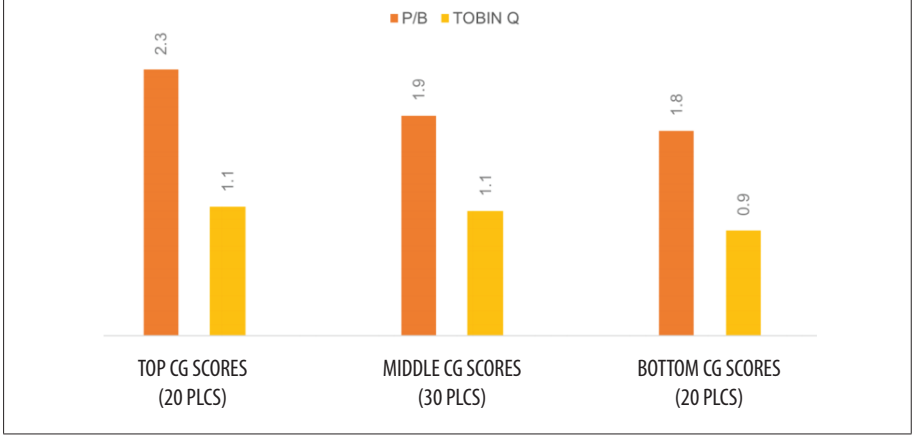
1.3.3. Improved Reputation and Company Valuation

In today's business environment, reputation is a key element of a company's goodwill. A company's reputation and image effectively constitute an integral, if intangible, part of its assets. Good corporate governance practices contribute to and improve a company's reputation. Companies that respect the rights of shareholders and ensure financial transparency and accountability will be highly regarded as advocates of investors' interests. As a result, such companies will enjoy more public confidence and goodwill. This public confidence and goodwill can lead to greater trust in the company and its products, which in turn may lead to higher sales and, ultimately, profits. A company's improved reputation can also positively affect its valuation.

Well-respected international surveys and research have pointed out clear benefits of corporate governance for companies, especially in terms of market value, including capitalization value of shareholders and the company. In particular, companies with good corporate governance often enjoy higher valuations than ones with poorer governance systems. Stock prices of companies with good corporate governance are also more stable and less vulnerable to stock market volatility. The ASEAN Corporate Governance Scorecard (ACGS) assessment indicates that companies with top corporate governance scores also have the highest P/B ratios (Price-to-Book value of shares) and Tobin's Q ratio (ratio of market value to book value of total assets Figure 6).

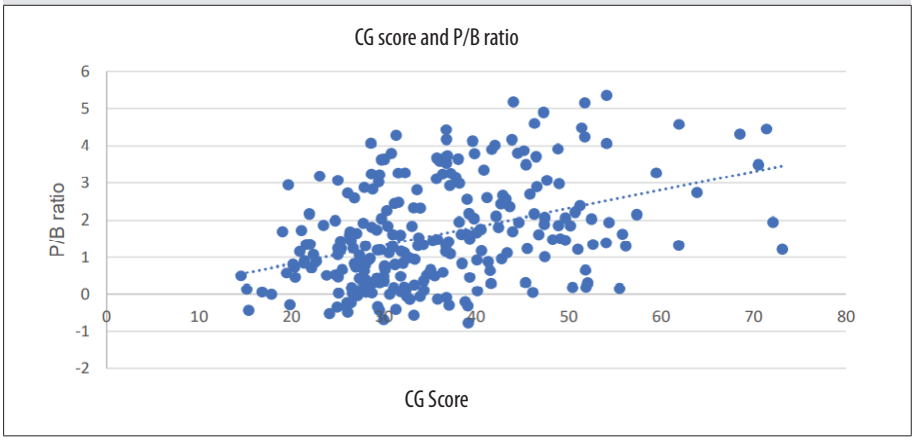
The ACGS assessment results also confirmed that corporate governance scores have a positive impact on stock prices, expressed by the upper slope of the regression line in Figure 7.

Figure 7. Correlation between Corporate Governance Score and Valuation



Source: IFC and SSC, ACGS: Viet Nam country report 5-year assessment 2012-2017[23]

Figure 8. Correlation between Corporate Governance Score and P/B Ratio



Source: IFC and SSC, ACGS: Viet Nam country report 5-year assessment 2012-2017

23 *https://viod.vn/*

Best practice

The following principles set out useful guidelines with respect to the formation, operation and enhancement of a company's corporate governance system, according to IFC's Corporate Governance Methodology:

Overall commitment to ESG

- The company and its shareholders have demonstrated a commitment to implementing high-quality corporate governance, including environmental and social matters.

Board of Directors

- The BoD is qualified and adequately structured to oversee the company's strategy, management, and performance.

Control environment

- The company's internal control system, internal audit function, risk management system, and compliance function ensure sound stewardship of the company's assets, operations effectiveness, reporting accuracy, and compliance with policies, procedures, laws, and regulations.

Disclosure and transparency

- The company's financial and non-financial disclosures are a relevant, faithful, and timely representation of material events to shareholders and other stakeholders.

Treatment of minority shareholders

- The company's minority shareholders' rights are adequate and not abused, and other stakeholders are treated equitably.

Governance of stakeholder engagement

- The company's governance of stakeholder engagement includes oversight over stakeholder mapping, stakeholder engagement policy and grievance mechanisms.

Implementing good governance practices entails costs, including hiring dedicated staff such as corporate secretaries, experienced and independent BoD members, internal auditors, or other governance specialists. It will likely require the payment of fees to external counsel, auditors, and consultants. The costs of additional disclosure can be significant as well. Furthermore, it requires a considerable time commitment from the BoD, especially in the early stages of a company's development. These costs tend to make implementation considerably easier for larger companies, as smaller ones' resources may be stretched thin.

Higher corporate governance standards are applicable to larger companies that are publicly traded on an exchange. A large, dispersed shareholder base, where controlling shareholders and directors can wield extraordinary powers and potentially abuse shareholder rights, often defines such companies. In addition, large companies constitute an important element of a country's economy and thus require close public scrutiny and attention.

Notwithstanding the above, strong corporate governance practices benefit all companies, irrespective of size, legal form, number of shareholders, ownership structure, or other characteristics. Of course, a one-size-fits-all approach should be avoided and companies should apply corporate governance standards with care. For example, smaller companies may not require a full set of Board committees or a full-time Corporate Secretary.

A company will not always see instant improvements in its performance due to better corporate governance practices. However, returns generally exceed costs over the long-term, even if sometimes difficult to quantify. This is especially true when potential invested capital, job and pension loss risks, and the disruption caused to communities when companies collapse are considered. In some cases, systemic governance problems may undermine faith in financial markets and threaten market stability.

Finally, it must be noted that corporate governance is not a one-time exercise, but rather an ongoing process. Markets tend to value long-term commitment to good governance practices rather than a single action or "box-ticking" exercises. No matter how many corporate governance structures and processes a company has in place, these must be regularly updated and reviewed.

1.4. Corporate Governance Framework in Viet Nam

1.4.1. Features of Corporate Governance in Viet Nam

The following is a list of features that characterize Viet Nam's corporate sector.

The role of state-owned enterprises (SOE): In Viet Nam, many important sectors in the economy remain either State monopolies or largely dominated by SOEs, such as those in the banking, education, electricity, media and publishing, mining, oil and gas, post and telecommunications, railways and shipbuilding sectors. In numerous equitized SOEs, the State retains a majority voting right of more than 50 percent (of charter capital) and exercises its control via the GMS and the directors appointed by the State to the company's BoD. The presence of the State as a shareholder is significant even among listed companies, as illustrated by Figure 9. Good governance of SOEs is essential for efficient and open markets at both domestic and international levels.

Figure 9. State Ownership Level (%) among Listed Companies with State Capital in the VN100 Index

Source: Pham, N., & Oh, Kok-Boon (2021) using data obtained from Bloomberg in February 2021.[24]

24 *Source: Pham, N., & Oh, Kok-Boon. (2021). State on board - Navigating corporate governance in emerging market business. The figure shows the distribution of ownership among various shareholder types as a snapshot. A higher level of holding is shown by a darker color. Ownership ratio by government is provided in percentage.*

Concentrated ownership: Many private companies in Viet Nam started out as small private firms owned either by a single controlling shareholder, members of a family, or a small group of shareholders. Although many have expanded significantly, the controlling shareholders have not changed. This concentrated ownership structure poses distinct challenges, such as how best to manage family conflicts, decide on succession, define ownership policies, strengthen strategic planning and other management functions as well as broaden membership of the executive bodies to include non-family, independent managers/directors. Not tackling these challenges effectively restricts the capacity of these businesses to attract the additional capital required to achieve full growth potential.

Little separation of ownership and control: Most controlling shareholders often occupy key positions at both the management and BoD levels. Those companies that separate ownership and control often do so only on paper. Failure to separate ownership and control typically results in weak accountability and control structures (majority/controlling shareholders oversee themselves in their function as directors and managers), abusive related party transactions, and poor information disclosure (insiders have access to all information and are unmotivated to disclose to outsiders or minority shareholders). Decree 155/2020 regulates that the chair of the Board and the CEO within a public company should be separate persons to ensure the separation of ownership and execution, an appropriate balance of power, increased accountability and greater capacity of the Board for independent decision-making[25], with administrative measures applied if the public company fails to comply with this requirement.[26] Within the context of the ASEAN Corporate Governance Scorecard (2021) for the largest listed Vietnamese companies, a mere 1 percent featured an independent chair, and only 2 percent reported having a majority of independent directors. Taking a broader perspective encompassing all listed companies on both stock exchanges, the Viet Nam Listed Company Awards 2022 revealed that just 25 percent of these companies had more than one-third of their directors serving as independent members.

Vietnamese capital market regulators have endeavored to enforce equitized companies to be public listed. An equitized enterprise having

25 *Decree 155/2020, Article 275, Clause 2.*
26 *Decree 156/2020, Article 15, Clause 4.*

registered for trading on the Unlisted Public Company Market (UPCOM), but not completed its public company registration with the SSC shall have its trading registration cancelled.[27]

Unwieldy holding structures: Some major business groups, especially large SOEs, are set up in the form of parent companies that maintain control over their subsidiaries. While holding structures can serve legitimate purposes, cross-shareholdings and lack of transparency often lead to opaque ownership structures that can disadvantage minority shareholders. Poor or incomplete accounting records present another corporate governance issue that has yet to be tackled.

Inexperienced and inadequate corporate bodies: Parts of Viet Nam's current concept of BoD, General Director and Supervisory Board were first introduced in the Company Law in 1990 and the Law on SOEs in 1995. However, these concepts were not taken seriously until recently, when companies began to draft detailed articles of charters that adhere to existing laws and regulations. In reality, it is still common for BoDs to attempt to bypass the supervisory mechanisms put in place by the charter (such as internal auditors or the Supervisory Board), and to limit direct contact to the controlling shareholder (to the extent they are not one and the same). According to the Viet Nam Listed Company Awards in 2022, only 17 percent of listed companies reported having an audit committee and 12 percent established a nomination and remuneration committee.

The role of the Supervisory Board as well as the Board Committees, General Director and Corporate Secretary often remain unclear in day-to-day company operations. Members of these bodies are supposed to be experienced and capable, but in reality they often lack awareness of their responsibilities and authority, due to a historical lack of general good practice in these areas. While the Law on Enterprise (LOE) (2020) and Decree No. 155/2020/ND-CP both encourage a designated role responsible for corporate governance with specific rights and obligations, limited awareness and practical implementation of the professional Corporate Secretary role is evident.

Lack of experience and independence in the corporate governance field is a big obstacle for further economic development. Additional training and market capacity development are essential to enhance awareness of best

27 *Decree 155/2020, Article 310, Clause 8.*

practices, professionalize corporate governance bodies and elevate corporate governance standards.

1.4.2. Legal and Regulatory Framework

The legal and regulatory framework in Viet Nam has some unique characteristics resulting from the country's history and development of its economy. Prior to 1987, under the "command market economy", only SOEs were created and existed as corporate bodies. Before 1990, the legal framework for the incorporation of private-sector companies did not exist in Viet Nam.

The introduction of the Foreign Investment Law in 1987 brought the first concepts of corporate governance to Viet Nam, although it only applied to foreign-invested enterprises (FIEs).

In 1990, private sector companies and enterprises were recognized for the first time with the introduction of the Company Law and Sole Proprietorship Law.[28] These two laws provided the legal foundation for establishment of the first private businesses in Viet Nam.

The LOE was introduced in 1999 and replaced the Company Law and Sole Proprietorship Law. The law triggered a boom in the development of domestic private sector enterprises in Viet Nam. The LOE liberalized the freedom to do business for Vietnamese citizens and provided formal protection for private businesses as well as private ownership. It introduced tremendous improvements in business start-up procedures, removed barriers to business entry and prompted a change in the mind-set of government institutions, ministries and local authorities towards private sector enterprises. As soon as the law was introduced, the number of enterprises registered annually increased dramatically and billions of US dollars have been invested by Vietnamese business people into the economy through enterprises registered under the LOE. However, it should be noted that corporate governance was not the top priority in this early version of the LOE.

28 *Law No. 47-LCT/HDNN8 on Companies (December 21, 1990), and Law No. 47-LCT/HDNN8 on Sole Proprietorship (December 21, 1990).*

From 2004 to 2006, Viet Nam accelerated efforts to get its legal framework ready to join the World Trade Organization (WTO). Since 2006 to date, Viet Nam has been making further efforts to revamp its legal framework and comply with commitments made when it joined the WTO.

In 2005, the National Assembly enacted a new LOE and Law on Investment (LOI), which replaced: (i) the Foreign Investment Law, (ii) LOE 1999, and (iii) Law on SOEs of 2003.

Regulations on corporate governance were emphasized in the revised LOE (2004) and its replacement version in 2014.[29] Currently, the LOE (2020) replacing the LOE (2014) from January 1, 2021 covers both private sector enterprises (including listed companies, public companies and all other business entities) and SOEs. The LOE (2020) provides important stipulations on corporate governance, such as composition of the BoD, liabilities of directors, information disclosure protection of the rights and equitable treatments of shareholders. In general, the latest version of the LOE has helped to continuously narrow the gap with international good practices and corporate governance principles.

In addition to the LOE, other laws have been introduced and helped to further improve the policy and legal framework for corporate governance in Viet Nam.

The first Law on Securities (LOS) came into effect in 2006, was amended in 2010[30] and then replaced by a new version in 2019, providing regulations on corporate governance requirements applicable to public companies.

Other laws that enhance the legal framework for corporate governance include the Law on Independent Audit (2011), Law on Accounting (2015), the new Law on Credit Institutions (LCI) (2010) that was amended in 2017 and 2024 and the Law on Insurance Business (2010).

Importantly, the latest LOS 2019 and LOE 2020, which superseded the previous LOS and LOE, are closer to international standards, for example, reinforcing accountability of shareholders and companies through stricter requirements of information disclosure. They will also support the corporate

29 *Law No. 68/2014/QH13 on Enterprises, effective from July 1, 2015, replacing the LOE (2005).*

30 *Law No. 70/2006/QH11 on Securities (June 29, 2006). Some articles of the law were amended by Law No. 62/2010/QH12 (November 24, 2010).*

sector to manage environmental, social and governance (ESG) risks and better harness the contributions of different stakeholders, be it shareholders, employees, creditors, customers, suppliers, or adjacent communities, to the long-term success of corporations.

Applicable laws and legal framework: As of 2021, all commercial enterprises, regardless of their legal form, are subject to a comprehensive set of laws, regulations and governmental decrees as illustrated in Table 3. Besides the LOE, companies in Viet Nam are also required to comply with laws and regulations which govern their specific industry and activities. Thus, a company in the insurance business is subject to the LOE and the Law on Insurance Business. Similarly, a bank is subject to the LOE and the LCI. In addition to these sector specific laws, a public listed company is also subject to the LOS. The LOE expressly provides that "in special cases where the establishment, organization, management and operation of an enterprise are regulated by a specialized law, the provisions of such law shall prevail". In addition to the general legal and regulatory framework, there are ordinances, decrees, circulars and decisions from the National Assembly, the government, ministries and other law enforcement bodies that deal with specific corporate issues in Viet Nam in more detail for joint stock companies, limited liability companies and other corporate entities. However, in practice, there are numerous cases where the distinctions are not clear-cut, and the overlapping laws and regulations have created confusion, ambiguities and uncertainties to companies trying to follow the laws and implement good corporate governance practice. This also creates a danger of inconsistencies in the interpretation and enforcement of these laws by different ministries, the courts and other law enforcement bodies.

In the last few decades, the corporate governance framework in Viet Nam has been significantly improved to catch up with the G20/OECD Principles of Corporate Governance. However, a big gap remains between the principles as articulated in laws, decrees, regulations and the enforcement and implementation in practice in Viet Nam.

Table 3. Principal Laws and Regulations Impacting on Corporate Governance

Law/Regulation	Regulated entities	Scope
Law on Credit Institutions (2024)	Credit institutions operating in Viet Nam.	This law was adopted by the National Assembly on June 16, 2010, was effective from January 1, 2011 and amended in 2017 and 2024.
Law on Enterprises (2020)	All corporate entities and activities.	Regulates founding, operation, reorganization, and liquidation of all forms of corporate entities (including FIEs), such as partnerships, limited liability companies, private enterprises and joint stock companies.
Law on Investment (2020)	All investment activities.	Regulates the formation, licensing, implementation, and liquidation of projects to be carried out by all forms of corporate entities (including FIEs), and indirect foreign investments. In relation to new companies, the procedures for licensing projects are also procedures for setting up the companies.
Law on Securities (2019)	Vietnamese and foreign organizations and individuals that invest in securities and operate in the securities market of Viet Nam, securities authorities, other organizations and individuals involved in securities activities and the securities market.	Regulates the issuance, offering, sale and purchase of securities, securities-related services and information disclosure.
Decree No. 05/2019/ND-CP	Listed companies, enterprises with 50 percent of charter capital held by the State and State enterprises which are parent companies operating in a parent-subsidiary business model.	Regulates the internal audit activity.
Decree No. 153/2020/ND-CP	Bond-issuing corporations that are joint stock companies or limited liability companies.	Regulates the private placement of corporate bonds and trading of privately placed corporate bonds in the domestic market and offering of corporate bonds to the international market.

Decree No. 155/2020/ND-CP	Vietnamese and foreign organizations and individuals that invest in securities and operate in the securities market of Viet Nam, securities authorities, other organizations and individuals involved in securities activities and the securities market (including public companies, securities companies, fund management companies).	Details and guides implementation of a number of articles of the Law on Securities. Mandatory corporate governance requirements for public companies.
Decree No. 158/2020/ND-CP	Vietnamese and foreign organizations and individuals that invest in derivatives and operate in the derivative market of Viet Nam. Other organizations and individuals involved in derivative investment and trading and the derivative market of Viet Nam.	Regulates derivatives and the derivatives market.
Decree No. 01/2021/ND-CP	All corporate entities.	Regulates enterprise registration.
Decree No. 47/2021/ND-CP	Groups of companies, SOEs.	Regulates the three cases of cross-ownership, and information disclosure of SOEs on their websites.
Circular No. 96/2020/TT-BTC	Public companies.	Regulates securities market disclosure.
Circular No. 116/2020/TT-BTC (Model Charter)	Public companies.	A model charter mandatory for public companies and non-mandatory, but advisable for non-public companies.

Table 3 reflects major laws and regulations relevant to corporate governance in Viet Nam, but the list is not exhaustive. It is important that companies seek legal advice. Moreover, Vietnamese legislation continues to change as it develops and improves. For example, as discussed previously, the LOE has been amended several times to eliminate inconsistencies in provisions that regulate the activities of governing bodies, securities issuance, the exercise of shareholder rights and other matters. Most laws and regulations that have an impact on corporate governance and are referred to

in this Manual have been enacted in the last few years, although they may have evolved from past laws.

For this reason, while companies should use this Manual as a reference, they should also review other laws and regulations which may be applicable to their line of business (e.g., accounting, anti-corruption, auditing, bankruptcy, commerce, competition, construction, labor, tender process, and taxation laws). If a company encounters an inconsistency or ambiguity between different pieces of legislation, it should consult appropriate legal advice in order to achieve full compliance with the law and best corporate governance practice. Appropriate sources of such advice may be the company's in-house legal or compliance department, the company's external legal counsel, or clarification from regulatory agencies.

Finally, all Vietnamese companies are encouraged to adhere to rules included in corporate governance regulations, although these provisions are only mandatory for public companies.

1.4.3. Institutional Framework

Numerous institutions make-up the institutional framework for corporate governance in Viet Nam today, too many to list exhaustively. The following institutions have at least one core activity focused on corporate governance:

Table 4. Corporate Governance-Related Institutions in Viet Nam

Courts	
Supreme People's Court of Viet Nam	http://www.toaan.gov.vn
Supreme People's Procuracy of Viet Nam	http://www.vksndtc.gov.vn/
Provincial economic courts	N/A
Arbitration Center	
Viet Nam International Arbitration Center	http://www.viac.org.vn
Public Sector Institutions	
National Assembly of the Socialist Republic of Viet Nam	www.na.gov.vn/
Government of Viet Nam	http://www.chinhphu.vn/
Ministry of Justice	www.moj.gov.vn

Ministry of Finance	www.mof.gov.vn
State Securities Commission of Viet Nam	www.ssc.gov.vn/
Ministry of Planning and Investment	www.mpi.gov.vn/
Departments of Planning and Investment of provinces and cities	Please refer to the specific province
Ministry of Public Security	www.mps.gov.vn
Viet Nam Securities Depository and Clearing Corporation (VSDC)	N/A
State Bank of Viet Nam	www.sbv.gov.vn
Official Gazette of the Socialist Republic of Viet Nam	N/A
Viet Nam Chamber of Commerce and Industries	www.vcci.com.vn
Viet Nam Stock Exchange (VNX)	N/A
Ho Chi Minh City Stock Exchange (HOSE)	http://www.hsx.vn/
Hanoi Stock Exchange (HNX)	http://hnx.vn/
Securities Research and Training Center	http://www.srtc.org.vn/
Professional Organizations	
Viet Nam Lawyers' Association	N/A
Viet Nam Institute of Directors (VIOD)	https://viod.vn
Viet Nam Independent Directors Association	https://www.vnida.vn
International Organizations	
Global Corporate Governance Forum (GCGF)	www.gcgf.org
International Finance Corporation (IFC)	www.ifc.org
Organisation for Economic Cooperation and Development (OECD)	www.oecd.org
The World Bank	www.worldbank.org

REFERENCE LIST

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NOTES

NOTES

Chapter 2

COMPANY GOVERNANCE STRUCTURE

2 | Company Governance Structure

Table of Contents

The Chairperson's Checklist

- ☑ What is a joint stock company?
- ☑ Why do we need joint stock companies?
- ☑ What is the dividing line between public and private joint stock companies?
- ☑ What is the significant governance difference between listed and unlisted joint stock companies?
- ☑ In addition to the General Meeting of Shareholders (GMS), Board of Directors (BoD) and management and management, has the company established supporting bodies such as a Supervisory Board, Audit Committee, Risk Management Committee, Corporate Governance, Nomination and Remuneration Committee, External Audit and Internal Audit functions?
- ☑ Have these supporting bodies been established and given the appropriate structures and adequate resources to be effective?
- ☑ Does the company need a Corporate Secretary?

The Law on Enterprises (LOE) defines a joint stock company's status and provides for the structure of its governing bodies. The CG Regulations and the Model Charter[1] further include recommendations to establish additional governing bodies for public companies, for example, Board Committees and the Corporate Secretary.

This chapter discusses the concept and governance structure of joint stock companies as they are defined by the LOE and as recommended by

1 *Model Charter is issued together with Circular No. 116/2020/TT-BTC (December 31, 2020). All public companies need to adopt a charter that is aligned with the Model Charter.*

the CG Regulations and the Model Charter. The authorities, functions and structures of the governing bodies are described in more detail in other chapters of this Manual.

2.1. Joint Stock Company

2.1.1. Definition of Joint Stock Company

Under Article 111 of the LOE (2020), a joint stock company has the following characteristics:

- The charter capital is split into multiple units of equal portions called shares.
- Shareholders may be organizations or individuals. The minimum number of shareholders is three and there is no restriction on the maximum number.
- Shareholders are solely liable for the company's debts and other liabilities up to the value of capital contributed to the company.
- Shareholders are entitled to transfer ownership of their shares to other persons, except when transferring to people other than founding shareholders within the first three years upon company establishment registration,[2] and cases whereby shares are restricted from transfer as prescribed by the Company Charter.[3]

Joint stock companies are entitled to issue shares, bonds and other types of securities of the company.

Joint stock companies are the only type of legal entity that can issue shares, encompassing ordinary shares, participating preference shares, redeemable preference shares, super-voting shares and other preference shares, as determined in the Company Charter[4] and applicable securities regulations.

The shareholders of a joint stock company are normally liable for the debts and other property obligations of the company up to the amount of capital they have contributed to the company. The LOE, however, contains certain specific obligations of shareholders, including[5]:

2 *LOE (2020), Article 120, Clause 3.*
3 *LOE (2020), Article 127, Clause 1.*
4 *LOE, Article 114, Clause 1 and Clause 2.*
5 *LOE, Article 119.*

- Make full payment for the subscribed shares on time: The founding shareholders[6] must together register at least 20 percent of the total authorized shares upon company establishment registration,[7] and make full payment for the subscribed shares within 90 days from the date of being granted the Enterprise Registration Certificate. A shareholder who fails to pay for the subscribed shares shall no longer be a shareholder of the company and must not transfer the right to purchase the shares to another person. A shareholder who only made payment for a portion of the subscribed shares shall have the right to vote and receive dividends and other rights in proportion to the number of paid shares and must not transfer the right to purchase the number of unpaid shares to another person. Unpaid shares shall be deemed unsold shares and the BoD shall be entitled to offer such shares for sale. Shareholders who have not made full payment for the subscribed shares shall be responsible for the financial obligations of the company in proportion to the total par value of subscribed shares, that arise within the period before the date the company registers for the change of charter capital.[8]

- Not withdraw contributed capital by ordinary shares from the company in any form, except when shares are repurchased by the company or acquired by other persons. In case a shareholder withdraws a part or all of the contributed share capital, such shareholder and any person with related interests in the company shall be jointly liable for debts and other property obligations of the company up to the value of withdrawn shares and any damage caused.

Comply with the Company Charter, and the company's rules and regulations:

- Abide by the resolutions and decisions of the GMS and BoD.

- Maintain confidentiality of information provided by the company in accordance with provisions specified in the Company Charter and the law.

- Only use provided information to exercise and protect the company's legitimate rights, obligations, and interests.

- Do not disseminate, copy, or share information provided by the company to any other organization or individual.

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6 *LOE, Article 4, Clause 4: "founding shareholder" means a shareholder who holds at least one ordinary share and has his/her signature on the list of shareholders that are also founders of the joint stock company.*

7 *LOE, Article 120, Clause 2.*

8 *LOE, Article 113.*

2.1.2. Public Companies and Private Joint Stock Companies

In general, if a company does not meet the definition of a public company it is considered a private joint stock company. Public companies require specified charter capital, and are subject to stricter and more complex rules regarding their governance and disclosure. The characteristics of a public company generally reflect a larger and growing company that might intend to raise money on equities markets. Private joint stock companies may be a more optimal structure for smaller enterprises.

Table 1. Comparison of Public Companies and Private Joint Stock Companies

	Public Companies	Private Joint Stock Companies
Characteristics	Have successfully made an Initial Public Offering (IPO) through registration with SSC[9] or have at least 10 percent of voting shares held by at least 100 non-major shareholders and have a minimum charter capital of VND30 billion.[10]	Three shareholders and above.[11]
Minimum Charter Capital	VND30 billion.[12]	Not required, except for companies engaging in certain specific sectors, e.g banking or insurance.
Issuance of Shares	A public offering shall register with SSC, except in certain cases.[13] Share offerings by a public commercial bank require approval by the State Bank of Viet Nam (SBV), while those of a public insurance company[14] require approval by the Ministry of Finance (MOF).	Share offerings may be conducted by the following methods:[15] - Share offering to existing shareholders - Private placement of shares: cannot offer shares via public media and to 100 investors or more. Share offerings by a joint stock commercial bank are subject to approval by SBV.[16] Share offerings by a joint stock insurance company are subject to MOF approval.[17]

9 *LOS, Article 32, Clause 1b.*
10 *LOS, Article 32, Clause 1*
11 *LOE, Article 111.*
12 *LOS, Article 32, Clause 1a.*
13 *LOS, Article 16.*
14 *Decree No. 155/2020/ND-CP, Article 13, Clause 7.*
15 *LOE, Article 123, Clauses 123, 124 and 125.*
16 *Law on Credit Institutions (32/2024/QH15).*
17 *Law on Insurance Business (No. 54/2019/QH14, 61/2010/QH12, 42/2019/QH14), Article 69, Clause* 1e.

Transferability of Shares	No restrictions (except for voting preference shares[18] and shares held by founding shareholders).[19] Neither the consent of other shareholders nor the company is required.	Potentially restricted. Transferability of shares is unrestricted, except for voting preference shares and shares held by founding shareholders and some restrictions, which may be included in the Company Charter.
Corporate Secretary	The BoD must nominate at least one person in charge of corporate governance to support company governance. This person can concurrently assume the position of Company Secretary.[20]	Not specified.
Information Disclosure	The company must disclose a wide range of information regarding its financial position, operations and governance.[21]	No legal requirements to publicly disclose information, except for State-owned enterprises.[22]

When the number of shareholders totals 100 and the charter capital reaches VND30 billion, a private company must register with the SSC to become a public company.[23] It is also possible for a private company to voluntarily transform itself into a public company and vice-versa by following legal requirements, in accordance with the Law on Securities (with charter capital of at least VND30 billion and at least 10 percent of the voting shares are held by at least 100 non-major shareholders[24]). Procedurally, this must be done by amending the Company Charter and enterprise registration certificate and is not considered to be a conversion of the business organization's legal form.

18 *LOE, Article 116, Clause 3: Voting preference shareholders must not transfer the ownership of such shares to others, except for transfer by a legally valid court judgment or decision or by inheritance.*

19 *LOE, Article 120, Clause 3: Within a period of three years from the issue date of the enterprise registration certificate, ordinary shares of founding shareholders can be freely transferred to other founding shareholders, and to people other than founding shareholders only upon approval of the GMS. In this case, the transferring founding shareholders do not have the right to vote on the ownership transfer of such shares.*

20 *Decree No.155/2020/ND-CP, Article 281, Clause 1.*

21 *LOE, Article 176, Clause 4, and Circular 96/2020/TT-BTC Chapter 2.*

22 *LOE, Article 176, Clause 4, and Article 88, Clause 1b.*

23 *LOE, Article 111, Clause 2.*

24 *LOS, Clause 1, Article 32.*

2.1.3. Regulatory Distinctions Based on Shareholding

There are some differences in the rights of a shareholder based on her/his shareholding. These differences are designed to provide for enhanced shareholder protection and/or easier administration of a joint stock company.

Table 2. Difference in Rights According to the Shareholding (regulated in Law on Enterprises)

No.	Shareholding	Specific Rights
1	All ordinary shareholders[25]	These shareholders have the right to: • Attend and express opinions at the GMS, exercise the right to vote directly or through an authorized representative or in other forms provided for by the Company Charter, and the law. Each ordinary share equals one vote. • Receive dividends at the rate decided by the GMS. • Be given pre-emptive rights when buying new shares in proportion to ownership ratios of ordinary shares. • Freely transfer the ownership of shares to other persons except in cases specified in the LOE and relevant laws. • Examine names and contact addresses in the list of shareholders with voting rights and request changes to incorrect personal information. • Examine and/or copy the Company Charter, minutes and resolutions of the GMS. • Receive a part of the remaining assets in proportion to the ratio of ownership of shares in the company when the company is dissolved or goes bankrupt.
2	At least 1 percent of the total ordinary shares[26]	• A shareholder or group of shareholders that holds at least 1 percent of the total ordinary shares may, on its own behalf or on behalf of the company, initiate legal action regarding individual or joint liability against members of the BoD or CEO to request the return of benefits or compensation for damages to the company or others. • Proceedings costs in case a lawsuit is filed on behalf of the company shall be recorded as a company expense, except where the petition for legal action is rejected. • Shareholders are entitled to examine or copy extracts of necessary information for a Court or Arbitration decision prior to or during the course of legal action.

25 *LOE, Article 115, Clause 1.*
26 *LOE, Article 166.*

3	At least 5 percent of the ordinary shares (or a smaller ratio specified in the Company Charter)[27]	The shareholder or group of shareholders that holds at least 5 percent of the ordinary shares (or a smaller ratio specified in the Company Charter). 1. Have the rights to: • Examine and/or copy extracts of the book of minutes, resolutions, and decisions of the BoD, half-year and annual financial statements, reports of the Supervisory Board, contracts and transactions subject to approval by the BoD and other documents, except those that involve the company's business secrets. • Request the convention of a GMS in cases specified in LOE. • Request the Supervisory Board to inspect each issue relating to the management and administration of company operations when it is considered necessary. The request shall be made in writing and shall contain the full name, contact address, nationality, number of personal legal documents in respect of an individual shareholder; enterprise name and code or number of institutional legal documents, head office address in respect of an institutional shareholder; number of shares and date of registration of shares of each shareholder, total number of shares of the group of shareholders, percentage of ownership in total number of company shares and issues to be inspected and purpose of inspection. • Request the convention of a GMS in cases that the BoD commits a serious violation against the rights of shareholders or the obligations of managers or makes decisions *ultra vires*.
4	At least 10 percent of the ordinary shares (or a smaller ratio specified in the Company Charter)	• A shareholder or group of shareholders holding 10 percent or more of the total number of ordinary shares or a smaller percentage as specified in the Company Charter shall have the right to nominate candidates to the BoD and Supervisory Board as per the process regulated in the LOE.[28] • Institution as a shareholder holding at least 10 percent or more of the total number of ordinary shares may designate up to three authorized representatives.[29]

27 *LOE, Article 115, Clause 2.*
28 *LOE, Article 115, Clause 5.*
29 *LOE, Article 14, Clause 2.*

2.2. Governance Structure of Joint Stock Company

Legislation provides companies with substantial flexibility in establishing their governance structure. The bodies required by the LOE do not depend on how many shareholders the company has or the amount of charter capital. However, there are different legal requirements pertaining to the governance structure between non-listed and listed joint stock companies.

In general, a joint stock company may select to apply these models of governance structures unless otherwise prescribed by securities laws[30]:

- A joint stock company with a GMS, BoD, Supervisory Board and Chief Executive Officer (CEO)[31]
- A joint stock company with a GMS, BoD and CEO. In this case, at least 20 percent of BoD members shall be independent members and there must be an Audit Committee affiliated to the BoD.[32]

A company is entitled to decide on its governance and management structure in accordance with one of the two models.

30 *LOE, Article 137, Clause 1*

31 *LOE, Article 137, Clause 1: If the joint stock company has fewer than 11 shareholders and the shareholders that are organizations hold fewer than 50 percent of the company's total shares, a Supervisory Board is not mandatory.*

32 *The organizational structure, functions and duties of the Audit Committee shall be specified in the Company Charter or the Audit Committee's operating regulations promulgated by the BoD.*

Figure 1. Company Governance Structure with a Supervisory Board (Model 1)

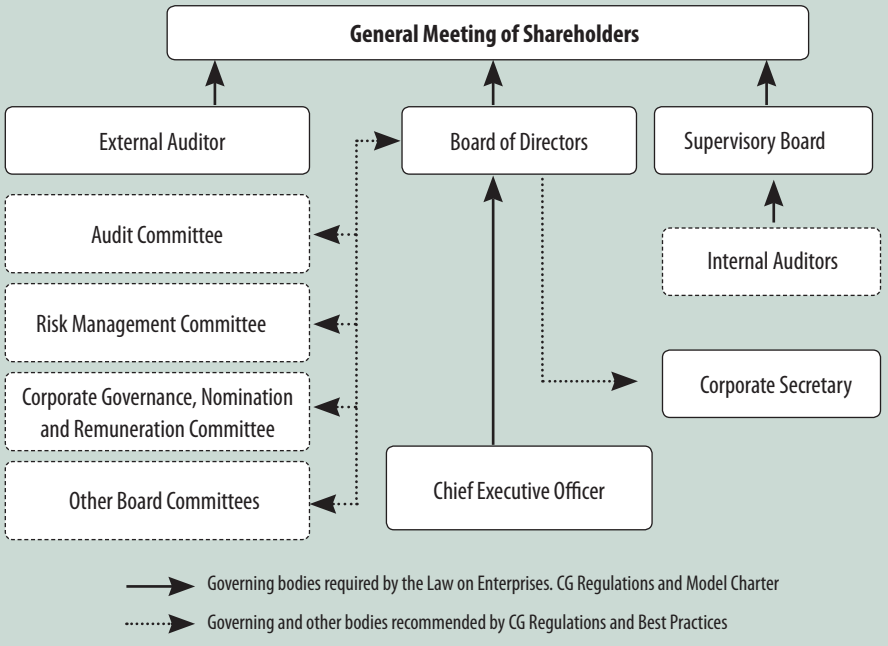
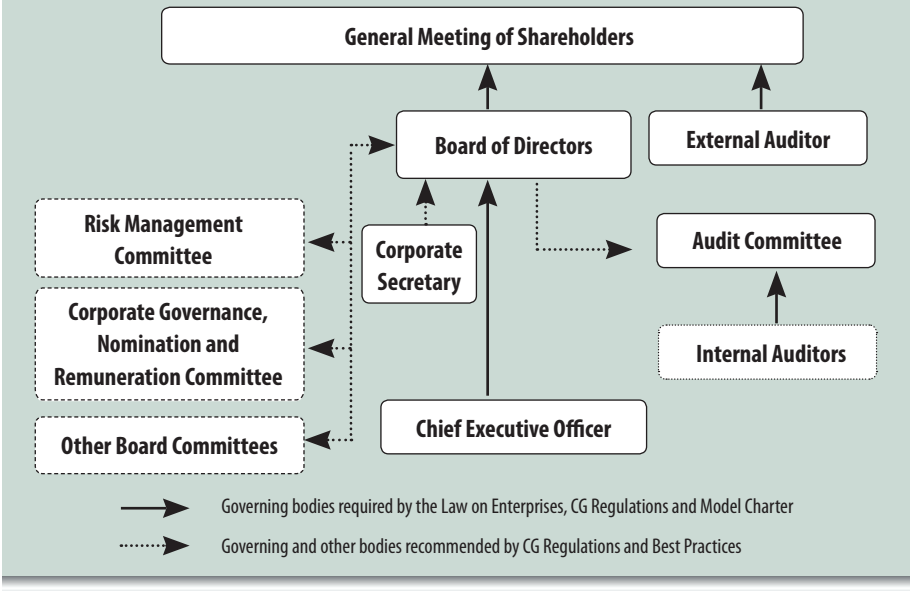


Figure 2. Company Governance Structure without a Supervisory Board (Model 2)



Listed companies: In addition to the bodies required for non-listed joint stock companies, listed companies must have:

- An Audit Committee under the BoD for listed companies organized and managed under Model 2.[33]
- Executive officers.[34]
- Corporate Secretary.[35]

In addition, it may establish the following Board Committees at its discretion:

- Risk Management Committee.
- Corporate Governance, Nomination and Remuneration Committee.
- Other Board Committees.

Mandatory and voluntary governing as well as other bodies of a company and their responsibilities are set forth by the LOE, CG Regulations and Model Charter.[36] In the case of only one legal representative in the company, it shall be the Chairperson of the BoD or CEO. Unless otherwise provided in the Company Charter, the Chairperson of the BoD shall be the legal representative of the company.[37]

2.2.1. General Meeting of Shareholders

The General Meeting of Shareholders (GMS) of a joint stock company is the highest decision-making body in the company. All ordinary shareholders have the right to participate in the GMS and have a number of votes corresponding to the respective ordinary shares held. The GMS normally only makes decisions on major issues affecting the company. It approves nominations for BoD and Supervisory Board membership. In addition, it approves the annual report and financial statements, distribution of profits and losses (including payment of dividends), changes to the charter capital

33 *Decree No.155/2020/ND-CP, Article 281, Clause 1.*
34 *LOS, Article 41, Clause 3 and Decree No. 155/2020/ND-CP, Article 281, Clause 1: at least one executive officer shall be approved by the GMS following the BoD's recommendation.*
35 *LOE, Article 156, Clause 5 and Decree No. 155/2020/ND-CP, Article 281, Clause 1: an executive officer may concurrently act as the Corporate Secretary.*
36 *LOE, Article 137.*
37 *LOE, Article 137, Clause 2.*

and Company Charter, re-organization and dissolution, large related-party transactions and extraordinary transactions.

2.2.2. Board of Directors

The Board of Directors (BoD) plays a central role in the corporate governance framework. It is responsible for guiding and setting the company's strategy and business priorities, including the annual financial and business plan, as well as guiding and controlling managerial performance, and making decisions on issues not under the GMS' authority. It acts in the interests of the company, protects the rights of all shareholders, oversees work by the CEO and management, as well as the integrity of the company's accounting, financial and non-financial reporting systems. An effective, professional, and independent BoD is essential for the implementation of good corporate governance practices.

Comparative Practice

Vietnamese companies can choose between different corporate governance structure models as stipulated in Article 137.1 of the LOE. Board structures and procedures vary both within and among countries. The two-tier system is common in civil law jurisdictions such as Germany, the Netherlands and Eastern European countries. The United Kingdom, United States, Australia, and other common law countries typically use a one-tier or unitary board system.

- The one-tier or unitary board system is characterized by a single board that governs the company, and includes both executive and non-executive members. This governance structure can facilitate strong leadership and efficient decision-making. Non-executive and independent directors, however, play a crucial role in monitoring managers and reducing agency costs.
- The two-tiered or dual system, on the other hand, is characterized by distinct supervisory and management bodies. The former is commonly referred to as the Supervisory Board, the latter as the Executive Board. Under this system, the day-to-day management of the company is handed down to the Executive Board, which is then controlled by the Supervisory Board (which, in turn, is elected by the GMS). These two bodies have distinct authorities and their composition cannot be mixed. This means members of the Management Board cannot sit on the Supervisory Board and vice-versa. The advantage of the two-tiered system is a clear oversight mechanism, but it has been criticized for inefficient decision-making.

- Besides the one-tiered and two-tiered systems, many countries recognize a third governance structure, the hybrid system. This is essentially an amalgam of the two above-mentioned models with an additional statutory body for audit purposes. According to this system, a joint stock company can establish a Supervisory Board and a BoD composed of non-executive directors and executive directors, with the option to organize an Executive Management as well.

Regardless of which system is adopted, the following must be kept in mind:

- There is always a trade-off between efficiency and control. For example, when there is high conflict of interest risks, shareholders may choose the two-tiered system, but must realize that a tight monitoring governance system could tie managers' hands and render business operations and decision-making inefficient. On the other hand, when shareholders and managers trust each other and the company requires optimized efficiency to explore other business opportunities, the company may choose a more pro-management oriented, one-tier Board system.
- While all systems have numerous elements in common, important differences do exist and will affect the Board's authority, structure and operations, and consequently the duties and obligations of directors.

2.2.3. Board Committees

Board Committees are provided for by CG Regulations applicable to public companies. CG Regulations recommend the establishment of certain Board Committees, such as an Audit Committee, a Risk Committee and a Corporate Governance, Nomination and Remuneration Committee. The primary task of these committees is to assist the BoD's functions. The discussion in this Manual as to the authority, composition, and functions of individual Board Committees is mostly based on recommendations of the Viet Nam Corporate Governance Code of Best Practices.

2.2.4. Executive Bodies

Chief Executive Officer

Every company must have a Chief Executive Officer (CEO) or general director who is responsible for day-to-day management of the company. The CEO is the legal representative of the company unless the Company Charter appoints the chairperson of the BoD to this position. The CEO is accountable

to the BoD. Legislation, the charter and internal regulations, and the contract signed between the CEO and the company regulate the authority and election of the CEO, as well as relations with other governing bodies.

Management Board

The Management Board is composed of the CEO and top executives of the company. It may be referred to as a "board of management", "managerial board", "executive team", or "collective executive body", among other terms. The term "Management Board" is used for the purposes of this Manual. A listed joint stock company is required to establish a Management Board, which is responsible for the day-to-day management of the company and carries out decisions set by the BoD.

2.2.5. Corporate Secretary

It is mandatory for a public company to appoint at least one Corporate Governance-focussed officer, who could be the Corporate Secretary. The main task of the Corporate Secretary is to organize meetings of the GMS, BoD and Supervisory Board and ensure BoD's resolutions are in compliance with law. The Corporate Secretary is normally in a senior company management position and is expected to provide professional guidance to shareholders, boards, individual directors, management, and other stakeholders on the governance aspects of strategic decisions. The Corporate Secretary typically would act as a bridge for information, communication, advice, and arbitration between the Board and management. The Corporate Secretary would also act as a bridge between the company and its shareholders and stakeholders. However, in large-sized companies, this task is filled by an "investor relations officer".

2.2.6. Internal Auditor

The role of Internal Auditor is increasingly becoming more important in strengthening corporate governance of public and listed companies. An effective internal audit function plays a key role in assisting the Board (or equivalent body) to discharge its governance responsibilities. According to current regulations, the following enterprises are obligated to establish an internal auditing function: (i) Vietnamese listed companies, (ii) enterprises in which the State owns more than 50 percent of charter capital being a parent

company operating under the model of parent company-subsidiary company and (iii) the State-owned enterprises (SOEs) being parent companies operating under the model of parent company-subsidiary company. Other enterprises are encouraged to conduct an internal audit.[38]

2.2.7. External Auditor

Vietnamese regulations on auditing stipulate that an annual, independent audit shall be conducted by a certified independent External Auditor (licensed and accredited audit company/organization). It is an obligation to have an independent audit if a company is:

- Considered to be a compliance-audited company (an SOE, FIE, commercial bank, credit institution, financial institution, insurance company and public company).
- A controlling company that makes consolidated financial statements.
- Issuing securities or other financial instruments traded on the organized market.

The External Auditor is a separate body of the company, elected by the GMS within the list of auditors approved by the SSC to conduct the audit of financial statements of listed companies, prepare the report of the auditor and submit to the BoD. The External Auditor is permitted and encouraged to attend all shareholder meetings, receive notices and information in relation to the shareholder meetings and speak at the shareholder meetings regarding the related-audit matters.

If the company's annual financial statement and audit report contain material exceptions, contradictory opinions or disclaimers, the public company must invite the representative of the audit firm approved for implementing the audit of the financial statements of the company to attend the annual GMS and the representative of such approved audit firm is responsible for attending the annual GMS of the public company.[39]

38 *Decree No. 05/2019/ND-CP, Article 10.*
39 *Decree No.155/2020/ND-CP, Article 273, Clause 4.*

2.2.8. Supervisory Board

A joint stock company with more than 11 shareholders and institutional shareholders holding more than 50 percent shareholding and listed companies are obligated to establish either a Supervisory Board[40], the purpose of which is to supervise the BoD and CEO with respect to management and administration of the company. The supervisory body should be independent of the BoD and Management Board. The Supervisory Board reports directly to the GMS.

40 *LOE, Article 137, Clause 1.*

NOTES

Chapter 3

INTERNAL CORPORATE DOCUMENTS

3 | Internal Corporate Documents

Table of Contents

The Chairperson's Checklist

- ☑ Does the company have a valid Company Charter, with provisions on the protection of shareholder rights, equitable treatment of shareholders, division of authority among the governing bodies and information disclosure?
- ☑ How detailed is the charter? Is it customized from the Model Charter to reflect the company's specific circumstances and corporate governance structure?
- ☑ Is the charter freely available to interested parties and accessible on the internet?
- ☑ Has the company adopted all required internal corporate governance regulations? If yes, were these internal regulations approved by the Board of Directors (BoD) or General Meeting of Shareholders (GMS)?
- ☑ Does the company adhere to its internal regulations?
- ☑ Has the company adopted its own corporate governance code? If so, does it touch upon the principles of fairness, responsibility, transparency, and accountability?
- ☑ Does the company's corporate governance code provide guidance on the relationship between the corporate bodies, notably interactions between the BoD and the Chief Executive Officer or Management Board?
- ☑ Has the company identified a core set of values? Does the company have a code of ethics based on these values?

The Company Charter is the founding document of a company. No company can be established without a charter. A charter establishes the company, and determines its structure and scope of business and operations. It is fundamental to the company's system of corporate governance, ensuring the protection and equitable treatment of shareholders, distribution of authority between the governing bodies, and disclosure and transparency of the company's activities. It also plays an important public role in relation to third parties, since it provides information about the company, especially on its corporate governance system. The company is required to register the charter and its amendments with the licensing authority.[1]

In addition to the charter, the company may adopt internal regulations for different purposes. Certain internal regulations are compulsory for a number of specific types of companies. For instance, a credit institution and an insurance company are required to adopt financial regulations which provide the framework for the financial administration of the company and aim to maintain the integrity of the company's financial system. Public companies, which include public banks and public insurance companies, are encouraged to adopt the corporate governance regulation[2] and Viet Nam's Corporate Governance Code of Best Practices, which ensures that a company is effectively operated and controlled in the interests of shareholders and related persons. A corporate governance code is useful in regulating detailed procedures for the company's governing bodies and can help ensure a clearer understanding and smoother governance practices. This code as an internal regulation, however, it must be consistent with the Company Charter.

This chapter examines corporate governance issues as related to charter provisions. It also explains when and how a charter and internal regulations can be amended, and how the amendments are registered.

1 *Law on Enterprises (LOE) (2020), Article 22.*
2 *Law on Securities (LOS) (2019), Article 41, Clause 3 and Decree No.155/2020/ND-CP, Article 270, Clause 2.*

3.1. Company Charter

3.1.1. Charter Provisions

The charter must include minimum provisions related to the company's structure and charter capital, the authority of the governing bodies and shareholder rights. Regardless of the company's activities, ownership and management structure, the charter must include the following mandatory provisions:[3]

- The company's name, addresses of the headquarters, branches and representative offices.
- The company's business lines.
- The charter capital, total quantity of shares, types of shares and face value of each type.
- Full name, mailing address, and nationality of the founding shareholders. Quantity of shares, types of shares and value of each type held by founding shareholders.
- Rights and obligations of shareholders.
- The organizational and management structure.
- Quantity, managerial titles, rights and obligations of each of the enterprise's legal representatives.
- Procedures for adoption of company decisions, principles for settlement of internal disputes.
- Bases and methods of calculating salaries, remuneration, and bonuses of managers and members of the Supervisory Board.
- Cases in which members or shareholders shall have the rights to request the company to repurchase their shares.
- Principles for distribution of after-tax profits and dealing with losses in the business.

3 *LOE, Article 24.*

- Cases of dissolution, procedures for dissolution and liquidation of the company's assets.
- Procedures for amendments or additions to the Company Charter.

The Company Charter at the time of registration shall include full names and signatures of the individual founding shareholder(s) and legal representative(s) or the authorized representatives of the institutional member(s).[4]

In addition to the foregoing mandatory provisions, the Company Charter may set forth other matters as agreed by the shareholders and must be consistent with the provisions of laws. These provisions give the company and its shareholders great flexibility in organizing the company structure, including its activities, financial structure, and shareholder rights. In other words, the charter largely determines the characteristics and activities of the company.

3.1.2. Model Charter

All public companies in Viet Nam are recommended to follow a Model Charter issued by the Ministry of Finance (MOF),[5] available as an attachment in Appendix 1 of Circular No. 116/2020/TT-BTC.

3.1.3. When to Amend the Charter?

The charter should be amended when changes occur that affect any of its provisions. For example, a company decision to expand its business scope, increase its charter capital, change its corporate name or its registered office should be accompanied by respective amendments of the charter. This rule is in accordance with the principle of accuracy and reliability of all registered data, and is advised to be followed as good corporate practice.[6]

The charter should also be brought into conformity with changes in legislation when new requirements that affect charter provisions are introduced.

4 *LOE, Article 24, Clause 3.*
5 *Decree No. 155/2020/ND-CP, Article 270, Clause 3 and Circular No. 116/2020/TT-BTC*
6 *LOE, Article 24, Clause 4: The revised company's charter shall contain the full names and signatures of the legal representative.*

3.1.4. Who can Amend the Charter?

As a rule, only the GMS has the authority to amend the charter.[7] The BoD has the right to decide the sale of unsold shares within the number of authorized shares of each class and decide other methods of raising capital.[8] These provisions seem to suggest that the BoD should have the right to amend the charter to the extent such amendments relate to the adjustment of the charter capital due to the sale of new shares within the authorized shares. However, such a charter amendment should be reported to the GMS at its annual meeting.

3.1.5. How to Amend the Charter?

Preparing amendments to the charter requires legal drafting skills and specialized knowledge of legislation.

Best practice

It is accepted practice that the company, through its legal counsel/ department, prepares the charter amendments in cooperation with outside legal consultants and with the participation of the Corporate Secretary. The CEO should closely follow the process, in order to ensure that provisions of the charter are formulated in accordance with the Board's guidelines. The final text of the draft proposal must be evaluated and accepted at the BoD meeting. That text will be submitted to the GMS as a proposal, except in those cases when amending the charter falls within the Board's authority. In that case, the BoD will, instead of a final proposal, adopt the decision that amends the charter.

A company may amend its charter at any time to add or change a provision that is required or permitted in the charter or delete a provision that is not required in the charter.

There are three ways a company can amend its charter:

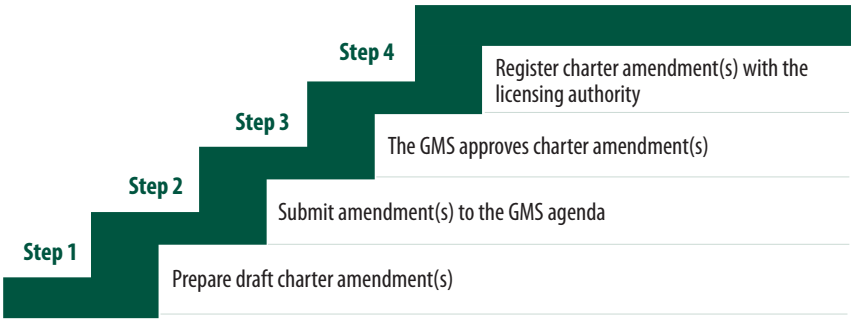
- Change existing charter provisions.
- Add new charter provisions.

7 *LOE, Article 138, Clause 2dd.*
8 *LOE, Article 153, Clause 2c.*

- Approve an entirely new version of the charter (redrafting the charter), which is appropriate when many changes are necessary.

Figure 1 illustrates the procedure for amending the charter. The procedure for redrafting the charter is similar.

Figure 1. Procedure for Amending the Charter



Under specific circumstances, when special regimes are introduced (as illustrated in Figure 1), the procedure for amending the charter changes in such a way that some of the above-mentioned steps will be excluded or broadened as permitted by law.

The GMS has the authority to approve the charter amendments with at least 50 percent (65 percent in some cases)[9] in the voting shares of all shareholders attending the shareholders' meeting. The charter, however, can provide for a higher percentage of votes.[10]

3.1.6. Objection to the Amendments of the Charter

By law, when a shareholder votes not to approve the resolution on the company's restructuring or changes of rights and/or obligations of the shareholders provided in the charter, such a shareholder has the right to request the company repurchases its shares. Such a request must be sent to the company within 10 working days from the date the resolution approving such change is passed.[11] The price to repurchase shares may be:[12]

9 *LOE, Article 148, Clause 1.*

10 *Regardless of provisions of the LOE, Viet Nam's commitments when joining the World Trade Organization allow foreign enterprises to stipulate that any matter within the competence of the GMS (including amendments to the charter) can be passed if it receives a majority of votes.*

11 *LOE, Article 132, Clause 1.*

12 *LOE, Article 132, Clause 2.*

- Market price.
- A price calculated in accordance with the rules in the Company Charter within 90 days from the receipt of request.
- A price given by a professional valuation organization appointed by the company.[13]

3.1.7. Registration of Charter Amendments

The law requires that any change in the business registration document of a company, including the Company Charter, is registered with the business registration authority.[14] In practice, a company normally registers an amended charter with the business registration authority at the same time it applies for any change of contents recorded in the business registration certificate (e.g. increase of charter capital, change of business activities).

The following documents should be submitted to the business registration authority to reflect the change of contents recorded in the business registration certificate:[15]

- Notification of change(s) of business registration contents.
- Resolution of the GMS approving such change(s).
- Amended charter.
- Other supporting documents relating to cases of changes stipulated in Chapter VI of Decree No. 01/2021/ND-CP on enterprise registration.

13 *LOE, Article 132, Clause 2: The company shall introduce at least three valuation organizations for the shareholder to make the final selection decision. The selection decision given by such organization shall be final.*

14 *LOE, Article 31, Clause 1.*

15 *Decree No. 01/2021/ND-CP, Article 47.*

3.1.8. When do Charter Amendments Become Effective?

Although the law is silent on when charter amendments become effective, given the GMS is imposed a right to approve any amendments of the charter, it is reasonable to conclude that the charter amendments will become effective from the date they are duly approved by the GMS.[16]

3.1.9. Disclosure of the Charter

The charter is an important source of information for shareholders and potential investors. The original charter document, as well as all charter amendments, should be kept at the head office of the company or other locations stipulated in the Company Charter for a duration stipulated by law.[17] Shareholders of the company are entitled to review, refer and extract the charter and its amendments.[18]

The Viet Nam Corporate Governance Code of Best Practices recommends that the Board ensures that company discloses updated and relevant information about its corporate governance practices and structures on its website and in annual reports. At a minimum, the company should disclose corporate governance policies and charters in accordance with this code.[19]

16 *Amendments of the business registration contents of a company subject to approval of the licensing authority (e.g. business activities, legal representative or charter capital), would only come into effect from the issuance of an amended business registration certificate, even though such changes have been recorded in the amended charter duly approved by the GMS.*

17 *LOE, Article 11.*

18 *LOE, Article 115.*

19 *Viet Nam Corporate Governance Code of Best Practices, Principle 8.3, Recommended Practice 8.3.1.*

3.2. Internal Corporate Governance Regulations

A company-level corporate governance code, as an internal regulation, is a principle-based statement setting out expectations for the company's governance practices. It involves a set of relationships between a company's management, its Board, its shareholders and other stakeholders. It also establishes the framework for setting the company's objectives, determining the means to achieve those objectives, and monitoring performance.

The Model Corporate Governance regulations (model company's corporate governance code) can be obtained as the attachment in Appendix 2 of Circular No. 116/2020/TT-BTC of MOF, which covers the following:[20]

- General Meeting of Shareholders
  - Roles, rights and obligations of the GMS.
  - Procedures for the GMS to ratify resolutions by vote.
  - Procedures for the GMS to ratify resolutions by questionnaire survey.
  - Procedures for the GMS to ratify resolutions through online meetings (including procedures for holding meetings and voting).
  - Procedures for the GMS to ratify resolutions through both face-to-face and online meetings (including procedures for holding meetings and voting).
  - Other forms of holding the GMS.
- Board of Directors
  - Roles, rights and obligations of the BoD, responsibilities of members of BoD (including the right to be provided with information of members of the BoD).
  - Nomination, self-nomination, election, dismissal of members of the BoD.
  - Remunerations and other benefits of members of the BoD.
  - Procedures for holding meetings of the BoD.

20 *Circular No. 116/2020/TT-BTC, Appendix II.*

- Sub-committees of the BoD.
- Selection, designation, dismissal of the person in charge of company corporate governance.

- Supervisory Board
  - Roles, rights and obligations of the Supervisory Board, responsibilities of members thereof.
  - Term of office, quantity, composition, structure of members of the Supervisory Board.
- Chief Executive Officer
  - Roles, responsibilities, rights and obligations of the CEO.
  - Designation, dismissal, conclusion and termination of the contract with the CEO.
- Other provisions:
  - Regulations on cooperation between the BoD, Supervisory Board, and CEO.
  - Annual assessment, commendation and discipline of members of the BoD, Supervisory Board, and CEO and other executives.
  - Other issues (if any).

IFC Corporate Governance Progression Matrix[21] for listed companies mentions written policies and a corporate governance code addressing, at a minimum, the role of the Board, rights and treatment of shareholders and other stakeholders, compliance with the law and transparency and disclosure, and stating the objectives and principles guiding the company.

By adopting, following and updating a company-level corporate governance code on a regular basis, the company confirms its desire to demonstrably lead and promote good corporate governance. To foster the confidence of its shareholders, employees, investors and the public, a company-level corporate governance code should, however, go beyond the established legal and regulatory framework and embrace both nationally and internationally recognized best corporate governance practices.

21 *https://www.ifc.org/en/what-we-do/sector-expertise/corporate-governance/cg-methodology-tools*

Best practice

Many companies in countries with well-developed corporate governance practices have voluntary corporate governance codes or guidelines in addition to their charter. Most codes are brief and simple statements of principle that generally reflect the desire of the BoD and management to conduct company operations in an honest, fair, legal and socially responsible manner.

Company codes and guidelines may cover a vast number of topics including:

- General Issues of Corporate Governance:
  - *Goals and objectives of the company.*
  - *Relationship between the shareholders and the BoD.*
  - *Relationship between the BoD and the CEO or Management Board.*
  - *Relationship between controlling and minority shareholders.*
- Good Board Practices:
  - *Composition, including the number of independent directors.*
  - *Number and structure of committees.*
  - *General working procedures.*
  - *Remuneration of non-executive directors.*
- Good Management Board Practices:
  - *Executive remuneration.*
  - *Interaction and relationship with the BoD.*
- Good Supervisory Board Practices:
  - *Composition, including the qualifications of the Supervisory Board members.*
  - *Responsibilities and working procedures of the Supervisory Board.*
  - *Relationship between the Supervisory Board and the BoD, the GMS and shareholders.*
  - *Mechanism to ensure the independence of the Supervisory Board when conducting its responsibilities.*
  - *Remuneration of the Supervisory Board members.*
- Shareholder Rights:
  - *Organizing and conducting the GMS.*
  - *Minority shareholder protection.*
  - *Disclosure of related party transactions.*
  - *The company's dividend policy.*

- Disclosure and Transparency Issues:
  - *Internal control function, including risk management.*
  - *Policy on the use of audit and consulting services and External Auditor rotation.*
  - *Accounting policies and standards.*
  - *Disclosure of financial reports and material non-financial information about the company.*
- Accountability of the company to stakeholders:
  - *Communications and relations with investors and other parties who have an interest in the company and can either affect or be affected by the business. This includes workers, customers, regulators, and the affected communities, contracted workers, primary supply chain workers, neighboring projects, non-governmental organizations (NGOs) and civil society organizations (CSOs).*

Topics to be covered will depend upon the issues of greatest relevance to the company. As a rule, company codes are approved by the BoD, communicated to shareholders and investors, and published on the company's website. Company codes or guidelines must be consistent with legislation, as well as the charter, and should generally follow the provisions of the relevant corporate governance code. They cannot, however, replace the charter.

By law, the CEO has the right to make recommendations and the BoD has the right to make decisions on internal corporate governance regulations of the company.[22] It is a statutory presumption that the BoD has the authority to adopt or change the internal regulations.

The corporate governance regulations of a (joint stock) company should be disclosed on the company's website.[23] This practice is also highly recommended by the Viet Nam Corporate Governance Code of Best Practices.

22 *LOE, Article 162, Clause 3 (d) and Article 153, Clause 2 (l).*
23 *Circular No. 96/2020/TT-BTC, Article 7, Clause 2c.*

3.3. Internal Regulations on Operations of the BoD

The internal regulations on the operation of BoD, also called the BoD Charter, describes the organizational structure, operating principles, rights and obligations of the BoD and its members to assist the Board in the exercising of its duties and responsibilities. Although the BoD Charter is optional, it must be consistent with the Company Charter and cannot conflict with legislation. Circular No. 116/2020/TT-BTC provides model regulations on the operation of the BoD, which covers the following:[24]

- Members of the BoD:
  - Rights and obligations of members of the BoD, including independent members preparing reports on BoD performance.
  - Rights to be provided with information of members of the BoD.
  - Terms of office and quantity of members of the BoD.
  - Criteria and conditions to become a member of the BoD, including those for independent directors.
  - Chairperson of the BoD.
  - Discharge, removal, replacement and addition of members of the BoD.
  - Method for election, dismissal and discharge of members of the BoD.
  - Announcement of election, dismissal and discharge of members of the BoD.
- Board of Directors:
  - Authority of the BoD.
  - Duties and entitlements of the BoD in approving and concluding transaction contracts.
  - Responsibility of the BoD to convene extraordinary GMS.
  - Sub-committees of the BoD.

24 *Circular No. 116/2020/TT-BTC, Appendix III.*

- Meetings of the BoD:
  - Regulations on meetings of the BoD.
  - Minutes of meetings of the BoD.
- Reporting and disclosure of interests:
  - Submission of annual reports.
  - Remuneration, bonuses and other benefits of members of the BoD.
  - Disclosure of related interests.
- Relationships of the BoD:
  - Relationship between members of the BoD.
  - Relationship with the Management Board.
  - Relationship with the Supervisory Board or Audit Committee, and other board committees.

The BoD Charter should be adopted by the BoD and disclosed on the company's website.[25]

Best practice

The Board Charter plays a pivotal role in fostering good governance practices. A charter serves as a comprehensive policy framework delineating the operational protocols of the Board and formalizes the adoption of effective governance principles tailored to the unique needs of each Board. It clearly defines the roles, responsibilities and authorities of the directors, both individually and collectively, and the Board's relationships with the company's management, shareholders and other stakeholders.

It is good practice to incorporate stakeholder engagement in the Board Charter to ensure accountability and transparency. The charter should define the Board's responsibilities, establish engagement mechanisms, and set criteria for evaluation of the effectiveness of engagement. This fosters the Board's effective representation of stakeholder interests.

25 *Circular No. 96/2020/TT-BTC, Article 7, Clause 2c.*

3.4. Internal Regulations on Operations of the Supervisory Board

The internal regulations on the operation of the Supervisory Board (also called the Supervisory Board Charter) stipulate the organizational structure, duties, powers and working methods of the Supervisory Board and its members. It also includes information on the relationships between the Supervisory Board and the BoD, Management Board, and shareholders. Although the Supervisory Board Charter is optional, it must be consistent with the LOE, the Company Charter and relevant regulations. A model by-law on the Supervisory Board Charter covers the following:[26]

- Members of the Supervisory Board:
  - Rights, obligations and responsibilities of members of the Supervisory Board.
  - Term of office and quantity of members of the Supervisory Board.
  - Requirements to be satisfied by members of the Supervisory Board.
- Head of the Supervisory Board:
  - Nomination of members of the Supervisory Board.
  - Method for election, dismissal and discharge of members of the Supervisory Board.
  - Cases of dismissal, discharge of members of the Supervisory Board.
  - Announcement of election, dismissal and discharge of members of the Supervisory Board.
- Supervisory Board:
  - Rights, obligations and responsibilities of the Supervisory Board.
  - Rights to be provided with information of the Supervisory Board.
  - Responsibility of the Supervisory Board to convene extraordinary GMS.
- Meetings of the Supervisory Board:

26 *Circular No. 116/2020/TT-BTC, Appendix IV.*

- o Regulations on meetings of the Supervisory Board.
- o Minutes of meetings of the Supervisory Board.

- Reporting and disclosure of interests:
  - o Submission of annual reports[27]
  - o Salaries and other benefits.
  - o Disclosure of related interests.
- Relationships of the Supervisory Board:
  - o Relationships between members of the Supervisory Board.
  - o Relationship with the Management Board.
  - o Relationship with the BoD.

27 *Circular No. 116/2020/TT-BTC, Appendix V, Chapter 4, Article 16, including the self-evaluation report on performance of the Supervisory Board and its members.*

3.5. Internal Regulations on Operations of the Audit Committee

The internal regulations on the operation of the Audit Committee (Audit Committee Charter) specify the organizational structure, operating principles, rights and obligations of the Audit Committee and its members to ensure its operations conform with the LOE, the Company Charter and relevant regulations as prescribed by law. The model regulations on operations of the Audit Committee were issued as an attachment to Circular No. 116/2020/TT-BTC of MOF, which covers the following:[28]

- Operational principles of the Audit Committee.
- Rights and obligations of the Audit Committee.
- Oversight of internal audit activity and other assurance providers.
- Members of the Audit Committee.
- Meetings of the Audit Committee.
- Annual self-assessment of the committee.
- Report on the operation of independent members of the BoD in the Audit Committee at the annual GMS.

28 *Circular No. 116/2020/TT-BTC, Appendix V.*

Best practice

Model Audit Committee Charter by the Institute of Internal Auditors.[29]

★ **Organizational Principles**

Introduction [Optional]
Background [Optional]
Purpose
Mandate [Optional]
Authority
Composition of the Audit Committee
The Chair of the Audit Committee
Terms of Office
Quorum

★ **Operational Principles**

Audit Committee Values
Communications
Work Plan
Meeting Agenda
Information Requirements
Executive Sessions
Preparation and Attendance
Conflict(s) of Interest
Orientation and Training

★ **Operational Procedures**

Meetings
Minutes
Required Attendance
Secretariat Services
Remuneration for the committee members
Responsibilities
Values and Ethics
Organizational Governance
Risk Management
Fraud
Control
Compliance

★ **Oversight of the Internal Audit Activity and Other Assurance Providers**

Internal Audit Activity
External Auditors
Financial Statements and Public Accountability Reporting
Other Responsibilities
Reporting on Audit Committee Performance
Approval/Signatures

29 *Model Audit Committee Charter (theiia.org).*

3.6. Company Code of Business Conduct and Ethics

A Code of Business Conduct and Ethics (also referred to as a Code of Conduct, or Ethics or Responsibility Statement) is a basic guide of conduct that imposes duties that company officers and employees owe to stakeholders. These stakeholders may include colleagues, customers, clients, business partners (e.g. suppliers), government and society.

A Code of Business Conduct and Ethics:

- **Enhances the company's reputation/image**: The company's reputation and image constitute an integral, if intangible, part of its assets. Establishing a Code of Business Conduct and Ethics is an effective way to communicate the value a company places on good business practices.
- **Improves risk and crisis management**: A Code of Business Conduct and Ethics can bring potential problems to management's and directors' attention before a full-blown crisis occurs, as it sensitizes and encourages employees to react to ethical dilemmas responsibly.
- **Develops a corporate culture and brings corporate values to the forefront**: The dissemination of a Code of Business Conduct and Ethics to the company's officers and employees can help build a cohesive corporate culture, based on a shared set of values, that helps guide employees in their daily work.
- **Advances stakeholder communications**: A Code of Business Conduct and Ethics carries a strong signal to the company's stakeholders during times of crisis, communicating the company's commitment to ethical behavior and underlining that possible transgressions are exceptions rather than the rule.
- **Avoids litigation**: A Code of Business Conduct and Ethics that is implemented effectively can help minimize litigation risks resulting from fraud, conflict of interest, corruption and bribery, and insider trading.

All companies have individual characteristics that reflect their size and industry objectives, as well as their respective business culture, values, shareholder composition, and many other factors. A Code of Business Conduct and Ethics should reflect these differences.

Drafting a Code of Business Conduct and Ethics goes beyond paper. It is a process as much as an outcome. In assessing the need for a Code of Business Conduct and Ethics, the company should begin by studying its internal ethics climate, the amount and type of ethical guidance its employees and officers receive, and the risk the company faces without such a code.[30] As a second step, the company should seek buy-in from every part of the organization, from senior management to workers, if the code is to truly guide the company's ethical practice. Most importantly, the company should ensure that a broad consultative process takes place within the company.[31] By the time the Code of Business Conduct and Ethics is submitted for the BoD's approval, every employee should be familiar with it and have played a role in drafting it, a process that ensures buy-in and helps with implementation. The company must also recognize that the "tone at the top" matters, and that public and demonstrable commitment by senior management and directors is a key component in the implementation of a Code of Business Conduct and Ethics. The approved code should also be disclosed and made available to the public through the company website.

A Code of Business Conduct and Ethics should be user-friendly (i.e. provide practical guidance to the company's management and employees on how to handle ethics problems that may arise in the day-to-day course of business).[32] The Board should ensure the proper and efficient implementation and monitoring of compliance with the Code of Business Conduct and Ethics and internal policies. In support of the code, the company may wish to conduct a communication and awareness campaign, continuous training to reinforce the code, strict monitoring and implementation and setting in place proper avenues where issues may be raised and addressed without fear of retribution. The BoD is the focal point of and collectively bears accountability for the governance of the company, its long-term success and the delivery of sustainable value to its stakeholders. The Board should set the role model for management and employees of the company to follow.

30 *Kenneth Johnson and Igor Abramov, Business Ethics: A Manual for Managing a Responsible Business Enterprise, Chapter 3, pp. 45-46 and Chapter 5, pp. 93-97.*

31 *Many companies can choose to establish a working group or task force to produce a first draft of the company's Code of Business Conduct and Ethics for the Board of Directors' approval, consisting of representatives from every level. See also: Kenneth Johnson and Igor Abramov, Business Ethics: A Manual for Managing a Responsible Business Enterprise, pp. 57-61*

32 *The Code of Business Conduct of Ethics itself should include a practical procedure for raising an ethical issue ("first go to your supervisor, then to..."), and even a procedure for suggesting changes in the code. The code should also include an ethical decision-making model ("Step 1: Check your facts, Step 2...."). See also: Kenneth Johnson and Igor Abramov, Business Ethics: A Manual for Managing a Responsible Business Enterprise, Chapter 6, pp. 138–144.*

Both IFC Corporate Governance Progression Matrix and Viet Nam Corporate Governance Code of Best Practices recommend that the Board ensure that the company adopts and enforces a Code of Business Conduct and Ethics.

Best practice

Remuneration for non-executive directors (NEDs) and Supervisory Board members

Having performance-linked bonuses for the BoD, especially non-executive directors (NEDs) and the Supervisory Board members, is not a good practice.

The best practice for non-executive director (NED) remuneration typically involves balancing fair compensation with the nature of their role and their responsibilities. Remuneration should reflect the time commitment, responsibilities, and complexity of the company they serve. Often, NEDs are paid a fixed fee rather than performance-based incentives to maintain their independence and objectivity. Additional remuneration could be paid for chairpersons and committee members due to their extra responsibilities.

Remuneration structures, if inappropriately set up, could compromise NEDs' objectivity in several ways. For example, if NEDs receive performance-based bonuses, such as, bonuses tied to financial goals, it may incentivize them to prioritize immediate financial results over long-term stability and ethical considerations. Equity compensation is another double-edged sword. While stock options or shares can align NEDs' interests with those of the company, they might also compromise independence by making NEDs more focused on stock price movements rather than overall company health and governance.

Companies should also avoid excessive compensation as it may create a conflict of interest where directors' focus is on how to be re-elected rather than the company's long-term value. Therefore, it is crucial to review directors' compensation regularly against industry standards to ensure competitiveness and fairness.

Similarly, while there is no universal guideline for setting up the remuneration structure for members of the Supervisory Board, the following considerations are essential.

No Performance-based Incentives: To ensure independence, Supervisory Board members typically do not receive performance-based bonuses that are common for executive directors.

↘

Balancing Fixed and Variable Pay: While fixed pay (like annual retainers) is common, variable pay (like stock options) is less prevalent for Supervisory Board members to maintain their independence. If used, it should be carefully structured so as not to compromise their objectivity.

Regular Review of Remuneration Policy: The policy should be reviewed regularly to ensure it remains appropriate and competitive.

It is typical that the remuneration of members of the Supervisory Board is composed of a fixed remuneration.

Transparency in determining remuneration is also key to upholding good governance practices. The OECD* suggests that an independent remuneration committee or a similar body should oversee the remuneration of Board members.

★ OECD (2011), Board Practices: Incentives and Governing Risks, Corporate Governance, OECD Publishing. http://dx.doi.org/10.1787/9789264113534-en

NOTES

Chapter 4

AN INTRODUCTION TO SHAREHOLDER RIGHTS

4 | An Introduction to Shareholder Rights

Table of Contents

The Chairperson's Checklist

- ☑ Does the Company Charter protect shareholder rights as stipulated by the Law on Enterprises (LOE), the Law on Securities (LOS), the Model Charter for listed companies and the CG Regulations (issued together with Circular No. 116/2020/TT-BTC of the Ministry of Finance dated December 31, 2020) and other relevant regulations? Do all directors take appropriate measures to ensure that these rights are respected?
- ☑ Do all directors take measures to encourage shareholders to exercise their rights, in particular the right to vote?
- ☑ Do shareholders exercise their rights collectively?
- ☑ Are shareholders provided with unrestricted access to company information in accordance with requirements of the LOE and LOS? Are shareholder information requests processed properly and on time?
- ☑ Does the BoD provide competent registers and institutions with timely, full and accurate information about the company, especially concerning shareholders' rights?
- ☑ Does the Management Board ensure that the charter, internal regulations, and internal documents do not stipulate additional obligations for shareholders other than those clearly defined by law?
- ☑ Do shareholders have the opportunity, evidenced by an agenda item, to approve remuneration (fees, allowances, benefits-in-kind and other emoluments) or any changes in remuneration structure for the directors?
- ☑ Does the company provide non-controlling shareholders with a right to nominate candidates for the BoD?
- ☑ Does the company allow shareholders to elect directors individually?
- ☑ In cases of mergers, acquisitions and/or takeovers requiring shareholders' approval, does the BoD appoint an independent party to evaluate the fairness of the transaction price?
- ☑ Does the company disclose its practices to encourage shareholders to engage with the company beyond general meetings?

- ☑ Where the company has more than one class of shares, does the company publicize the voting rights attached to each class of shares, such as through the company website, reports, the stock exchange and regulator's website?
- ☑ Does the company pay dividends in an equitable and timely manner?

By investing in shares, investors become shareholders and receive a number of rights attached to these securities. Shareholders rely on the rights they receive in return for their investment. For most shareholders, this includes the right to benefit from the profits of the company. Other rights are also important, especially from the perspective of maintaining and increasing investment. These rights include, amongst others, the right to vote on the BoD composition, approve charter amendments and capital changes, approve the annual report and financial statements, and the right to access information about the company and its activities. Through these rights, shareholders ensure that the managers of the company do not misappropriate their investment. To realize these rights, shareholders must be recorded in the company register,[1] and different classes of shares may attract different sets of rights.[2]

The quality of investor protection has several corporate governance implications, such as the depth of capital markets, ownership patterns, dividend policy, and the efficiency of allocating resources.[3] Where laws are protective of shareholders and well enforced, shareholders are willing to invest their capital and financial markets are broader and more valuable. In contrast, where laws do not adequately protect shareholders, the development of financial markets is stunted. When shareholder rights are protected by the law, and indeed by the company itself, outside investors are often willing to pay more for financial assets, such as equity. They pay more because they recognize that, with better legal protection, more of the firm's profit will return to them as dividends and/or capital gains as opposed to being expropriated by managers or controlling shareholders.

1 *LOE, Article 113, Clause 5.*
2 *LOE, Article 114.*
3 *Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer, Robert Vishny, Investor Protection and Corporate Valuation, National Bureau of Economic Research, Working Paper 7403, October 1999.*

The mere "law on the books" is not necessarily sufficient to ensure that shareholder rights are adequately protected. Effective enforcement is also required.

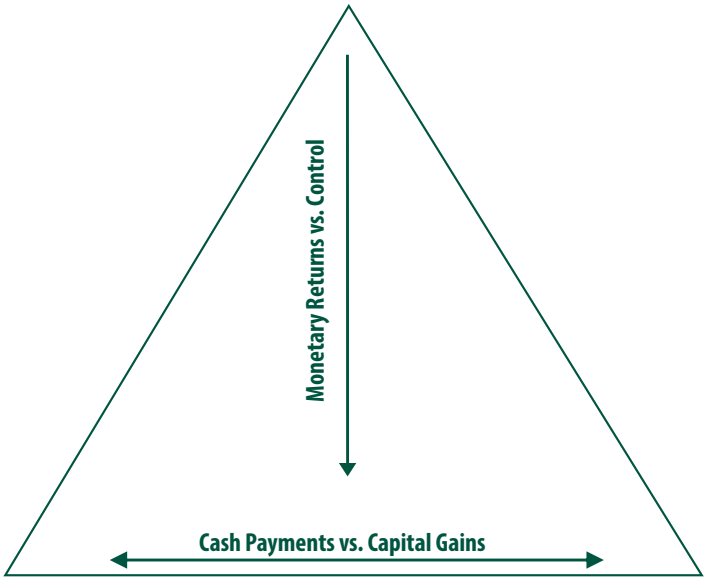
This chapter provides an overview of shareholder rights and the rules a public company must follow to protect these rights. Some specific rights, such as participation in the General Meeting of Shareholders (GMS), are discussed in detail in other chapters of this Manual.

Reasons for Being a Shareholder

Investors purchase company shares for a variety of reasons. The most common reasons are to gain control of the company and influence decision-making and maximize the total shareholder returns, including dividends and capital gains, as shown in Figure 1.

Figure 1. Common Reasons for Becoming a Shareholder

Control: Shares provide investors with the opportunity to legally control the company and influence decision-making by nominating directors and, possibly, management. The greater the number of voting shares a shareholder holds, the greater the she or he wields.



Dividends: Dividends play an important role in the decision to invest. Regular dividend payments, especially if an investor holds a portfolio of shares, can generate predictable cash flows.

Capital Gains: Investors purchase shares to benefit from capital growth. Unlike dividends, shares need to be sold to realize the gains represented by rising share prices.

Source: IFC, March 2004

4.1. Share Classifications

Legislation specifies two types of shares: ordinary and preferred. A shareholding company must have ordinary shares. In addition, a company may also issue preferred shares.[4] Certificates issued by the company or recorded in the book of entry evidencing the ownership of one or more shares issued by the company are referred to as "share certificates". The face value of each share and the total face value of shares will be specified in the share certificate.

4.1.1. Ordinary Shares

Owners of ordinary shares, also called common shares, have the right to participate in the decision-making process of the company, most commonly exercised by voting during the GMS. They also have the right to share in the profits of the company, either through dividends or through capital gains.

Ordinary shares have certain characteristics. They always represent one class of shares. Each share will have the same nominal value or accountable par, which is a portion of the charter capital of the company. The charter of listed companies defines the number, nominal value or accountable par, and rights attached to ordinary shares. Every ordinary share carries the same rights, interests and obligations to its owners in accordance with the LOE, the charter and the internal regulations regardless of the time of issuance. Ordinary shares cannot be converted into preference shares.[5] Ordinary shares used as underlying assets to issue non-voting depository receipts are called "underlying ordinary shares". Non-voting depository receipts have interest and obligations proportional to the underlying ordinary shares, except voting rights.[6]

4 *LOE, Article 114.*
5 *LOE, Article 114, Clause 5.*
6 *LOE, Article 114, Clause 6.*

4.1.2. Preferred Shares

A company has the right to issue various classes of preferred shares including dividend preference shares, redeemable preference shares, voting preferred shares and other types of preference shares prescribed by the Company Charter and securities laws.[7] Those investors entitled to purchase preferred shares shall be stated in the Company's Charter or decided by the GMS.[8] All preferred shares of the same class must have the same nominal value and provide the same rights, interests and obligations to their owners. In the case of listed companies that have various preferred stocks, the rights and obligations attached to those preferred stocks must be fully disclosed to shareholders and approved by the GMS. In contrast to ordinary shares, preferred shares can be converted into ordinary shares subject to resolutions in the GMS.[9] Under the relevant laws of Viet Nam, there is no specific regulation on whether preferred shares can be converted into other classes of preferred shares. The price at which the shares will be repurchased must not be lower than their market price unless otherwise prescribed by the Company Charter or agreed upon by the company and relevant shareholders.[10]

Preferred shares can give their owners preferential rights associated with the distribution of dividends, voting rights and liquidation value of shares.[11] For listed companies, the charter must specify the rights and obligations attached to each class of share, including preferred shares issued by the company.[12] Although there is no specific regulation, it is good practice that the Company Charter specifies the amount of dividends and/or the liquidation value of preferred shares or, alternatively, the procedure for determining the amount of dividends and the liquidation value of preferred shares.

Shareholders with redeemable preferred shares have the right to sell such shares to the company at any time upon the holder's request or under circumstances as stated in the share certificate.[13]

7 *LOE, Article 114, Clause 2.*
8 *LOE, Article 114, Clause 3.*
9 *LOE, Article 114, Clause 5.*
10 *LOE, Article 133, Clause 2.*
11 *LOE, Article 116-118.*
12 *Circular No. 116/2020/TT-BTC, Model Charter.*
13 *LOE, Article 118, Clause 2.*

The LOE distinguishes preferred shares according to the specific rights they grant. Preferred shares include shares of types as described hereunder:

- Voting preference shares carry more votes than ordinary shares. The number of votes in a super-voting share shall be determined in the Company Charter. Super-voting shareholders shall have other rights as ordinary shareholders, except they are not allowed to transfer their shares. Super-voting preference shares shall only be held by government-authorized organizations and founding shareholders. Voting preference shares of founding shareholders shall be effective for three years from being granted the certificate of business registration. The right to vote and voting preference period of voting preference shares held by organizations authorized by the government shall be specified in the Company Charter. Thereafter, voting preference shares of founding shareholders shall be converted into ordinary shares.[14]

- Dividend preference shares provide their holders with higher dividends than those of ordinary shares or with a stable annual dividend. The annual dividend includes the fixed dividend and extra dividend. Fixed dividends do not depend on the company's business performance. Fixed dividends and the method for determination of extra dividends shall be written on the certificates of dividend preference shares.[15] However, for credit institutions, under Clause 3, Article 60, Law on Credit Institutions No. 32/2024/QH15 (January 18, 2024) on the organization and operations of commercial banks, a fixed dividend shall only be paid when the bank makes a profit. In case of losses, the fixed dividend payable to dividend preferred shares shall be accumulated to the following years. The total face value of dividend preferred shares shall be no more than 20 percent of the bank's charter capital.

- Redeemable preference shares are redeemed by the company at the request of their holders or under the conditions written in the certificates of redeemable preference shares and the Company Charter.[16]

Participating preference shareholders and redeemable preference shareholders shall have the same rights as ordinary shareholders, except they are not entitled to vote, to attend the GMS, or to nominate member candidates in the BoD and Supervisory Board.[17]

14 *LOE, Article 116.*
15 *LOE, Article 117, Clause 1.*
16 *LOE, Article 118, Clause 1.*
17 *LOE, Article 117 and 118.*

Under the LOE, the principal comparisons between ordinary and preferred shares of shareholding companies are summarized in Figure 2.

Figure 2. Comparison of Ordinary and Preferred Shares

	Ordinary Shares	Preferred Shares
Mandatory?	**Yes**, must always be issued	**No**, are optional
Can different classes of shares be issued?	**No**, only one class of ordinary shares may be issued	**Yes**, different classes of shares can be issued
Can this type of share be converted into other securities?	**No**, ordinary shares cannot be converted into preferred shares or other securities	**Yes**, preferred shares can be converted into ordinary shares subject to resolutions of the GMS
Do shareholders have the right to vote, to attend the GMS to nominate candidates to the BoD and the Supervisory Board?	**Yes**, with certain statutory exceptions	**No**, except for voting preferred shares.[18] See Section 4.3.1 of this chapter
Do shareholders have the right to freely transfer their shares?	**Yes**, with certain statutory exceptions	**Yes**, except for voting preferred shares
Can the charter grant additional rights to shareholders?	**Yes**	**Yes**

Best practice

Companies should provide investors with adequate information on the rights attached to all series, a subset of a class of shares[19], and classes of shares, which is material to their investment decisions. Further, companies must not make changes to the rights attached to classes of shares without the approval of those shareholders who will be negatively affected. Proposals to change the voting rights of different series and classes of shares should be submitted for approval at the GMS by a specified (normally higher) majority of voting shares in the affected categories.[20]

18 *Circular No. 116/2020/TT-BTC, Model Charter, Article 16, Clause 1: For listed companies, a GMS resolution to change or waiver special rights attached to a class of shares shall be passed only when the written consent of the holders of at least 75 percent of the voting rights of the issued shares of such class is obtained.*

19 *A series is a subset of a class of shares. If provided for in its articles, a corporation can issue a class of shares in one or more series. All series in the same class must participate equally on a share-for-share basis in any partial return of capital or payment of dividend arrears.*

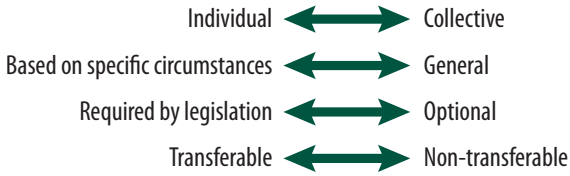
20 *G20/OECD Principles of Corporate Governance, 2023.*

4.2. General Shareholder Rights

The LOE distinguishes between the rights of shareholders and the rights held collectively by a group of shareholders. It is also possible to distinguish shareholder rights according to their nature. Some rights relate to the decision-making process and the organization of the company. Others relate to the capital and the return on shareholder investment.

Figure 3 illustrates the two-sided nature of shareholder rights.

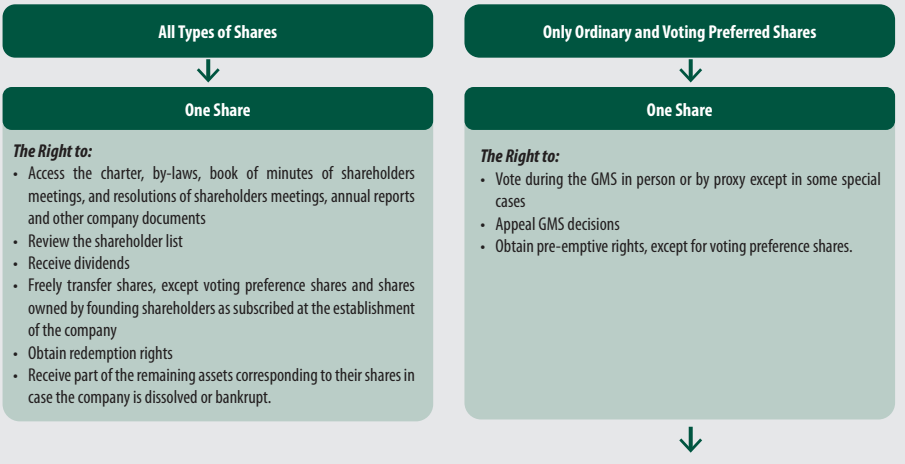
Figure 3. The Two-Sided Nature of Shareholder Rights



Source: IFC, March 2004

Figure 4 summarizes the rights of shareholders by the types of shares, and by the percentage of shares held. Neither the company nor its shareholders can change these rights. The Company Charter can, however, provide additional rights to shareholders if they are not prohibited by legislation.

Figure 4. Shareholder Rights Under the Law on Enterprises



≥1% of Shares

- A shareholder or group of shareholders that holds at least 1 percent of the total ordinary shares may, in their own name(s) or the company's name, file a lawsuit against a member of the BoD or the Chief Executive Officer to claim the interest or damages. [21]

≥5% of Shares

- Access, extract the minutes of meetings, resolutions and decisions of the BoD, mid-year and annual financial statements, reports of the Supervisory Board, contracts and transactions subject to approval by the BoD and other documents except those that involve the company's business secrets.
- Demand that a GMS be convened in cases specified in the LOE.
- Request the Supervisory Board to investigate specific matters relevant to the company's administration where necessary. The request shall be made in writing and contain the full names, mailing addresses, nationalities, legal document numbers of shareholders that are individuals, names, enterprise identification (EID) numbers or legal document numbers, headquarters addresses of shareholders that are organizations; quantities of shares and time of shares registration of each shareholder, total quantity of shares of the group and holdings in the company, the matter that needs investigating and purposes of investigation.
- Can demand a GMS be convened in the following cases: the BoD seriously violates the shareholders' rights, obligations of executives or issues decisions ultra vires.[22]

> 10% of Shares (*)

The Right to:

- Call an extra GMS and request the business registrar to supervise the convocation of the extra GMS.

(*) Unless otherwise prescribed by the Company Charter, the shareholder or group of shareholders that holds at least 10 percent of the ordinary shares (or a smaller ratio specified in the company's charter) is entitled to nominate candidates for the BoD and the Supervisory Board as follows:

a) The ordinary shareholders shall hold a meeting to nominate candidates for the BoD and the Supervisory Board and inform the participating shareholders before the opening of the GMS.

b) The number of candidates depends on the size of the BoD and Supervisory Board and shall be decided by the GMS. In case the number of candidates nominated is smaller than the permissible number, the remaining candidates shall be nominated by the BoD, the Supervisory Board and other shareholders.

Shareholders of public companies are entitled to be sufficiently notified about periodical and extraordinary disclosure of information on company activities.

21 *LOE, Article 166.*
22 *LOE, Article 115, Clause 2.*

A resolution by the GMS on the content that adversely changes the rights and obligations of shareholders owning preferred shares may only be passed if the number of preferred shareholders of the same type attending the meeting owns from 75 percent of the total preferred shares of that class or more, or approved by preferred shareholders of the same class who own 75 percent or more of the total number of preferred shares of that class, in case of passing a resolution in the form of collecting documental opinions.[23]

A shareholder or group of shareholders owning 20 percent or more of ordinary shares for a consecutive period of at least six months has the right to file a petition to open bankruptcy proceedings when the joint stock company becomes insolvent. A shareholder or group of shareholders holding less than 20 percent of ordinary shares for a consecutive period of at least six months has the right to file a petition to open bankruptcy proceedings when the joint stock company becomes insolvent in case it is stipulated in the Company Charter.[24]

Shareholders who own shares of the company continuously for at least one year have the right by themselves or together with a lawyer, accountant or auditor with practicing certificates to directly review the company's reports, including the report on the business operations of the company, the financial statements, the evaluation report on the management and administration of the company and the verification reports of the Supervisory Board.[25]

Currently, the LOE allows a shareholder or group of shareholders that holds at least 1 percent of the total ordinary shares, in their own names or in the company's name, to file a lawsuit against a member of the BoD or the Chief Executive Officer to claim interest or damages.[26]

Best practice

One of the ways shareholders can enforce their rights is to initiate legal and administrative proceedings against management and Board members. Experience has shown that an important determinant of the degree to which shareholders' rights are protected is whether effective methods exist to obtain redress for grievances at a reasonable cost and without excessive delay. The confidence of minority investors is enhanced when the legal system provides mechanisms for minority shareholders to bring lawsuits when they have reasonable grounds to believe that their rights have been violated. *(OECD/G20 Principles of Corporate Governance, 2023 – Page 17)*

23 *Circular No. 116/2020/TT-BTC, Model Charter, Article 17.*
24 *Law on Bankruptcy (2014), Article 5.*
25 *LOE, Article 175, Clause 2.*
26 *LOE, Article 166.*

4.3. Specific Shareholder Rights

4.3.1. The Right to Vote

Shareholders can participate in the decision-making of the company through their right to vote during the GMS. Important matters that fall within the authority of voting at the GMS include[27]:

a) Orientation for development of the company

b) Types of authorized shares, quantity of each type and decisions on the annual dividends of each type of shares

c) Election or dismissal of BoD and Supervisory Board members

d) Investment or sale of assets worth at least 35 percent of total assets written in the latest financial statement, unless another ratio or value is specified in the Company Charter

e) Revisions to the Company Charter

f) Ratification of annual financial statements

g) Repurchase of more than 10 percent of total sold shares of each type

h) Actions against violations committed by members of the BoD and Supervisory Board that cause damage to the company and its shareholders

i) Reorganization or dissolution of the company

j) Remuneration of the BoD and Supervisory Board

k) Rules and regulations of the company, the BoD and Supervisory Board

l) Selection and dismissal of the External Auditor

m) Other rights and obligations prescribed by law and the Company Charter.

The right to vote can be exercised personally or by proxy. A proxy holder is authorized to act on behalf of the shareholder and to make any decision the shareholder could have made during the GMS. A listed company is not allowed to restrict participation by its shareholders in the GMS and should facilitate its shareholders' authorization of their representatives to participate in the GMS according to shareholders' written authorization.

27 *LOE, Article 138.*

This is made in accordance with the civil law and must clearly state the name of the authorized individual or organization and the number of authorized shares. Individuals and organizations authorized to attend the GMS must present a written authorization when registering to attend the meeting before entering the meeting room.[28]

The Right to Vote of Ordinary Shares

Ordinary shares grant voting rights to their holders. However, there are some circumstances when ordinary shares become non-voting. These circumstances are summarized in Table 1.

Table 1. Non-Voting Common Shares

Preconditions	Legal Consequences
Failure to fully pay for shares: When ordinary shares placed to the company's founders are not fully paid for, unless the charter provides otherwise.	Shareholders only pay for some of the shares registered to purchase with voting rights, receive dividends and other rights in proportion to the paid shares. They may not transfer the right to buy unpaid shares to another person. Unpaid shares are considered unsold shares and the BoD is entitled to sell.[29]
Underlying ordinary shares: Ordinary shares used as underlying assets to issue non-voting depository receipts.	Non-voting depository receipts have interest and obligations proportional to the underlying ordinary shares, except voting rights.[30]
Approval of related party transactions: Ordinary shares owned by a shareholder who is an interested party in a related party transaction.	Shareholders that are related to the parties to the contract or transaction must not vote.[31]
Repurchased shares:[32] When a company repurchases issued ordinary shares of the company.	The shares repurchased in accordance with Articles 132 and 133, of the LOE, shall be considered unsold shares according to Clause 4, Article 112 of the LOE. The share certificates of the repurchased shares shall be destroyed right after the shares are fully paid for.[33] Therefore, no voting rights are granted for this type of shares.

28 *LOE, Article 144, Clause 2.*
29 *LOE, Article 113, Clause 3.*
30 *LOE, Article 114, Clause 6.*
31 *LOE, Article 167, Clause 4.*
32 *LOE 2019 and LOS 2019: There are no further regulations on treasury shares, despite several requests to restore this regulation.*
33 *LOE, Article 134, Clauses 2 and 3.*

Best practice

Companies increasingly recognize the value of using information technology to facilitate efficient participation in voting by shareholders. These technologies include secure systems for electronic voting in absentia. A common voting system that helps shareholders to vote in absentia is the direct-recording electronic voting system, which uses electronic ballots and transmits voting data from the polling place to another location over a public network. Voting data may be transmitted either as individual ballots at the time they are being cast, periodically as batches of ballots throughout the election day, or as one batch at the close of voting period. Some countries that use this system include Estonia, Ireland, Switzerland, the United Kingdom, and the United States.

Companies should remove barriers for shareholders to participate in general meetings and facilitate electronic distribution of proxy materials, electronic voting in absentia and voting confirmation systems. Remote shareholder participation is key to reducing participation and engagement costs faced by shareholders. Companies should also conduct meetings that ensure equal access to information and participation opportunities for all shareholders. Due care is needed to ensure that remote meetings do not decrease the likelihood of shareholders' engagement and questioning of Boards and management in comparison to physical meetings.

The G20/OECD Principles of Corporate Governance (2023) recommends the following principles:

- Processes, format and procedures for GMS should allow for equitable treatment of all shareholders. Company procedures should not make it unduly difficult or expensive to cast votes. (II.C.2.)
- Shareholders should be able to vote in person or in absentia, and equal effect should be given to votes whether cast in person or in absentia. (II.C.6.)
- Impediments to cross-border voting should be eliminated. (II.C.7.)

Market practice in Viet Nam

Acquisition of shares in control transactions: There have been cases of hostile takeovers in Viet Nam conducted through the transfer of shares. At present, there are limited rules and procedures governing corporate control. Under the LOS, disclosure of entities encompasses major shareholders and groups of related persons holding at least 5 percent of voting shares of a public company,[34] including internal actors of public companies and their related persons, groups of related foreign investors holding at least 5 percent of

34 *LOS, Article 118, Clause 1(e).*

voting shares.[35] The disclosing entities shall simultaneously file an information disclosure statement to the SSC and organization where the securities are listed or registered.[36]

Tender rules/mandatory bid rules[37]

- A mandatory tender offer is required by law when an acquirer attempts to gain 25 percent or more of the voting shares of a public company.
- An organization, individual or related person holding 25 percent or more of the voting shares are also required to make a tender offer when they intend to buy more outstanding voting shares of the company which leads to ownership levels of 35, 45, 55, 65 and 75 percent.

Organizations and individuals that register and report on a tender offer to buy may only conduct public tendering activities when they fully satisfy conditions prescribed by law.[38] Organizations and individuals that register and report on a tender offer shall be responsible for organizing implementation of the offer for sale, issuance of securities or a public offer to buy under the registered plan, and report to the SSC within the prescribed period.[39]

Principles of a tender offer to buy: 1) the tender offer must ensure fairness to the shareholders of the target company and investors of the target investment fund, 2) the parties participating in the tender offer are provided with sufficient information to approach the proposal to buy stocks and closed-end fund certificates, 3) respect the right of self-determination of the shareholders of the target company, investors of the target investment fund and 4) organizations and individuals making a tender offer must appoint a securities company to act as an agent for the public bid.[40]

Order and procedures for registration of a tender offer are as follows:

1. Organizations and individuals making a tender offer shall send dossiers of registration of public offers to the SSC, the target company and the securities investment fund management company that manages the target investment fund.

35 *LOS, Article 118, Clause 1 (h & i)*
36 *LOS, Article 119, Clause 3.*
37 *LOS, Article 35, Clause 1.*
38 *Decree No. 155/2020/ND-CP, Article 53.*
39 *Decree No. 155/2020/ND-CP, Article 7, Clauses 1 & 2.*
40 *Decree No. 155/2020/ND-CP, Article 82.*

2. Within three working days from the date of receipt of the application for registration of the tender offer, the target company and/or the investment fund management company that manages the target investment fund are responsible for disclosing the information on the receipt of the tender offer and on the stock exchange's website.

3. Within 15 working days from the date of receipt of a complete and valid dossier, the SSC shall notify in writing the organization or individual offering a tender offer and post it on the website of the SSC. In case of refusal, it must reply in writing and clearly state the reason.

Squeeze-out provisions: A provision for a squeeze-out right, by which a bidder who obtains sufficient shares of a target can compel the remaining minority shareholders to sell their shares, is stipulated under Part II, Clause 1(c), Article 35 of the LOS. After making a tender offer, organizations, individuals and related persons specified in Points a, b, c, d, e and g, Clause 46, Article 4 of the law holding 80 percent or more of voting shares in a public company (the bidder) must continue to purchase the remaining shares within 30 working days. However, the current regulations do not impose any obligation on the remaining shareholders to sell their shares within this time limit.

Violations of regulations in these above cases are liable to fines under Decree No. 156/2020/ND-CP (December 31, 2020) on sanctioning of administrative violations in the domain of securities and the securities market. The violating parties or individuals shall be put into a forcible renunciation of the right to vote directly or through an authorized representative on the number of shares obtained from the violation.[41]

The Right to Vote of Preferred Shares

The LOE specifically regulates types of preferred shares: dividend preference shares, redeemable preference shares, preference shares and other types of preference shares prescribed by the Company Charter.[42] Except for voting preference shares, which carry more votes than ordinary shares, dividend preference shares and redeemable preference shares do not have voting rights at the GMS.

41 *Decree No. 156/2020/ND-CP, Article 17 Clause 6(c).*
42 *LOE, Article 114, Clause 2.*

Under the LOE, shareholders of a class of preferred shares can have the right to vote if there is a change or waiver of special rights attached to that class of share. A GMS resolution on the content that adversely changes the rights and obligations of shareholders owning preferred shares may only be passed if the number of preferred shareholders of the same type attending the meeting owns at least 75 percent of the total number of preferred shares of that class or more, or approved by preferred shareholders of the same class who own 75 percent or more of the total number of preferred shares of that class, in case of passing a resolution in the form of collecting documental opinions.[43] The organization of a meeting of shareholders holding a type of preferred shares to approve changes of the above rights is only valid when there are at least two shareholders (or their authorized representatives) who hold at least one-third of the par value of issued shares of that class. If there is insufficient delegates, the meeting shall be reorganized within the next 30 working days, and the holders of shares of that type (regardless of the numbers of people and shares) are present directly or through an authorized representative are considered sufficient for the required number of delegates. At the meetings of shareholders holding preferred shares as mentioned above, holders of shares of such class present in person or through their representatives may request secret ballots. Each share of the same class has equal voting rights at the above-mentioned meetings.[44]

The Right to Appeal Decisions of the GMS

When a resolution of the GMS or BoD violates the law or infringes upon shareholders' fundamental benefits provided for by law, shareholders of listed companies may request non-implementation of such resolution according to the order and procedures prescribed by law. Within 90 working days from the date of receipt of the resolution or minutes of the GMS or minutes of vote counting results to collect opinions of the GMS, the shareholder or group of shareholders owning 5 percent of the total number of ordinary shares or more or a smaller percentage as prescribed in the Company Charter[45] have the right to request the court or an arbitrator consider and cancel the resolution or part of the GMS resolution in the following cases[46]:

43 *LOE, Article 148, Clause 6.*
44 *Circular No. 116/2020/TT-BTC, Model Charter, Article 17, Clause 2.*
45 *LOE, Article 115, Clause 2.*
46 *LOE, Article 151.*

- The order and procedures for convening a GMS and making decisions seriously violate the provisions of this law and the Company Charter, except for the case where the resolution of the GMS, passed by 100 percent of the total number of voting shares, is legal and effective even if the order and procedures for convening the meeting and approving such resolution violates the provisions of related law and the Company's Charter.[47]
- The content of the resolution violates the law or Company Charter.

4.3.2. The Right to Information

Every shareholder shall have the right to review, refer and extract information from the list of shareholders who have voting rights, and request the amendment of inaccurate information, and to review, refer, extract or copy the Company Charter, the minutes book of the GMS, and the resolutions of GMS meetings.[48]

In Viet Nam, shareholders of listed and unlisted public companies can obtain information about share classes from the Company Charter, the prospectus, and the annual and quarterly reports publicly available from the official websites of the HNX, HOSE and SSC. Shareholders of listed companies are entitled to be sufficiently notified about periodical and extraordinary disclosures of information on the company's activities.[49]

Public companies must submit approved financial statements to the business registrar. Every individual and organization has the right to see and make copies of the financial statement kept by the business registrar. For public companies, a shareholder or a group of shareholders owning 5 percent of the total number of ordinary shares or more or a smaller percentage as prescribed in the Company Charter has the right to review, search, and extract minutes and resolutions, decisions of the BoD, mid-year and annual financial statements, reports of the Supervisory Board, contracts, transactions approved by the BoD and other documents, except documents related to trade and business secrets of the company.[50]

The charter and internal regulations should specify the procedures that the company and shareholders must follow for the distribution of information

47 *LOE, Article 152, Clause 2.*
48 *LOE, Article 115, Clause 1.*
49 *Circular No. 116/2020/TT-BTC, Model Charter, Article 12, Clause 1(k).*
50 *LOE, Article 115, Clause 2.*

and documents. The information rights of common and preferred shareholders under best practices are depicted in Figure 5.

Figure 5. Shareholder Information Rights

Company Documentation

- The charter (including amendments to the charter or a new version of the charter)
- The certificate of state registration
- Title documents that verify the ownership of the company's assets
- The internal regulations and other internal company documents
- Book of shareholders

Other information

- Prospectus of the company
- Data about corporate bodies
- Report on the activities of the company submitted to state agencies
- Lists of affiliated parties of the company
- Reports of Independent Appraisers
- Other documents specified by legislation, the charter and by-laws.

Financial Information

- Annual reports
- Financial statements
- Reports of the supervisory bodies, the External Auditor, and state and municipal financial control agencies.

GMS

- The minutes of the GMS, the Board of Directors, Board Committee, Supervisory Board
- Voting ballots and proxies for the GMS (or copies of these)
- Lists of persons entitled to participate in the GMS, or entitled to receive dividends, and any other lists prepared by the company for exercising shareholder rights.

Source: IFC, March 2004.

With such a substantial amount and variety of documents and information, it is preferable for companies with large numbers of shareholders to define in the charter or internal regulations the procedures for realization of shareholders' rights to receive all information. These procedures should ensure that shareholders are provided with all information within a reasonable timeframe and without disturbing the company's day-to-day activities.

4.3.3. The Right to Review Shareholder Register

The list of shareholders shall be made on the basis of the date of establishing the shareholders using an extract from the Register Book of Shareholders or the registration member of the Viet Nam Securities Depository and Clearing Corporation (VSDC). The list of shareholders shall include the full name/registered name and address/registered office, nationality, ID, passport or other legal individual certification number, business registration number of each shareholder, the number of shares of each type, total shares and the date of registration under each type of each shareholder.[51]

Every shareholder has the right to check, refer to, extract and copy the list of shareholders, to request the amendment of incorrect information or the addition of necessary information.[52]

This right gives shareholders the opportunity to contact other shareholders and coordinate voting for collective action purposes. It is also important for verifying the information in the shareholder list and exercising rights attached to shares.

The company is obliged to provide the following information:

- The shareholder list
- A document confirming that the inquiring shareholder is not included in the shareholder list.[53]

4.3.4. The Right to Receive Dividends

Dividends play an important role in a decision to invest in a company. One important right of shareholders is to receive dividends.[54] Listed companies should have a dividend policy in place. The BoD shall make a proposal on the pay-out ratio for each class of shares and submit it to the GMS for approval.[55] For listed companies, the BoD may recommend the GMS approve payment of all or part of dividends in shares. The BoD is the authority to implement this decision. Dividends can be made in cash or in the form of ordinary shares.

51 *LOE, Article 141.*
52 *LOE, Article 141, Clause 3.*
53 *Circular No. 116/2020/TT-BTC, Model Charter, Article 12, Clause 1.*
54 *LOE, Article 115, Clause 1(b).*
55 *LOE, Article 153, Clause 2(o).*

Where dividends or other payments related to a stock are paid in cash, the company must pay in Viet Nam Dong.[56] Dividends must be paid in full within six months from the end of the GMS. The BoD shall make a list of shareholders who are entitled to receive dividends, determine the level of dividends to be paid for each share, the time limit and form of payment at least 30 working days before each dividend payment. Notice of dividend payment shall be sent by a secure method to shareholders at the address registered in the register of shareholders at least 15 days before the payment of dividends.[57]

Best practice

The Viet Nam Corporate Governance Code of Best Practices says the Board should develop and implement a fair and consistent dividend policy (Principle 9.3).

The code also recommends the following:

9.3.1 The Board should adopt a clear and transparent policy on the dividend distribution and payment process. Shareholders should be given full information on conditions of dividends distribution and pay-out procedures. There should no hindrance for shareholders in obtaining their dividends.

9.3.2 The cash dividends should be paid within 30 days after adoption of the relevant resolution. If the company has a resolution to pay dividends by shares, the script dividends should be paid within 60 days.

9.3.3 The company is responsible for paying all declared dividends. Accordingly, the Board shall be liable to its shareholders for the failure to discharge this duty, pursuant to the applicable legislation.

9.3.4 The Board should disclose the dividend policy via the company's website.

4.3.5. The Right to Freely Transfer Shares

Except for voting preference shares and shares subscribed by founding shareholders at the establishment of the company, the owners of common and preferred shares have the right to freely transfer their shares to other shareholders and persons who are not shareholders of the company. They can sell their shares at any time and at any price, without the consent of, or any pre-emptive right on the part of, the company and other shareholders.[58]

56 *Circular No. 116/2020/TT-BTC, Model Charter, Article 51.*
57 *LOE, Article 135, Clause 4.*
58 *LOE, Article 127.*

Voting preference shares are only held by government-authorized organizations and founding shareholders. The voting preference of founding shareholders shall be effective for three years from being granted a business registration license. Then, voting preference shares of founding shareholders shall be converted into ordinary shares and freely transferred by the owners.[59]

There are some restrictions on the transfer of ordinary shares subscribed by founding shareholders at the establishment of the company. Within three years from the date the company is granted the Certificate of Business Registration, the ordinary shares of founding shareholders are freely transferable to other founding shareholders and can only be transferred to persons who are not founding shareholders if approved by the GMS. In this case, the founding shareholders who intend to transfer ordinary shares do not have the right to vote on the transfer of such shares. After this three-year period, all restrictions imposed upon founding shareholders shall be abolished.[60]

4.3.6. The Right of First Refusal and Pre-Emptive Rights

In certain circumstances, shareholders have pre-emptive rights that allow them to purchase shares or convertible securities on a priority basis before they are offered to third parties. Thus, a shareholder has the right to subscribe newly-issued shares in proportion to the par value of the shares or the book value of no par value shares she/he owns at the time the company decides to issue new shares.[61] For listed companies, it is regulated that existing shareholders shall be given priority to be offered ordinary shares for sale at the ratio corresponding to their ownership percentage of ordinary shares in the company, except where otherwise stipulated by the GMS.[62] A company may issue other types of preferred shares after obtaining GMS approval and in accordance with provisions of the law[63], however, there is no specific regulation or guidance in case the company issues additional preferred shares.

Shareholders can transfer their pre-emptive rights to others.[64]

59 *LOE, Article 116.*
60 *LOE, Article 120, Clause 3.*
61 *LOE, Article 115, Clause 1(c).*
62 *Circular No. 116/2020/TT-BTC, Model Charter, Article 6, Clause 5.*
63 *Circular No. 116/2020/TT-BTC, Model Charter, Article 6, Clause 4.*
64 *LOE, Article 115, Clause 1(c).*

Purpose of Pre-Emptive Rights

Pre-emptive rights ensure that all shareholders of the same class are treated equally. They provide the opportunity to purchase new shares when the company wants to increase its charter capital. Pre-emptive rights help protect shareholders from dilution, which can result in losing some of their rights due to the decrease of the percentage of shares they hold.

When pre-emptive rights exist: Whenever the capital is increased by consideration in cash, the shares must be offered on a pre-emptive basis to shareholders in proportion to the capital represented by their shares.

Pre-emptive rights and fractional shares: When shareholders exercise pre-emptive rights, fractions of shares (fractional shares) can result. Currently, in Viet Nam, there is no specific regulation on the treatment of fractional shares. However, it is market practice for the number of additional shares issued to be rounded down to the unit of share. The BoD can distribute the remaining shares due to rounding to shareholders of the company or to others in an appropriate way provided that the offering conditions of such remaining shares are not better than that offered to existing shareholders.

Procedure for Exercising Pre-Emptive Rights

Issuing organizations must register the issuance of additional shares with the SSC.[65] Within seven working days after a certificate of public offering of securities becomes effective, the issuing organization shall publish an issuance announcement on an electronic or printed newspaper for three consecutive issues.[66]

A share offering to existing shareholders of a joint stock company, that is not a public company, is conducted as follows:[67]

a) The company must notify shareholders in writing in a manner that ensures they reach their contact addresses in the register of shareholders at least 15 days before expiration of the time limit for registration to purchase shares.

b) The notice must include: full name, contact address, nationality, number of legal papers of the individual. For individual shareholders: name,

65 *LOS, Article 16, Clause 1.*
66 *LOS, Article 25, Clause 3.*
67 *LOE, Article 124, Clause 2.*

enterprise code or number of legal papers of the organization and head office address. For shareholder organizations: number of shares and current share ownership ratio of shareholders in the company, total number of shares expected to be offered for sale and the number of shares shareholders are entitled to buy, share offering price, purchase registration period, full name and signature of the legal representative of the company. The notice must be accompanied by a registration form to buy shares issued by the company. If the share purchase registration form is not sent to the company on time according to the notice, such shareholders shall be deemed to have not received the right of priority to purchase.

c) Shareholders have the right to transfer their priority rights to buy shares to other people.

In case the number of shares to be offered for sale is not fully registered by shareholders and the transferee of the right to purchase, the BoD has the right to sell the remaining shares to shareholders of the company as well as others with conditions not as favorable than those offered to shareholders, unless otherwise approved by the GMS or provided by the LOS.

Shares are considered to have been sold when fully paid and information about the purchaser specified in Clause 2, Article 122 of the LOE is fully recorded in the register of shareholders. From this point onwards, the person who buys the shares becomes a shareholder in the company. After the shares are paid in full, the company issues and delivers the shares to the buyer. In case of not handing over shares, information about the shareholder specified in Clause 2, Article 122 of the LOE shall be recorded in the register of shareholders to certify that shareholder's ownership of shares in the company.

The BoD decides the time, method and selling price of shares. The selling price of shares to all shareholders in proportion to their existing share ownership in the company may be lower than the market price at the time of sale or the most updated book value of shares.[68]

68 *LOE, Article 126.*

Best practice

A shareholder who holds pre-emptive rights may exercise these rights fully or in part by submitting a written statement to the company requesting to purchase additionally issued shares or other convertible securities. This statement must include:

- Shareholder's name
- Shareholder's location of residence
- Number of shares to be purchased by the shareholder
- A document verifying payment.

4.3.7. The Right to Demand Share Redemption

A shareholder has the right to have the company redeem all or a part of its shares upon voting against or abstaining in the case of:

1. Alteration of a shareholder's rights and obligations provided in the Company Charter, on which she/he had voted against.

2. Restructuring of the company in the form of mergers, divisions or involving a change of its legal form (transformation), on which she/he had voted against.

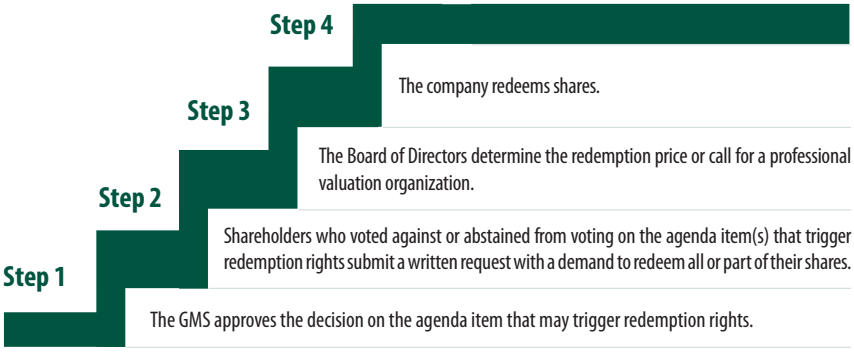
The shareholder will send a request to the company within 10 working days from the date of GMS resolution on issue that it voted against. The request shall be in writing, specifying the name and address of such shareholder, the number of shares held under each type of class, the proposed price and reason for such request.

The BoD must determine the redemption price, which can be the market price or any other method as stated in the Company Charter. Where such price fails to be agreed, the shareholder can sell the shares to another person or the company with the option of an independent valuation. The company can recommend at least three professional valuation organizations for the shareholder to select from. The decision of selecting such valuation organization is final.

The company must redeem the shares within 90 days from receipt of the request.[69]

The steps required to redeem shares are summarized in Figure 6.

Figure 6. Procedures for Redemption



The Right to File a Claim on Behalf of the Company

The LOE introduced, in principle, the right of shareholders to request the court or arbitrators to overturn GMS decisions. According to Article 151, of the LOE, within 90 days from the date of receipt of the resolution or minutes of the GMS or minutes of vote counting results to collect GMS opinions, the shareholder or group of shareholders that holds at least 5 percent of ordinary shares (or a smaller ratio specified in the Company Charter)[70] has the right to request the court or arbitrator to consider and cancel part or all of the GMS resolution in the following cases: 1) the order and procedures for convening a meeting and making decisions of the GMS seriously violate the provisions of this law and the Company Charter, except for the case[71] where a resolution ratified by 100 percent of voting shares was lawful and effective even if procedures for convening the meeting and issuing such a resolution prescribed in this law and the Company Charter are not followed and 2) the content of the resolution violates the law or the Company Charter.

Shareholders or groups of shareholders owning at least 1 percent of the total number of ordinary shares have the right to initiate lawsuits on their own

69 *LOE, Article 132*
70 *LOE, Article 115, Clause 2.*
71 *LOE, Article 152, Clause 2.*

or on behalf of the company for personal liability and joint liability against members of the BoD, Chief Executive Officer (CEO) or to claim benefits or compensation for the company or other people in the following cases:[72]

- Violating responsibilities of the company manager as prescribed in Article 165 of this law.
- Failure to perform, incompletely, improperly performing or performing contrary to the provisions of law or the Company Charter, resolutions and decisions of the BoD with respect to the rights and obligations granted by the BoD.
- Abuse of position and use of information, know-how, business opportunities and other assets of the company for personal gain or for the benefit of other organizations or individuals.
- Other cases as prescribed by law and the Company Charter.

The order and procedures for initiating lawsuits shall comply with provisions of the Civil Procedure Code. The cost of filing a lawsuit in case a shareholder or group of shareholders sues on behalf of the company shall be included in the company's expenses, unless the lawsuit is denied. Shareholders and groups of shareholders as prescribed above have the right to consider, look up and extract necessary information according to the decisions of the Courts or Arbitrators before or during the course of lawsuits.

4.3.8. The Right to Summon a GMS

This right is important to shareholders to protect their rights. A shareholder or a group of shareholders that owns more than 5 percent of total ordinary shares or a smaller ratio as stipulated in the Company Charter has the right to summon a GMS in the following cases:

- The BoD seriously violates the shareholders' rights, obligations of executives or issues decisions *ultra vires*.
- Other cases prescribed by the Company Charter.[73]

72 *LOE, Article 166.*
73 *LOE, Article 115.*

4.3.9. The Right to Nominate BoD and Supervisory Members

A shareholder or group of shareholders representing at least 10 percent of the voting rights, or a lower percentage as provided by the Company Charter have the right to nominate a member to the BoD and the Supervisory Board.[74]

The number of candidates depends on the quantity of members of the BoD and Supervisory Board and shall be decided by the GMS. In case the number of candidates nominated is smaller than the permissible number, the remaining candidates shall be nominated by the BoD, the Supervisory Board and other shareholders. In practice, the majority shareholders often control the election and removal of Board members.

4.3.10. Restrictions on Founding Shareholders

The transfer of ordinary shares held by the founding shareholders to non-founding shareholders within the first three years is restricted unless approved by the shareholders' meeting. This restriction only applies to founding shareholders of new joint stock companies within the first three years from the date of company's formation.[75]

4.3.11. The Right to the Company's Assets During Liquidation

Shareholders are residual claimants when a company is being liquidated and hence, will receive a portion of the assets remaining after creditor claims are satisfied. Owners of ordinary shares have a right to receive a portion of the company's property in proportion to their holdings in the company after it has paid out creditors and shareholders of other classes in accordance with law.[76]

During liquidation, a company must first satisfy its priority claimants (usually liquidation and administrative expenses, salaries, wages, employee benefits and taxes), and then obligations to creditors. Finally, the liquidator divides the remaining assets among shareholders in which the preference shares are paid first.[77]

The company's assets must be distributed to each group in order of priority. For example, the company cannot pay the liquidation value of

74 *LOE, Article 115, Clause 5.*
75 *LOE, Article 120, Clause 3.*
76 *LOE, Article 115, Clause 1(g).*
77 *Circular No. 116/2020/TT-BTC, Model Charter, Article 61, Clause 3.*

preferred shares until it has paid the full liquidation value of higher priority shares. If the company does not have sufficient assets to pay all shareholders of the same priority class, then the assets must be distributed in proportion to the number of shares in the class.

The LOE stipulates that dividend preference shareholders shall be entitled to receive part of the company's remaining assets corresponding to their paid-in shares after the company pays all debts and redeemable preference shares when the company is dissolved or bankrupt.[78]

4.4. The State as Shareholder

The State can become a shareholder in shareholding companies through buying shares or conversion of State companies into shareholding companies (this process is normally called "equitization").

State-owned enterprises (SOEs) shall be limited liability companies or joint stock companies, including[79]:

- Wholly SOEs (100 percent of charter capital is held by the State):
  - Single-member limited liability companies (100 percent of charter capital held by the State), that are parent companies of state-owned corporations or parent companies in groups of a parent company (subsidiary companies)
  - Independent single-member limited liability companies (100 percent of charter capital is held by the State).
- Partially SOEs (more than 50 percent of charter capital or voting shares held by the State, except wholly SOEs):
  - Multiple-member limited liability companies and joint stock companies (more than 50 percent of charter capital or voting shares is held by the State), that are parent companies of state-owned corporations or parent companies in groups of a parent company (subsidiary companies).
  - Independent multiple-member limited liability companies and joint stock companies (more than 50 percent of charter capital or voting shares held by the State).

78 *LOE, Article 117, Clause 2b.*
79 *LOE, Article 88.*

The percentage of State-held shares is based on the criteria for classification of State enterprises publicized by the Prime Minister for each period.[80] On the basis of the determined charter capital, the owner's representative agency shall decide on the share capital structure for the first time, including shares held by the State according to criteria for classification of SOEs announced by the Prime Minister in each period. For specific enterprises, which play an important role in local economic development serving the development strategy of industries and economic groups (such as management and exploitation of seaports, in which case the State holds 36 percent of charter capital and other special cases), the owner's representative agency shall report to the Prime Minister to decide the number of shares the State continues to hold and the number of voting preference shares according to the LOE. Therefore, the State can participate in a company either as an ordinary shareholder or as the holder of privileged rights.[81]

Comparative practice

Foreign investors are usually cautious about investing in companies where shares are issued having privileged rights. Even though privileged rights arrangements can play a useful role in protecting the interests of the State and public, it is recommended that State agencies carefully weigh all pros and cons of implementing privileged rights arrangements on a case-by-case basis.

The State as an Ordinary Shareholder

In this case, the influence of the State in a company is determined by the percentage of owned shares.

The State as the Holder of Privileged Rights

The privileged rights of the State are in the form of voting preference shares or majority shares. In some key areas as decided by the Government, the State shall be entitled to these privileged rights. These rights shall ensure the security of the State, or protect the morale, health, rights, and interests of its citizens.

80 *Decree No. 126/2017/ND-CP, Article 4, Clause 1(a).*
81 *Decree No. 126/2017/ND-CP, Article 33, Clause 2.*

Comparative practice

Although enjoying the same rights as other shareholders in the company, with the majority of shares or voting preference shares with more votes than ordinary shares, the State in Viet Nam may have the following rights:

- Propose items for the agenda of the GMS
- Request an extraordinary GMS
- Veto the following decisions of the GMS:
  a) Amendments to the charter or approval of a new charter
  b) Reorganization of the company
  c) Liquidation of the company, appointment of the internal corporate body, or approval of the intermediary and final liquidation balance sheets
  d) Amendments to the charter capital
  e) Approval of extraordinary and related party transactions
  f) Access all corporate documents.

The State may appoint a representative to the BoD and replace this representative at any time.

In recent times, the State has reduced its ownership in companies that do not need comprehensive State involvement and control through a program of capital withdrawals from these companies. In addition, State corporations, holding companies and the State Capital Investment Corporation (SCIC) can be shareholders without privileged rights. In this case, their rights are identical to those of the company's other shareholders.

Exercising the Rights of the State as a Shareholder

State authorities that own shares often use their statutory powers to intervene in the business of the companies.

The State shall exercise the ownership rights of State investment capital with the following principles:

- Exercise the ownership rights as a capital investor.
- Preserve and develop the State capital's value.
- Separate the function of exercising ownership rights from the function of

State administrative management.

- Separate the function of exercising ownership rights from the implementation of State social duties.
- Separate the function of exercising ownership rights from enterprises' business autonomy, respect enterprises' rights to do business.
- Exercise the rights and obligations of the owner of capital in enterprises.

Enterprises with 100 percent of charter capital held by the State[82] are organized and managed in the form of a one-member limited liability company under provisions of Chapter IV and other relevant provisions of the LOE. In case there is any differences between provisions of this law, the provisions of Chapter IV, LOE on SOEs shall apply.

Enterprises with more than 50 percent of charter capital or voting shares held by the State[83] are organized and managed in the form of a limited liability company with two or more members in accordance with provisions of Chapter IV of the LOE (SOEs).

The owner's representative agency shall appoint one or more persons to act as representatives for State capital amounts in equitized enterprises which are subsidiaries or affiliates and take responsibility for discharging the rights and obligations of these representatives in accordance with law.[84] For equitized enterprises, the Enterprise Equitization Steering Committee shall report to the owner's representative agency to appoint a representative of the State capital portion in equitized enterprises to continue participating in joint stock companies and be responsible for exercising rights and obligations/ duties of the representative of the owner of the State capital in accordance with provisions of law.[85]

The Commission for Management of State Capital at Enterprises (CMSC) is a ministerial agency of Viet Nam implementing the rights and responsibilities as the State owner's representative for enterprises, in which 100 percent of charter capital is held by the State and the State's investment

82 *LOE, Article 88, Clause 1(a).*
83 *LOE, Article 88, Clause 1(b).*
84 *Decree No. 126/2017/ND-CP, Article 45, Clause 2.*
85 *Decree No. 126/2017/ND-CP, Appendix II - The procedure of transforming a state-owned enterprise into a joint stock company, Step 3(6).*

capital in joint stock companies, limited liability companies of two or more members as prescribed by law.[86] CMSC performs duties and powers with respect to the State capital invested in joint stock companies and limited liability companies with two or more members in which the CMSC acts as the owner's representative including in appointments, dismissals, relief from duty, rotations, assignments, secondments, commendations, discipline, decisions on salary, responsibility allowances, bonuses and other benefits of the representative of State capital share according to provisions of law. The representative of the State capital portion performs tasks prescribed by law on management and use of State capital invested in production and business at the enterprise. It gives timely written opinions on matters under responsibility of the representative to report or seek opinions and inspects, supervises and evaluates the activities of the representative of the State capital portion.[87]

According to the OECD[88], the State has distinct governance challenges as a shareholder. The State shareholder may exercise undue hands-on and politically motivated ownership interference, affecting corporate efficiency. This challenge is typically intensified if the company with State capital has dual economic and social goals. On the contrary, there may be a lack of oversight due to the passive approach or distant ownership by the State. Additionally, under various ownership models, the ownership entity, the State shareholder or part of the State responsible for the ownership function, can be a single State ownership agency, a co-ordinating agency or a government ministry responsible for exercising State ownership. The accountability for performance of the State as a shareholder involves a complex chain of agents, namely management, Board, ownership entities, ministries, the government and legislature, leading to unclear lines of responsibility and a lack of accountability.

86 *Decree No. 131/2018/ND-CP, Article 1.*
87 *Decree No. 131/2018/ND-CP, Article 5, Clause 4.*
88 *OECD (2023), Recommendation of the Council on Guidelines on Corporate Governance of State-Owned Enterprises, OECD/LEGAL/0414.*

Best practice

The OECD emphasizes the importance of professionalizing the State as an owner. The State should act as an informed and active owner, ensuring that the governance of a SOE is transparent and accountable, with a high degree of professionalism and effectiveness.

Regarding ensuring equitable treatment of shareholders and other investors, where SOEs are listed or otherwise include non-State investors among their owners, the State and enterprises should recognize the rights of all shareholders and ensure shareholders' equitable treatment and equal access to corporate information. This includes, where practical, the following:

- implementing the OECD's Principles of Corporate Governance.
- adhering to national corporate governance codes.
- ensuring adequate information disclosure to non-State shareholders about public policy objectives.
- fully upholding contractual rights and addressing disputes in a timely and objective manner when engaging in cooperative projects.

OECD (2023), Recommendation of the Council on Guidelines on Corporate Governance of State-Owned Enterprises, OECD/LEGAL/0414. (Page 11)

4.5. Shareholding Registration

The company's shareholder registry is an important document that identifies the shareholders and the owners of other registered securities of the company. It can be used to verify the number, nominal value, type, and class of shares and other registered securities held. The shareholder register is also maintained to secure shareholder rights and monitor the circulation of shares and other registered securities.

4.5.1. Shareholder Register

A company shall make and maintain a register book of shareholders from the date of being granted the certificate of business registration. Such a book may be in writing, in electronic files, or both.[89]

89 *LOE, Article 122, Clause 1.*

The register book of shareholder shall include the following contents:

- The company's name and headquarters address
- Total number of authorized shares, types of authorized shares and quantity of each type
- Total number of sold shares of each type and value of share capital contributed
- Full names, signatures, mailing addresses, nationalities and legal document numbers of shareholders that are individuals, names, enterprise identification (EID) numbers or legal document numbers and headquarters addresses of shareholders that are organizations
- Quantity of each type of shares of each shareholder, date of share registration.[90]

The shareholder register shall be retained at the company's headquarters or another organization that is licensed to retain shareholder registers. Shareholders are entitled to inspect, access, extract names and addresses of the company's shareholders from the shareholder register.[91] Members of the BoD, the Supervisory Board, CEO and other executives have the right to search the register of shareholders of the company, the list of shareholders, books and other records of the company. The company for purposes related to its position provided that this information must be kept confidential.[92] The company must update the change of shareholders in the register of shareholders at the request of the relevant shareholder within 24 hours.[93]

Although there are no specific regulations on the management of shareholder register, the LOE regulates the company manager must promptly provide information in the register of shareholders, amend and supplement false information at the request of shareholders, shall be responsible for compensation for damage arising from failure to provide or provide untimely and inaccurate information in the register of shareholders as requested.[94] There should be a clear regulation in case of a discrepancy between data in the book of shareholders and data of the registration members of the Viet Nam Securities Depository and Clearing Corporation.

90 *LOE, Article 122, Clause 2.*
91 *LOE, Article 122, Clause 3.*
92 *Circular No. 116/2020/TT-BTC, Model Charter, Article 49, Clause 3.*
93 *LOE, Article 127, Clause 7.*
94 *LOE, Article 141, Clause 3.*

4.5.2. Securities Registration

Registration with the Viet Nam Securities Depository and Clearing Corporation

Public companies must carry out centralized registration of shares at Viet Nam Securities Depository and Clearing Corporation (VSDC).[95] VSDC is an enterprise that was established and operated in accordance with the LOE. More than 50 percent of charter capital or voting shares of the VSDC shall be held by the State. The Prime Minister shall issue decisions on establishment, dissolution, operating model, type of ownership, functions, tasks and powers of the VSDC, and establishment of its subsidiaries as proposed by the Minister of Finance. VSDC is under management and supervision of the SSC.[96] VSDC inherits all rights and responsibilities of the Viet Nam Securities Depository Center in accordance with laws.[97]

Securities of public companies and other organizations listed or registered on the securities trading system shall be registered at VSDC. The public companies shall register their information, securities and securities holders with VSDC. The VSDC shall compile a register of holders of securities registered with it. VSDC shall compile a list and grant access to securities holders according to their holdings as informed by public companies and issuers. Only holders on the latest register will be entitled to the interests of the securities they are holding.[98]

VSDC will issue regulations on securities registration, depository, clearing and settlement, member regulations of VSDC and other professional regulations after they are approved by the SSC.[99] Under the Law on Security 2019 there are two types of VSDC members: deposit members-providing securities registration, depository, clearing and payment services and offsetting members-providing offsetting and payment services for derivatives and other kinds of securities.[100]

Registration with Business Registrar

The laws of Viet Nam do not regulate that shareholders holding 5

95 *LOS, Article 34, Clause 1(c).*
96 *LOS, Article 52.*
97 *Draft decision on establishment, organization and operation of VSDC, Article 1, Clause 2.*
98 *LOS, Article 61.*
99 *LOS, Article 55, Clause 1(a).*
100 *LOS, Article 56, Clause 1.*

percent or more of the total number of the shares must be registered, but the information of major shareholders, groups of related persons holding at least 5 percent of voting shares of a public company must be disclosed to the public.[101]

4.6. Protection of Shareholder Rights

The protection of shareholder rights sits at the center of corporate governance and is of particular importance for companies operating in emerging markets or transition economies. This protection is realized internally (through internal corporate procedures and other guarantees envisaged by the LOE and other legislation), and externally (through outside parties).

4.6.1. Guarantees in Viet Nam's Law on Enterprises

The LOE provides many guarantees to realize and protect shareholder rights. Some of these guarantees are procedural in nature and relate to the organization of the GMS. Others are reflected in the respective obligations of the governing bodies and officers of the company, such as members of the BoD, the CEO, and Management Board members.

For example, the right of shareholders who own or represent a certain percentage of shares (5 percent as provided under the LOE and in the Model Charter for listed companies) to make proposals to the GMS agenda should be guaranteed by the following provision related to the authority and obligations of the BoD:

- Directors cannot reject proposals on other than procedural grounds envisaged by the LOE, thus preventing the removal of questions from the agenda that directors do not wish to address. A proposal can only be rejected in the following circumstances: i) the proposal is not sent within the time limit or does not contain all required information, ii) the proposed issues do not fall under the jurisdiction of the GMS or iii) other circumstances provided in the Company Charter.

Judicial Protection

When their rights are violated, shareholders have the right to judicial

101 *LOS, Article 118, Clause 1(e).*

protection. This is a fundamental shareholder right guaranteed by law. In Viet Nam, commercial courts are authorized to provide shareholders with judicial protection. Under prevailing law, in principle, shareholders have the right to request the economic court to overturn GMS decisions. However, shareholders cannot sue directors of joint stock companies, based on the rule that the company shall bear the cost of the lawsuit. Shareholders cannot file suits against directors in the forms of class action and derivative actions, as they have not been introduced in Viet Nam.

Depending on the nature and extent of the breaches made, those who break a provision of the LOE shall be disciplined, either by receiving an administrative fine, or being subjected to criminal prosecution in accordance with the law. When the breaches cause damage(s) to the company or shareholders, the violators will be liable to make full compensation in accordance with the law.[102]

The shareholder or group of shareholders that holds at least 5 percent of ordinary shares (or a smaller ratio specified in the Company Charter) shall have the rights to demand a GMS be convened in the cases of: a) the BoD seriously violates the shareholders' rights, obligations of executives or issues decisions *ultra vires*, b) other cases prescribed by the company's charter.[103] Failing to convene an irregular meeting of the GMS as requested in accordance with the LOE within a specific period of time, the Chairperson of the BoD and other members of the BoD shall be responsible to the law and compensate for any damages and losses caused to the company.[104] Shareholders can file a petition requesting the court or an arbitrator to consider and/or cancel resolutions of the GMS in certain specific cases.[105]

In case of a dispute between a shareholder and the company, or between a shareholder and the BoD, Inspection Committee and the CEO cannot be resolved by way of negotiation and conciliation within a specific period of time, the shareholder may take the dispute to economic arbitration or the economic court. A shareholder or group of shareholders that holds at least 1 percent of total ordinary shares may file a lawsuit against a member of the BoD or the CEO to claim interest or damages when the Board or CEO: a) fails to fulfill the executive's duties, b) fails to comply with or fully and punctually perform their

102 LOE, Article 153, Clause 4.
103 LOE, Article 115.
104 LOE, Article 140, Clause 2.
105 LOE, Article 151.

rights and obligations as prescribed by law, the Company Charter, resolution or decision of the BoD, c) abuses the position of power or uses the enterprise's information, secrets, business opportunities and assets for personal gain or serve any other organization's or individual's interests and d) other cases prescribed by law and the Company Charter.[106]

Shareholders holding half of the currently circulating shares with rights to vote in the election of members to the BoD shall have the right to lodge a petition with a court requesting dissolution of the company in certain specific circumstances.[107]

In Viet Nam, the courts still lack jurisprudent expertise in securities market disputes and experienced magistrates. Courts are generally considered less efficient in comparison to the international benchmark with numerous and complicated procedures. This makes protection of shareholders' rights through the court system challenging.

Protection by the State Securities Commission

According to the Law on Securities (LOS), the State Securities Commission (SSC) has the following tasks and powers:[108]

- Propose legislative documents on securities and the securities market, strategies, plans, schemes and policies on development of the securities market to the Minister of Finance or a competent authority for promulgation.
- Organize and develop the securities market, directly manage and supervise securities activities, manage services related to securities and the securities market in accordance with regulations of law.
- Issue, reissue, renew, revise, revoke licenses, securities professional certifications, certificates related to securities activities. Revise, suspend and revoke decisions relevant to securities activities.
- Manage, inspect, supervise operations of Viet Nam Stock Exchange (VSE), its subsidiaries and VSDC, consider approving regulations of the VSE, its subsidiaries and VSDC. Request VSE, its subsidiaries and VSDC to revise their regulations. Revise, suspend and revoke decisions relevant to operations

106 *LOE, Article 166, Clause 4.*
107 *Circular No. 116/2020/TT-BTC, Model Charter, Article 21.*
108 *LOS, Article 9, Clause 1.*

of VSE, its subsidiaries and VSDC. Also direct VSE, its subsidiaries and VSDC to fulfil duties to protect the lawful rights and interests of investors.

- Consider approving new securities, change and apply new transaction methods.
- Manage and supervise operations related to securities and the securities market of organizations and individuals.
- Carry out inspections, settle complaints and denunciations, impose administrative penalties against securities-related offences.
- Submit reports to the Ministry of Finance on securities market developments. Submit a report to the Ministry of Finance, the Government and Prime Minister on any adverse event that considerably affects the security and safety of the securities market to stabilize the market and maintain financial security and safety.
- Implement or request a competent authority to implement measures for assurance of securities market safety and security.
- Produce statistics and forecasting about securities activities and the securities market. Modernize information technology serving securities activities and the securities market.
- Provide or cooperate with relevant organizations in providing training for securities officials and certified securities professionals. Spread public knowledge about securities and the securities market.
- Issue instructional documents and other documents under management of the SSC.
- Supervise securities-related socio-professional organizations implementing their charters and guidelines.
- Prepare and submit reports on securities trading and the securities market as prescribed by law.
- Promote international cooperation and coordinate implementation of securities-related international agreements to which Viet Nam is a signatory.
- Other duties and entitlements provided for in this law and relevant laws.

Through these above tasks and powers, the SSC contributes to protecting the legitimate rights and interests of investors. The LOS also provides specific regulations and guidelines in the inspection and supervision activities of the SSC.

The SSC Chairperson shall develop programs or plans for inspections of securities activities and the securities market. Extraordinary inspections may also be conducted upon detection of signs of violations of the LOS and the securities market by organizations or individuals participating in investment and conducting activities on the securities market according to requirements of settlement of complaints and denunciations, or under assignment by the SSC Chairperson.[109]

The legal consequences for not observing disclosure and reporting rules may include fines or delisting. Accordingly, the SSC may impose administrative fines, suspension of trading, administrative warnings and delisting.[110]

Non-Governmental Organizations for the Protection of Shareholder Rights

Shareholders may seek assistance from associations, institutes, or other non-governmental organizations (NGOs) dedicated to the protection of shareholder rights.

The Viet Nam Association of Financial Investors (VAFI) was established under Decision No.74/2003/QD-BNV of the Ministry of Home Affairs (November 5, 2003) and began operations in January 2004 with the goal of creating a bridge between businesses, stock companies, investors, and management agencies. VAFI proposes suggestions for the improvement of the investment environment and as such, it provides training, consulting and guidance for investment in the capital market. It also serves as a platform for discussion and makes contributions to the drafting of legislation. One of VAFI's objectives is to "protect the rights of investors by helping investors attain a thorough knowledge of laws and feel confidence in investing in businesses".

109 LOS, Article 129.
110 LOS, Article 130.

However, one of VAFI's sources of funds is the State budget and VAFI has close links with the Government. This, in combination with the lack of detail as to which investors are actually represented by VAFI, creates doubt as to whether it is a truly effective representative of shareholder rights for investors.

Comparative practice

In some countries, NGOs play an important role in exerting pressure on companies. Organizations do this in various ways. For example, some organizations may become shareholders themselves and participate in the GMS. Others may conduct media campaigns to exert pressure on companies and draw public attention to the issue of shareholder protection. NGOs may also assist shareholders by providing legal help for filing a claim in court or establishing a special fund for the protection of shareholder interests.

Company Charter and Internal Regulations

A listed company shall build a rational corporate governance apparatus and an effective system of communication with shareholders in order to ensure that:

- Shareholders can fully exercise the rights provided by law and the Company Charter.
- Shareholders are fairly treated.

A listed company shall elaborate its charter according to the Model Charter promulgated by the Ministry of Finance.

A listed company shall elaborate and promulgate internal regulations on corporate governance that contain the following principal details:[111]

- Roles, rights and obligations of the GMS, BoD and CEO.
- Order and procedures for the meeting of the GMS. Nominate, stand for election, elect, relieve and dismiss members of the BoD, Supervisory Board, CEO.

111 *Circular No. 116/2020/TT-BTC. The model internal regulation.*

- Other activities as prescribed in the Company Charter and current regulations other of the law.

4.6.2. Shareholder Activism

The protection of shareholder rights begins with good corporate behavior, an appropriate legal and regulatory framework and appropriate enforcement procedures. Shareholders themselves must also play a role in this process. Shareholders are often the only parties aware of violations to their rights and are in the best position to either file a complaint with the company or, ultimately, with regulatory and judicial bodies.

Another aspect of shareholder rights protection is collective action. Collective action is when a group of shareholders, unable to attain a right on an individual basis combine their votes to reach a threshold (10 percent for joint stock companies or 5 percent for listed companies) to obtain the right collectively. Moreover, the LOE also provides shareholders with access to shareholder lists to contact other shareholders to solicit cooperation.

Shareholder activism has increased in recent years in Asia-Pacific markets. Shareholders can send their demands to the company, either publicly or privately, when they disagree with how the company is run, its major strategic and financial decisions, and/or its environmental, social and governance (ESG) practices.

4.6.3. Shareholder Agreements

Shareholder agreements can be an important device for exercising collective action among shareholders. In fact, such agreements can enable minority shareholders to make use of minority rights (acquiring the 10 percent necessary to elect a fiduciary to examine the financial statements). The situation is more complex if agreements are concluded between shareholders and the company (or one of its governing bodies). In these circumstances, shareholders may be "locked in" in a variety of ways, such as by obliging themselves to always vote in favor of proposals by directors or to always follow the instructions of management in matters relating to essential shareholder rights (the right to sell their shares, to receive dividends and other rights).

Shareholder agreements are, in principle, a form of private, civil law contract. Yet, because of their corporate governance implications, it is necessary to make certain provisions.

First, shareholder agreements cannot substitute (or contradict) the founding documents of the company. It is the founding document (charter) that is mandatory, publicly regulated, and subject to disclosure (according to the State registration regime and/or securities regime).

Second, it is necessary to prevent the above-mentioned forms of abuse to the ability to control the voting power of minority shareholders by prohibiting the inclusion of certain terms in such agreements.

Lastly, it is necessary (particularly for publicly traded companies) to provide for greater transparency of voting control by requiring the disclosure of such arrangements. Accordingly, shareholders are required to inform the GMS about the concluded contract at the next meeting of shareholders.

Under prevailing laws, there is no specific regulation on the terms of shareholder agreements or disclosure of shareholder agreements.

4.7. Shareholder Responsibilities

4.7.1. Obligation to Make Full Payment for Subscribed Shares

In addition to rights, shareholders also have responsibilities. The main legal responsibility of shareholders is to make full payment for shares for their subscribed shares.[112] Founding shareholders shall collectively subscribe at least 20 percent of the total ordinary shares issued by the company and must pay in full for the subscribed shares within 90 days of the issuance date of the company's business registration license.[113]

4.7.2. Obligation to be Liable for Debt and Other Liabilities of the Company

Shareholders shall be liable for debts and other liabilities of the company to the extent of the paid-in capital. No withdrawal of contributed capital for ordinary shares from the company is allowed in any form except the company or other persons repurchasing the shares. If a shareholder withdraws a part or the entire contributed capital which is contrary to this stipulation, all members of the BoD and the legal representative of the company shall be

112 *LOE, Article 119, Clause 1.*
113 *LOE, Article 120, Clause 2.*

jointly liable for all debts and other asset obligations of the company within the amount of the withdrawn shares.[114]

4.7.3. Other Obligations

Other responsibilities may exist. Shareholders are responsible to comply with the charter and the other internal regulations of the company, to observe resolutions of the GMS and the Management Board, to provide the correct address when registering subscription for shares and to perform other obligations in accordance with current law.[115]

Besides, a shareholder shall be personally liable when performing one of the following acts in any form in the name of the company:

- Breaches the law.
- Conducts business and other transactions for personal benefit or for the benefit of other organizations or individuals.
- Pays undue debts prior to a time when the company could face financial danger.[116]

Other obligations may include disclosure of obligations when certain thresholds of ownership are passed, or disclosure of the intent to acquire further shares or gain control of a company. These additional responsibilities generally apply to larger shareholders and are described throughout this Manual. For a discussion on the disclosure of beneficial ownership, see Chapter 10.

Under certain conditions, shareholders may be held liable despite their limited liability. In particular, this refers to controlling shareholders who have the opportunity to determine the actions of or give mandatory instructions to the company.

Finally, in some countries, shareholders (especially institutional investors) may be required to vote their shares. In other countries, there is no legal requirement but it may be considered a moral imperative. While no legal requirements for voting exist in Viet Nam, good corporate governance depends heavily on the active participation of shareholders in the governance of the company.

114 LOE, Article 119, Clause 2.
115 LOE, Article 119, Clauses 3-6.
116 Circular No. 116/2020/TT-BTC, Model Charter, Article 13, Clause 7.

NOTES

NOTES

Chapter 5

GENERAL MEETING OF SHAREHOLDERS

5 | General Meeting of Shareholders

Table of Contents

The Chairperson's Checklist:

The authority of the General Meeting of Shareholders (GMS):

- ☑ Are the powers of the GMS clearly set forth in the Company Charter?
- ☑ Are there any powers of the GMS that the Company Charter explicitly delegates to the Board of Directors (BoD)?

Preparing for the GMS:

- ☑ Does the BoD provide workable and timely mechanisms to include all legitimate shareholder proposals on the agenda?
- ☑ Does the company give shareholders the opportunity to place item(s) on the agenda of general meetings and/or request general meetings subject to a certain percentage of shares with voting rights?
- ☑ Does the BoD have a clear duty to ensure the agenda is not changed after it is sent to all shareholders?
- ☑ Are all shareholders properly notified of the GMS?
- ☑ Does the company properly inform all shareholders of the GMS via its website?
- ☑ Is sufficient information available for all shareholders to make well-informed decisions on agenda items, including the rationale and explanation for each agenda item which requires shareholders' approval in the notice of the GMS, circulars and/or the accompanying statement?
- ☑ Does the company disclose the voting procedures used before the start of the meeting?
- ☑ Are the profiles of directors (age, academic qualifications, date of first appointment, experience, and directorships in other listed companies, for example) in seeking election/re-election included in the meeting information package?
- ☑ Are auditors seeking appointment/re-appointment clearly identified?
- ☑ Is the company's notice of GMS/circulars fully translated into English and published on the same date as the Vietnamese version?

Conducting the GMS:

- ☑ Is the venue of the GMS convenient and easily accessible for all company shareholders?
- ☑ Are shareholders (or their representatives) who attend the GMS properly registered and do they have an opportunity to participate in the GMS?
- ☑ Does the company ensure that the quorum of the GMS is properly verified and properly recorded?
- ☑ Does the company allow voting in absentia?
- ☑ Does the company vote by poll, as opposed to a show of hands, for all resolutions?
- ☑ Has the BoD or other authorized corporate bodies or persons in accordance with the company's general documents ensured that effective and independent vote counting mechanisms are in place during the GMS and that the voting results are properly recorded?
- ☑ Has the company appointed an independent party (scrutineers/inspectors) to count and/or validate the votes at the GMS?
- ☑ Are members of the BoD, Management Board and Supervisory Board as well as the External Auditor present during the GMS?
- ☑ Do shareholders have the opportunity as per their right to ask questions of executives and other presenters?
- ☑ Does the BoD ensure that all decisions are valid and that all applicable legal requirements are met?
- ☑ Does each of the resolutions tabled at the most recent annual general meeting deal with only one item. In other words, there is no bundling of several items into the same resolution?

After the GMS:

- ☑ Did the company disclose the voting results, including approving, dissenting, and abstaining votes for all resolutions/each agenda item of the GMS?
- ☑ Did the company make the voting results for all resolutions at the GMS publicly available (by the next working day)?
- ☑ Did the company disclose the list of Board members and the Chief Executive Officer (CEO). If not a Board member, who attended the most recent Annual General Meeting (AGM)?
- ☑ Do the minutes of the GMS report that shareholders were given an opportunity to ask questions and where they recorded along with the answers?

The Extraordinary General Meeting (EGM):

- ☑ Does the BoD convene an EGM when circumstances require in conformity with the law?
- ☑ Does the BoD convene an EGM as requested by a shareholder (or group of shareholders) owning at least 5 percent or less of voting shares, as stipulated in the Company Charter, for a consecutive period of six months?

Shareholders are the main contributors of equity capital. At the same time, shareholders may lack the necessary time or skills to run a company and do not always wish to participate in the day-to-day management. For this reason, shareholders entrust professionals in the Management Board, as elected by a BoD, to run the company's operations. However, this does not mean that shareholders completely give up their governance rights. Rather, shareholders most commonly exercise these rights through the GMS.

A Company Charter will determine the GMS as a specific company organ with separate rights and responsibilities from the BoD and Management Board. The Law on Enterprises (LOE) and the Company Charter set the boundaries of GMS authority and responsibilities. It is through the GMS that shareholders express their opinions concerning important corporate decisions, such as amendment of the Company Charter, approval of annual reports and financial statements, election and dismissal of the BoD, payment

of dividends and distribution of company profits, reorganization, major corporate transactions, and other matters as determined under the LOE and Company Charter. The GMS also provides shareholders with the opportunity to discuss these and other important matters at least once a year, meet in person with directors and managers, ask questions, and make decisions concerning the company's future direction. Hence, shareholders exercise their rights to participate in the decision-making of the company through the GMS.

There are two types of GMS:

- ***Annual General Meeting (AGM):***

  The LOE requires companies to hold a GMS once a year,[1] mainly to discuss the company's annual report and performance of the BoD and CEO.[2] The AGM must be held within four months, but not beyond six months from the end of the fiscal year.[3] The BoD shall convene the AGM in an appropriate place in Viet Nam. The AGM must provide all shareholders with an opportunity to attend.

- ***Extraordinary General Meeting (EGM):***

  All GMS, other than the AGM, are called the EGM. An EGM is convened in response to specific company needs and interests, such as to give approval for consolidations, mergers, acquisitions or spin-offs, to elect and dismiss the BoD/CEO, or to approve capital increases or reductions. There are no limitations on the number of EGMs a company can conduct during the year. Under certain circumstances, the company may be legally required to call an EGM.

The preparation and conduct of a company's GMS are subject to detailed procedural requirements under the LOE and internal corporate policies and procedures. This chapter describes the authorities of the GMS, its organization and legal requirements for adopting valid decisions.

1 *LOE, Article 139, Clause 1.*
2 *LOE, Article 139, Clause 3.*
3 *LOE, Article 139, Clause 2.*

5.1. Authority of the GMS

The authorities of the GMS are set forth in the LOE. The Company Charter may, however, provide additional authorities to the GMS, unless otherwise determined by the law. The authority of the GMS is summarized in Figure 1:

Figure 1: The Authority of the GMS

The GMS Has Authority Over:

- Amendment of the Company Charter
- Appointment, dismissal of the BoD and Supervisory Board members
- Remuneration of BoD and Supervisory Board members
- Annual financial statements, reports of BoD, Supervisory Board
- Annual work program
- Decisions of the internal procedures for governing bodies
- Charter capital increases or reductions
- Dividend payments
- Major corporate transactions
- Mergers, acquisitions, spin-offs, consolidations, and bankruptcy
- Dissolution and liquidation.

The GMS holds primary authority over the following matters:[4]

1. Decisions on governing bodies

- Appointment, dismissal and replacement of members of the BoD and the Supervisory Board.
- Inspections and dealing with breaches by the BoD or the Supervisory Board which cause losses to the company and shareholders.
- Decisions on the budget or total remunerations, bonuses and other benefits of the BoD and the Supervisory Board.

2. Oversight of the company's operations

- Ratify the orientation for development of the company.
- Approve annual financial statements.

4 *LOE, Article 138 and Circular No. 116/2020/TT-BTC, Model Company Charter, Article 15.*

- Discuss and approve the Supervisory Board report.
- Discuss and approve the BoD report.
- Approve the list of independent audit companies, choose independent audit companies to audit the company and dismiss independent audits where necessary.

For public companies, a report on governance and performance of the BoD to the GMS must contain at least the following:[5]

- Remuneration, operating expenses and other benefits of the BoD and each member of the BoD.
- Summarize meetings and decisions of the BoD.
- Report on transactions between companies, subsidiaries, companies in which the public company holds control over 50 percent or more of the charter capital with members of the BoD and related persons of the members, a company-to-company transaction in which a member of the BoD is a founding member or manager of the enterprise during the last three years before the time of the transaction.
- Activities of independent members of the BoD and results of independent members' evaluation of activities of the BoD (for listed companies).
- Operation of the Audit Committee (if any).
- Activities of other BoD committees (if any).
- Monitoring results for the CEO.
- Results of supervision for other operators.
- Plans for future activities.

For public companies, a report of the Supervisory Board on business results of the company, performance of the BoD and CEO to the GMS must contain at least the following: [6]

- Remuneration, operating expenses and other benefits of the Supervisory Board and each member of the Supervisory Board.
- Summarize the meetings of the Supervisory Board and the conclusions and recommendations of the Supervisory Board.

5 *Decree No. 155/2020/ND-CP, Article 280.*
6 *Decree No. 155/2020/ND-CP, Article 290.*

- Results of monitoring the company's operational and financial situation.
- Report on evaluation of transactions between companies, subsidiaries, companies in which the public company holds control over 50 percent or more of charter capital with members of the BoD, CEO, other executives of the company and related persons. A company-to-company transaction in which a member of the BoD, CEO, or other executive of the company is a founding member or a manager of the enterprise in the last three years prior to the time of the transaction.
- Supervision results for the BoD, CEO, and other executives of the company.
- Results of the evaluation of coordination between the Supervisory Board and the BoD, CEO and shareholders.

3. Decisions of the internal procedures for governing bodies

- Decisions on amendments and additions to the Company Charter.
- Approve internal governance regulations, terms of reference of the BoD and Supervisory Board.

4. Decisions on capitalization

The LOE stipulates that the GMS has the authority to approve a capital increase or reduction. However, to be valid, all GMS resolutions concerning capitalization must meet the minimum quorum and voting requirements set out under the LOE as well as any additional provisions stipulated under the Company Charter.

The GMS shall have the authority to increase the Charter Capital by:

- Making decisions on classes of shares and the number of new shares to be issued for each class of shares.[7]
- Issuing shares for payment of dividends or by issuing bonus shares to current shareholders from internal sources.[8]
- Making decisions on private placement of bonds, the class of bonds, total value of bonds, and time of placement of convertible bonds and warrant-linked bonds.[9]

7 *Circular No. 116/2020/TT-BTC, Model Charter, Article 6, Clause 2.*
8 *Decree No. 155/2020/ND-CP, Article 60.*
9 *LOE, Article 130, Clause 1a.*

It is noted that unless provided in the Company Charter, the BoD shall have the right to make decisions on the class of bonds, total value of bonds and time of placement, but must report to the GMS at the earliest meeting. The report shall be accompanied by documents and files on the bond placement.[10] However, no further regulations or guidelines are given in case the GMS does not agree with the issuance of bonds by the BoD.

For listed companies, the authority to approve the issuance of bonds, convertible bonds and other securities rights is the GMS, as the BoD shall only propose the issuance of bonds, convertible bonds and other securities rights.[11]

The GMS may decide on a Company Charter capital decrease under the forms of:

- Returning a portion of the contributed capital to shareholders in proportion to their respective ratios of share ownership in the company, provided that the company has conducted business operations for two consecutive years or more from the date of enterprise establishment registration, and ensuring that debts and other property obligations are able to be paid in full after returning part of the contributed capital to shareholders.[12]
- Repurchase of more than 10 percent of issued shares (but no more than 30 percent of the total number of sold ordinary shares, a portion of or all of the sold dividend preference shares). The BoD shall decide the repurchase prices, and a repurchase of no more than 10 percent of total sold shares of each class within 12 months.[13]

For joint stock banks, the GMS shall not have the full authority to decide the change in the bank's charter capital. Instead, the increase or decrease in joint stock banks' charter capital needs to be approved by the State Bank of Viet Nam (SBV). The process and procedures as well as the application dossiers for the approval of the change in joint stock banks' charter capital are regulated under Article 1111 of Circular No. 50/2018/TT-NHNN (December 31, 2018) of the SBV. It provides guidance on matters relating to the organization, management, charter capital, transferring of shares, amendment and supplement of the business license and charter of joint stock banks.

10 *LOE, Article 130, Clause 1b.*
11 *Decree No. 155/2020/ND-CP, Article 20.*
12 *LOE, Article 112, Clause 5a.*
13 *LOE, Article 133, Clause 1 and Clause 2.*

5. Decisions on dividends

The GMS has the right to decide the annual dividend for each class of shares and the rate of dividend payable on each class of share.[14] The BoD may decide on the timing of dividend payment and how dividends shall be paid to shareholders.[15]

6. Decisions on major corporate transactions

According to the LOE, the following extraordinary transactions require approval of the GMS:

- Transactions involving the investment or sale of assets valued at 35 percent or more of the total value of assets.[16]
- Transactions involving the repurchase of more than 10 percent of the total number of sold shares which are sold within 12 months; and other cases of share repurchases which are sold beyond 12 months.[17]
- Related party transactions between shareholders or the authorized representative of an institutional shareholder holding more than 10 percent of ordinary shares of the company, or members of the BoD, the CEO and their related persons.[18] Transactions for borrowing, lending, or sale of assets valued at more than 10 percent of the total value of assets stated in the most recent financial statement between the company and a shareholder holding 51 percent or more of the total number of voting shares or its related person.[19]
- For lower value transactions, common practice is for the GMS to authorize the BoD to approve these transactions.
- The BoD should submit the transaction proposal or explain the main contents of intended transactions during the GMS or to collect written opinions of shareholders. Transactions will be approved with 65 percent or more of the total number of votes of all attending shareholders at the GMS, except for the specific percentage as provided by the Company Charter. Shareholders related to above contracts or transactions cannot vote.

14 *LOE, Article 139, Clause 3(e).*
15 *LOE, Article 153, Clause 2(o).*
16 *LOE, Article 147, Clause 2dd and Article 148 Clause 1.*
17 *LOE, Article 133, Clause 1, Article 147, Clause 2c and Article 148, Clause 1.*
18 *LOE, Article 167, Clause 1.*
19 *LOE, Article 167, Clause 3.*

Best practice

All companies in Viet Nam should develop and adopt their own strong definition of 'related parties' which meets at least the collective minimum of the following key instruments: the LOE, the Law on Credit Institutions, securities regulations and IAS 24, and which goes beyond minimal regulatory requirements.

A definition of related parties should include clarity on the following persons and their interests: i) directors and Supervisory Board members, ii) senior management, iii) significant shareholders, iv) related entities (including companies, trusts) and v) family members and relatives of directors and Supervisory Board members, senior managers and significant shareholders.

Companies should include as related parties, related entities, each deemed related to the other, such as a: i) holding/parent company, ii) subsidiary, iii) controlled company (also referred to as affiliate, associate, sister or fellow company) or iv) jointly controlled entity. Directors and senior managers of the holding company are considered related parties. Directors of related entities should also be identified as related parties.

Material related party transactions should be subject to strict *ex-ante* decision-making and (dis)approval processes by the Board and/or shareholders.

IFC's Viet Nam Guidebook for Banks: Related Party Transactions (2015)

7. Decisions on reorganization and liquidation of the company

- Approve the consolidation, merger, acquisition, or spin-off of the company.
- Approve the re-organization of the company.
- Approve the liquidation of the company (decision to terminate the company).[20]

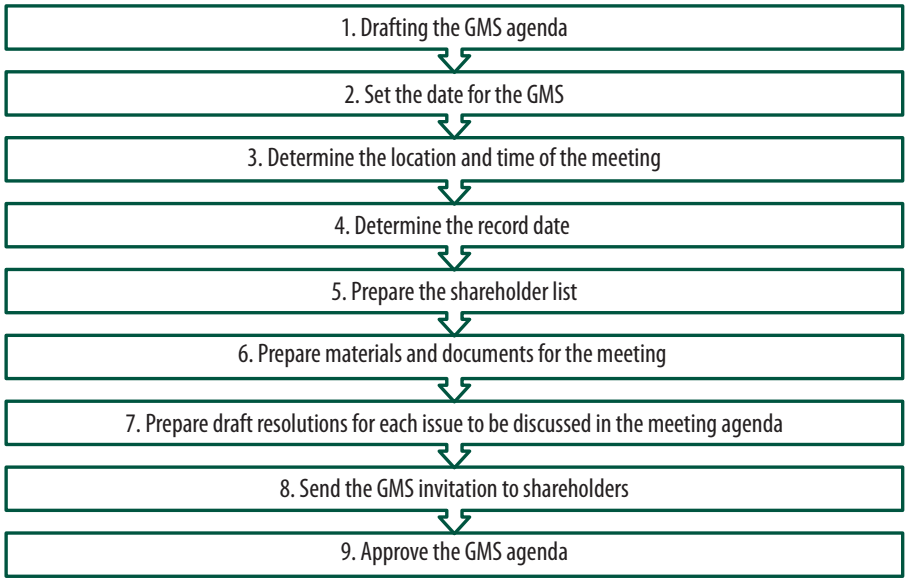
Further regulations are given in case the company is liquidated. For listed companies, a Liquidation Committee must be established, of which two members are appointed by the GMS and one member is appointed by the BoD from an independent auditing firm.[21] For public, non-listed companies, the BoD shall directly organize the liquidation of the company's assets unless the Company Charter stipulates that it should set up a Liquidation Committee.[22]

20 *LOE, Article 138.*
21 *LOE, Article 208, Clause 2.*
22 *Circular No. 116/2020/TT-BTC, Model Charter, Article 61.*

5.2. Preparing for the GMS

Preparing for the GMS requires careful planning and adherence to procedural requirements under the LOE and the Company Charter. Figure 2 summarizes the steps that a company should follow to prepare for the GMS.

Figure 2. Preparation for the GMS



5.2.1. Drafting the Agenda

The initial step to prepare for an GMS is to draft an agenda. The agenda structures the GMS, and lists issues that must be addressed. The GMS must discuss all items included in the agenda, and generally may make decisions concerning only those items that are properly included in the agenda and meet the LOE requirements. Other issues not included in the agenda may only be discussed if all shareholders representing 100 percent of the voting shares attend the GMS (whether in person or via an authorized representative/proxy) and agree to the addition of the new agenda items.

The person who convenes the GMS shall prepare the agenda.[23] The BoD shall have the right to approve the agenda and contents of documents for the GMS.[24]

Best practice

Mutual understanding and cooperation between the BoD and shareholders is critical.

The BoD should provide workable and timely mechanisms to include all legitimate shareholder proposals on the agenda. The company should give shareholders the opportunity to place items on the agenda of general meetings and/or to request general meetings subject to a certain percentage of shares with voting rights. In the period preceding the decision to conduct a GMS, the BoD should review all proposals (formal and informal) made by shareholders. If a proposal is rejected, it is a good practice to notify shareholders about the rejected agenda items.

The BoD has a clear duty to ensure that the agenda is not changed after it has been sent to all shareholders.

5.2.2. Making Preliminary Decisions

The BoD must make key decisions concerning the agenda, date, place, time, notification procedures, list of materials, and proxy voting before logistical preparations for the GMS can be made.[25]

Date of the GMS

The LOE requires companies to conduct their AGM within four months and not more than six months from the end of the financial year. The BoD may determine the exact date for each AGM, within that above period, following any additional requirements set out under the Company Charter.[26] Companies have the discretion to hold an EGM at any time as needed.

Location of the GMS

According to the LOE, the convenors of the GMS will determine the venue of the GMS. The venue of the GMS must be in the territory of Viet Nam. The meeting location is the place where the chair attends.[27] Although there

23 *LOE, Article 142, Clause 1.*
24 *LOE, Article 153, Clause 2(m).*
25 *LOE, Article 140, Clauses 1 and 5.*
26 *LOE, Article 139, Clause 2.*
27 *LOE, Article 139, Clause 1.*

are no specific rules for the location of the GMS, it should be held in a place that offers optimal conditions for the attendance of shareholders. GMS can be organized in a virtual format in addition to the traditional offline format.[28]

Best practice

In case of *force majeure* events, the GMS can be conducted in a virtual or hybrid format. This form must be specified in the Company Charter. Please refer to Chapter Appendix for tips on organizing virtual shareholder meetings.

A GMS allowing for remote shareholder participation should be permitted by jurisdictions to facilitate and reduce participation and engagement costs for shareholders. Such meetings should be conducted in a manner that ensures equal access to information and opportunities for participation of all shareholders.

Enhanced Engagement: Virtual or hybrid GMS can improve shareholder engagement by making participation more convenient and less costly.

Platform Costs and Benefits: While using virtual platforms may incur additional costs for companies, they offer streamlined access to meeting agendas and information, secure infrastructure, and more efficient ways to handle shareholder feedback.

– G20/OECD Principles of Corporate Governance (2023) (Principle II.C.3)

Maintaining Quality Interaction: Care is needed to ensure that virtual meetings allow for the same level of shareholder interactions with boards and management as in-person meetings. Questions raised by shareholders during the meeting, if unanswered, should be recorded and addressed either in the meeting minutes or any other relevant shareholder communications.

Regulatory Guidance: Some jurisdictions have provided guidelines to ensure transparent and fair conduct of remote meetings. This includes handling and disclosing shareholder questions and responses as well as managing technological disruptions.

Technology Vendor Selection: When choosing technology vendors for remote meetings, companies should consider professionalism, data handling, digital security, and the ability to ensure fair and transparent meetings. This includes secured authentication of attendees, equal participation, and the confidentiality and security of pre-meeting votes.

28 *LOE, Article 144, Clauses 3; Decree No.128/2021/ND-CP*

Record date

The record date, sometimes referred to as the fixing date, is the date used to determine who is entitled to participate in the GMS. The LOE states that the convenor of the GMS shall make the list of shareholders entitled to participate in GMS sessions based on the register book of shareholders. The list of shareholders entitled to attend the GMS shall be made no later than 10 days before the date of sending the invitation.[29] A public company must disclose information about making a list of shareholders entitled to attend the GMS at least 20 days before the last registration date[30], while the person who convenes the GMS shall send invitations to all shareholders based on the list of shareholders entitled to participate in the GMS at least 21 days before the opening day, unless an earlier time as specified in the Company Charter.[31]

5.2.3. Preparing the Shareholder List

Once the BoD has set the record date, the next step is to compile the shareholder list according to data from the register book of shareholders at the company.

The shareholder list is prepared to:

- Determine which shareholders are entitled to participate in the GMS.
- Notify shareholders of the GMS.
- Determine which shareholders have the right to amend the agenda.
- Give shareholders the opportunity to verify that their rights are registered properly.

Who should be included on the shareholder list

Only persons included on the shareholder list are entitled to participate in the GMS. The distinction has to be made between right to participate in the meeting and the right to vote. Under the LOE, owners of dividend preferred shares and redeemable preferred shares are not entitled to attend and vote at the GMS. However, for public companies, the Model Charter stipulates that shareholders of these types of preferred shares shall have the authority to vote in case of a GMS resolution on the change or waiver of special rights attached to a class of shares.[32]

29 *LOE, Article 144, Clause 1.*
30 *Decree No. 155/2020/ND-CP, Article 273, Clause 1.*
31 *LOE, Article 143, Clause 1.*
32 *LOE, Article 148, Clause 6.*

Nominal shareholders and the shareholder list

A nominal shareholder (nominee owner), an individual or a body corporate, is the registered owner of shares held for the benefit of another person (the beneficial owner). A nominal shareholder does not have actual ownership rights in relation to the shares. A nominal shareholder acts at the direction of the real owner (beneficial owner) of the company with whom it has a contractual relationship. The services of a nominee owner are typically used to preserve the confidentiality of beneficial owners or when the beneficial owner is required to appoint a nominee. The concern for regulators is clear: the appointment of nominal shareholders would, in effect, provide beneficial owners with the opportunity to shield their true identity from investors and other stakeholders, making it more difficult to detect expropriation by controlling beneficial owners.[33]

Best practice

Major share ownership, including beneficial owners and voting rights

One of the basic rights of investors is to be informed about the ownership structure of the company and their rights vis-à-vis the rights of other owners.

Disclosure of ownership data should be provided once certain thresholds of ownership are passed. In equity markets characterized by dispersed ownership structures where small shareholdings may exert significant influence over a company, these thresholds could be set lower. Such disclosure might include data on major shareholders and others that, directly or indirectly, may significantly influence or control the company through, for example, special voting rights, shareholder agreements, ownership of controlling or large blocks of shares, use of holding company structures involving layering of companies or significant cross-shareholding relationships and cross guarantees. It is also required or considered good practice in some jurisdictions to disclose the shareholdings of directors, including non-executives, and it is good practice that such disclosure is made on an ongoing basis.

An increasing number of jurisdictions use a centralized national registry, while others may require a company-level registry to facilitate access to up-to-date and accurate information on beneficial ownership.

– G20/OECD Principles of Corporate Governance 2023 (IV.A.4.)

33 *https://www.ifc.org/content/dam/ifc/doc/mgrt/focus-14.pdf*

Information in the shareholder list

The list of shareholders entitled to attend the GMS shall be prepared based on the company's shareholder register. The shareholder list must contain information on each individual and legal entity including: [34]

- Full name, contact address, nationality and number of personal legal documents in respect of individual shareholders.
- Enterprise name and code or number of institutional, legal documents, head office address in respect of institutional shareholders.
- Number of shares of each class, and shareholder number and registration date of each shareholder.

Best practice

It is considered good corporate practice to include the email addresses of each shareholder in the shareholder list.

Disclosure of information in the shareholder list

All shareholders shall have the right to check, refer to, extract and copy the contents of the register book of shareholders at any time during the working hours of the company.[35] In some countries, information regarding persons, including their mailing address, may only be disclosed with their permission.

Shareholders are entitled to verify the accuracy of the information in the register about themselves and their holdings. They are entitled to make objections to any irregularity on the list and request the amendment of incorrect information or addition of necessary information.[36] It is good corporate practice for the company to issue a statement within a couple of days highlighting any objection.

The BoD may amend the shareholder list after the record date only to restore the rights of persons who were omitted or to correct other errors.

34 *LOE, Article 141, Clauses 1 and 2.*
35 *LOE, Article 141, Clause 3.*
36 *LOE, Article 141, Clause 3.*

Shareholder obligations when selling shares after the record date, but prior to the GMS

The LOE does not stipulate on the right of voting or participating in the GMS in the case of a shareholder selling shares after the record date, but before the GMS opening. In practice, if the shareholder list is not updated after the record date, the selling shareholder still has the right to attend the meeting and vote. This shareholder must ensure that the new shareholder may vote at the GMS. There are two ways for the selling shareholder to fulfil this obligation:

- Grant a power of attorney to the new owner; or
- Participate in the GMS and vote in accordance with the instructions of the new owner.

In practice, these two options only work when the shareholder knows:

- The identity of the buyer: shares are generally sold anonymously through intermediaries, thus making it impossible for the seller to identify and contact the buyer. It gets more complicated when shares are sold to multiple shareholders or during multiple and sequential transactions.
- The record date: in practice, shareholders are not notified about the record date prior to notification of the GMS. This makes it difficult for the seller to know if it is obliged to act to allow the new shareholder to participate in the GMS.

The authorization of participants (power of attorney) in the GMS shall be made in writing. The authorization letter shall be made in accordance with civil laws and specify the name of the authorized participant and the quantity of shares authorized. The authorized participant shall present the authorization letter before entering the meeting room.[37]

37 *LOE, Article 144, Clause 2.*

Best practice

There are some ways to ensure the right of the new shareholders as follows:

- If the instructions of the new owners coincide, their votes must be combined.
- If the instructions of new owners do not coincide, the seller must vote in accordance with the instructions of new owner(s).
- If the new owners receive power of attorney from the seller, the new shareholders must be registered in order to participate in the GMS and they must be given new voting ballots.
- If voting shares are being circulated in foreign markets in the form of depositary receipts, voting must be based on the instructions of the depositary receipt holders.

5.2.4. Providing Proper Notice

Once the procedures set out are completed, all shareholders eligible for participation in the GMS must be notified of the GMS no later than 10 working days prior to the invitation sending date.[38] For listed companies, the Model Charter requires that the notice of the GMS must be sent at least 21 days before the date of the meeting[39], which is also the recommended practice in the Viet Nam Corporate Governance Code of Best Practices (item 9.2.1).

The minimum public notice period for GMS varies across jurisdictions. According to the OECD Corporate Governance Factbook 2023, while some countries only require a minimum public notice of 10 to 14 days (Chile, Japan, New Zealand, Republic of Korea and Singapore), some other markets require more than 28 days (Canada, Czech Republic, Germany, Hungary, Italy, the Netherlands, Slovak Republic, Slovenia, and the United States).

38 *LOE, Article 141, Clause 1.*
39 *Circular No. 116/2020/TT-BTC, Model Charter, Article 18, Clause 3.*

Best practice

It is good practice that notification of the GMS:

- Allows sufficient time for all shareholders to prepare for the GMS.
- Is given to all shareholders.
- Allows sufficient time for shareholders to contact other shareholders.
- Occurs at least 21 days in advance.
- According to the OECD Corporate Governance Factbook 2023, most major markets covered in the report have a minimum public notice period for a GMS of 15 days or more, except for Chile, Japan, New Zealand, Republic of Korea and Singapore.

How to notify

Shareholders must be notified of the GMS by registered mail to the permanent address of the shareholder. If the company has a website, the company shall publish the notice of the general meeting on it together with the dispatch of the notice to shareholders.

For listed companies, under the Model Charter, the notice of invitation to the GMS is sent to all shareholders by a method to ensure it reaches the shareholder's contact address, and at the same time published on the website of the company and SSC, the stock exchanges where the company's shares are listed or registered for trading. The agenda of the GMS, documents related to issues to be voted on at the meeting are sent to shareholders and/or posted on the company's website. In case documents are not attached to the notice of meeting, the notice of invitation must clearly state the electronic link to access all meeting documents for shareholders online, including: a) meeting agenda and documents to be used in the meeting, b) list and details of candidates in case of election of members of the BoD, members of the Supervisory Board, c) voting cards and d) draft resolution for each issue in the meeting agenda. If necessary, the invitation may be published in a local or national daily newspaper as prescribed by the Company Charter.[40]

40 *LOE, Article 143, Clause 2.*

Best practice

Every reasonable effort should be made to inform shareholders of an upcoming GMS. A broader reach may be achieved by:

- *Permitting the use of email and the internet.*
- *Using widely read print media to disseminate notice.*
- *Using no less than two and, ideally, several publications to give notice.*

Information included in the GMS notification

The GMS notification should contain sufficient information to enable shareholders to participate. It must include information required by the LOE.[41] The list of information that should be included in the GMS notification is summarized in Table 1.

Table 1. Information to Include in the GMS Notification

Information	Mandatory	Recommended by the CG best practice
1. Name of the company and head office address	√	√
2. Number of the business registration certificate	√	
3. Date, place, and time of the GMS	√	√
4. Name and address of shareholders or of the shareholders' authorized person	√	√
5. Agenda	√	√
6. Proxy form	√	√
7. Voting ballot and discussion materials, draft resolutions	√	√
8. Details of the place and time at which shareholders can obtain the materials to be discussed during the GMS	√	√
9. Procedures for obtaining background information on the GMS		√
10. Registration place		√
11. Details on where and how to report violations of GMS procedural requirements		√

41 *LOE, Article 143, Clause 1.*

Information and materials for the GMS

The LOE and Model Charter requires that the GMS invitation includes information about the materials to be discussed during the meeting.

Table 2 summarizes the recommended GMS materials that should be made available to shareholders.

Table 2. GMS Materials	
GMS Materials	1. The annual report and financial statements, corporate governance report and sustainability report (if applicable)
	2. The report of the External Auditor
	3. The report of the supervisory body (Supervisory Board, Internal Auditor)
	4. The operation report of the BoD
	5. Draft charter amendments, draft of the new version of the charter (if any)
	6. Drafts of resolutions of the AGM
	7. Information on proposed candidates for members of the BoD and Supervisory Board
	8. Consent of nominees to accept the position if they are elected
	9. The position of the BoD on each agenda item and any dissenting opinions
	10. Materials that must be made available if the agenda includes the reorganization of the company: - Justification of the terms and procedures of the reorganization, contained in the decision on the division, separation, or transformation, or in the contract on merger or accession approved by the BoD (the BoD report) - Annual reports and financial statements of all companies involved in the reorganization for the last three fiscal years or for all completed fiscal years if the company was established less than three years ago - Quarterly accounting documents for the quarter that precedes the decision - Report of the External Auditor - Report of the Supervisory Board (if any).

When and where materials must be made available

Each shareholder of record has the right to receive copies of GMS materials. They are delivered with written notice to every shareholder. For public, non-listed companies, if the company has a website, the GMS materials should be posted on the website at the same time of sending the GMS notice.[42] It is required that links, place and how to download documents of GMS materials, including meeting notice, proxy form, meeting agenda, voting ballots, discussion materials and draft resolution for each item in the agenda, must be included in the invitation to the GMS. [43]

Best practice

It is good corporate practice to determine, in the Company Charter, the deadline for making all materials for the AGM available to shareholders. Twenty-one days prior to the AGM could be an appropriate solution. Although it is stipulated under the LOE that GMS materials must be delivered together with written notice to every shareholder, it is advisable that these materials be posted on the internet, preferably on the company's website as electronic dissemination is a simple and cost-effective method of allowing broad public access.

Besides, the GMS materials should also be made available at the company's headquarters during its working hours. Information and materials may also be made available at other places, preferably in an area where a significant number of shareholders reside, as long as the address is specified in the GMS notification.

It is also recommended by the Viet Nam Corporate Governance Code of Best Practices (Item 9.4.3) that GMS materials shall be provided in English language to enable full participation by those not fluent in Vietnamese. Translators shall be provided at the AGM, as necessary.

When and how voting ballots are sent to shareholders

Under Article 143, of the LOE, voting ballots must be sent together with notice of the GMS to shareholders. However, Article 146 stipulates that prior to opening the GMS, registration must be undertaken. This same procedure is also stipulated in the Model Charter. The voting ballots will state the registration number, full name of the shareholder, full name of the authorized representative and the number of votes of such shareholder.[44]

42 *LOE, Article 143, Clause 2.*
43 *LOE, Article 143, Clause 4.*
44 *Circular No. 116/2020/TT-BTC, Model Charter, Article 20, Clause 1(a).*

Public companies are required to regulate, in the internal regulation on company governance, the application of modern information technology to ensure shareholders can participate and give opinions at the GMS via online meetings, electronic voting or other electronic forms.[45]

Since the COVID-19 pandemic, there has been a surge in the number of companies globally holding fully virtual or hybrid GMS, allowing for remote participation and voting by shareholders. The 2023 OECD Corporate Governance Factbook reported that 75 percent of jurisdictions have provision in laws or listing rules for virtual meetings and 80 percent for hybrid meetings.

Remote GMSs increase accessibility for shareholders, provides a cost-effective opportunity to participate, and is a flexible solution for both companies and shareholders. Its drawback, however, is reduced face-to-face interactions between shareholders and managers, especially when questions submitted online during the meeting are filtered by management. This is a major investor concern as the practice of filtering questions reduces meaningful and transparent communication between investors, company management and directors.

Regulatory bodies are encouraged to provide clear guidelines that enable the effective execution of remote meetings. This should encompass protocols for managing shareholder inquiries, their responses, and the subsequent disclosure process. It is vital to ensure a transparent approach by boards and management regarding the collection, consolidation, and responses to these questions, as well as their public disclosure. This will facilitate more open and accountable interactions between shareholders, boards, and management in remote meeting settings.

45 *Decree No. 128/2021, Article 15, Clause A.*

Best practice

A recent OECD paper[46] on remote participation in shareholder meetings recommends the following best practices.

Before the meeting:

- Set up a dedicated website for shareholder meetings, which is properly communicated to shareholders.
- Provide clear guidance on the meeting process.
- Collect questions via meeting applications or email in advance, which may require a sufficient cut-off time for shareholders to ask questions prior to the meeting.
- Ensure reliable infrastructure that guarantees two-way interactions.
- Ensure sufficient training for company participants to become familiar with the platform.

During the meeting:

- Choose an appropriate meeting format: hybrid meetings or (fully) virtual meetings.
- Video broadcasting is better than audio-only format.
- Make all votes casted in advance and during the meeting visible to all participants in the meeting.
- Ensure shareholders can cast their votes remotely in real time.
- Encourage shareholders with no access to the internet to cast a vote via proxy.
- Arrange necessary safeguards to validate votes.
- Arrange technical support during the meeting and prepare a contingency plan.

After the meeting:

- Allow shareholders to review questions and answers, including answers not addressed during the meeting due to time constraints.
- All questions and answers should be available on the company's website.
- The record of the meeting should also be available.

When and how to use an option of written voting

GMS shareholders may participate and vote by the following ways:

- The shareholder directly participates in and votes at the GMS.

46 *OECD (2023) Policies and practices for remote participation in AGMs: Background note prepared for the 2023 OECD-Asia Roundtable on Corporate Governance.*

- The shareholder authorizes another organization or individual to participate in and vote at the meeting on its behalf.
- The shareholder participates and votes online or through other electronic methods.
- The shareholder sends the votes to the GMS by post, fax or email.
- The shareholder sends the votes by other means specified in the Company Charter.[47]

The BoD has the right to collect opinions from shareholders in writing to pass a resolution of the GMS when it deems it necessary for the benefit of the company[48], except resolutions on the following issues that shall be voted on at the meeting: [49]

- Revisions to the Company Charter.
- Development directions of the company.
- Types of shares and quantity of each type.
- Election and dismissal or members of the BoD and the Supervisory Board.
- Investment or sale of assets worth at least 35 percent of total assets written in the latest financial statement, unless another ratio or value is specified in the Company Charter and ratification of the annual financial statement.
- Reorganization or dissolution of the company.

The BoD must prepare the opinion form, draft resolution of the GMS, documents explaining the draft resolution and send it to all shareholders with voting rights at least 10 days before the deadline to return the opinion form.[50] The request and method of sending the opinion form and accompanying documents shall be the same as per GMS documents.[51]

47 *LOE, Article 144, Clause 3.*
48 *Circular No. 116/2020/TT-BTC, Model Charter, Article 22, Clause 1.*
49 *LOE, Article 147, Clause 2.*
50 *Circular No. 116/2020/TT-BTC, Model Charter, Article 22, Clause 2.*
51 *Circular No. 116/2020/TT-BTC, Model Charter, Article 18, Clause 3.*

5.2.5. Approving the Agenda

The LOE does not impose specific guidelines on the rights of shareholders to approve or amend the GMS agenda, beyond the requirement to include a copy of the agenda in the GMS invitation to allow shareholders to review it.[52] There are mandatory items that all companies must include in the agenda, as illustrated in Figure 3,[53] beyond which either the BoD or shareholders may propose additional items.[54]

Figure 3. Required AGM Agenda Items

AGM Mandatory Agenda items	Annual business plan of the company
	Annual financial statements
	Report of the BoD on governance and performance of the BoD and each member of the BoD
	Report of the Supervisory Board business results of the company, performance of the BoD and CEO
	Self-evaluation report of the Supervisory Board and Supervisors
	Rate of dividend payable on each class of share

For listed companies, the AGM shall also discuss and approve the short-term and long-term developmental plans of the company.[55]

Who may submit agenda items

A shareholder (or a group of shareholders) holding at least 5 percent or less of ordinary shares as stipulated in the Company Charter of a public, non-listed company may propose agenda items.[56] The Viet Nam Corporate Governance Code of Best Practices recommends that shareholder(s) owning at least 10 percent of company voting shares should have the right to include additional items in the meeting agenda. Shareholder(s) owning less than 10 percent of company's voting shares should also be provided with the opportunity to propose additional items to the GMS agenda.

52 *LOE, Article 145, Clause 4.*
53 *LOE, Article 139, Clause 3.*
54 *LOE, Article 142, Clause 2.*
55 *Circular No. 116/2020/TT-BTC, Model Charter, Article 15, Clause 1(a).*
56 *LOE, Article 142, Clause 2 and LOE, Article 115, Clause 2.*

The signatory of the proposal is considered the individual who submits the proposal. The date on which a shareholder's ownership should be verified is the date of legal submission.

How and when to submit agenda proposals

The LOE stipulates that the proposal shall be made in writing and sent to the company at least three working days before the opening date, unless another period is specified in the Company Charter.[57] It is recommended that shareholders send the proposal as soon as possible after receiving the GMS invitation, so the BoD has sufficient time to review and respond. There is no specific regulation on the method of submission, to whom the proposal is submitted or how to determine the date of submission. It is good practice that the Company Charter stipulates such matters in detail.

Comparative practice

Shareholders may submit proposals of agenda items in writing:

- By regular mail to the Chairperson of the BoD. Proposals are considered submitted as of the postmark date.
- By hand to the Chairperson of the BoD (or to the Corporate Secretary, or any other person entitled to receive mail on behalf of the company). The delivery must be verified by dated receipt. The date of receipt of such a proposal is deemed to be the date of submission.
- By other means, such as email or fax (if allowed by the charter and/or internal regulations). In this case, the charter or internal regulations determine the date of submission.

Required proposal information

Each proposed agenda item from shareholder(s) must contain:[58]

- The name of the submitting shareholder(s).
- The number, types, and classes of shares held by the shareholder(s).
- The issue(s) proposed to be included in the agenda.

It is good practice that the proposal also includes the following items:

57 *LOE, Article 142, Clause 2.*
58 *LOE, Article 142, Clause 2.*

- The signature(s) of the submitting shareholder(s).
- The reasons for making the proposal.

If a shareholder representative signs the proposal, a valid power of attorney must be attached.

Information to be included in candidate proposals

A shareholder (or a group of shareholders) owning at least 10 percent of ordinary shares in the company may propose candidates for the BoD and the Supervisory Board.[59]

The number of candidates that may be proposed is limited to the size of the body specified in the Company Charter or internal regulations.[60]

Based on the number of BoD and Supervisory Board members, a shareholder or group of shareholders is entitled to nominate one or several people according to the decision of the GMS. In case the number of candidates nominated by a shareholder or group of shareholders is lower than the number of candidates they are entitled to nominate as decided by the GMS, the remaining candidates shall be nominated by the BoD, the Supervisory Board and other shareholders.[61]

The current laws of Viet Nam do not regulate the number of candidates who can be nominated by majority shareholders to the BoD or Supervisory Board according to the proportion of total shares. In practice, the majority shareholders often control the election and removal of Board members. The number of candidates who can be nominated by majority shareholders to the BoD or Supervisory Board, according to the proportion of total shares with voting rights if the Company Charter does not stipulate otherwise, is shown in the following tables:

59 *LOE, Article 115, Clause 5.*
60 *LOE, Article 115, Clause 5.*
61 *LOE, Article 115, Clause 5b; and Circular 116/2020/TT-BTC, Model Charter, Article 12, Clause 3(b).*

Table 3. Number of Candidates required for non-listed companies	
Proportion of Total Shares with Voting Rights	**Number of Candidates to be Nominated**
From 10% to less than 20%	1
From 20% to less than 30%	2
From 30% to less than 40%	3
From 40% to less than 50%	4
From 50% to less than 60%	5
From 60% to less than 70%	6
From 70% to less than 80%	7
From 80% to less than 90%	8

Table 4. Number of Candidates required for listed companies	
Proportion of Total Shares with Voting Rights	**Number of Candidates to the BoD or Supervisory Board to be Nominated**
From 5% to less than 10%	1
From 10% to less than 30%	2
From 30% to less than 50%	3
From 50% to less than 65%	4
65% or more	Full number of candidates

Proposal review by the BoD

The BoD must decide whether to accept or reject shareholder proposals. It may reject a proposal only when:[62]

62 *LOE, Article 142, Clauses 3 and 4.*

- The proposal is submitted by the shareholder (or a group of shareholders) who does not hold an eligible proportion of ordinary shares.
- The proposal is not submitted in written form and within the period determined by law and the charter.
- The proposal is incomplete.
- The proposed issue is beyond the competence of the GMS.
- Other cases as prescribed in the Company Charter.

The convenors of the GMS shall put all shareholder proposals, not rejected, in the proposed meeting agenda and contents. The proposed items will be officially added to the agenda upon the approval of the GMS. For listed companies, any decision by the GMS Chairperson on the order and procedures or on events arising outside the agenda of the GMS shall be final.[63]

Notification of shareholders of rejected proposals

The BoD should notify shareholders if their proposals are rejected or accepted. The LOE specifies that the refusal shall be made in writing with clear reasons two days, at the latest, prior to the opening date of the GMS.

The shareholders can appeal to a court in case the BoD rejects or fails to make a decision (including the decision on shareholder proposals).[64]

5.2.6. Preparing Draft Resolutions on each Item on the Agenda

The BoD must prepare draft resolutions on each of the items on the agenda. These draft resolutions shall be sent to shareholders together with notice of the GMS.[65]

Approving the annual report and financial statements are some of the most important decisions made by the AGM. Therefore, it is a good practice that the BoD preliminarily approves the annual report and financial statements. Before it does so, the company's Supervisory Board should verify the annual report and financial statements.

63 *LOE, Article 142, Clause 4.*
64 *LOE, Article 166, Clause 1.*
65 *Circular 116/2020/TT-BTC, Model Charter, Article 18, Clause 2(d).*

5.3. Conducting the GMS

The LOE does not provide detailed guidelines on the process for conducting a GMS. It is common practice for the company to set its own procedures in the Company Charter or other internal regulations, ideally using corporate governance best practices as a reference.

Companies should use the GMS as a forum through which to inform shareholders about company activities, achievements and upcoming plans, as well as to involve shareholders in important decisions. For minority shareholders, the GMS is often the only opportunity to obtain detailed information about the company's operations and to meet the directors and managers.

Companies should steer away from holding an excessively lengthy GMS that is likely to exhaust participants, even though this may be challenging as issues to be decided are either complex, contentious and/or numerous. The overriding principle is for companies to conduct the GMS in a manner that facilitates effective shareholder participation and decision-making.

An overview of the steps necessary to organize the GMS is provided in Figure 4.

Figure 4. Procedures to Conduct the GMS
Step 1: Registration of persons attending the GMS
Step 2: Verifying and announcing the quorum
Step 3: The Chairperson of the BoD or the convenor of the GMS opens the GMS, except in special cases
Step 4: Shareholders elect the GMS Chairperson, if the charter or other company documents do not define who will preside
Step 5: The GMS Chairperson appoints the GMS Secretary, who will take minutes of the GMS
Step 6: Shareholders elect a Voting Committee
Step 7: The GMS Chairperson presents the proposed agenda and the rules of order and the GMS approves the agenda
Step 8: The GMS Chairperson opens the discussion on agenda items
Step 9: Shareholders vote on agenda items
Step 10: The Voting Committee counts votes and prepares the minutes on the voting results
Step 11: The GMS Chairperson announces voting results and decisions
Step 12: The GMS Chairperson closes the GMS
Step 13: The Voting Committee archives voting ballots and voting instructions
Step 14: The Company Secretary prepares and archives the GMS minutes.

5.3.1. Registering Shareholders

The company should register shareholders or their representatives before the GMS begins.[66] Participants must be registered to verify the quorum.[67] Shareholders may attend the GMS in person or grant a power of attorney to a representative (proxy) who attends the GMS on the shareholder's behalf. Persons authorized to attend the GMS must submit written authorization when registering to attend the meeting.[68]

Under prevailing regulations, shareholders are considered as participating in the GMS in cases they: 1) directly participate in and vote at the GMS, 2) participate and vote online or through other electronic methods, 3) send votes to the GMS by post, fax or email or 4) send votes by other means specified in the Company Charter.[69] For public companies, in cases where more than one authorized representative is appointed, the specific number of shares and votes of each representative must be specified.[70]

If participation is by proxy, letters of proxy shall be in writing in the form as prescribed by the company with adequate signatures, without the need to be notarized. Any person authorized to attend a GMS must submit its written authorization prior to entering the meeting room. In case the authorizer is deceased, its capability of civil acts is either lost or restricted, or the authorizer has cancelled such authorization, this authorization is still effective unless the company receives written notice of one of these events no less than 24 hours prior to the opening of the GMS. For listed companies, the period required for such notification is 48 hours prior to the opening of the GMS.

The current law and other related regulations are silent on the case where an individual shareholder is deceased, or a legal entity shareholder reorganizes after the record date. Comparative practice suggests that in this case, the legal heir or the new shareholder should be entitled to attend the GMS. However, the vote of the person authorized to attend the meeting within the scope of authorization is still valid when the proxy is deceased.[71]

66 *LOE, Article 146, Clause 1.*
67 *Circular No. 116/2020/TT-BTC, Model Charter, Article 20, Clause 1(a).*
68 *Circular No. 116/2020/TT-BTC, Model Charter, Article 16, Clause 2.*
69 *LOE, Article 144, Clause 3.*
70 *Circular No. 116/2020/TT-BTC, Model Charter, Article 16, Clause 2.*
71 *Circular No. 116/2020/TT-BTC, Model Charter, Article 16, Clause 3(a).*

a) Who registers shareholders

Under the LOE for shareholding companies or the Model Charter for listed companies, there is no guideline on how the registration will be conducted and who is responsible for these actions. They only regulate that on the date of the GMS, the company must carry out procedures to register its shareholders and such registration shall continue until all shareholders entitled to attend the meeting and who are present have been registered.[72] It is stipulated by the laws that a listed company issues regulations on the order and procedures for convening and voting at the GMS, including the method of registration of participants at the GMS.[73]

BEST PRACTICE

Registering shareholders can be seen as a Corporate Secretary authority, because this corporate body is responsible for GMS preparations.

b) What documents must be verified for the registration

The BoD or those who convene the GMS may require shareholders or authorized representatives entitled to attend the GMS to be checked or subject to other security measures which it deems appropriate. They may also ask competent agencies to maintain the order of the meeting, expel those who do not comply with the Chairperson's instructions, intentionally cause disorder, hinder GMS proceedings or refuse to comply with security checks.[74] However, no specific regulations on how to check and which documents to verify are given.

It is a normal practice in Viet Nam that in the notification of the GMS, a company usually states the documents that a shareholder or authorized person needs to bring and present for registration at the GMS, including ID card, passport or copy of business registration certificate, invitation letter and letter of proxy (in case of being authorized).

72 *LOE, Article 146, Clause 1.*
73 *Decree No. 155/2020/ND-CP, Article 273, Clause 3.*
74 *LOE, Article 146, Clause 7.*

c) Registration of participants and voting ballots

Where a shareholder is registered, the company shall grant it voting rights or its authorized representative a voting card which states the number of registration, full name of shareholder, full name of authorized representative and the number of votes of such shareholder.[75]

d) Time for the registration of participants

The registration of participants of the GMS officially starts at the time stated in the notice of the GMS and ends after the discussion of the last agenda item. Any shareholder or authorized representative who comes after the opening of the GMS shall be entitled to register and shall have the right to vote after registration. The effectiveness of votes already cast shall not be affected.[76]

e) Where participants must be registered

Registration must take place where the GMS is held.

Best practice

Participant registration should be carried out on the same day as the GMS and completed before it is scheduled to begin. Poorly organized registration may result in shareholders having to wait in line while the GMS starts. Accordingly, companies should make every effort to ensure that the registration process is quick and efficient, and that shareholders are not prevented from participating in the GMS due to administrative delays. This means the registration desk must be adequately staffed and opened well in advance of the GMS' scheduled start time.

5.3.2. Verifying and Announcing Quorum

There is no regulation or guideline under the LOE or Model Charter through which companies should verify the GMS quorum. It is best practice that the Company Charter, internal regulations or other internal corporate documents should specify the body or the person responsible for verifying and announcing the quorum. As such, the quorum should be announced after registration is completed and before shareholders vote. The LOE requires the following minimum quorum thresholds:

75 *Circular No. 116/2020/TT-BTC, Model Charter, Article 20, Clause 1(a).*
76 *Circular No. 116/2020/TT-BTC, Model Charter, Article 20, Clause 1(b).*

Table 5. Minimum Quorum Thresholds		
No.	**Corporate Action**	**Quorum**
1	To convene a GMS	≥ 50% of total shares having voting rights[77]
2	To convene a second GMS (within 30 days from the first meeting date)	≥ 33% of total shares having voting rights[78]
3	To convene a third GMS (within 20 days from the second meeting date)	Any number of shares having voting rights[79]

The Chairperson of the GMS shall have the right to adjourn the GMS for which sufficient attendees have registered no more than three working days from the date of the tentative meeting opening and shall only adjourn the meeting to another time or change the location of the meeting with or without obtaining opinions of the GMS in the following cases: [80]

- The location of the GMS fails to provide sufficient suitable seating for all attendees.
- The communication facilities at the site of the meeting do not ensure the attending shareholders can participate, discuss and vote [at the meeting].
- Attendee(s) disrupts or is likely to disrupt order at the meeting, and there is a risk that the meeting might not be conducted fairly and lawfully.

For public companies, the quorum for a resolution of the GMS on the change or waiver of special rights attached to a class of shares is at least two shareholders (or their authorized representatives) and each of them holds at least one-third of the par value of the issued shares of such class. When the number of attendees as required is insufficient, the meeting shall be reconvened within 30 days and the holders of shares of such class who are present directly or via an authorized representative shall be considered a sufficient number of attendees.[81]

77 *LOE, Article 145, Clause 1.*
78 *LOE, Article 145, Clause 2.*
79 *LOE, Article 145, Clause 2.*
80 *LOE, Article 146, Clause 8.*
81 *Circular No. 116/2020/TT-BTC, Model Charter, Article 17, Clause 2.*

5.3.3. Opening the GMS

The GMS shall be conducted when it is attended by shareholders who represent more than 50 percent of the votes or the ratio specified in the Company Charter.[82]

For a GMS convened by the BoD, the Chairperson of the BoD shall chair the meeting. When the Chairperson is absent or temporarily loses the ability to work, the remaining members shall select one to be the GMS Chairperson of the meeting. If no BoD member can be the GMS Chairperson, the highest-ranking member of the Board shall guide the GMS to vote for a GMS Chairperson. In other cases, the person who signs the decision to convene the meeting shall guide the GMS to vote for a GMS Chairperson.

For listed companies, in every case, the Chairperson of the BoD shall preside over the GMS. If the Chairperson of the BoD is absent, the deputy Chairperson of the BoD or a person elected by the GMS shall preside over the GMS. Where no such person is able to preside over the GMS, the BoD member holding the highest position and who is present at the GMS shall organize a meeting to elect the GMS Chairperson who need not necessarily be a member of the BoD.

The Chairperson of the GMS shall nominate a person to be the secretary of the meeting.

The GMS Chairperson and the secretary shall have the right to perform activities that they find relevant to chair the meeting properly, in order and in compliance with the approved agenda, or to make the meeting reflect the opinions of the majority participants.

In the case of electing a GMS Chairperson, the names of the nominees and the number of votes for each nominee shall be announced. The person receiving the highest number of votes shall chair the meeting.

82 *LOE, Article 145, Clause 1. In case the first invitation for the GMS is not fulfilled, the second invitation shall be sent within 30 days from the first meeting date unless otherwise prescribed by the Company Charter. The second GMS shall be conducted when it is attended by a number of shareholders who represent at least 33 percent of the votes. The specific ratio shall be specified in the Company Charter. In case the second invitation is not fulfilled, the third invitation shall be sent within 20 days from the second meeting date unless otherwise prescribed by the Company Charter. The third GMS shall be conducted regardless of the number of votes represented by the participants.*

Electing the Voting Committee

The Chairperson of the GMS must request the GMS to elect Voting Committee members at each GMS.[83] It is recommended that the company establish a Voting Committee, with conditions and the method for election of members and their authority determined in the charter, internal regulations or other general internal documents of the company. The Voting Committee must have at least three members and it is recommended that one is a graduated lawyer.

To ensure the Voting Committee performs its functions independently of the CEO, the Management Board and BoD, it is recommended the following are not committee members:

- BoD members and candidates.
- Management members and candidates for the Management Board.
- Persons connected with the above-mentioned members or candidates.

Under current law and regulations, the Voting Committee is responsible for counting the votes or supervising the counting of votes. It is a recommended practice for companies to hire an independent party to ensure an accurate count of the votes and the capacity to audit the records and system for verification of votes. In the case of a physical GMS, the current law does not give regulations or guidance on how the Voting Committee minutes its work of counting the votes and how the minutes of counting is filed. It is recommended that after the GMS, the Voting Committee prepares a written report about its work. The company will make this report available to shareholders electronically on the company's website and in written form at the CEO's headquarters. The report must be signed by all members of the Voting Committee. Any member who refuses to sign the report is obliged to provide an explanation, which will be featured in the annex of the report.

83 *LOE, Article 146, Clause 2(a).*

5.3.4. Presenting the Agenda and the Rules of Order

The Chairperson of the GMS presents the agenda to the GMS participants. In addition, the GMS Chairperson explains the rules of order as specified either in the charter and internal regulations or in a decision of the GMS. The meeting agenda must define details and timing for each of the issues to be discussed. The meeting agenda and contents must be approved by the GMS in the opening session. Only the GMS has the right to amend the agenda, which has been sent to shareholders together with the GMS invitation.

For listed companies, any decisions by the GMS Chairperson on the order and procedures or on events arising outside the agenda of the GMS shall be final.

5.3.5. Discussing Agenda Items

Although there is no regulation under current law, besides shareholders, the Chairperson of the BoD should invite BoD and Supervisory Board members to the GMS.

As a practical matter, the company may invite auditors or representatives of audit companies, creditors, potential investors, employees, government officials, journalists, experts and other individuals and organizations that do not own company shares to the GMS. The Company Charter and internal regulations may specify procedures on inviting guests to the GMS. For listed companies, the laws recommend that auditors or representatives of audit companies be invited to the GMS and express opinions on audit issues.[84] This is further clearly stated in the Model Charter that independent auditors shall be invited to attend the GMS to give opinions on annual financial statements. The invited experts are supposed to comment on agenda items before shareholders vote.

The GMS Chairperson may ask invited experts to explain agenda items to shareholders. The presence of the above-mentioned experts is important to underpin an AGM decision.

84 *Decree No. 155/2020/ND-CP, Article 273, Clause 4.*

Best practice

It is good practice that:

- Shareholders have the opportunity to question members of the BoD, Supervisory Board and External Auditor.
- Shareholders receive clear answers to questions.
- Questions from shareholders are answered immediately. If a question cannot be answered immediately, a written response should be given as soon as possible after the GMS.
- The GMS be conducted so that all shareholders have an opportunity to make balanced and informed decisions on all agenda items.
- The External Auditor, General Director, and members of the BoD, Supervisory Board, other subcommittees of the BoD (if any) and members of the Management Board are present at the GMS. If they are not, the GMS Chairperson should explain their absence.
- Key officers of the company, including the Chairs of BoD committees, speak at the GMS.
- To set aside some time for presentations by shareholders.
- The Chairperson of the GMS interrupts speakers only to maintain order or comply with procedural requirements.
- Remote participants have an equal opportunity to engage with management and directors as those attending in person.

5.3.6. Voting

The GMS shall discuss and vote on each item in the agenda. The voting shall be carried out by voting for, against, and abstention. [85] The GMS Chairperson should invite shareholders to vote based on the principle of one share, one vote.

Unless otherwise provided in the Company Charter, members of the BoD and the Supervisory Board shall be elected by cumulative voting, whereby each shareholder shall have a total number of votes proportional to its shares multiplied (x) by the number of members to be elected to the BoD or the Supervisory Board. Each shareholder has the right to accumulate all or part of its total votes for one or more candidates. Elected members of the BoD

85 *LOE, Article 146, Clause 5.*

or Supervisory Board shall be determined by the number of votes they receive in descending order, starting from the candidates that receive the most votes until the number of members are sufficient according to the Company Charter. If there are two or more candidates who obtain the same number of votes for being the last member of the BoD or the Supervisory Board, they shall be voted on again or selected according to the voting criteria or the Company Charter.[86]

It is recommended that companies should only consider a ballot valid if a shareholder marks only one of the possible options for a particular item. Failure to do so makes it difficult to properly count votes. If a ballot is received in which multiple options have been selected for one item, the GMS should invalidate the ballot with respect to that particular item.

Shareholders or authorized participants who arrive after the opening of the meeting may register and have the right to vote after registration. In this case, the effectiveness of the issues voted on previously shall remain unchanged.[87]

Vote counting results shall be announced by the GMS Chairperson right before the end of the meeting, unless otherwise prescribed by the Company Charter.[88]

Information recommended to be included in the voting ballots is summarized in Table 6.

Table 6. Information that Must or Should be Included on the Voting Ballot
1. The full name and location of the company
2. The type of GMS (AGM or EGM)
3. The date, place and time of the GMS
4. Issues to be voted on in the order given in the agenda
5. Voting options "for", "against" or "abstained" on each issue
6. The name of each candidate, in the case of the appointment of BoD or Supervisory Board members
7. An instruction that the ballot must be signed by the shareholder, unless the voting is being conducted anonymously

86 *LOE, Article 148, Clause 3.*
87 *LOE, Article 146, Clause 6.*
88 *LOE, Article 146, Clause 5.*

8. The ballot must show the number of votes each shareholder may cast on each item based on information from the shareholder list
9. Instructions on how to complete the ballot
10. An instruction that an individual who completes the ballot on behalf of a shareholder who is a legal entity must indicate its name and position and the full name of the legal entity which it represents
11. An instruction that a copy of the power of attorney must be attached to the ballot, and that the representative of the shareholder must sign the voting ballot (if the voting is by proxy).

Best practice

For virtual or hybrid meetings, the notice-of-meeting should include clear explanations of how to use the technology to observe, vote, make comments and ask questions. Companies should assess virtual technologies in advance of the meeting and consider running a rehearsal session and arrange technical backups and support.

During the meeting, all voting be conducted through polling instead of by a show of hands.

Additionally, where feasible, provisions should be made for members to cast their votes online or through alternative methods before the meeting. This is particularly beneficial for those who may not plan to actively participate in the meeting, ensuring their convenience and involvement in the decision-making process.

(The Australian Securities and Investments Commission's (ASIC) guidelines for investor meetings using virtual technology, 2021[89])

5.3.7. Absentee Voting

The BoD is entitled to carry out absentee voting of shareholders to ratify GMS resolutions when deemed necessary in the company's interests.[90]

The BoD shall prepare absentee ballots, draft resolutions of the GMS, descriptions thereof, and send them to shareholders with voting rights at least 10 days before the deadline for submitting absentee ballots, unless a longer period is prescribed by the Company Charter.[91]

89 *https://asic.gov.au/about-asic/news-centre/news-items/asic-guidelines-for-investor-meetings-using-virtual-technology/*
90 *LOE, Article 149, Clause 1.*
91 *LOE, Article 149, Clause 2.*

The absentee ballot shall contain the following basic details: [92]

a) Name, head office address, and code of the enterprise.

b) Purpose of the voting.

c) Full name, contact address, nationality, number of personal legal documents in respect of an individual shareholder. Enterprise name and code or number of institutional legal documents, head office address in respect of an institutional shareholder. Number of shares of each class and number of votes of the shareholder.

d) The issues to be voted on.

e) Voting options, comprising affirmative, negative, or abstention.

f) Deadline for submitting the completed absentee ballot to the company.

g) Full names and signatures of the Chairperson of the BoD and of the legal representative of the company.

A shareholder may send a completed absentee ballot to the company in any of the following forms: [93]

- Where it is sent by post, the completed absentee ballot shall bear the signature of the individual shareholder, or signature of the authorized representative or legal representative of the institutional shareholder. Every absentee ballot sent to the company shall be put into sealed envelopes and must not be opened before counting.
- Where the absentee ballot is sent by fax or electronic mail, the absentee ballot shall be kept confidential until the vote counting time.
- Absentee ballots that are sent to the company after the deadline specified in the ballot or that are opened if sent by post, or disclosed if sent by fax or email are invalid. If a absentee ballot is not submitted, it shall be excluded from voting.

Resolutions ratified by absentee voting are as valuable as those ratified at the GMS. [94]

92 *LOE, Article 149, Clause 3.*
93 *LOE, Article 149, Clause 4.*
94 *LOE, Article 149, Clause 8.*

5.3.8. Vote Counting and the Minutes of Vote Counting

The BoD shall arrange the vote counting and prepare the minutes of vote counting in the presence and under the supervision of the Supervisory Board or shareholders not holding managerial positions in the company. The minutes of vote counting shall contain the following basic details:[95]

- Name, head office address, and code of the enterprise.
- Purpose and issues to be voted on for ratification of the resolution.
- Number of shareholders with total numbers of votes having participated in the vote, classifying valid and invalid votes and the method of sending votes, including an appendix listing the shareholders having participated in the vote.
- Total number of affirmative votes, negative votes, and abstentions on each issue voted on.
- Issues ratified and the respective percentages of affirmative votes.
- Full names and signatures of the Chairperson of the BoD, the vote counting supervisors, and vote counters.

The members of the BoD, vote counters and vote counting supervisors shall be jointly responsible for the truthfulness and accuracy of the minutes of vote counting, and shall be jointly responsible for any financial loss arising from a resolution that is ratified due to an untruthful or inaccurate counting of votes.

The minutes of vote counting and resolution shall be sent to shareholders within 15 days from the date of completion of vote counting. If the company has its own website, it can publish the minutes of vote counting and resolution instead.[96]

Completed absentee ballots, the minutes of vote counting, the resolution ratified and any related documents enclosed with absentee ballots shall be archived at the head office of the company.[97]

95 *LOE, Article 149, Clause 5.*
96 *LOE, Article 149, Clause 6.*
97 *LOE, Article 149, Clause 7.*

5.3.9. Announcing Voting Results and Decisions

The voting results shall be announced by the GMS Chairperson before the meeting is closed. For a listed company, the overall numbers of votes which agree, do not agree and abstentions shall be announced immediately after an issue is voted on.

5.3.10. Closing the GMS

The GMS Chairperson closes the GMS when all agenda items have been discussed and voted upon, and when the voting results have been announced.

After the GMS, the Voting Committee must ensure that the voting ballots and written voting instructions are sealed and transferred to the archives.

5.4. Preparing and Disclosing Minutes of GMS

The minutes of the GMS must be completed and approved before closing the meeting.[98] The GMS Chairperson and the GMS secretary shall be jointly responsible for the completeness and accuracy of the minutes.[99] The minutes of the GMS shall be sent to all shareholders within 15 days from the closing of the meeting. The GMS Chairperson and the GMS secretary must sign the meeting minutes.[100] The Viet Nam Corporate Governance Code of Best Practices recommends the minutes of AGMs and EGMs be available on the company website within 24 hours after the meeting. GMS minutes are inserted in the minutes book. The minutes of the GMS and its appendixes shall be archived at the head office of the company. The company must provide a copy of the GMS minutes to shareholders upon request. Shareholders may be asked to reimburse the company for reasonable copying costs.

Minutes prepared in Vietnamese and a foreign language shall be of equal legal validity. Where there are any discrepancies between the Vietnamese version and foreign language version, the Vietnamese version shall prevail.[101]

98 *LOE, Article 150, Clause 2.*
99 *LOE, Article 150, Clause 3.*
100 *LOE, Article 150, Clause 5.*
101 *LOE, Article 150, Clause 4.*

Table 7 presents a summary of information that must be included in the GMS minutes and information that is recommended to be included in the minutes of voting results.

Table 7. Information Related to the Results of the GMS[102]	
1	Name, head office address, and code of the enterprise.
2	Time and location of the GMS.
3	Agenda and content of the meeting.
4	Full names of the Chairperson and secretary.
5	Summary of the meeting and opinions, including dissenting ones, shareholders' questions asked and answers given at the GMS on each matter set out in the meeting agenda.
6	Number of shareholders and total number of votes of attending shareholders, appendix listing registered shareholders and representatives of shareholders attending the meeting with the total number of shares and the corresponding total number of votes.
7	Total number of votes on each issue, specifying the method of voting, the number of valid or invalid votes, the number of affirmative votes, negative votes and abstentions as well as the corresponding percentage of the total number of votes of shareholders attending the meeting.
8	Matters ratified and corresponding percentage of affirmative votes.
9	Signatures of the chair and secretary.

Where the chair or the secretary declines to sign-off on the minutes, they shall be effective if all other members of the BoD attending the meeting sign-off with sufficient contents as provided in the Article 150 of LOE 2020. The minutes shall clearly record the fact that the chair or secretary declined to sign-off on the minutes.

The following documents must be attached to the GMS minutes:[103]

- The list of shareholders registered to attend the meeting.
- The ratified resolutions.
- All materials attached with the meeting invitation.

102 LOE, Article 150, Clause 1.
103 LOE, Article 150, Clause 6.

Best practice

The Viet Nam Corporate Governance Code of Best Practices recommends the following:

9.2.9 The company should disclose the voting results within 24 hours after the annual or extraordinary shareholders' meeting. Voting results should include a breakdown of the approving and dissenting votes on the matters raised during the shareholders' meeting.

9.2.10 The minutes of a AGM or EGM should be available on the company website within 24 hours after the meeting. In addition to the regulatory requirements, the minutes should include the following: (1) voting procedures, (2) if an opportunity was given to shareholders to ask questions, as well as a record of the questions and answers received, (3) the matters discussed and the resolutions reached, (4) voting results for each agenda item, (5) a list of the directors, officers, external auditors and shareholders who attended the meeting and (6) dissenting opinions on any agenda item considered significant in the discussion process.

9.4.3 AGM materials – including documents, resolutions and minutes – shall be provided in English language to enable full participation by those not familiar with Vietnamese language and translators shall be provided at the AGM where necessary.

5.5. Extraordinary GMS

An EGM may be convened by the company to make important decisions between two AGMs. An EGM allows the company's governing bodies to address important matters outside of the regular schedule, and also provides shareholders with an opportunity to request a meeting. Any of the following parties may request an EGM:[104]

- Board of Directors.
- Supervisory Board.
- A shareholder or a group of shareholders owning at least 5 percent of the ordinary shares (or a smaller ratio specified in the Company Charter).

The steps for preparing and conducting an EGM are largely similar to those for a GMS, as explained above.

Unless otherwise provided in the Company Charter, the BoD shall convene the GMS within 30 days from the date of occurrence of the event as required by law arising, or from the date of receipt of the request.[105] If the BoD fails to convene a GMS within this time period, the Supervisory Board shall convene a GMS within the next 30 days.[106] If the meeting is still not convened, the shareholder or group of shareholders may convene the GMS on behalf of the company.[107]

104 LOE, Article 140, Clause 1.
105 LOE, Article 140, Clause 2.
106 LOE, Article 140, Clause 3.
107 LOE, Article 140, Clause 4.

5.6. Decisions of the GMS

It is important to follow procedures for preparing and conducting the GMS to ensure the validity and lawfulness of decisions reached by this governing body. However, resolutions approved during GMS sessions by shareholders and their authorized representatives representing 100 percent of voting shares shall be lawful and take immediate effect. This is the case even when the order and procedures of convention, the meeting agenda and the conducting procedures are not in accordance with related regulations.[108]

5.6.1. Decisions Requiring Supermajority Vote

The following decisions are required by law to attain the following minimum voting thresholds:

Table 8. Voting Threshold for Corporate Actions

No.	Corporate Action	Voting Threshold
1	Decision on classes of shares and the total number of shares of each class	≥ 65% of the total number of votes of all attending shareholders
2	Change of lines of business and business sectors	≥ 65% of the total number of votes of all attending shareholders
3	Change of the organizational and management structure of the company	≥ 65% of the total number of votes of all attending shareholders
4	Investment project or sale of assets valued at ≥ 35% of the total value of assets	≥ 65% of the total number of votes of all attending shareholders
5	Restructuring or dissolution of the company	≥ 65% of the total number of votes of all attending shareholders
6	Amendment of or addition to contents of the Company Charter	≥ 65% of the total number of votes of all attending shareholders
7	Developmental direction of the company	≥ 50% of the total number of votes of all attending shareholders
8	Election, discharge or removal of members of the BoD and of the Supervisory Board	≥ 50% of the total number of votes of all attending shareholders
9	Approval of the annual financial statements	≥ 50% of the total number of votes of all attending shareholders

108 *LOE, Article 152*

In the case of absentee voting, a resolution shall be ratified if it is approved by shareholders who represent at least 50 percent or more of the total votes of all shareholders entitled to vote. The specific percentage shall be provided in the Company Charter.[109]

The GMS' resolution that adversely changes the rights and obligations of shareholders holding preference shares shall only be approved if consented to be the number of preference shareholders of the same class attending the meeting holding 75 percent or more of the total preferred shares of that class or approved by preference shareholders of the same class holding 75 percent or more of the total preferred shares of that class in the case of absentee voting.[110]

5.6.2. Filing a Lawsuit against GMS Decisions

Under certain circumstances, GMS decisions may be appealed at (and potentially invalidated by) the courts. Decisions may be appealed when legal and/or charter requirements have not been met. GMS decisions may be appealed by a shareholder or shareholders having at least 5 percent of ordinary shares.[111]

Decisions by the GMS may be appealed in the following cases: [112]

- The process and procedures for convening a meeting and issuing a decision of the GMS seriously violated the provisions of the LOE and the Company Charter.
- The content of the resolution violates the LOE or the Company Charter.

Decisions by the GMS must not be appealed in the following cases: [113]

- A resolution that is ratified by 100 percent of the voting shares shall be lawful and effective, even if the procedures for convening the meeting and issuing such resolution prescribed in this law and the Company Charter are not followed.

109 LOE, Article 148, Clause 4.
110 LOE, Article 148, Clause 6.
111 LOE, Article 151.
112 LOE, Article 151.
113 LOE, Article 152, Clause 2.

Within 90 days from the receipt of the resolution or minutes of the GMS or the minutes of the results of vote counting by way of absentee ballots, a shareholder or group of shareholders mentioned above is entitled to request the court or an arbitral tribunal to consider invalidating the resolution in part or in full.[114] However, such resolution shall remain effective until the court or arbitrator's decision becomes effective, except for the case of application of interim injunctive relief in accordance with the competent agency's decision.[115]

114 *LOE, Article 151.*
115 *LOE, Article 152, Clause 2.*

CHAPTER APPENDIX

VIRTUAL SHAREHOLDER MEETINGS

One of the crucial responsibilities of a Corporate Secretary is to ensure effective decision-making. This becomes especially critical in times of uncertainty. This was the case during the COVID-19 pandemic, when organizations turned to virtual platforms to facilitate key decision-making necessary at BoD and shareholder levels.

Organizing virtual meetings requires careful consideration to ensure meaningful engagement and voting for all participants.

Please see below for guidance and best practices, particularly for companies and corporate secretaries, regarding the organization of virtual AGMs.[116]

When Preparing for the Meeting

Consider the following when holding a virtual shareholders meeting:

Do we have adequate technology to reach all shareholders and other stakeholders who will be required to participate in the meeting?

- Many organizations globally offer virtual platforms for conducting AGMs. When selecting a platform, corporate secretaries should collaborate with an IT specialist to ensure that the chosen platform is secure and provides an opportunity for shareholders to participate to the same degree as they would in person. Striking a balance between platform security, cost, and shareholder convenience and access is crucial.
- Wherever possible, limit the amount of software to be downloaded by the shareholder. This should be a key consideration when choosing the platform.
- Additionally, it is imperative to conduct thorough testing to ensure the seamless functionality of the chosen platform.

116 *Source: IFC Tipsheet on Virtual Meetings.*

Do all shareholders understand the concept of a virtual meeting and how they will engage and vote?

- Information regarding the meeting format, joining procedures, agenda, supporting documents, how to ask questions, and the voting process should be easily accessible in a dedicated section on the company's website and included in the Notice of the Meeting.
- Develop and distribute a set of protocols outlining how engagement during the meeting should occur, including guidelines for asking questions. Communicate these protocols to shareholders through the company's website and in the Notice of Meetings.
- To facilitate shareholders' access to the meeting, corporate secretaries should establish a registration and verification process. This involves sending shareholders an invitation to the meeting along with a unique shareholder ID. It is essential to obtain shareholders' preferred communication methods in advance to securely deliver this information for reasons of confidentiality and security.

How will we manage the Q&A?

Questions should be facilitated in real-time whenever possible. Shareholders should be provided with ample time to submit questions before the meeting, and there should be no restrictions on the length or number of questions they can submit. All answers to questions should be made available on the company's website after the meeting.

How will we manage voting?

- The management of voting will vary based on the number of shareholders. For a smaller number, materials could be provided in advance, allowing the vote to be conducted before the meeting. However, shareholders typically prefer hearing from the Chairperson and CEO before casting their votes, making this approach less favorable.
- Alternatively, there are voting apps available that can collate votes during the meeting. It is worth noting that these apps may be expensive for some companies. A solution proposed by the Financial Reporting Council (FRC) in the United Kingdom is to split the shareholder meeting into two events – one

for presentations and Q&A held on a virtual platform and the other for voting, facilitated by a voting app if necessary.

- Another method of voting is by proxy. Guidance on how a shareholder may appoint and vote by proxy should be provided on the website and in the Notice of Meeting.

How to communicate with the Chairperson and CEO during the meeting?

It is essential to establish a communication channel that enables interaction both with and from the Chairperson and CEO without disrupting the meeting's flow. This can be achieved through a chat function integrated into the platform or a separate chat function via secure social media.

Will the meeting be recorded?

Numerous companies opt to record face-to-face Q&A sessions of shareholder meetings to generate verbatim reports for their websites. Unless prohibited, recording the meeting is advisable. This practice proves especially helpful on the day of the meeting as the Corporate Secretary may be engaged in other tasks, making it challenging to take notes for the minutes.

What is the back-up plan if technology fails?

- The feasibility of the approach will hinge on the meeting's size. For smaller meetings, reverting to telephone communication may suffice. However, for larger meetings, it may be necessary to proactively establish a designated group, including the Chairperson, capable of adjourning the meeting over the telephone with prior arrangements.
- Consider providing a Helpdesk to assist shareholders on the meeting day. Ensure a seamless communication channel with the Helpdesk to stay informed about any issues, enabling effective communication with the Chairperson.
- Include information about the backup plan on the company website and in the notice of the meeting.
- Additionally, liaise with power companies and internet service providers to confirm the absence of planned outages on the meeting day. In the event of any disruptions, shareholders should be promptly notified.

Dress Rehearsal?

Corporate secretaries should conduct dress rehearsals with the Chairperson, CEO, and other Board members and senior management to ensure preparedness. During these rehearsals, explain the technology involved, covering aspects such as access, Q&A, and voting procedures. Address any specific requirements, such as headphones, internet equipment, or airtime bundles, to maintain the meeting's quality.

What Information should be provided to the Chairperson?

Similar to face-to-face meetings, corporate secretaries should furnish a script for the Chairperson. This script should commence with the meeting protocols, including instructions such as keeping microphones on mute unless attendees signal a desire to ask a question and information about helpdesk availability for technical issues.

The Meeting

What to consider?

- Ensure IT support is available for both the Corporate Secretary and shareholders via the Helpdesk.
- Conduct a thorough platform and communication methods test, including a dry run with the Chairperson, CEO, and Helpdesk.
- Designate a host for the meeting. This could be the Corporate Secretary, but keep in mind the need to produce minutes, which might require note-taking unless the meeting is being recorded.
- Once the meeting begins, ensure all microphones are on mute, except for the individual who is speaking.
- Have the Chairperson share the agenda for the day and explain how the meeting will be conducted, as outlined in the script prepared for it.

The Chairperson and CEO presentations should be displayed. Ensure the use of shared screens so shareholders can view both the presentation and the presenter, as the presenter's body language can also convey a message.

- After the presentations conclude, the Chairperson should transition to the Q&A session. The Corporate Secretary's usual role involves managing the

Q&A session. The shareholder's name should be clearly announced. To assist the Chairperson, confirm with the shareholder that it has finished asking its question, express gratitude, and then handover to the Chairperson. This approach prevents a shareholder from being cut-off mid-question and minimizes the possibility of multiple people talking simultaneously.

- Upon completion of the Q&A session, the Chairperson should proceed to the resolutions and voting. Once voting is concluded, announce that the results will be published on the company website.

After The Meeting

As per a face-to-face meeting, the Corporate Secretary should:

- Publish the minutes of the meeting, including the verbatim Q&A and the results of the voting, on the company website as soon as possible.
- File any regulatory announcements or forms related to the meeting's business in line with required time scales. For example, this includes those related to the appointment of new directors.
- Facilitate the payment of any dividends.
- Seek feedback from the Chairperson on the meeting.

It is instructive to seek shareholders' and other stakeholders' feedback through the website regarding their thoughts on how the virtual meeting went and any suggestions for improving their experience in future years.

NOTES

Chapter 6

BOARD OF DIRECTORS

6 | BOARD OF DIRECTORS

Table of contents

The Chairperson's Checklist:

The Board of Directors (BoD)'s authority:

- ☑ Is the BoD's focus protecting the company's and its stakeholders' interests, including shareholders? Do all BoD members understand the role and priorities of the BoD? Does the BoD have sufficient authority and resources according to the Company Charter and internal regulations to fulfil its oversight duties? Have these authorities appropriately been communicated? Does the BoD use its powers in practice?
- ☑ What is the BoD's role concerning the company's governance, organization of the General Meeting of Shareholders (GMS), protection of company assets, resolution of conflicts and supervision of internal controls and risk management?
- ☑ How effective is the Board in guiding and setting strategy?
- ☑ Does the BoD have the tools to properly oversee the operational and financial performance of the company and the performance of the Chief Executive Officer (CEO) and the executive team?
- ☑ Is a succession plan in place, particularly for the directors and the CEO?
- ☑ Is the BoD's authority distinct from management's, as evidenced by internal regulations and practice?

The BoD's election:

- ☑ Who nominates candidates to the BoD? Is sufficient information provided to shareholders about nominees? How does the BoD influence the nomination process?
- ☑ Does the BoD ensure that all shareholders understand how cumulative voting works?
- ☑ Does the company disclose the criteria used in selecting new directors?
- ☑ Does the company use professional search firms or other external sources of candidates, such as director databases set up by directors or shareholder bodies, when searching for candidates for the BoD?

The BoD's composition:

- ☑ Has the BoD designed, articulated, and implemented policies relating to its size, composition, mix of skills, gender, breadth of experience, and other pertinent qualities?
- ☑ Is the BoD's composition, considering its competencies and mix of skills and gender, suited to its oversight duties and the development of its strategy?
- ☑ How effectively does the BoD work as a team?
- ☑ Do the company's independent directors account for at least one-third of BoD members?
- ☑ Is the BoD constituted of a majority of non-executive directors?
- ☑ How effective is the BoD's leadership at the Board and committee level?
- ☑ Is the number of directors consistent with the needs of the company? Does the company have enough directors to establish necessary BoD committees?
- ☑ Does the company have at least two female directors or 30 percent of female directors to optimize the benefits of gender diversity on the Board?
- ☑ Does the company have a policy and disclose measurable objectives for implementing its Board diversity and report on progress towards achieving its objectives?

The BoD's structure and committees:

- ☑ Does the BoD have the Corporate Governance, Nomination and Remuneration, Risk Management and Audit committees or other Board committees meeting legal requirements and sound corporate governance practices?
- ☑ What are the costs and benefits of these or other committees?
- ☑ Are there sufficient independent (or non-executive) directors to chair and sit on these committees? Do BoD committees have sufficient human and financial resources to properly fulfil their functions?
- ☑ Does the Corporate Governance, Nomination and Remuneration committees undertake the process of identifying the quality of directors aligned with the company's strategic directions?

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- ☑ How well informed are non-committee members about the committee's deliberations?
- ☑ Is the information prepared by the committee for the BoD adequate for effective decision-making?
- ☑ Do BoD committee members have sufficient expertise on issues relevant to delegated competence? Do they have access to information from the External Auditor, Internal Auditor and management involved in the company's financial, economic and other activities?

The BoD's working procedures:

- ☑ Has the BoD identified, prioritized and scheduled key issues that should be reviewed regularly?
- ☑ Does the Chairperson take an active role in organizing the work of the BoD?
- ☑ Does the BoD meet regularly with a fixed schedule?
- ☑ Do Board members properly prepare themselves for Board meetings?
- ☑ Does the Chairperson encourage a free and open exchange of views?
- ☑ Are procedures in place that ensure the proper preparation and conduct of BoD meetings, including procedures for participating via different channels (onsite, online and hybrid meetings). Is there advance notification on agenda issues, distribution of materials and documents, proper determination of the quorum, voting through absentee ballots and preparation of the minutes?
- ☑ How efficient are BoD meetings in practice? Is the information provided to directors focused, succinct and to the point, allowing for effective decision-making? Are key issues and risks highlighted? Do the materials contain annexes with further relevant details?
- ☑ How does the BoD ensure that it properly oversees the executive bodies? Does it receive periodic reports and updates from management? Does the BoD invite members of management to Board meetings to inform its members of key issues?

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- ☑ How well does the BoD interact with senior management, including the CEO? Does the Board provide wise counsel and clear direction to members of management? Does it challenge management sufficiently? How does it balance oversight against micro-management?
- ☑ Are BoD meetings scheduled before the start of the financial year?
- ☑ Has each director attended at least 75 percent of all Board meetings held during the year?
- ☑ Did the company's non-executive directors meet separately at least once during the year without any executives present?

The BoD's duties and liabilities:

- ☑ Do all BoD members understand their duties to act reasonably and in good faith in the company's and its stakeholders' best interests, including shareholders?
- ☑ Does the company have contracts with directors? Do such contracts describe their duties and liabilities?

The BoD's performance evaluation and training:

- ☑ Does the BoD conduct annual self-evaluations for each director, Board committee and the whole Board? Has the Board developed performance indicators or benchmarks for its work? Is this process credible, and are the results made available to shareholders?
- ☑ Does the BoD have a performance evaluation conducted by an external independent party?
- ☑ Does the BoD conduct regular training events on corporate governance and other issues of importance for improving the future work of this corporate body? Do all directors attend training sessions?
- ☑ Does the company hold induction training for new Board members to acquaint them with the company's strategy, plans and operations, and the previous work of the BoD?

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The BoD's remuneration:

- ☑ Is the remuneration of directors competitive? Are all directors paid the same amount? Is the remuneration structured to provide incentives to take on additional responsibilities? Does the remuneration package jeopardize a director's independence? Does the total remuneration package constitute a significant portion of a director's annual income?
- ☑ Does the BoD and its Nomination and Remuneration Committee periodically review the remuneration paid to directors? Is the remuneration of directors disclosed on an individual basis?
- ☑ Does the company have a policy that prohibits personal loans or credits to its directors?
- ☑ Does the company have a policy on (not) remunerating executive directors for their services to the BoD beyond their executive remuneration package? Does the company have measurable standards to align the performance-based remuneration of executive directors and senior executives with the long-term interests of the company, such as clawback provisions and deferred bonuses?

An effective, professional, and independent BoD is essential for good corporate governance. The BoD acts in the best interests of the company and its shareholders. It sets the company's strategy, protects shareholder rights, and oversees the executive bodies and financial operations of the company.

While the BoD cannot be a substitute for talented professional managers or change the economic environment in which a company operates, it can influence company performance through its strategic oversight and control over management. The BoD's activities may go unnoticed when an economy is strong, share prices are rising and everything appears to be going well. On the other hand, when things go badly, the BoD becomes the center of attention and its importance becomes clear.

The legal regime of the BoD is characterized by mandatory requirements, but is also accompanied by a degree of flexibility enabling companies to tailor their internal organization to their own needs and circumstances. This chapter describes the authority, election and dismissal, composition, structure, working procedures, duties and liabilities, evaluation, and remuneration of the BoD. It also discusses corporate governance principles and standards in the Viet Nam Corporate Governance Code of Best Practices, other best practices and legal regulations.

6.1. Authority

6.1.1. When to Establish a BoD?

A joint stock company must establish a BoD.[1] A company that wishes to establish a BoD can take the following steps illustrated in Figure 1.

Figure 1. Five Steps to Developing a Board of Directors

Source: IFC, 2014

6.1.2. Overview of the BoD's Authority

The Law on Enterprises (LOE) defines the BoD's authority.[2] The BoD is the regulatory body of the company. It shall have full authority to make decisions on behalf of the company and exercise the rights and perform the company's obligations, except for the rights and obligations under the authority of the GMS.[3] The BoD's responsibilities include setting the company's strategy and business priorities, guiding and controlling managerial performance, and making decisions on matters that do not fall under the GMS' authority. In essence, the role of the BoD is to direct and not manage. The Company Charter can also assign additional powers to the BoD.[4]

1 *LOE 2020, Article 137, Clause 1.*
2 *LOE, Article 153, Clause 2.*
3 *LOE, Article 153, Clause 1.*
4 *LOE, Article 153, Clause 2.*

As a rule, the BoD has the authority to decide all issues that do not fall under the authority of the GMS and other corporate bodies.

Best practice

When additional powers and authorities are granted to the BoD in the Company Charter, these should correspond with the BoD's typical functions to avoid any ambiguity regarding the division of powers between the GMS, BoD, CEO, and/or management. This should be documented in the company's Delegation of Authority (DoA) matrix.

A DoA matrix defines delegations and empowerment as well as provides a consolidated view of all authorities across the company. The DoA should serve as a reference library for all authorities across the company, including subsidiaries.

Powers covered in the DoA must be exercised in the company's policies, procedures and internal controls. Authorities are related to job positions and not individuals. When an individual moves to another position, it could expect to be re-assigned new authorities. Decision points with applicable financial limits apply to complete transactions and may not be deliberately circumvented by explicitly splitting transactions to a lower level or value. A transaction rejected by the authority should not be considered by any other lower authority, even if it falls within the latter's control.

Matters under the BoD's authority cannot be delegated to the CEO or management.

As illustrated in Figure 2, the BoD has the authority to make decisions in the following areas:[5]

- The strategic oversight and control over management, as well as the election and oversight of the CEO and management.
- Shareholder rights.
- The charter capital and assets of the company.
- Disclosure and transparency.
- Other areas determined by the LOE or the Company Charter.

5 *LOE, Article 153, Clause 2.*

Figure 2. Board of Directors' Authority According to the Law on Enterprises and the CG Regulations

Strategic Oversight and Control

- Decide on medium-term development strategies, plans, and annual business plans of the company.
- Decide on investment plans and investment projects within its authority and limits stipulated by law.
- Decide on solutions for market expansion, marketing and technology.
- Approve contracts for purchase, sale, borrowing, lending and other contracts valued at 35 percent or more of the total value of assets recorded in the most recent financial statements of the company (or such smaller percentage as may be stipulated in the charter).
- Elect, discharge or remove the Chairperson of the BoD.
- Appoint, discharge, and sign contracts or terminate contracts with the CEO and other key managers of the company as provided in the Company Charter.
- Appoint authorized representatives to exercise ownership rights in other companies, and to make decisions on the level of remuneration and other benefits of such persons.
- Supervise and direct the CEO and other senior executives in their work of conducting the day-to-day business of the company.
- Decide on organizational structure and the rules on internal management of the company
- Decide on the establishment of subsidiaries, branches and representative offices and the capital contribution to or purchase of shares of other enterprises
- Propose restructuring or dissolution of the company, or petition for bankruptcy of the company.
- Create Board committees with respect to listed companies.
- Appoint or dismiss the Corporate Secretary.
- Adopt internal management documents (and corporate governance code for public companies).
- Establish internal control and risk management mechanisms.

Disclosure and Transparency

- Submit annual reports to the GMS.
- Prepare and publicly disclose the CG report of a public company every six months.
- Adopt and publicly disclose reports on important events for the public company.

Charter Capital and Assets

- Recommend the classes of shares and total number of authorized shares of each class.
- Decide on the sale of unsold shares within the number of authorized shares of each class.
- Decide on raising additional funds in other forms.
- Decide on selling prices of shares and bonds of the company.
- Decide on repurchase of shares of no more than 10 percent of the total sold shares of each class within each 12-month period.

Shareholder Rights

The GMS

- Organize the GMS.
- Approve the agenda and contents of documents for the meeting.
- Obtain absentee ballots in order for the GMS to ratify resolutions.

Dividends

- Propose dividend rates to be paid, make decisions on the deadline and procedures for payment of dividends or for dealing with losses incurred in business operations.

Conflict Resolution

- Approve related party transactions valued at less than 35 percent of the total value of assets recorded in the latest financial statements of the company. (Note: this does not apply for transactions regulated in Articles 138 and 167 of the LOE).
- Resolve corporate conflicts.

Source: IFC 2014

6.1.3. BoD's Authority on Strategic Oversight and Control

The BoD plays an essential role in the company's strategic oversight and control. The BoD has the following authorities in this area:

Setting Development Strategies, Plans and Annual Business Plans of the Company

The BoD has the authority to make decisions on development strategies and plans, as well as the company's annual plans.[6]

Best practice

The BoD sets the company's strategic direction in the context of the market environment, its financial position and other factors. The BoD needs to determine the amount and type of risks the company is ready to take in accomplishing its goals, considering Environmental and Social (E&S) and climate change risks as well as opportunities.

The company's strategic and business plans should be reviewed and evaluated at least annually. This evaluation should also cover production, marketing, and planned investments. Finally, the BoD should approve a single document containing financial projections for one year.

Sound corporate governance principles also suggest that:

- The company develops internal regulations with detailed procedures for the CEO and management to obtain approval for operations that fall outside the scope of the financial and business plan, including non-financial matters.
- The BoD be given the right to veto a decision by the CEO and management to implement any non-standard operations, provided such veto can be justified.
- The company's internal regulations determine the rights and duties of the executive bodies and the responsibility for acting outside these limitations.

However, the BoD is not involved in the day-to-day management of the company, which is the responsibility of management.

6 *LOE, Article 153, Clause 2a.*

Appointment and Removal of Members of Management

The BoD has the authority and obligation to appoint the CEO and other key managers of the company.[7] The BoD may also remove such managers by law.[8]

Approving Conditions in the Contracts with Members of Management and Determining the Remuneration

The BoD has the authority to make decisions on salary, remuneration, bonuses and the terms and conditions of the contract between the company and members of the management.[9] Upon this approval, the CEO will sign the contract with each member of the management. The Chairperson of the BoD will sign the contract with the CEO. The LOE states that the salaries, remunerations, bonuses and other benefits for the CEO and other managers are determined by the BoD based on the business results and efficiency of the company.[10]

Best practice

Internationally, it is common practice for the BoD's Remuneration Committee – chaired and comprised of independent directors – to set the remuneration of the CEO and other senior managers. Criteria for determining the level of compensation should include the tasks of the Executive Board member, the economic (financial) situation of the company, the performance outlook compared to competing companies, evaluation of the member's past performance as well as the performance of the Executive Board as a whole, making connections between the future results of that member and its remuneration and professional opinions.

Supervising the Management's Operations

Management must be accountable to the BoD. As such, the BoD supervises and directs the CEO and other managers in conducting the company's day-to-day business.[11]

7 *LOE, Article 153, Clause 2i.*

8 *Arguably the CEO and other key managers of the company would be considered employees of the company and the provisions of the Labor Code would apply. Accordingly, terminating employment of the CEO and such managers would be subject to legitimate reasons as provided in the Labor Code.*

9 *LOE, Article 153, Clause 2i.*

10 *LOE, Article 66, Clause 1.*

11 *LOE, Article 153, Clause 2k.*

Best practice

In corporate governance, effective oversight of management by the BoD is pivotal. Shareholders, especially minority ones, often lack the means to closely monitor managerial activities. Hence, it is the BoD's responsibility to supervise management on behalf of all shareholders.

When forming and selecting an Executive Board, it is essential to strike a balanced approach. This involves finding a proper equilibrium between overseeing the CEO and granting sufficient autonomy for conducting corporate affairs. Straying too far in either direction carries risks. Inadequate oversight may lead to self-serving managerial actions, while excessive oversight may result in micro-management and the politicization of decision-making, leading to economic inefficiencies and legal complications.

To mitigate these risks, it is crucial to develop charters, internal regulations, and other policy documents that delineate responsibilities among the governing bodies. This division should be based on each body's suitability for specific tasks. Professional managers should handle managerial duties, while oversight tasks are entrusted to bodies like the Supervisory Board, Audit Committee, and GMS.

Best practice

To ensure effective oversight, the BoD must know the critical aspects that demand close monitoring. The following key issues are pivotal for the BoD's vigilant attention:

- Regular assessment of the company's overall performance, focused on comparative analysis against industry peers, is essential for strategic decision-making.
- Monitoring management's adherence to legal requirements and internal procedures is imperative. This includes corporate governance practices, risk management, internal controls, ethics and considerations related to environmental and social responsibilities.
- Evaluating the performance of both the management team as a whole and individual executives is crucial for ensuring effective leadership and execution of responsibilities.
- Closely tracking the implementation of the company's strategic initiatives ensures alignment with long-term goals and objectives.

- A comprehensive examination of the company's financial results provides insights into its fiscal health and performance.
- Monitoring financial and non-financial disclosures ensures transparency and compliance with reporting standards.
- Maintaining positive relationships with key stakeholders – including shareholders, employees, suppliers and customers – is crucial for sustaining the company's reputation and goodwill.

By focusing on these key areas, the BoD can enhance its oversight role, contributing to the company's overall success and sustainability. Regular attention to these aspects empowers the Board to make informed decisions that align with the company's strategic objectives and ethical considerations.

Appointing the CEO

The BoD appoints the company CEO to lead the Senior Executive team, which is also called the Management Board in some jurisdictions.

Creating the Board Committees

The Board should set up specialized Board committees to support it in performing its functions and avoiding conflicts of interest. Establishing Board committees is a strategic approach to addressing specific facets of governance in a more focused manner. By adhering to BoD regulations and operating within defined frameworks, these Board committees significantly contribute to the overall effectiveness of corporate governance.

The committees shall operate in accordance with regulations of the BoD. A committee's resolution is only effective when it is voted for by the majority of its members during its meetings.[12]

Appointing and Dismissing the Corporate Secretary

According to the company's demand, the BoD decides whether to appoint the Corporate Secretary.[13] The Corporate Secretary is accountable to and supervised by the BoD by the terms and conditions of its employment contract.

12 *Circular No. 116/2020/TT-BTC, Model Charter, Article 31, Clause 1.*
13 *LOE, Article 156, Clause 5.*

Approving and Adopting Internal Documents

The BoD adopts the internal documents, including those that must be approved by the GMS.

Best practice

International corporate governance practices underscore the importance of BoD approval for several internal documents that guide a company's fundamental policies and operations. The BoD is crucial to endorse and oversee key internal frameworks to ensure transparency, accountability, and ethical conduct.

The Board approves internal regulations in the following key areas:

- Dividend policy.
- Information disclosure policy.
- Ethical standards.
- Internal control.
- Risk management.
- Finance policy.
- Corporate Secretary.
- Stakeholder engagement policy.

Establishing and Terminating Subsidiaries, Branches and Representative Offices

The BoD has the authority to decide on the establishment of a company's subsidiaries, branches, and representative offices.[14]

14 *LOE, Article 153, Clause 2l.*

Why is Subsidiary Governance Important?

Subsidiaries may pose financial, operational, and reputational risks to the parent and other companies. Several high-profile corporate scandals have originated in subsidiary companies. Good subsidiary governance becomes particularly important if group subsidiaries have minority investors.

Subsidiary governance has moved from an emerging area to one of increased focus globally for many companies as:

1. Regulators are showing increased interest in parent company accountability and management liability for subsidiary oversight.
2. Subsidiary ownership structures can raise integrity and responsible tax principles flags that could indicate unethical tax practices and heightened reputational and legal risks.
3. Excessive oversight or involvement of the parent in subsidiary operations can enhance risks within the subsidiary and dilute accountability if subsidiary boards function as rubber stamps for parent decisions.
4. Many companies lack a central/global head office or function to manage legal entity compliance status and associated reporting, technology and governance practices.
5. Parent company Boards need to achieve the right balance between parent company needs to set group strategy and coordinate group oversight, while maintaining requisite subsidiary directors' fiduciary duties.
6. Subsidiary directors need adequate support and training regarding their legal and corporate governance obligations.

As businesses become more complex, understanding how to achieve a suitable and effective subsidiary governance framework is critical. The development and adoption of a subsidiary governance policy is a control mechanism that a company can adopt to improve its subsidiary governance.

Adopting an Effective Code of Corporate Governance

The BoD has the overall responsibility to ensure that the company adopts an effective internal code of corporate governance to protect shareholders' rights. The GMS has the approval authority for the code of corporate governance, and the BoD should review it before submitting it to the GMS.

6.1.4. BoD's Authority on Shareholder Rights

Organizing the General Meeting of Shareholders

The BoD has the authority to approve the agenda and contents of the GMS, convene the GMS and obtain absentee ballots for the GMS to ratify resolutions.[15]

The BoD shall accept and include proposals on additional issues to the GMS agenda upon the request of a shareholder (or a group of shareholders) owning more than 5 percent of voting shares.[16]

Resolving Corporate Conflicts

The Board can resolve conflicts between shareholders and the company by facilitating open dialogue, considering diverse perspectives, and making decisions aligned with the long-term interests of both parties. This may involve mediation, addressing concerns transparently, and seeking mutually beneficial solutions to foster trust and collaboration. The BoD needs to establish robust governance structures and policies to address conflicts promptly and fairly.

Best practice

An essential BoD function is establishing a system of compliance with corporate procedures. The BoD is responsible for taking all necessary steps to prevent and resolve conflicts that may arise between shareholders and the company. It may appoint officers to implement systems of enforcement. To this end, the BoD may also form a Conflict Resolution Committee.

6.1.5. BoD's Authority in Relation to Assets and Charter Capital

The BoD has the authority to make decisions on the capital contribution to, or purchase of, shares of other enterprises.[17] The BoD also has the authority to decide on the class of bonds, total value of bonds and the timing of issuance,

15 *LOE, Article 153, Clause 2m.*
16 *LOE, Article 142, Clauses 2 & 4.*
17 *LOE, Article 153, Clause 2.*

unless this authority is provided to the GMS in the Company Charter. In such circumstances, the BoD must report and submit relevant documents concerning the issuance of bonds to the soonest shareholders' meeting.[18] The issuance of convertible bonds, however, is subject to GMS approval.[19]

The BoD may decide on the repurchase of no more than 10 percent of the total outstanding shares of each class within 12 months and determine the repurchase price.[20] The BoD also has the authority to approve contracts for purchase, sale, borrowing, lending and other agreements and transactions valued at 35 percent or more of the total value of assets recorded in the latest financial statement.[21]

6.1.6. BoD's Authority in Relation to Control, Disclosure and Transparency

Submission of Annual Reports

At the end of the fiscal year, the BoD shall submit the following reports and documents to the GMS:[22]

- Report on the business results of the company: shall be sent to the Supervisory Board for appraisal before submission to the annual GMS for final approval.
- Financial statements: shall be audited before submission to the GMS for consideration and approval.
- Report on the evaluation of management and company operations shall be sent to the Supervisory Board for appraisal before submission to the annual GMS for final approval.
- Validation report of the Supervisory Board: shall be submitted to the annual GMS for final approval.

For a public company, the BoD shall disclose information on corporate governance reports every six months.[23]

18 *LOE, Article 1303, Clause 1l.*
19 *Decree No. 153/2020/NĐ-CP, Article 13, Clause 2a.*
20 *LOE, Article 133, Clauses 1 & 2.*
21 *LOE, Article 153, Clause 2h.*
22 *LOE, Article 175.*
23 *Circular No. 96/2020/TT-BTC, Article 10, Clause 4 and Appendix V.*

Best practice

A listed company is required to make a public disclosure on its corporate governance at the annual GMS. The BoD is obliged to prepare the company's annual management and operation report, which should include the company's corporate governance report and other material non-financial E&S matters, and submit it to the annual GMS. The corporate governance report should enclose all essential elements of the company's corporate governance structure and practices. In this report, the BoD must disclose how the company follows corporate governance principles and explain any discrepancies with corporate governance regulations. Finally, it is incumbent upon the BoD to suggest improvements in the company's current corporate governance practices.

Risk Management Oversight

The BoD should ensure that systems for evaluating and managing risks are in place. Some of the critical responsibilities of the BoD and the significant sources of assurance that the BoD should regularly engage in are outlined in the "Best practice" box below and Figure 3.

Best practice

Risk management is an essential area of oversight of the BoD. The BoD should establish systems that enable the company to assess and control risks. Among other things, the BoD should:

- Approve a risk appetite statement, risk management framework, policies and ensure compliance with such policies. These policies should ensure that the company and its employees notify the BoD promptly of any substantial deficiency in risk management mechanisms.
- Analyze, evaluate and improve the effectiveness of internal risk management policies regularly.
- Develop adequate incentives for executive bodies, departments and employees to implement internal control systems. Developing incentives for executive bodies, departments, and employees is a strategic approach to cultivating a proactive internal control culture. By aligning incentives with organizational objectives and fostering a positive environment, organizations can enhance the application and effectiveness of their internal control systems.
- Establish a Risk Management Committee of the BoD, if practical.
- Ensure that the company complies with legislation and charter provisions.

Figure 3. Sources of Assurance

6.2. Duties and Liabilities

The law provides that each BoD shall exercise its delegated powers and perform its delegated obligations honestly, prudently and to the best of its ability to assure the legitimate interests of the company and its stakeholders.[24]

Best practice

In certain jurisdictions, the BoD is mandated by law to prioritize the company's interests, without explicitly considering the well-being of its shareholders and stakeholders. However, focusing solely on the company's interests may inadvertently foster a culture of management entrenchment. In light of this, shareholders and indeed legislators must deliberate carefully on whether to mandate directors to act in the best interests of shareholders as well. This paradigm shift towards stakeholder capitalism underscores the importance of considering the broader ecosystem in which a company operates, aligning corporate governance with the holistic interests of all stakeholders involved.

Standards for interpretation of the terms "honestly" and "prudently", as well as standards for "the best of ability", develop over time in a country's judicial system, economy and corporate culture. Vietnamese law does not define these standards clearly.

It is important to note that reasonableness and good faith are presumed when a court action is brought against a director. However, the LOE does not define "good faith" or "reasonableness."

Turning to other jurisdictions for guidance, for example the United States and the United Kingdom, the concepts of reasonableness and good faith are viewed as fundamental principles of a director's duty, notably that of care and loyalty.

6.2.1. Duty of Care

Members of the BoD are responsible for exercising their rights and discharging their duties in good faith, with due diligence and care, and in a professional manner.

24 *LOE, Article 165, Clause 1b.*

Best practice

A director should:

- Act honestly, on a fully informed basis, and in good faith.
- Use care and prudence to the maximum extent that may be expected from a good director in a similar situation under similar circumstances.
- Not cause the company to act unlawfully.
- Regularly attend and actively participate in BoD meetings.
- Place matters on the agenda of BoD meetings and request such meetings when necessary.
- Ensure that an efficient and effective system of internal control is in place.
- Ensure that the CEO and senior management members provide adequate information to the BoD so that its members are adequately informed on corporate matters.
- Exercise a reasonable amount of supervision over management.

6.2.2. Duty of Loyalty

The duty of loyalty plays a central role in corporate governance. Loyalty underpins the effective implementation of key corporate governance principles, such as the need to monitor related party transactions and establish appropriate remuneration policies for managers and non-executive directors.

The LOE requires BoD members to have a duty of loyalty to the company and benefits of the company and shareholders. The duty of loyalty requires directors to exercise their powers in the interests of the company as a whole. Simply put, directors should not allow personal interests to prevail over the company's interests. The duty of loyalty usually prohibits directors from:

- Participating in decisions where they have a personal financial interest that conflicts, or could potentially conflict, with the interests of the company.
- Participating in a competing company.
- Voting on matters where they have a conflict of interest without proper disclosure and, if required, recusal from the decision-making process.
- Entering into any transaction with the company without first disclosing the transaction and obtaining BoD or GMS approval.

- Using corporate property and facilities for personal needs.
- Disclosing non-public, confidential information.
- Using company information, know-how, business opportunities and other assets for personal benefit or the benefit of another organization(s) or individual(s).[25]

Duty of loyalty is also a fundamental principle for Board members working within the structure of a group of companies, even though a company might be controlled by another enterprise. Duty of loyalty for a Board member relates to the company, its shareholders and other stakeholders, not just to the controlling company of the group.[26]

Best practice

Duty of loyalty requires the director to act in the best interests of the company and all stakeholders, regardless of:

- Who nominated and elected such a member.
- Pressure from other directors, shareholders, or individuals to take actions or make decisions not in the company's and its stakeholders' best interests.

In carrying out its duties, the Board should not be viewed or act as an assembly of individual representatives for various constituencies.[27] Instead, as a company organ, the BoD must operate as a cohesive unit. While specific directors may indeed be nominated or elected by certain shareholders (and sometimes contested by others), it is an essential feature of the BoD's work that directors carry out their duties in an even-handed manner regarding all shareholders. It is essential to establish this principle in the presence of controlling shareholders who are able to select the majority of or, in some cases, all directors.

Furthermore, directors and affiliated persons (for example, family, friends, and business partners) should not accept gifts from persons with an interest in BoD decisions or any other direct or indirect benefits. An exception can be made for symbolic gifts given as a common courtesy or souvenirs given during official events. These exceptions should be described in the company's internal regulations or other internal documents.

25 *LOE, Article 165, Clause 1c.*

26 *G20/OECD Principles of Corporate Governance. See also: https://www.oecd.org/corporate/principles-corporate-governance/*

27 *G20/OECD Principles of Corporate Governance. See also: https://www.oecd.org/corporate/principles-corporate-governance/*

6.2.3. Conflicts of Interest

A director should not be discharged from duties if there is a conflict of interest between it, the company and shareholders in a single instance or transaction. However, in the case of a general conflict of interest with the company and shareholders, the director should be discharged from its position.

Best practice

A conflict of interest may arise when a director or its related person:

- Enters into a contractual relationship with a company.
- Has financial interests in that action in a way that can be reasonably expected to influence the director's behavior contrary to the interests of the company.

LOE addresses the issue of conflicts of interest within the context of related party transactions. Any contract or transactions between the company and associated persons and valued at less than 35 percent of the total value of assets of the enterprise, as recorded in the most recent financial statements or a smaller percentage as provided in the Company Charter, shall be approved by the BoD. In this case, the person representing the company to sign the contract or transaction shall notify members of the BoD and supervisors about the parties involved in such a contract or transaction and enclose the contract draft or the transaction's main contents.[28]

Directors should refrain from actions that may result in a conflict between their own interests and those of the company. They are also advised to refrain from voting when they have a personal interest in the matter in question, especially when voting on transactions that benefit themselves or their related persons.[29] Directors should immediately inform the BoD through the Corporate Secretary about a potential conflict of interest.

A director must disclose relevant interests to the BoD in accordance with the LOE and relevant legislative documents.[30] Such information must be disclosed at the first BoD meeting after the director becomes cognizant of

28 *LOE, Article 167, Clause 2.*
29 *Circular No. 116/2020/TT-BTC, Model Charter, Article 47, Clause 4.*
30 *Circular No. 116/2020/TT-BTC, Model Charter, Article 47, Clause 1.*

any potential conflict. The Law on Securities also regulates that members of the BoD, the Supervisory Board, the CEO, other managers and their related parties must only take advantage of information obtained by the influence of their positions for the benefit of the public company. They must not use or disclose internal information to others to carry out related transactions.

6.2.4. Access to Information

Every director has a right to request the CEO, deputy CEO, and other managers in the company provide information and documents on the company's financial situation and business operations as well as of units in the company.[31] These documents shall include, but are not limited to, the company's business performance, budgets, forecasts, monthly internal financial statements (including explanations of any material variances between projections and actual results), compliance and risk reporting (including E&S risks). Directors must have access to this information to properly discharge their duties, including complete and accurate responses to inquiries from members of executive bodies, and other company officers.

A manager receiving such a request shall provide all information and documents promptly, thoroughly and accurately as requested by a member of the BoD. The process and procedures for requesting and giving information shall be as provided in the Company Charter.[32]

Directors are entitled to access the company's shareholder register, list of shareholders, other documents and records for purposes relevant to their positions, provided this information is kept confidential.[33]

6.2.5. Confidentiality of Information

Directors, members of the Supervisory Board, senior managers, and their related persons must not use or reveal internal information to carry out related party transactions.[34]

31 *LOE, Article 159, Clause 1.*
32 *LOE, Article 159, Clause 1.*
33 *Circular No. 116/2020/TT-BTC, Model Charter, Article 49, Clause 3.*
34 *Circular No. 116/2020/TT-BTC, Model Charter, Article 47, Clause 5.*

Best practice

Directors should not disclose confidential information or use their access to company information for their interests or those of third parties. The personal use of confidential information ultimately damages the interests of shareholders. It is recommended that:

- Directors take steps to protect confidential information.
- Directors should not disclose information or use it for their interests.
- Regulations on the use of confidential information should be specified in the internal documents of the company.
- Contracts between the company and directors should stipulate the obligation of directors not to disclose confidential information within 10 years from leaving the company.

To create an effective mechanism to prevent the unauthorized use of confidential information for personal gains from securities transactions, the company should require directors to:

- Notify the BoD in writing of their intention to enter into transactions that involve securities of the company or its subsidiaries.
- Disclose information about previous transactions with the company's securities in accordance with procedures for disclosing material facts specified by securities legislation.
- BoD members, upon their assignment, sign an agreement to comply with all legal requirements regarding the treatment and non-disclosure of confidential information.

6.2.6. Liabilities

Each member of the BoD will share personal liability for the company's losses if the director concerned is at fault or negligent in performing the tasks to supervise and advise the Management Board in good faith and with regard to the company's and shareholders' best interests.[35] If several directors cause losses to the company, they are jointly liable for such losses.[36] The representatives of State or municipal entities on the BoD are liable to the same extent as other directors. It is essential that customary business practices and other relevant circumstances be considered to determine the grounds and degree of directors' liability.

35 *LOE, Article 165, Clause 1; and Circular No. 116/2020/TT-BTC, Model Charter, Article 48, Clause 1.*
36 *LOE, Article 165, Clause 2.*

Directors are not relieved from liability after having resigned or when dismissed from the BoD for actions and decisions made during their tenure.

A shareholder or group of shareholders who hold at least 1 percent of the total number of ordinary shares shall have the right, on its behalf or on behalf of the company, to initiate legal action regarding individual or joint liability against members of the BoD to request the return of benefits or to compensate for damages to the company or others in the following cases:[37]

- Committing a breach of the responsibilities of the company's managers according to laws.
- Failure to implement or fully and punctually perform their assigned rights and obligations as prescribed by law, the Company Charter, resolutions or decisions of the BoD.
- Abuse of powers and positions or use of company information, know-how, business opportunities, and other assets for their own personal benefit or the benefit of other organizations or individuals.

Best practice

To effectively enforce provisions that regulate the liability of directors, it is recommended that the company keep detailed minutes (and possibly verbatim reports) of meetings. The BoD must retain detailed minutes of BoD meetings to determine who voted for a particular decision and who could be held liable (to the extent the court considers such factors). In addition, the company should:

- Encourage directors to perform their duties properly.
- Take measures to terminate the authority of directors responsible for inflicting losses.
- Hold directors responsible when they do not fulfil their obligations towards the company.

↘

37 *LOE, Article 166, Clause 1.*

Managing a company's affairs is a complex process. Even when acting reasonably and in good faith, the BoD may make decisions that are adverse to the company's interests. Companies should allow their directors to protect themselves from, or at least limit liability for, losses incurred while they fulfil their duties. Such mechanisms may include:

- Liability insurance.
- Provisions in the charter and internal regulations indemnify directors against claims, litigation expenses and liabilities in certain circumstances.

A company may wish to obtain liability insurance for directors to cover the risk their actions might result in losses to the company or third parties. Liability insurance for directors should allow the company to use civil law remedies more productively. The protections that such insurance offers may help the company to attract competent directors. In addition, companies may reimburse a director for expenses incurred in defending a claim related to its role as a BoD member if it acted:

- Honestly.
- In good faith.
- In the best interests of the company and key stakeholders.
- In compliance with the law, the charter and internal regulations.

6.3. Qualifications

6.3.1 Who Can Be a Director?

Under the LOE, a director must meet the following requirements:[38]

- Not be prohibited from management of enterprises as provided for in the LOE. Individuals prohibited from management of enterprises include:
    - o Those from State agencies and units of armed forces using State-owned assets to establish enterprises to make profits for their agencies or units.
    - o Officials, civil servants and public employees in compliance with the Law on Officials and Civil Servants and the Law on Public Employees.
    - o Officers, non-commissioned officers, career service members and national defence workers and employees in agencies and units of the People's Army of Viet Nam, officers and professional non-commissioned officers in Public Security of Viet Nam agencies and units.

38 *LOE, Article 155, Clauses 1a & b.*

- Professional leaders and managers of State-owned enterprises, except for those designated and authorized representatives to manage State-owned stakes in enterprises or to manage State-owned enterprises.
- Minors, persons whose capacity for civil acts is restricted or lost, persons whose capacity for civil acts is restricted or lost and organizations without legal entity status.
- Persons being examined for penal liability, held in temporary detention, serving an imprisonment penalty, performing administrative handling measures at a compulsory drug rehabilitation establishment or compulsory education establishment, or prohibited by the court from holding certain positions or practicing certain professions or performing specific jobs.

- Has professional qualifications and experience in business administration in the sectors and lines of business of the company and not necessarily a shareholder of the company, unless otherwise prescribed by the Company Charter.

A person may be a member of the BoD of more than one company,[39] provided that the person does not hold directorship at more than five other companies.[40]

For a State-owned company, a BoD member must not be a relative of the CEO or any other manager of the company or a person with authority to appoint managers of the parent company.[41]

The LOE defines a "related person" as an organization or individual with a direct or indirect relationship with an enterprise in the following cases:[42]

I. The parent company, its managerial levels and legal representative, and the persons competent to appoint managers of the parent company.

II. A subsidiary, its managerial levels and legal representative.

39 *LOE, Article 155, Clause 1c.*
40 *Decree No.155/2020/ND-CP: Article 275.*
41 *LOE, Article 155, Clause 1d.*
42 *LOE, Article 4, Clause 23.*

III. An individual, organization or group of individuals or organizations with the ability to control operations of the enterprise through ownerships, acquisition of shares, capital contributions, or the ability to influence the decision-making process of the company.

IV. A manager of the enterprise, legal representative, supervisors.

V. Wife, husband, natural father, natural mother, adoptive father, adoptive mother, father-in-law, mother-in-law, natural children, adopted children, children-in-law, biological siblings, brothers-in-law, sisters-in-law of any managers, legal representatives, supervisors, members and shareholders holding the controlling capital contribution or controlling shares.

VI. An individual who is the authorized representative of the company or organization mentioned in Points I, II and III.

VII. An enterprise in which an individual, company or organization mentioned in Points (I) to (V) controls the decision-making process of such company.

A comprehensive definition of "related parties" should be broad enough to encompass relevant entities and transactions that pose a potential risk of exploitation and, at the same time, not be easily circumvented and allow for strict enforcement. The company should adopt and publish its own definition of related parties that encompasses all requirements of the Law of Credit Institutions (if relevant), the LOE, securities regulations and the International Accounting Standard (IAS 24). Any list of related parties should not be considered definitively exhaustive, as additional related parties may surface over time. Ultimately, the classification of a related party should hinge upon an individual's or entity's current or anticipated ability to control or influence decision-making within the company.[43]

Under the Company Charter: Members of the BoD are not necessarily shareholders of the company. The Company Charter may also set out additional criteria and conditions which a director or a prospective director must satisfy, provided that such requirements do not violate basic rights of shareholders.[44]

43 *IFC (2015) Viet Nam Guidebook for Banks: Related Party Transactions.*
44 *Circular No. 116/2020/TT-BTC, Model Charter, Article 25.*

Other requirements: Although not expressly determined by the LOE, it is implied that a legal entity cannot be a director, although an individual who happens to be a representative of a legal entity can be elected to the BoD. In this case, the individual elected to the BoD may only serve in the capacity of a director and not as a representative of the legal entity. It must act in the interests of the company on whose BoD it is sitting and not of the company it is representing. The directors of a company subject to industry-specific regulations – such as a bank, insurance or securities company – may be subject to stricter requirements. It would be prudent for companies subject to industry-specific regulations to carefully investigate their industry's requirements while selecting directors.

Best practice

At the beginning of a term, every BoD member must fulfil all conditions required by law, corporate governance regulations and company internal documents. In the event of any divergence with these conditions during the term, the Board member should inform the Chairperson of the Board. All conditions for Board members shall be applicable to directors elected after a BoD vacancy.

Upon the BoD's proposal, the GMS shall adopt a resolution on necessary conditions for the election of Board members, taking into consideration the nature of the company's activities and its purposes. These conditions can be general if applicable to all directors, and specific if applicable to a particular director.

To avoid conflicts of interest, individuals should not be elected to the company's BoD when they are a:

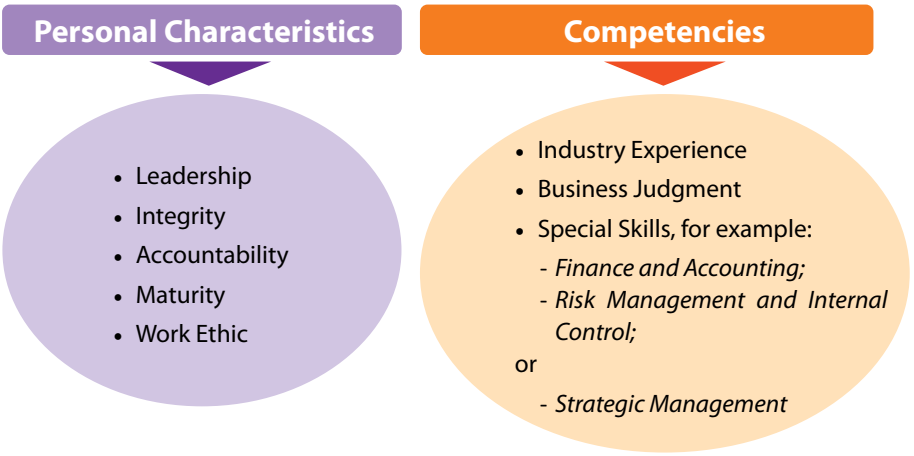
- Director of a competing company.
- Manager of a competing company.
- Employee of a competing company.

Nominees for the BoD should also not be related to suppliers, affiliated persons nor employees of the independent External Auditor.

6.3.2. Qualifications of Directors

Directors should possess the necessary skills and experience to contribute to the work of the BoD. Figure 4 illustrates the personal characteristics and competencies required for this task.

Figure 4. Recommended Characteristics and Competencies for Board of Directors Members



There are no legal requirements with regards to the qualification criteria for directors. However, companies may find it useful to include requisite qualifications in their internal company documents, such as charters, regulations or other policies.

According to Viet Nam's Corporate Governance Code of Best Practices, collectively, the Board should possess a diversified and broad range of views, expertise, skills, and competencies sufficient to provide effective stewardship and oversight of the company.[45]

Aside from qualifications of directors, considerations for Board composition should consider other factors, as listed in Figure 5.

45 *Viet Nam's Corporate Governance Code of Best Practices, Principle 2.1.*

Figure 5. Considerations for Board Composition

Type	• Executive - Non-Executives - Independents
Experience	• Industry - Geographical - Market
Subject Expert	• Financial - Risk - Legal - Other
Personal Attributes	• Leaders - Tacticians
Diversity	• Age-Gender - Cultural
View Points	• Risk Adversity - Differing Perspectives
Other Value Added	• Business Contacts - Reputation

Best practice

Although the right mix of skills vary across companies, the following Board expertise is useful to consider:

- Financial, including knowledge of finance, accounting and audit.
- Risk management.
- Marketing: an understanding of marketing techniques and practices.
- Information technology: an understanding of systems for storing, retrieving and transferring information.
- Professional experience: years of professional experience in the relevant sector (15-20 years).
- Legal: knowledge of the regulatory environment of the relevant industry related to the company and understanding of the regulatory, legal, fiduciary and ethical requirements affecting directors.
- Business management: familiarity with up-to-date business management techniques and related ethics.
- Business environment: awareness of major external influences on the company and commercial environment, including political, economic, environmental, social and technological risks and opportunities.
- Sector-specific experience: familiarity with industry trends and developments to guide management in setting strategy.
- International experience: knowledge of operations in a foreign country can be of great benefit, for example in case of opening offices or launching products overseas.

Equitable gender representation, with at least two female directors, should also be a priority in Board composition.

In addition, regarding the qualifications of Board members, some characteristics and skills required include:

- Alignment and commitment to the organization's principles, values, and Code of Conduct.
- Strategic vision.
- Willingness to defend their point of view, based on their own judgement.
- Ability to communicate.
- Time availability.
- Ability to work as part of a team.
- Knowledge of corporate governance best practices.
- Ability to interpret management, accounting, and financial or non-financial reports.

A Board should utilize a skills matrix to ensure a balanced composition of expertise that aligns with the company's strategic objectives. This tool aids in identifying gaps in skill sets, promoting diversity, and enhancing Board effectiveness. By regularly assessing its collective skills against current and future needs, the Board can make informed decisions regarding its composition, recruitment, and training. An example of a skills matrix is provided in Figure 6.

Figure 6. A Skills Matrix Example

Qualifications and Attributes	Director 1	Director 2	Director 3	Director 4	Director 5	Director 6	Director 7	Director 8	Director 9	Director 10	Director 11
Accounting/Auditing	●	●	●	●			●	●	●	●	●
Business Operations	●	●	●	●	●	●	●	●	●	●	●
Capital Management	●	●	●	●		●	●	●	●	●	●
Corporate Governance Leadership		●	●	●	●	●	●	●	●	●	
Financial Expertise/Literacy	●	●	●	●	●	●	●	●	●	●	●
Independence	●	●	●	●	●	●	●	●		●	●
Industry Experience		●	●	●	●	●	●		●	●	
International		●					●		●	●	●
Investment Markets		●			●		●			●	
Other Recent Public Board Experience	●		●	●	●	●		●	●		

Public Company Executive Experience	●	●	●	●	●		●		●	●	●
Regulatory/Risk Management	●	●		●	●	●	●	●	●	●	●
Technology			●		●						●
Demographic Background											
Tenure (Years)	5	11	0	2	4	10	6	13	3	3	3
Age (Years)	59	71	59	61	62	61	56	68	49	61	57
Gender (Male/Female)	M	M	F	M	F	M	M	F	M	M	M

Notwithstanding the above, there are requirements applicable to companies regulated by industry-specific laws and regulations, such as for banks, insurance and securities companies. In which case, the directors of the BoD may need to satisfy certain qualification requirements.

For instance, in addition to requirements set out in the *Section 6.3.1 - Who can be a director?* directors of a bank must also: (i) have a university degree or higher, (ii) have a minimum of either three years' management experience in a credit institution or five years' management experience in an enterprise operating in the finance, banking or accounting industries, or other enterprises whose equity is at least equal to the legal capital for the respective type of credit institution, or five years working directly in the departments of finance, banking, accounting or auditing.[46] Again, it would be prudent for companies subject to industry-specific regulations to carefully examine their industry's requirements while selecting directors.

46 *Law on Credit Institutions (47/2010/QH12, 61/2010/QH12), Article 50, Clause 1.*

Best practice

The charter should set forth the qualifications criteria for directors. In general, directors should have:

- Ability to relate to the interests of all stakeholders and make well-reasoned decisions.
- Professional expertise and education to be effective.
- International business experience, knowledge of national issues and trends, market knowledge, products/services and competitors.
- Ability to translate knowledge and experience into solutions.

It may, however, be difficult for the company to determine whether a potential director possesses these attributes. Moreover, a brief description of such qualifications in the Company Charter may lead to ambiguity and thus be of little use. Instead, companies may wish to include the above-mentioned criteria in their internal regulations or other documents. Indeed, companies in the United States use corporate governance guidelines for this purpose.

Shareholders should be informed of the directors' qualifications. The list of candidates for the BoD should indicate whether, at the time of election, the candidate is or will be:

- The CEO.
- Management member or a company officer.
- Able to meet the qualifications of an independent director.

The background of BoD candidates should be checked for a criminal record and past administrative offences not *de minimis* in nature to establish whether candidates meet requirements set out in the LOE, corporate governance regulations and the Company Charter.

During its term, the BoD should comprise members who in totality have the knowledge, capability and professional experience necessary for the successful direction of the company. At least one member must have listed company finance and accounting knowledge and experience.

6.4. Election and Dismissal

6.4.1. Election and Term of Directors

BoD members are elected at either annual or extraordinary meetings of the GMS.[47] The GMS elects directors[48] for a term of no more than five years that commences from the moment they are elected.[49] Despite the expiration of a BoD's term, it continues to serve until a new BoD is elected.[50]

There are no limitations on how many times directors can be re-elected. An individual may only be elected as an independent member of the BoD for no more than two consecutive terms.[51]

Best practice

Companies can maintain their vitality and ability to adapt to new challenges by changing the composition of their BoD. Non-executive directors can lose some of their (independent) edge if they remain on a Board for too long. A company may wish to impose term limits, either for the entire BoD or a certain percentage, to keep its members focused. Either way, reappointment should not be automatic, but a conscious decision by shareholder(s) and the director concerned.

In accordance with French law, for example, a director's mandate may not exceed six years unless the GMS decides to renew this mandate, and directors aged more than 70 years may not exceed one-third of Board membership. In this respect, the Hellebuyk Commission recommends that directors' mandates should not exceed four years and the number of directors over 65 years should not exceed one-third of the Board membership. The French Corporate Governance Code provides that the duration of a director's term of office, set by the internal regulations, should not exceed a maximum of four years to enable shareholders to rule upon their appointment with sufficient frequency.

Singapore's CG Code requires companies to 'rigorously' review the independence of directors who have served for more than nine years from the date of first appointment. If the Board chooses to retain long-serving directors, the code requires companies to explain and defend why that director should be considered independent.

47 *LOE, Article 140, Clause 1b & Article 160, Clause 4a, b.*
48 *LOE, Article 138, Clause 2c.*
49 *LOE, Article 154, Clause 2.*
50 *LOE, Article 154, Clause 3.*
51 *LOE, Article 154, Clause 2.*

6.4.2. Nomination of Candidates for the BoD

Shareholders or groups of shareholders holding more than 10 percent of the total number of ordinary shares or a smaller percentage as specified in the Company Charter have the right to nominate candidates for the BoD.[52] The existing BoD, Supervisory Board and other shareholders may nominate candidates for the BoD if the number of candidates nominated by qualified shareholders is insufficient.[53]

The list of candidates for the BoD of banks and financial institutions must be approved by the Governor of the State Bank of Viet Nam.[54]

6.4.3. Information about BoD Nominees

After candidates for the BoD have been nominated, the company shall publish information about such candidates at least 10 days before the opening date of the GMS on the company's website for shareholders to study their profiles before voting. Each candidate shall prepare a written declaration that the information is correct, including:[55]

- Full name, date of birth.
- Qualifications.
- Work experience.
- Other managerial positions, including positions in the BoDs of other companies.
- Interests relevant to the company and related parties.
- Other information (if any) specified in the Company Charter.
- In the case of a listed company, information about the companies in which the candidate is a member of a BoD, other managerial positions and their interests in these companies (if any).

52 *LOE, Article 115, Clause 5.*
53 *LOE, Article 115, Clause 5b.*
54 *Circular No. 22/2018/TT-NHNN, Articles 3 and 4.*
55 *Circular No. 116/2020/TT-BTC, Article 25, Clause 1.*

Best practice

Shareholders should receive sufficient information to assess the capacity of BoD nominees to fulfill their duties and, if applicable, to ascertain their independence. Some useful items of information include:

- Identity of the candidate.
- Identity of the shareholder (or group of shareholders) that nominated the candidate.
- Age and education background of the candidate.
- Professional qualifications and experience.
- Positions held by the candidate during the last five years.
- Positions held by the candidate at the moment of its nomination.
- Evaluation report on the candidate's work history with the company as a member of the BoD, in case of its reappointment.
- Nature of the relationship between the candidate and company.
- Other BoD memberships or official positions held by the candidate.
- Other nominations of the candidate for the BoD or official positions.
- Candidate's relationship with affiliated persons of the company.
- Candidate's relationship with major business partners of the company.
- Shares held in the company.
- Committee membership.
- Information related to the financial status of the candidate and other circumstances that may affect its duties and independence as a Board member.
- Refusal of the candidate to respond to an information request of the company.

Information about BoD nominees should be made available to shareholders before the GMS (21 days prior to the GMS). This information should be available at the company's head office and other places specified in the GMS notification. Posting this information online, preferably on the company's website, is a simple and cost-effective method to ensure public access.

6.4.4. Election of Directors

All directors must be elected by cumulative voting.[56] This rule is applicable to all joint stock companies. Cumulative voting is a system that helps minority shareholders pool their votes to elect a representative to the BoD.

56 *LOE, Article 148, Clause 3.*

How Cumulative Voting Works

Cumulative voting works as follows:[57]

- Each shareholder shall have a total number of votes that is proportional to its shares multiplied (x) by the number of members to be elected to the BoD.
- Each shareholder has the right to accumulate all or part of its total votes for one or more candidates.
- Elected members of the BoD shall be determined by the number of votes they receive in descending order, starting from candidates who receive the most votes until the number of members is sufficient according to the Company Charter.
- If there are two or more candidates who obtain the same number of votes to fill the last position on the BoD, they shall be voted on again or selected according to the voting criteria or the Company Charter.

Cumulative Voting and Collective Action

Cumulative voting increases the likelihood that minority shareholders elect a representative to the BoD. In order to be effective, minority shareholders must organize themselves to vote. For this, they must:

- Have the resources and skills to campaign for candidates.
- Make use of the shareholder list to contact other shareholders.
- Be able to use cumulative voting strategically.

57 *LOE, Article 148, Clause 3.*

Mini Case 1

The following mini case illustrates how shareholders, in particular minority ones, can calculate the minimum number of votes required to elect one BoD member. This will help them synergize their collective action to elect a representative and have a voice on the BoD.

In this case, a company has 2,500 minority shareholders holding a total of 3,000 (or 20 percent) of voting shares, and one majority shareholder holding a total of 12,000 (or 80 percent) of voting shares. The charter states that the BoD has nine members. The 2,500 minority shareholders hold 27,000 votes (3,000 shares x 9 votes) and the majority shareholder has 108,000 votes (12,000 shares x 9 votes). The nine candidates who receive the most votes are elected to the BoD.

A formula can be used to calculate a minimum number of votes to elect one director:

$$\frac{nS}{D+1} + 1 = \frac{9 \times 15{,}000}{9+1} + 1 = 13{,}501 \text{ shares}$$

Where D — the number of directors to be elected, S — the number of outstanding voting shares and n — the total number of directors the majority shareholder wants to elect (n = 9 directors in this example).

For this formula to work, shareholders must know the number of voting shares the company has in total (S), how many directors must be elected (D) and how many candidates they want to elect to the BoD. The formula indicates that shareholders must have 13,501 votes to ensure that one director is elected. Minority shareholders, in this example, hold 27,000 votes which will enable them to elect at least one director, should they vote collectively.

Relationship between the Number of Directors and the Effectiveness of Cumulative Voting

There is a direct relationship between the effectiveness of cumulative voting and the number of directors. The higher the number of directors to be elected, the greater the opportunity for minority shareholders to elect a representative to the BoD. This conclusion can be drawn from the results of the following three examples:

- If the charter requires that a company elects five BoD members, a shareholder (or a group of shareholders) holding approximately 16.7 percent of the total number of voting shares could elect one director.[58]
- If the company must have at least seven BoD members, a shareholder (or a group of shareholders) holding around 12.5 percent of the total number of voting shares could elect one director.[59]
- In a company with nine BoD members, a shareholder (or a group of shareholders) holding a mere 10 percent of voting shares could secure one position on the BoD.[60]

6.4.5. Dismissal of Directors

The GMS shall dismiss a member of the BoD from office in the following cases:[61]

- Failure to satisfy the stipulated criteria and conditions of a director.
- Submits a letter of resignation that is approved.
- Other cases as stipulated in the Company Charter.

The GMS shall discharge a member of the BoD from office in the following cases.[62]

- Failure to participate in activities of the BoD for six consecutive months, except *force majeure* cases.
- Other cases as stipulated in the Company Charter.

The dismissal or discharge of BoD members shall be decided by the GMS by voting,[63] and be announced in accordance with regulations on information disclosure.[64]

58 *Using the figures in the mini case, ((1x15,000)/(5+1))+1=2,501 shares. (2,501/15,000) x 100% = 16.7%.*
59 *According to the formula: ((1x15,000)/(7+1))+1=1,876 shares. (1,876/15,000) x 100% = 12.5%.*
60 *According to the formula: ((1x15,000)/(9+1))+1=1,501 shares. (1,501/15,000) x 100% = 10%.*
61 *LOE, Article 160, Clause 1.*
62 *LOE, Article 160, Clause 2.*
63 *Circular No. 116/2020/TT-BTC, Model Regulations on BoD's operation, Article 8, Clause 4.*
64 *Circular No. 116/2020/TT-BTC, Model Regulations on BoD's operation, Article 10, Clause 2.*

6.5. Size and Composition

6.5.1. Number of Directors

Unless the charter specifies otherwise, the number of directors shall be in accordance with that set out in the LOE. A BoD must have a minimum of three directors and a maximum of 11 directors.[65] In addition, the charter must specify the number of directors who must reside in Viet Nam.

When determining the size of its BoD, beyond following legal requirements, a company should be guided by the specific needs and interests of its shareholders and key stakeholders. The number of directors chosen should enable the Board to:

- Hold productive and constructive discussions.
- Make prompt and rational decisions.
- Efficiently organize the work of all committees.

Having either too few or many directors can impede effective decision-making. A small BoD may not allow the company to benefit from an appropriate mix of skills and breadth of experience. On the other hand, a larger BoD is typically more difficult to manage and can make consensus building a time-consuming and challenging task. The key to selecting the optimal BoD size lies in striking an effective balance between the two.

Best practice

The number of BoD members may vary according to the company's industry, size, complexity, projected life cycle, and which committees need to be created. An odd number of Board members between five and 11 is recommended.[66] The Board should aim to have at least two female members, or comprise 30 percent of the Board, to optimize the benefits of gender diversity.

65 *LOE, Article 154, Clause 1.*
66 *Viet Nam's Corporate Governance Code of Best Practices, item 2.1.7.*

6.5.2. Categories of Directors

International practices distinguish between different categories of directors – executive, non-executive and independent – according to the degree to which such directors are involved or related to company affairs.

Executive Directors

Although the term "executive directors" is not specifically defined under the LOE[67] and the Model Charter, it is often interpreted to comprise directors who also hold an executive position in the company, namely that of:

- The CEO, Deputy CEO or any other senior executive.

In other words, members of management who act concurrently as directors on the BoD are considered executive directors. In Viet Nam's Corporate Governance Code of Best Practices, an executive director is defined as a director who has executive responsibility for day-to-day operations of part or all of the organization.

Further, it is recommended that the CEO should not simultaneously serve as the Chairperson of the BoD (in international practice, so-called "CEO-duality"). The Model Charter applicable to public companies prohibits the Chairperson from serving concurrently as the CEO.[68]

Arguments supporting a separation include:

- The roles of the Chairperson and CEO are fundamentally different. While the CEO runs the business, the Chairperson runs the Board.
- If the positions of Chairperson and CEO are combined, then Board oversight of the executive – and by the Chairperson-CEO in particular – becomes difficult due to the inherent potential conflict. The separation of the two positions is, therefore, a prerequisite to ensure the Board's independence.
- A non-executive/independent chairperson is likely to be more active in guiding the Board in fulfilling its main functions, particularly strategic oversight.

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67 *Although Article 155, Law on Enterprises 2020, has a requirement for an "independent director", the term "executive directors" was not mentioned specifically.*

68 *Circular No. 116/2020/TT-BTC, Model Charter, Article 29.*

- A non-executive/independent Chairperson is ideally placed to counter the (potential) short-term focus of the CEO with an outside, long-term perspective.
- Combining the roles can lead to difficulties in succession planning. If a combined CEO-Chairperson was to resign, be dismissed or become incapacitated, the Board must deal with two key vacant roles.

As per Viet Nam's Corporate Governance Code of Best Practices,[69] the Chairperson of the Board and the CEO are separate persons to ensure an appropriate balance of power, increased accountability, and greater capacity of the Board for independent decision-making. It is also recommended that the Chairperson is an independent director. In cases where the Chairperson is not independent and where the roles of Chair and CEO are combined, putting in place proper mechanisms ensures independent views and perspectives. More importantly, it avoids the abuse of power and authority, and potential conflicts of interest. A suggested mechanism is the appointment of a strong "lead director" among the independent directors and it is also recommended that boards are comprised of a majority of independent directors if the Chairperson is not independent.

Non-Executive Directors

According to Viet Nam's Corporate Governance Code of Best Practices[70], a non-executive director has no executive responsibility and does not perform any work related to the operations of the company, but is somehow related to the company. Effective non-executive directors should have the following personal attributes:

- Integrity and high ethical standards.
- Sound judgment.
- Ability and willingness to challenge and probe.
- Strong interpersonal skills.

According to the Model Charter, at least one-third of members of the BoD shall be non-executive members, which is lower than recommended in

69 *Viet Nam's Corporate Governance Code of Best Practices, Principle 3.5.*
70 *Viet Nam's Corporate Governance Code of Best Practice, Page 18.*

Viet Nam's Corporate Governance Code of Best Practices (see Best Practice Box below). If the company is unlisted, at least one-fifth of its BoD members must be independent. In case the BoD of this unlisted public company has fewer than five members, at least one must be an independent member.[71]

For a listed company, the total number of independent members of the BoD shall satisfy the following requirements:[72]

- At least one independent member if the BoD has three to five members.
- At least two independent members if the BoD has six to eight members.
- At least three independent members if the BoD has nine to 11 members.

Best practice

According to Viet Nam's Corporate Governance Code of Best Practices, the Board should be composed of at least two-thirds of non-executive directors who possess the necessary qualifications to effectively participate and help secure objective, independent judgments on corporate affairs and to substantiate proper checks and balances.

Most international and national codes of corporate governance recommend that a BoD be composed of a majority of non-executive directors who contribute:

- An outside perspective and greater impartiality in their judgments.
- Additional external experience and knowledge.
- Useful contacts.

In most European Union countries, non-executive directors normally exercise oversight over the financial and strategic decision-making functions of the company. Aside from these, there are three areas in need of disinterested monitoring by non-executive directors:[73]

- Nomination of directors.
- Remuneration of senior managers and directors.
- Internal and external audits.

71 *Circular No. 116/2020/TT-BTC, Model Charter, Article 29.*

72 *Circular No. 116/2020/TT-BTC, Model Charter, Article 26, Clause 3.*

73 *Report of the High Level Group of Company Law Experts on a Modern Regulatory Framework for Company Law in Europe, November 2002, page 60. See also: http://ec.europa.eu/internal_market/company/docs/modern/report_en.pdf.*

In the United Kingdom, the Higgs report groups the role of the non-executive director around four issues:[74]

- *Strategy*: Non-executive directors should constructively challenge and contribute to the development of the company's strategy.
- *Performance*: Non-executive directors should scrutinize the performance of management in meeting agreed goals and objectives and monitor the reporting of performance.
- *Risk*: Non-executive directors should satisfy themselves that financial information is accurate, and that financial controls and systems of risk management, including E&S risks, are robust and defensible.
- *People:* Non-executive directors are responsible for determining appropriate levels of remuneration for executive directors and have a prime role in succession planning as well as appointing and removing senior management.

The Model Charter refers to non-executive and independent directors in the context of restricting the number of executive directors that may sit on the BoD. Table 1 summarizes the relevant legal provisions concerning executive and non-executive directors' functions.

Table 1. Restrictions on Executive Directors and Non-Executive Directors

Questions	Answer Based on Current Laws	Answer Based on Best Practices
Can a BoD member be a member of management?	Yes, but executive members must occupy a maximum two-thirds of BoD seats or less (a minimum of a third of non-executive directors).	The Board should be composed of at least two-thirds of non-executive directors.
Can a BoD member be a CEO?	Yes, unless prohibited by the Company Charter.	Yes, the CEO being on the BoD will be counted as an executive director.
Can the Chairperson of the BoD be the CEO?	(a) Yes, for a non-listed joint stock company, unless prohibited by the Company Charter. (b) No, for a listed company.[75]	Not recommended. It is recommended that the Chairperson is an independent director. The Board should designate a lead director among the independent directors if the Chairperson of the Board is not independent, including the case where the positions of the Chairperson of the Board and CEO are held by one person.
Can the Chairperson of the BoD be a member of management other than the CEO?	Yes, unless prohibited by the Company Charter.	

74 *Derek Higgs, Review of the Role and Effectiveness of Non-Executive Directors, January 2003. See also: http://www.ecgi.org/codes/documents/higgsreport.pdf*

75 *LOE, Article 156, Clause 2.*

Independent Directors

International practices distinguish between independent directors and non-independent directors. The Viet Nam Corporate Governance Code of Best Practices provide that an independent director is a director who has no relationship with the company, its related corporations, its substantial shareholders (i.e., holding 1 percent of voting shares or more) or its officers that could interfere, or be reasonably perceived to interfere, with the exercise of the director's independent business judgement in the best interests of the company. To promote independent judgments by all Board members and the integrity of the governance system, Boards should have at least one-third independent directors.

According to the law, the independent member of the BoD shall satisfy the following criteria and conditions:[76]

- Not be a current employee of the company or its parent company or subsidiaries. Not work for the company or its parent company or subsidiaries for at least three preceding years.
- Not be a person currently entitled to salary or remuneration from the company, except allowances to which members of the BoD are entitled in accordance with regulations.
- Not be a person whose spouse, natural father, adoptive father, natural mother, adoptive mother, biological children, adopted children and siblings are not major shareholders of the company, a manager of the company or its subsidiaries.
- Not be a person directly or indirectly owning at least 1 percent of the total voting shares in the company.
- Not be a person who used to be a member of the BoD or the Supervisory Board of the company for at least five preceding years, except for the case of being elected for two consecutive terms.

The presence of independent directors in the Board ensures the exercising of independent judgment on corporate affairs and proper oversight of managerial performance, including prevention of conflicts of interests and balancing competing demands of the corporation.

76 *LOE, Article 155, Clause 2.*

Best practice

Independent directors can make a substantial contribution to essential decisions of the company, especially in evaluating executive performance, setting executive and director remuneration, reviewing financial statements, reviewing related party transactions, and resolving corporate conflicts. Independent directors give investors additional confidence that the BoD's deliberations will be free of apparent bias. Companies are advised to disclose information about independent directors in the annual report.

IFC defines an independent director as who:

1. Has not been employed by the company or its related parties in the past five years.
2. Is not affiliated with a company that is an advisor or consultant to the company or its related parties.
3. Is not affiliated with a significant customer or supplier of the company or its related parties.
4. Has no personal service contracts with the company, its related parties, or its senior management.
5. Is not affiliated with a non-profit organization that receives significant funding from the company or its related parties.
6. Is not employed as an executive of another company where any of the company's executives serve on that company's BoD.
7. Is not a member of the immediate family of an individual who is, or has been during the past five years, employed by the company or its related parties as an executive officer.
8. Is not, nor has been in the past five years, affiliated with or employed by a present or former auditor of the company or of a related party.

If a director ceases to be independent, it should immediately notify the BoD explaining why the criteria of independence no longer apply. The BoD is then advised to:

- Notify shareholders that the director is no longer independent.
- Disclose information about independent directors in the company's annual report, giving shareholders the opportunity to verify any changes in the status of independent directors.

In any event, independent directors should refrain from actions that may compromise their independent status.

Other international and national corporate governance codes have similar definitions for independent directors. In the United Kingdom, for example, a non-executive director is considered independent when the BoD determines that the director is independent in character and judgment, and there are no relationships or circumstances which could affect, or appear to affect, a director's decision. Such relationships and circumstances would include those in which the director:[77]

- Is or has been an employee of the company or group within the last five years.
- Has, or has had within the previous three years, a material business relationship with the company, either directly or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company.
- Has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme, or is a member of the company's pension scheme.
- Has close family ties with any of the company's advisers, directors or senior employees.
- Holds cross-directorships or has significant links with other directors through involvement in different companies or bodies.
- Represents a significant shareholder.
- Has served on the BoD for more than nine years since their first appointment.

The large number of definitions with detailed qualifications may give rise to confusion. In reality, understanding and defining independence need not be complex. The Council of Institutional Investors (CII), a grouping of some of the world's largest institutional investors, defines an independent director plainly in the following way: "Stated most simply, an independent director is a person whose directorship constitutes his/her only connection to the corporation." This cuts to the heart of the matter. For those interested in learning how to apply this simple definition in practice, the CII also lists specific circumstances that compromise independence.[78]

Finally, it should be noted that director independence is not a panacea. The New York Stock Exchange is a telling example. In 2003, the exchange was enveloped in a scandal over the excessive compensation of its CEO, despite the fact that compensation levels had been approved by a committee staffed and chaired by independent directors.

77 *The U.K. Corporate Governance Code, Financial Reporting Council, January 2024, https://media.frc.org.uk/documents/UK_Corporate_Governance_Code_2024_kRCm5ss.pdf*

78 *For more information on the CII, see: https://www.cii.org/corp_gov_policies#indep_director*

6.6. BoD Committees

As the business environment becomes more complex, the demands on and responsibilities of the BoD and its members continue to grow. To overcome these challenges, the BoD may choose to set up specialized committees to support the Board in the performance of its functions and avoid any conflicts of interest. More specifically, BoD committees:

- Assist the BoD in handling a greater number of complex issues more efficiently, by allowing specialists to focus on specific issues and provide detailed analysis and recommendations back to the Board.
- Allow the BoD to develop subject-specific expertise on the company's operations, most notably on financial reporting, risk, and internal control.
- Enhance the objectivity and independence of the BoD's judgment, insulating it from the potential undue influence of managers and controlling shareholders.

It is crucial that committees are understood to be part of the BoD. The BoD establishes committees, sets their terms of reference through committee internal regulations, appoints their members, and turns their recommendations into action.[79]

The BoD must issue detailed regulations on the establishment, duties and responsibilities of each BoD committee and its members.[80]

Types of Committees

A company may establish several types of committees, as discussed in more detail in Table 2. Committees are not a must, except for the Audit Committee of a public company without a Supervisory Board.[81] The G20/OECD Principles of Corporate Governance and Viet Nam Corporate Governance Code of Best Practices suggest that the BoD set up committees to assist it. The types of committees recommended include an Audit Committee, Risk Management Committee, Corporate Governance Nomination and Remuneration Committee.[82]

79 *Circular No. 116/2020/TT-BTC, Model Charter, Article 31, Clause 1.*
80 *Circular No. 116/2020/TT-BTC, Article 3, Clause 6.*
81 *LOE, Article 137, Clause 1; and Circular No. 116/2020/TT-BTC, Article 7.*
82 *Viet Nam Corporate Governance Code of Best Practices, Principle 4.*

It should be noted that many committees can be complex to manage and may lead to fragmentation of the BoD. It is advisable to establish committees as needed, starting with the most critical ones and then establishing others as experience is gained. The BoD may establish either permanent or ad-hoc Board committees. The most critical committee from the shareholder perspective is the Audit Committee.

Table 2. Different Types of Committees

	Primary Responsibilities	Recommendations for the Committee's Composition
Audit Committee[83]	• Oversee the integrity of the financial statements of the company and any formal disclosures relating to the company's financial performance. • Review the company's internal control and risk management systems. • Review related party transactions under the authority of the BoD or GMS and make recommendations on the transactions that need to be approved by the BoD or GMS. • Oversee the company's internal audit function. • Recommend the appointment, remuneration and terms of engagement of the external auditor for the Board's review and approval before submitting to the GMS for final approval. • Monitor and assess the external auditors' independence and objectivity and the effectiveness of the audit process, primarily when the company uses non-audit services of the external auditors. • Monitor to ensure the company's compliance with all legal and regulatory requirements and other internal regulations.	• The Audit Committee is recommended by the LOE to be composed of two or more members.[84] The Viet Nam CG Code of Best Practices recommends the Board creates an Audit Committee, which should be composed of a minimum of three Board members, all non-executives and a majority of whom should be independent, including the committee chair.[85] • The committee should have collective knowledge of internal audit, International Financial Reporting Standard (IFRS) and Vietnamese Accounting Standards (VAS) accounting, compliance, financial reporting, and control. The chair of the Audit Committee should have financial expertise.[86] • The role and responsibilities of the Audit Committee should • Be covered in a separate charter, which should be adopted by the Board and disclosed on the company's website. The authorities, composition and working procedures specified in the Audit Committee charter should be developed as a practical benchmark against which the performance of the Audit Committee is evaluated.[87]

83 *LOE, Article 161, Clause 3.*
84 *LOE, Article 161, Clause 1.*
85 *LOE, Article 161*, Clause 1.
86 *Viet Nam Corporate Governance Code of Best Practices, Recommended Practices 4.1.2.*
87 *Viet Nam Corporate Governance Code of Best Practices, Recommended Practices 4.1.3.*

Risk Management Committee[88]	• Approve and oversee the company's processes and policies in identifying and managing financial and non-financial risks. • Oversee and monitor senior management's performance in implementing the company's risk management policy. • Review and recommend risk appetite and risk management strategies for Board approval. • Recommend to the Board exposure limits and risk-taking authority delegated to the CEO and senior management. • Consider risk aspects of strategies and proposals by management. • Monitor the effectiveness of the risk management function and ensure there are adequate resources and systems in place to meet the desired level of capability and exceed minimum compliance requirements. • Establish continuing education programs to improve members' knowledge of risk management.	• The Board should establish a Risk Management Committee with at least three non-executive directors, the majority of whom should be independent, including the committee Chairperson. • The Board should adopt a Risk Management Committee charter, which should be made publicly available via the company's website. • The authorities, composition, and working procedures specified in the Risk Management Committee charter should be developed as a practical benchmark against which the committee's performance is evaluated. • Subject to legal requirements on company size, the nature of the business environment and other factors, if there is no urgent need to establish a separate Risk Management Committee, the Audit Committee may combine audit and risk management oversight responsibilities.

88 *Viet Nam Corporate Governance Code of Best Practices, Recommended Practices 4.2.*

Corporate Governance, Nomination and Remuneration (CGNR) Committee[89]	• Develop, recommend and annually review the company's corporate governance policies and oversee corporate governance matters. • Identify individuals qualified to become Board members and recommend such individuals to the Board for nomination and election. • Make recommendations to the Board concerning committee appointments (other than the CGNR Committee). • Coordinate an annual evaluation of the Board, directors and committees. • Ensure compliance with the company's corporate governance policy (manual) and the Code of Conduct. • Assist the Board with discharging its responsibilities relating to the remuneration of directors, CEO, senior management, company secretary and such other members of management as is designated to be considered by the Board. • Oversee administration of the company's compensation and benefits plans. • Prepare an annual report on remuneration policy and practices that will be included in the company's annual report.	• The Board's Corporate Governance, Nomination and Remuneration (CGNR) committee should be composed of at least three qualified non-executive directors, the majority of whom should be independent, including the committee Chairperson. • The Board should adopt the CGNR committee charter, which should be made publicly available via the company's website. • The authorities, composition and working procedures specified in the CGNR committee charter should be developed as a practical benchmark, against which the performance of the CGNR committee is evaluated.[90]

89 *Viet Nam Corporate Governance Code of Best Practices, Recommended Practices 4.3.*
90 *Viet Nam Corporate Governance Code of Best Practices, Recommended Practices 4.3.2.*

Best practice

Board Sustainability Committee

Sound corporate governance underpins a company's ability to effectively manage the risks in its operating environment as well as recognize and capture opportunities. The Board is responsible for providing this underpinning and, as such, the company's sustainable development must be governed as an integral part of Board performance.

For less complex companies with limited sustainability issues, it may be appropriate for the Board to have direct responsibility to ensure that sustainability considerations are integrated into the strategy and execution of business plans. The assumption, in this instance, is that the Board has the capacity and knowledge required to govern the sustainability of the company effectively. Where companies have not achieved even the basic practices level, Board oversight is absent. Alternatively, the Board may establish a committee that oversees sustainability in a more focused and detailed way, in which case the various workstreams or functions that have sustainability duties report to the Board Sustainability Committee.

The role of a sustainability-focused committee at the Board level is to govern the company's interactions with the triple context in which it operates. The triple context is made up of the economy, the environment and society which, in turn, contains various components. The Board Sustainability Committee will be accountable for approving the sustainability policies and frameworks and for overseeing implementation of sustainability policies and frameworks.

(IFC Focus 15: Sustainability Committees: Structure and Practices)

Please see Appendix X for a model of the Sustainability Committee charter.

Authority of BoD Committees

The BoD is a collective body in which:

- All members have equal rights and duties (except for cases of tied votes, whereby the vote of the Chairperson of the BoD shall prevail).[91]
- All members bear joint and collective liability.
- Members act together as a body according to specific decision-making procedures.

91 *LOE, Article 157, Clause 12.*

Although the above suggests that the ultimate decision-making responsibility rests with the entire BoD, in fact BoD committees can resolve and make decisions on issues delegated to them by the BoD. But, resolutions of a committee are only valid and enforceable if a majority of members of such committee who are present and vote at the committee's meeting are also members of the BoD.[92]

Composition of BoD Committees

The BoD shall decide the quantity of members of each committee, but it is recommended that a BoD committee should have at least three members. Committee members can be BoD and external members, but at least one committee member must be a member of the BoD and meet the criteria required of an independent director. Independent directors/non-executive directors shall make up a majority of the committee. One member shall be designated as the Chairperson of the committee under a decision of the BoD.[93] Other parties, most notably managers who are not members of the BoD committee, may be invited to present or elaborate on particular issues but have observer status only. This means they are precluded from conferring or deciding on specific issues. This is to avoid a hybrid structure typically found in BoD of Vietnamese companies where a committee's members include a board director and executives who are not board directors. Such hybrid committees may lack the same level of independence and objectivity as a BoD consisting of only board directors. It is, therefore, highly recommended to establish BoD consisting of solely board directors.

92 *Circular No. 116/2020/TT-BTC, Model Charter, Article 31, Clause 1.*
93 *Circular No. 116/2020/TT-BTC, Model Charter, Article 31, Clause 1.*

Best practice

BoD members should be experienced and knowledgeable. There needs to be a sufficient number of members to accomplish the work at hand. Since the work of BoD committees may involve time-consuming reviews, the participation of directors in multiple BoD committees should be restricted. Before allowing participation in multiple committees, the BoD should review all activities assigned to the committee, estimate time necessary for practical realization of these activities, and the free time that potential members can dedicate to the committee's work. BoD committees may occasionally require the assistance of outside advisors. However, these advisors must not receive BoD committee member status.

Many stock exchanges further recommend that BoD committees be composed of and/or chaired by independent directors. The listing requirements of some stock exchanges, for example the New York Stock Exchange, go further and require a majority of independent directors and the Audit, Nomination, and Compensation Committees to be fully independent.[94]

The Chairperson of a committee is responsible for its effectiveness, regardless of other duties.

Best practice

The Chairperson of a committee plays an essential role in organizing its work. Ideally, committees should be chaired by independent and non-executive directors. This holds particularly true for the Audit, Nomination and Remuneration (Compensation) Committees, which are to be chaired by independent directors according to best corporate governance practices.

The Chairperson of the committee should keep the Chairperson of the BoD informed about its work. In addition, a committee Chairperson should be present at the GMS to respond to shareholders' questions.

A committee Chairperson should:

- At least once every three months, inform the BoD about all material issues related to the committee's work.
- Without undue delay, submit all data/information requested by the BoD.
- Take necessary administrative measures to ensure that the committee performs its tasks.

94 *NYSE Listed Company Manual, Section 303A Corporate Governance Standards, Frequently Asked Questions (2021) https://www.nyse.com/publicdocs/nyse/regulation/nyse/FAQ_NYSE_Listed_Company_Manual_Section_303A_7_28_2021.pdf*

6.7. BoD Chairperson

The Chairperson of the BoD shall be elected from and by the members of the BoD.[95] The Chairperson of a public company must not concurrently act as the CEO.[96]

In case the Chairperson is absent or unable to perform its duties, it shall authorize in writing another member of the BoD to exercise the rights and perform the obligations of the Chairperson following the principles stipulated in the Company Charter. In case no person is authorized or the Chairperson is deceased, missed, held in temporary detention, serving an imprisonment penalty, attending a compulsory drug rehabilitation establishment or compulsory education establishment, fled from its place of residence, has its civil act capacity restricted or lost, has difficulty perceiving and controlling its acts, prohibited by the court from holding certain positions or practising certain professions or performing specific jobs, the remaining members shall select one member to act as the Chairperson in accordance with the principle that the majority of remaining members approves until a new decision of the BoD is available.[97]

The Chairperson has the following rights and obligations:[98]

- Prepare work plans and programs for the BoD.
- Prepare the agenda, contents and documents for meetings of the BoD, convene, chair and preside over such meetings.
- Manage the ratification of resolutions and decisions of the BoD.
- Supervise the implementation of resolutions and decisions of the BoD.
- Chair meetings of the GMS.
- Perform any other duties as set out in the LOE and the Company Charter.

95 *LOE, Article 156, Clause 1.*
96 *LOE, Article 156, Clause 2.*
97 *LOE, Article 156, Clause 4.*
98 *LOE, Article 156, Clause 3.*

Best practice

The Chairperson's other duties or responsibilities should be defined in the internal regulations for the BoD. In addition, the company may wish to draft a position description or terms of reference, which could contain the following elements:

The Chairperson:

- Provides leadership and ensures the BoD's effectiveness.
- Establishes, implements and reviews procedures that govern the BoD's work.
- Schedules a BoD meeting calendar and coordinates it with Board committee chairs.
- Organizes and presents meeting agendas and ensures that all directors receive appropriate information on a timely basis.
- Ensures effective communication between the BoD and executives.
- Ensures provision of accurate, timely, and clear information to and from the other directors.
- Ensures effective communication with shareholders and key stakeholders.
- Arranges annual evaluations of the BoD's performance, as well as of its committees and individual directors.
- Facilitates the effective contribution of non-executive and independent directors and enables constructive relations between executive and non-executive directors.
- Carries out other duties as requested by the GMS and the BoD as a whole, depending on needs and circumstances.

6.8. Meeting and Working Procedures

The BoD is a governing body that operates according to procedures defined by the LOE, the Company Charter, or the company's internal regulations.

6.8.1. Chairperson and BoD Meetings

The Chairperson of the BoD shall be elected at the first meeting of the BoD within seven working days from its election. This meeting shall be convened and chaired by the member who obtains the highest number or percentage of votes. If two or more members get the equal highest number or percentage of votes, they shall be voted for by members under the majority rule to convene the BoD.[99]

Best practice

The first meeting of a newly-elected BoD should be held no later than one month after it is elected. As a matter of convenience, the first BoD meeting can be organized to follow the GMS. In addition, it is recommended that the first BoD meeting:

- Define and confirm the priorities of the BoD.
- Establish committees if appropriate.
- Elect a committee Chairperson.

A company may also wish to develop an induction training for new BoD members that covers, among other topics, an overview of the company's:

- Industry and sector of operation.
- Business operations.
- Current financial situation.
- Strategy.
- Business risks.
- Key employees' background and skills.

99 *LOE, Article 157, Clause 1.*

Best practice

More specifically, the Chairperson facilitates the work of the BoD by:

- Ensuring the effective functioning of the Board, including scheduling meetings, ensuring adequate notice before meetings, timely distribution of appropriate materials in advance of any meeting, and facilitating decision-making on agenda items.
- Encouraging open discussions on issues in a friendly and constructive manner
- Providing BoD members with an opportunity to express their points of view on matters being discussed.
- Facilitating separate meetings of non-executive Board members and establishing the process for such a meeting.
- Ensuring that appropriate orientation for new Board members is organized.
- Being available to shareholders where and when appropriate (e.g. AGM, between Board meetings), though such representation should not vitiate the principle of collective responsibility.
- Being available to the CEO for consultation on an as needed basis.
- Supervising the work of Board committees and liaising regularly with their chairs without interfering with their responsibilities.
- Ensuring an effective, regular process of evaluation of the Board and Board Committees.

In doing so, the Chairperson should act with conviction and, at all times, in the company's best interests. Moreover, the internal regulations or other internal documents should impress upon the Chairperson the responsibility to:

- Encourage directors to express their opinions freely.
- Discuss the opinions of directors openly.
- Initiate the drafting of the BoD's decisions.

Board Meetings. The BoD must follow legal requirements in making valid decisions or risk having them overruled by the courts upon complaints.

Best practice

Directors should ensure that BoD and committee meetings are well-organized and held regularly. Directors should actively participate in the BoD meetings, and each director should:

- Take part in discussions and voting.
- Participate in the work of BoD committees if a member of the Committee.
- Demand a BoD meeting to discuss matters of concern.
- Notify the BoD when unable to attend meetings.

In addition, BoD members should have sufficient time to perform their functions. The BoD should develop rules to regulate the participation of its members on other companies' BoDs. However, the general rule for directorships on multiple BoDs should be based on time constraints. If a director does not have sufficient time, it should not take on the responsibility.

The BoD shall ratify resolutions and decisions by voting at the meetings, balloting or another method specified in the Company Charter. Each member of the BoD shall have one vote.[100]

6.8.2. Schedule of BoD Meetings

Meetings of the BoD shall be held at least once every quarter, and extraordinary meetings may be held on an *ad hoc* basis.[101]

100 LOE, Article 153, Clause 3
101 LOE, Article 157, Clause 2.

Best practice

The BoD should have a work plan and a schedule for meetings that includes the topics to be addressed. The BoD should hold regular meetings at least four times a year. The BoD may, however, wish to hold meetings as often as deemed necessary. Guidance on conducting productive and efficient BoD meetings includes:

- Develop an annual calendar of meetings. This will allow directors to slot the meetings into their agendas. This calendar serves as a guide, as the BoD should hold additional meetings when warranted and, vice versa, cancel meetings when issues are resolved.
- Set an agenda well in advance. This will allow directors to prepare for the task at hand. The Chairperson may wish to send a draft agenda in advance, allowing for comments and suggestions. Place essential issues at the beginning of the agenda. Scheduling meetings early rather than later in the day is often more conducive to fostering productive discussions.

In addition to regular meetings, the BoD needs to organize a meeting to review and approve the annual report. This BoD meeting must occur within two months before the AGM.

6.8.3. Who Has the Right to Convene a BoD Meeting?

The Chairperson typically convenes regular BoD meetings and must do so in any of the following cases:[102]

- Upon request of the Supervisory Board or an independent member of the BoD.
- Upon request of the CEO or at least five other managers.
- Upon request of at least two members of the BoD.
- Other circumstances as stipulated in the Company Charter.

The request must clearly state the objectives and issues required to be discussed and that the decisions are under the authority of the BoD.

The Chairperson of the BoD is obligated to convene a BoD meeting within seven working days from the date of receipt of a request. If the Chairperson fails to convene such a meeting, it shall be liable for any loss caused to the company. The meeting requestee shall have the right to convene a meeting of the BoD in place of the BoD Chairperson.[103]

102 LOE, Article 157, Clause 3.
103 LOE, Article 157, Clause 5.

6.8.4. Proper Notice for BOD Meetings

Relevant information and materials should be sent to directors with notice of the BoD meeting sufficiently in advance to enable directors to review the material thoroughly.

The Chairperson of the BoD or convener of the BoD meeting shall send invitations at least three working days before the meeting date unless otherwise prescribed by the Company Charter. The invitation must specify the meeting's time, location, agenda, issues and decisions. The invitation shall be enclosed with documents used at the meeting and members' ballots. The invitations can be sent by letter, telephone, fax, electronic means, or other methods provided in the Company Charter and are guaranteed to reach the contact address of each member of the BoD registered with the company.[104]

Best practice

Internal regulations or documents should determine the form of notice and method of delivering the most convenient and acceptable materials to all directors (for example, by mail or e-mail). Such delivery method must be sufficiently secure to ensure the notice reaches the director at their registered address.

While the minimum time for the meeting notice and relevant documents to be sent to Board directors is three working days per the LOE[105], it is highly recommended that the company's internal regulations specify a reasonable notice time to ensure that directors have sufficient time to prepare adequately and make informed decisions at BoD meetings.

The ASEAN Corporate Governance scorecard considers having the Board meeting notice and meeting documents sent to Board members at least five working days before the meeting as best practice.[106]

6.8.5. Quorum for BoD Meetings

A quorum is the minimum number of directors that must participate in a meeting for decisions to be valid. Unless the Company Charter or internal regulations require a higher number, a quorum of the BoD consists of three-

104 *LOE, Article 157, Clause 6.*

105 *LOE, Article 157, Clause 6.*

106 *ASEAN Corporate Governance Scorecard's question (item E.3.6): Are Board papers for Board of directors/commissioners meetings provided to the Board at least five business days in advance of the Board meeting?*

quarters (75 percent) of the number of directors.[107]

6.8.6. How Directors Can Participate in BoD Meetings

Directors can participate in voting when they:[108]

- Attend and vote at the meeting in person.
- Authorize another person to attend the meeting and vote.
- Attend and vote via an online conference, electronic voting or other electronic methods.
- Are absent, but send ballots to the meeting by mail, fax or email to the Chairperson or other methods specified in the Company Charter. A vote is sent by post and shall be put in a closed envelope and be delivered to the Chairperson of the BoD at least one hour before the opening time. Votes shall only be opened in the presence of all participants.

Best practice

Although the law does not explicitly impose such a requirement, certain items are of such importance that directors need to be physically present. As such, the company should consider making it mandatory that directors adopt resolutions on such matters in a physical meeting (rather than by ballot or by telephone or remotely). These items include:

- Approval of the strategic plan and the company's financial and business plan.
- Calling an AGM and making decisions on items related to the organization of the AGM.
- Preliminary approval of the annual report of the company.
- Convening or declining a request by third parties to convene an EGM.
- Election of the Chairperson.
- Creation and early termination of the authority of executive bodies.
- Suspension of the CEO and the appointment of an interim CEO.
- Reorganization or liquidation of the company.
- Increasing the charter capital and issuing shares.

Every director is required to attend all meetings of the BoD. However, if a director cannot attend, they may appoint a proxy to participate and vote at a meeting, subject to the approval of a majority of the Board members.[109]

107 *LOE, Article 157, Clause 8.*
108 *LOE, Article 157, Clauses 9 & 10.*
109 *LOE, Article 157, Clause 11.*

Best practice

To prepare adequately before a BoD meeting, each director should:

- Study the meeting documents thoroughly.
- Be aware and advise the BoD of potential conflicts of interest regarding matters being decided at the meeting, if any.
- Request supporting materials. When presented with a particular issue that does not correspond to the director's area of expertise, additional information in the form of studies, independent appraisals or opinions, and other documentation on the subject should be requested before the meeting.
- Check for relevant updates about industry trends, market conditions, and regulatory changes.

When participating in BoD meetings, each director should:

- Listen attentively and ask questions to understand the materials presented.
- Participate actively in discussions and debates related to agenda items.
- Contribute insights and perspectives based on their expertise.
- Respect allotted time for discussions and adhere to the meeting agenda.
- Uphold confidentiality regarding sensitive information discussed during meetings.
- Collaborate effectively with fellow Board members and promote a positive and constructive Board culture.

After the meeting, each director should:

- Promptly follow up on action items and commitments made during the meeting.

6.8.7. Consideration of Written Opinions (Absentee Ballots)

Good corporate governance suggests that the Company Charter or internal regulations should specify that written opinions of directors can be considered in determining the existence of a quorum for BoD meetings and the validity of voting results.

Best practice

The charter, internal regulations or documents should enable BoD members to make decisions based on absentee votes. However, for resolutions required by the charter to be adopted by voting in person, absentee votes expressing opinions in written form should not be counted for the quorum. Companies should develop procedures for absentee voting, including deadlines for delivery of voting ballots and for the return of completed ballots. Directors should have sufficient time to receive the ballots and decide on agenda items. More specifically:

- Clearly outline the specific circumstances or types of decisions eligible for absentee voting.
- Define the format and method for submitting written opinions for absentee voting, ensuring clarity and consistency.
- Establish a secure and confidential process for collecting and handling absentee votes to maintain the integrity of the voting system.
- Clearly communicate the procedures for absentee voting to all Board members to ensure understanding and compliance.
- Specify any required information or documentation that directors must include when submitting their votes in writing.
- Designate a responsible party or office to oversee and manage the absentee voting process, ensuring accountability.
- Consider using secure electronic platforms for submitting absentee votes, considering cybersecurity and data protection considerations.
- Clearly state any conditions or limitations on using absentee voting to avoid misuse or misinterpretation.
- Ensure that the procedures align with legal and regulatory requirements regarding absentee voting.
- Periodically review and update absentee voting procedures to adapt to changes in technology, regulations, or organizational needs.
- Provide a mechanism for directors to seek clarification or additional information on agenda items before submitting absentee votes.
- Establish a process for verifying the authenticity of absentee votes and resolving any disputes or discrepancies.
- Encourage transparency by documenting and reporting the results of absentee votes to all Board members.

6.8.8. BoD Decisions

BoD decisions shall be ratified if approved by a majority of attending members unless a higher percentage is provided by the Company Charter. In case of equal votes, the Chairperson shall have a casting vote.[110] It is acknowledged that a non-independent Chairperson having the casting vote poses a heightened risk. Companies should consider the potential impact on impartial decision-making. They may choose to address this risk by appointing an independent Chairperson or other governance mechanisms outlined in the Company Charter.

6.8.9. Minutes of BoD Meetings

All minutes of meetings of the BoD shall be taken in writing, audio recordings or other electronic means. The minutes shall be made in Vietnamese language (additional foreign languages are permitted) and contain the following information:[111]

- Company name, head office address, the business registration number and registration date of the enterprise.
- Time and location of the meeting.
- Purposes, agenda and content of the meeting.
- Full names of each member attending the meeting or persons authorized to participate in the meeting and method of attending the meeting. Full names of members not attending the meeting and reasons for not attending. The statement confirming the establishment of a quorum at the beginning of the meeting to indicate that the required number of directors was present.
- Information about any guests or observers present at the meeting.
- Any conflicts of interest declared by Board members and actions taken to address them.
- Review and approval of minutes from the previous meeting.

110 LOE, Article 157, Clause 12.
111 LOE, Article 158, Clause 1.

- Any documents, reports, or materials presented during the meeting and summarize their key points.
- Issues to be discussed and voted on at the meeting.
- Summary of opinions of each member attending the meeting.
- Results of voting, indicating members who cast affirmative votes, negative votes, and abstentions.
- Issues ratified and respective affirmative votes. Outline any action items or tasks assigned during the meeting, including responsible parties and deadlines.
- Note any legal counsel's advice or inputs provided during the meeting.
- Full names and signatures of the meeting chair and the minutes recorder.

The Chairperson, the minutes recorder and persons who sign the minutes are responsible for the accuracy and trustworthiness of the BoD meeting minutes.[112]

Best practice

As the legal and regulatory requirements of directors become more onerous, minutes are important records that show that the BoD has discharged its duty of care. Under good corporate governance practices, the minutes will include the voting of each director.

The BoD is often required to designate a secretary to take notes and help prepare the minutes. In international practices, the Corporate Secretary usually serves as the secretary of the BoD and may sign the minutes together with the Chairperson.

The minutes provide only a summary of the BoD meeting. In addition to minutes, every meeting should be followed by making verbatim reports containing a word-for-word account of discussions. They should form an integral part of the minutes. Verbal reports from the meeting are supposed to be kept in the company's records as a part of the minutes.

112 *LOE, Article 158, Clause 3.*

Best practice

Regardless of whether the company chooses to keep minutes and verbatim reports, the following documents should be preserved together with the minutes and/or verbatim reports:

- Voting ballots.
- Written opinions of directors who were not able to attend.

Each director should also be given a summary of the BoD's deliberations. The company should establish a procedure which ensures that all directors will be provided with:

- Copies of the minutes and/or verbatim reports.
- Reports detailing the outcome of voting.

6.8.10. Corporate Secretary and BoD Meetings

According to the LOE, Chairperson and the Corporate Secretary have the following responsibilities at BoD meetings:[113]

- Prepare for meetings of the BoD and the Supervisory Board as requested by the BoD or the Supervisory Board. Collaborate with the Chairperson and other relevant parties to develop comprehensive meeting agendas that align with organizational priorities and legal requirements.
- Provide consultancy on meeting procedures.
- Participate in the meetings. Contribute to discussions on risk management strategies, ensuring that the BoD is informed about potential risks and mitigation measures.
- Monitor and promote ethical conduct within the organization, advising the BoD on ethical considerations in decision-making.
- Provide consultancy on procedures for the lawful issuance of resolutions of the BoD. Ensure that all actions and decisions taken during meetings comply with relevant legal and regulatory requirements.
- Provide financial information, copies of BoD meeting minutes and other information for members of the BoD or Supervisory Board.

113 *LOE, Article 156, Clause 5; and Circular No. 116/2020/TT-BTC, Model Charter, Article 32.*

- Supervise and report to the BoD on the company's information disclosure.
- Develop and oversee procedures for proxy voting during meetings, ensuring a fair and transparent process for absentee Board members.
- Serve as a liaison between the BoD and other stakeholders, facilitating communication and ensuring that relevant information is disseminated to the appropriate parties.
- Assist in identifying, addressing, and managing conflicts of interest among Board members, ensuring transparency and compliance with conflict of interest policies.
- Facilitate and participate in periodic self-assessment processes for the BoD to evaluate its performance and identify areas for improvement.
- Protect confidentiality in accordance with regulations of law and the Company's Charter.

Best practice

The Corporate Secretary should be responsible for administrative and organizational matters, such as preparing and conducting BoD meetings. While the decision to conduct a BoD meeting is made by the Chairperson, the Corporate Secretary should be responsible for handling such matters as:

- Notifying all directors of BoD meetings.
- Sending voting ballots.
- Collecting completed ballots and absentee ballots.
- Ensuring compliance with procedures for BoD meetings.
- Keeping the minutes and verbatim reports.

6.9. Director Remuneration

The company is entitled to pay director fees (remuneration) to members of the BoD based on business results and efficiency.[114]

Non-executive directors are typically remunerated based on their role and level of responsibility, considering the anticipated time and effort required. However, their fees should not be tied directly to the company's performance to avoid potential conflicts of interest, preserving their independence and objectivity.[115]

The remuneration of each member of the BoD shall be included in the operating costs of the company in compliance with the Law on Corporate Income Tax. It shall be presented as a separate item in the annual financial statements of the company and be approved by the GMS at its annual meeting.[116]

The issue of director remuneration is one of the more contentious in the field of corporate governance, and companies are advised to choose a cautious and circumspect approach to the question of BoD remuneration. Excessive compensation plans are often perceived as an unjustified privilege of power. Therefore, it is of the utmost importance that director compensation be competitive, yet stay within reasonable limits.

An essential distinction in this respect must, however, be made between executive and non-executive directors. As a rule, executive directors do not receive additional fees for participating in the BoD. Their executive compensation packages are generally thought to include BoD duties, in the form of a lump sum, salary, commission, profit percentage, or another form decided by the BoD.[117] Non-executive directors, on the other hand, should be remunerated. The most common form of remuneration for non-executive directors is a monetary fee. For example, directors can receive:

- An annual fee (which may be paid in the form of shares in lieu of cash).
- A fee based upon meeting attendance.

114 *LOE, Article 163, Clause 1.*

115 *Singapore's Institute of Directors, CG Guide for Boards in Singapore: Provision 7.2: https://www.eguide.sid.org.sg/index.php/singapore-code-of-corporate-governance/remuneration-matters/principle-7/provision-7-2.*

116 *LOE, Article 163, Clause 3.*

117 *Circular No. 116/2020/TT-BTC, Model Regulations on the BoD Operation, Article 19, Clause 4.*

- Fees for additional work, such as on BoD committees.
- Fees for additional responsibilities, such as serving as the BoD's Chairperson or one of its committees.

Directors can also be reimbursed for meals, accommodation, travel and other reasonable expenses to fulfil their delegated duties, including the costs of participation in meetings of the GMS, the BoD or its subcommittees.[118] Additionally, the directors may have liability insurance purchased by the company if approved by the GMS.[119]

Best practice

The remuneration payable to directors should be equal for all non-executive directors. Moreover, a company's fees should be competitive to attract competent individuals. They should be set neither greatly below nor above director fees paid at a peer group of companies. Setting a reasonable level of director remuneration is particularly important to not jeopardize the special status of independent directors. Independent or not, a director's judgment may be clouded if they receive a significant percentage of their total income in the form of a director's fee. A director who relies on Board compensation from a single company for their livelihood will soon become beholden to the company and may not be relied upon to fill their responsibilities objectively.

The BoD should regularly review the remuneration of directors.

Great care must be exercised in establishing performance-based remuneration, particularly stock-based remuneration, as it is not considered good practice. Performance-based compensation is generally considered a factor that impinges on director independence.

Personal loans or credits to the company's directors are also a minefield and a potential source of controversy that companies would be well advised to avoid.

118 *LOE, Article 163, Clause 2b; and Circular No. 116/2020/TT-BTC, Model Charter, Article 28, Clause 5.*
119 *Circular No. 116/2020/TT-BTC, Model Charter, Article 28, Clause 6.*

6.10. Performance Evaluation

To be effective, BoD members should have the necessary resources and networks to develop and maintain their knowledge, skills, and experience to help promote effective Board performance. Training programs are fundamental to this end, based on periodic evaluations of the BoD and its members.

Board assessments help directors to review their performance and understand their roles and responsibilities thoroughly. It is essential that the BoD conducts performance evaluations – including of the Chairperson, individual members and committees – on an annual basis through self-evaluations, confidential peer evaluations, or assessments by an external facilitator every three years.[120] The collective results of the BoD performance evaluations should be disclosed in the company's annual reports. Through critical reflection and self-evaluation, directors can be more responsive to shareholders, investors, and other stakeholders.

Board evaluations consider directors' presence at Board and committee meetings, engagement in boardroom discussions, and voting conduct on significant matters. Employing an external facilitator could enhance the assessment's impartiality, with potential facilitators including consulting firms, academic institutions, or professional organizations.

The Board should have a system that provides, at the minimum, criteria and processes to determine the performance of the Board, individual directors, and its committees. Such a system should allow for a feedback mechanism from shareholders.[121] The evaluation process is typically overseen by the Corporate Governance, Nomination and Remuneration Committee.

Evaluations can generate important insights into the strengths and weaknesses of the BoD and its members. This information is helpful to assist the BoD in identifying areas of weakness and where further training may be needed.

120 *Viet Nam Corporate Governance Code of Best Practices, Principle 5.1.*
121 *Viet Nam Corporate Governance Code of Best Practices, Principle 5.2.*

Board self-evaluation ideally covers the dimensions presented as follows:

Dimension	Potential gaps
Composition, structure and interaction	Lack of competencies in the Board leading to poor decision-making processes, tension among Board and executives due to overlaps or unclear division of responsibility between them.
Committees	Insufficient or too many committees installed, important Board matters like remuneration, risk and audit not supported by committees with specific competencies or not appropriated levels of independence.
Corporate Secretary	Prereading material not distributed in advance, materials with too much or superficial information. No clear agenda.
Processes and work conditions	Time pressures in the decision-making process, tension in the room, and issues related to Board independence.
Robustness of the decision-making process	Lack of use of group decision-making techniques, information sharing, Board dialogue, and trust (Board dynamics – behavior factors).
Environment Social Governance (ESG)	Board with no agenda to discuss this subject.
Capital markets	Board engagement practices with shareholders and market monitoring are not structured, and poor communication with investors exposing companies to risks.

6.11. Education and Training

Evaluations can generate important insights into the strengths and weaknesses of the BoD and its members. This information is helpful to assist the BoD in identifying areas of weakness and where further training may is needed. Corporate governance training can be precious for companies operating in transitional economies, where directors must stay abreast of frequent changes to the legal and regulatory framework and best practice standards. All this makes a company's education and training policy for the BoD and its directors a critical success factor in developing and supporting a competent, knowledgeable and vigilant Board.

According to the Viet Nam Corporate Governance Code of Best Practices, all directors should attend at least one corporate governance or director training program organized by an accredited and professional organization to ensure they understand key principles of good corporate governance and strive to update themselves annually with the latest governance trends and requirements. The company's policy on the continuing development of directors, including an orientation program for first-time directors (on-boarding training) and relevant annual continuing training for all directors, should be provided in its Board Charter and Corporate Governance regulations. These professional development practices and training for Board members should also be disclosed in the corporate governance section of their annual reports.

Best practice

A variety of organizations contribute to the professional development and training of directors. These include stock exchanges, financial institutions, government and industry regulators, business associations, chambers of commerce, institutions of higher education, institutes of directors and associations set up to promote good corporate governance practices.

Director training is delivered primarily by two broad types of organizations. One is corporate governance associations, which are devoted to improving corporate governance and provide training as one aspect of that effort. The other is organizations focused on directors and support, representing and setting standards for directors. Both types of organizations can be membership associations, such as the National Association of Corporate Directors in the United States, the Institute of Directors in the United Kingdom, and the Brazilian Institute of Corporate Governance. They may serve directors without having a membership base, such as the Corporate Governance Centre in Kenya and the Corporate Governance Forum of Turkey.

In Viet Nam, the Viet Nam Institute of Directors provides professional development and training for company directors. It is a professional body dedicated to elevating Board professionalism, advocating for business ethics and transparency, cultivating a cadre of independent directors and fostering networking opportunities among corporate leaders and stakeholders.

Professional development and training can provide directors with:

- New skills.
- Increased professionalism.
- Greater awareness of relevant issues.
- Access to current requirements and trends on governance and other issues.
- Opportunities to discuss issues with peers and facilitators.

Table 3. Summary Checklist to Determine the BoDs' Effectiveness[122]

Questions	Yes	No
1. Has the BoD considered the company's longer-term objectives and examined which strategic options are available to achieve these objectives? If so, has the BoD reached a decision on its future goals and strategies, and have these been put in writing?		
2. Has the BoD consciously considered its underlying corporate philosophy, including value system, ethical and social responsibilities, and desired image? Has the company developed an internal policy that sets out these values? Does the company have formal procedures for recording and promulgating major BoD decisions, such as policy guidelines for line managers?		
3. Does the BoD periodically review the organizational structure of the company and consider how this may change in the future? Does it review and approve the appointments of all senior executives? Are adequate human resource development programs in place?		
4. Does the BoD routinely receive all the information it needs to ensure it effectively controls the company and management? Have there been any unfavorable results or unexpected crises that could be attributed to a lack of timely or accurate information?		
5. Does the BoD routinely require the CEO to present annual plans and budgets for review and approval? Does the Board regularly monitor the performance of the CEO and immediate subordinate managers regarding actual results achieved against agreed plans and budgets?		
6. When the BoD is required to make major decisions on future objectives, strategies, policies, significant investments and senior appointments, does it have adequate time and knowledge to make these decisions soundly? Does the Board have expertise in E&S issues or access to sustainability/E&S experts to make decisions about such risks and opportunities?		

If the answers to all of these questions are "yes", it is safe to say the company's BoD can be considered adequate. On the other hand, if the answers are negative or perhaps unclear, the company needs to re-evaluate the composition and role of its BoD and undertake other activities to improve its performance.

122 *Source: Parker, Hugh, Letters to a New Chairperson, (1990) London: Director Publications, pp. 12-14. (As cited in Cadbury, Adrian, Corporate Governance and Chairpersonship, (2002) Oxford University Press, pp. 47-48).*

CHAPTER APPENDIX

Sustainability Committee Charter for [Company ABC]

Date of Board Approval: DD/MM/YYYY

Objective

1. The Board of Directors ("Board") of the Company has resolved to establish a Sustainability Committee ("Committee"), a Board-level committee established by resolution of the Board to assist the Board in overseeing sustainability matters, which encompass sustainable development, sustainable consumption, sustainable business, and sustainable investing; environmental, social, and governance (ESG) matters;[123] climate impacts; and climate responses. The effects of climate change are cross-cutting and do not just fall within sustainability. A firm's or financial institution's climate finance and climate risk management can be seen to sit fully within ESG.[124]

2. The establishment of the Committee is incorporated into the Company's [Corporate Charter, Articles of Association, Corporate Governance Policy, and By-Laws]. The Board and Company management have established an environmental and social (E&S) and climate risk governance structure to manage significant risks that the Company faces, oversee the operation of the E&S and climate risk governance framework, and provide reasonable assurance that the Company's key sustainability objectives will be achieved.

123 *See International Finance Corporation's definition of ESG (https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/environmental_social_and_governance).*

124 *"Sustainability" is used herein as a broad term encompassing all aspects of ESG and climate risk management; "E&S" or "climate" is used when referring specifically to underlying environmental or social risks or risks related to climate change. "G" in ESG refers to structures and processes by which companies are directed and controlled (e.g., board structure and diversity, ethical conduct, risk management, disclosure and transparency), which include the governance of key E&S policies and procedures.*

3. The primary responsibilities of the Committee are to assist the Board in:

a) **Overseeing** development and reviewing sustainability policies and procedures annually for the Company, overseeing implementation of sustainability matters and the Company's E&S risk and climate risk management framework, and overseeing and monitoring senior management's performance.

b) **Ensuring** compliance with the Company's E&S and climate-related policies and procedures, Code of Conduct or Ethics, [and disclosure policy].

c) **Coordinating** an annual performance review.

Membership

1. The Board shall designate one Committee member to act as its Chair who shall meet the independence requirements set out in the [source]. The Committee shall be appointed by a majority vote of the Board from among its members in consultation with the Chair. The Committee shall consist of no fewer than three members, the Board to determine the exact number from time to time, all of whom shall be non-executive directors [and the majority of whom shall meet the independence requirements set out in the [source]].[125]

2. All Committee members shall have the necessary skills and knowledge of the Company's risk management systems and practices and an understanding of E&S and climate-related risks. At least one Committee member shall have in-depth knowledge of the E&S risks, and another Committee member shall have in-depth understanding of climate-related risks. Collectively, the Committee shall have sufficient knowledge of the Company's primary business areas and strategies and material E&S and climate risks associated with those business areas to assess the effectiveness of the Company's E&S and climate risk management system, recommend improvements to the system, and provide recommendations on sustainability objectives to the Board.

125 *Good practice requires at least one independent member, preferably Committee chaired by an independent. Better practice requires a majority of independent directors, best all independent directors.*

3. The Chair, with input from the other members of the Committee, shall set the agenda for Committee meetings, which shall be distributed to the Board, and shall attend the Annual General Meeting of the Company to discuss with shareholders sustainability and material E&S matters, as well as climate-related risks within the responsibility of the Committee. If the Chair or their designee is unable to attend a Committee meeting, the remaining members present should elect one of their number to chair the meeting.

4. The Secretary of the Company or their designee shall act as Secretary to the Committee.

5. The Committee may request that any directors, officers, other employees of the Company, or any other persons whose advice and counsel the Committee seeks attend any Committee meeting and provide such pertinent information as the Committee requests. The Committee may exclude from its meetings any persons it deems appropriate to fulfil its responsibilities.

Authority and Responsibilities

The Committee assists the Board in providing oversight for the E&S and climate risk management framework and systems of the Company. It ensures that, when relevant, material E&S and climate-related risks are included with crucial strategic risks and managed following the relevant policies and in line with the risk appetite level and risk tolerance limits that the Board determines (based on recommendations from the Committee). The Committee shall have such authority as it may require to perform its functions and obligations as may be stipulated in internal regulations of the Company or recommended or required of it by the Viet Nam Corporate Governance Code and listing rules, including to seek any information that it needs from any Company employee to perform their duties. All employees are directed to cooperate with any request from the Committee. In particular, and without limitation to the foregoing, the Committee shall have the following specific authority, in addition to any other authority that the Board may from time to time delegate to the Committee:

1. Corporate Governance Structure

a) Consider and recommend any proposed amendments to the Company's memorandum and articles of association, any standing procedures of the Board, and the terms of reference of the Company's Board committees and to review and recommend any changes to other documents related to the sustainability performance of the Company.

b) Review the Company's policies about sustainability and make recommendations to the Board in relation thereto.

c) Review all legislative and regulatory ESG and climate developments that might affect the Company's operations and make recommendations to the Board in relation thereto, always striving to ensure that the Company is at the forefront of best practice.

d) Oversee implementation of the Company's sustainability improvement action program, if any.

e) Ensure that the ESG and climate-related standards and disclosures required in the Viet Nam Corporate Governance Code are observed and reflected in disclosures made in the Company's reports.

f) Receive and consider reports on any views that shareholders, shareholder representative bodies, stakeholders, and other interested parties express about ESG and climate change matters.

g) Receive regular reports from management regarding compliance with the Company's ESG and climate-related policies and procedures, review requests for waivers from the policies and procedures, [and receive independent audits on the effectiveness of the company's E&S and climate risk management systems and stakeholder engagement processes.

2. E&S Risk Governance

a) Oversee the setting of policies and strategies to guide the company in meeting its business objectives while managing E&S risk effectively and oversee the development, implementation, and management of the E&S risk management framework to meet the Company's

objectives, legal requirements, and other external requirements and commitments [such as include reference to applicable international standards].

b) Review and recommend for Board approval E&S risk management policies and direct the management team to develop and implement additional policies relating to E&S risk management at the operational level.

c) Review environmental, health, and safety compliance problems and incidents periodically to determine whether the Company is taking all necessary action concerning those matters and whether the Company has been diligent in meeting its responsibilities and performing the activities required in that regard.

d) Review results of operational, health, safety, and environmental audits and management's activities to maintain appropriate internal and external health, safety, and environmental audits; identify the principal areas of health, safety, and environmental risks and impacts; and ensure that sufficient resources are allocated to address these.

e) Ensure appropriate dialogue between the Company and key stakeholders and the effectiveness of the company's external communications and grievance mechanism.

f) Keep abreast of developments in international standards and best practices in E&S risk governance and risk management and make recommendations to the Board when changes are appropriate for the Company.

3. Climate Governance

a) Ensure that there is a climate-specific function, relevant committee, or designated individual responsible for the management of climate-related risks and opportunities at the executive level and ensure that such function, committee, or individual reports to the Committee.

b) Ensure that management systems are in place to identify and manage climate risks, impacts, and opportunities.

c) Review management's assessment of the short-, medium-, and long-term materiality of climate-related impacts, risks, and opportunities for the Company on an ongoing basis; review the Company's actions and responses to climate change; and determine whether they are proportionate to the materiality of climate change to the Company.

d) Monitor progress against goals and targets for addressing climate-related challenges as part of the Company's strategy and risk management.

e) Ensure that the Company has implemented an internal price on carbon to understand how climate change will affect the Company in the future.

f) Enable a succession plan that ensures that there are always Board and Committee members and individuals in management with climate awareness skills and experience.

g) Keep abreast of developments in international standards and best practices in climate governance and climate risk management[126] and make recommendations to the Board when changes are appropriate for the Company.

4. Committee and Management Appointments

a) Identify Board members qualified to fill vacancies on the Sustainability Committee and recommend that the Board appoint the identified member or members to the relevant committee.

b) Endorse the job description of the Chief Sustainability Officer (CSO) or E&S Manager; interview the final shortlisted candidates during the selection of the CSO; and ensure that the CSO has adequate authority, resources, and support to fulfil their responsibilities, including unfettered access to the Committee. Appointment and dismissal of the CSO shall require approval from the Committee.

c) Endorse the terms of reference of a climate-specific function, committee, or individual at the executive level concerning climate

126 *This part can also be assigned to a separate risk management committee at the Board level.*

change and ensure that such function, committee, or individual has adequate authority, resources, and support to fulfil their responsibilities, including unfettered access to the Committee.

Procedures for Meetings

1. The Committee shall meet as often as it deems necessary but at least three times a year at such times and places as the Committee Chair determines, with further meetings to occur or actions to be taken by unanimous written consent when the Committee or its Chair deems it necessary or desirable. Special meetings may be convened upon the request of the Board and CEO. The Committee shall develop and approve the annual calendar of its meetings.

2. Meetings of the Committee may be conducted with the members physically present or in video or audio conferences.

3. Notice and details of meetings shall be given to Committee members at least five working days in advance unless otherwise agreed.

4. Two members of the Committee shall constitute a quorum.[127] When more than two members are present, the act of a majority of such members at a meeting at which a quorum exists shall be the act of the Committee. When only two members are present, the unanimous vote of the two members shall constitute the act of the Committee. The Committee may also act at any time by unanimous written consent.

5. The Committee shall keep minutes of its meetings, which shall be circulated to members for objections and approval. The minutes shall be approved if no objection is lodged within five business days. Once approved, such minutes shall be provided to the Board.

6. Except as expressly provided in this Charter, the Committee shall set its own rules of procedure.

Access to Advisors and Training

1. The Committee shall have its own budget and the authority to engage and obtain advice and assistance from internal or external legal

127 If an independent director is appointed, it shall be present to constitute a quorum.

counsel, E&S or climate risk management advisors, or other advisors as it deems necessary in the performance of its duties without having to seek Board approval and at the Company's expense.

2. The Committee shall make determinations concerning payment of external advisors that the Committee retains.

3. Committee members shall receive appropriate training on E&S risk generally and for the industry upon taking office and on an ongoing and timely basis to ensure they can perform their functions.

Relationship with Other Board Committees

1. The Committee Chair shall work with the Audit Committee and Risk Management Committee chairs to ensure that the work of the three committees is complementary. The Committee shall rely on the Audit Committee to provide assurance that internal controls about each of the critical risks are established, maintained, and monitored and that adequate internal audit and compliance functions are established.

2. The Committee shall rely upon the Risk Management Committee to ensure that a risk management framework is established, maintained, and monitored. In instances in which there is no Audit Committee or Risk Management Committee, modify the language to provide that the Board shall ensure that these activities are performed.

Reporting Obligations

1. The Committee shall maintain minutes of its meetings and give regular reports to the Board, including on the Committee's actions, conclusions, recommendations, and other matters as the Board shall from time to time specify. Reports to the Board may take the form of oral reports by the Committee Chair or any Committee member that the Committee designates.

2. The Committee shall submit an Annual Report to the Board on the Committee's activities during the year that describes the status of the Company's E&S and climate risk management performance, areas requiring improvement, and Committee recommendations for addressing areas needing improvement.

3. In addition to the above, the Committee shall prepare a report describing the Committee's work in discharging its responsibilities to be included in the Company's Annual Report or special sustainability or climate reports (e.g. following Task Force on Climate-Related Financial Disclosures (TCFD)).

4. These terms, as may be amended occasionally, shall be posted on the Company website.

Committee Performance Evaluation

The Committee shall review its performance, reassess the adequacy of these terms of reference at least annually in such manner as it deems appropriate, and submit such evaluation, including any recommendations for change, to the Board for review, discussion, and approval.

Compensation

No Committee member may receive, directly or indirectly, any compensation from the Company other than any fees paid to directors for service on the Board, additional fees paid to directors for service on a committee of the Board (including the Committee) or as Chair of any committee, and a pension or other deferred compensation for prior service that is not contingent on future service on the Board as long as it does not compromise the Committee member's independence.

Other

The Committee shall give due consideration to laws and regulations, the provisions of the Viet Nam Corporate Governance Code, and the listing rules, as appropriate.

NOTES

Chapter 7

MANAGEMENT BOARD

7 | MANAGEMENT BOARD

Table of contents

The Chairperson's Checklist:

- ☑ Does the company clearly delineate and separate authority between shareholders, directors, and managers? Has the company adequately established a Management Board? Does the Company Charter or other internal regulations clearly distinguish the powers of the Chief Executive Officer (CEO) from those of the Management Board?
- ☑ Do the CEO and all Management Board members possess the knowledge and skills necessary to manage the company? Do they perform their functions on a full-time basis? Is there a transparent division of tasks among Management Board members, such as finance, legal, marketing, risk management, internal control and operations?
- ☑ Who elects members of the Management Board? Is the CEO sufficiently involved in the nomination process of other Management Board members?
- ☑ Does the Management Board meet regularly to discuss the company affairs? Are these meetings well prepared, with an agenda and reference materials distributed in advance (in writing and/or electronically)?
- ☑ Do the CEO and the Management Board regularly and adequately inform the Board of Directors (BoD) on all company operations? Does the Management Board provide all relevant information to the BoD, the committees of the Board, the Supervisory Board, and External Auditor in a timely manner?
- ☑ Do all members of the Management Board clearly understand their duties to act reasonably and in good faith in the best interests of the company? Does the BoD take measures to ensure that managers who fail to act by these duties are held liable under civil, administrative, and criminal law?
- ☑ Are thorough performance reviews of the Management Board based on periodically conducted analysis of key performance indicators? Does the BoD rigorously evaluate the Management Board at least annually, if not more frequently? Does the BoD link performance and remuneration when deciding on executive remuneration?

The Law on Enterprises (LOE) does not clearly define what the "Management Board" is comprised of and what its functions are. The primary management function in a joint stock company, as referred to in the LOE, is led by the CEO of that company.[1] The Model Charter helps shed some light on the issue by reserving an article to set out the details of the "organization of the management body in listed companies", which consists of the CEO, Deputy CEOs and Chief Accountant, all of whom shall be appointed or dismissed by the BoD.[2]

Despite the lack of a precise legal definition, "Management Board" is the term broadly used to indicate executives entrusted with managing a company's day-to-day activities. It implements the strategic direction set out by the BoD and the General Meeting of Shareholders (GMS) and are an essential part of the company's governance structure. Management, as defined in the Viet Nam Corporate Governance Code of Best Practices, is a group of executives given the authority by the BoD to implement the policies it has laid down in the conduct of the company's business. This chapter describes the composition of the Management Board as it is often structured in practice, the authorities, formation and working procedures of such an executive body, and its interactions with the BoD, duties, evaluation, liabilities and remuneration.

1 *LOE, Article 162.*
2 *Circular No. 116/2020/TT-BTC, Model Charter, Article 33.*

7.1. Authority

The Management Board may comprise of the CEO, Deputy CEOs, Chief Accountant and other persons designated by the BoD to hold other senior executive positions.[3] The CEO shall manage the company's day-to-day business operations, be supervised and accountable to the BoD as well as exercise its delegated powers and meet its obligations before the law.[4]

Vietnamese law requires that the GMS and BoD decide on specific key issues of a joint stock company. The GMS and BoD may not delegate to management on matters within their respective authority. Furthermore, the charter and internal regulations should specify the authority of management.

Best practice

The work of management should be guided by a financial and business plan approved annually by the BoD. Sound corporate governance principles further recommend that:

- The CEO and Management Board seek the approval of the BoD for transactions that fall outside the scope of the financial and business plan (non-standard operations).
- The company develops internal regulations or other internal documents detailing procedures for the CEO and Management Board to obtain such approval from the BoD.
- The BoD has the right to veto decisions by the CEO and Management Board to implement non-standard operations.

3 *Circular No. 116/2020/TT-BTC, Model Charter, Article 34, Clause 1.*
4 *LOE, Article 162, Clause 2.*

7.2. Duties and Liabilities

Vietnamese laws set out a legal framework for the Management Board, as an executive provided in the Company Charter. The LOE specifies the CEO's duties and obligations towards the day-to-day management of the company, which include:[5]

- Decide on daily operating issues of the company outside the jurisdiction of the BoD and the GMS.
- Organize the implementation of resolutions and decisions of the BoD.
- Organize implementation of the company's business and investment plans.
- Propose the company's organizational structure, internal rules and regulations.
- Designate, dismiss the company's executives, except those under the jurisdiction of the BoD.
- Decide salaries and other benefits of the company's employees, including the managers designated by the CEO.
- Recruit employees.
- Propose plans for distribution of dividends or settlement of business losses.
- Other rights and obligations specified by law, the Company Charter, resolutions, and decisions of the BoD.

5 *LOE, Article 162, Clause 3.*

7.3. Composition

The number of Management Board members should be outlined in the Company Charter, the internal regulations or a specific resolution from the BoD.

Best practice

The size of the Management Board will need to be adapted to the company's specific circumstances and, consequently, will vary in composition. It will depend on the company's activities, size (number of employees), level of development and other company characteristics. All this is important for determining the optimal number of executive officers and their qualifications and professional skills. The Management Board might include the following positions:

- CEO
- Deputy CEO(s)
- Chief Operating Officer
- Chief Financial Officer (or the Chief Accountant)
- Chief Legal Counsel (or the General Legal Counsel)
- Chief Risk Officer
- Chief Internal Auditor
- Chief Technology Officer
- Chief Sustainability Officer
- Marketing and Sales Director
- Head of Purchasing
- Head of Research and Development
- Head of Public/Investor Relations
- Heads of Business/Product Lines
- Human Resources Director.

Except as otherwise noted in this chapter, members of the Management Board can also be members of the BoD or any other persons permitted by the LOE to act as members of the Board. The Model Charter and the corporate governance regulations limit the number of Management Board members who can be BoD members in listed companies, so Management Board members

occupy less than two-thirds of the total number of BoD seats.[6] However, the Viet Nam Corporate Governance Code of Best Practices recommends that no more than one-third of directors should hold executive positions within a company.[7]

7.4. Qualifications

Any individual is eligible to serve as the CEO or a Management Board member. Specific criteria, however, apply to the CEO of a public company[8], a State-owned enterprise (SOE) or a subsidiary company of an SOE[9]:

- The CEO is not a person specified in Clause 2, Article 17 of the LOE.
- The CEO is not related to any of the executives, members of the BoD, members of the Supervisory Board of the company and parent company, representatives of a State or enterprise's investment in the company and parent company.
- The CEO has professional qualifications and experience in business administration.

For more information on concepts of: (i) persons who are prohibited from management of enterprises and (ii) related persons, see Section 6.3.1.

Best practice

Best practice dictates that individuals should not be appointed to the Management Board when, at the same time, they are:

- Directors of a competing company.
- Managers of a competing company.
- Employees of a competing company.

The CEO should not be engaged in business activities other than those related to the company's management and its subsidiaries' governance.

6 *Decree No. 155/2020/ND-CP, Article 270, Clause 2.*
7 *Viet Nam Corporate Governance Code of Best Practices, Principle 2.2.*
8 *LOE, Article 162, Clause 5.*
9 *LOE, Article 88, Clause 1.*

The executive bodies can only be effective when they have adequate financial and human resources and members with the necessary experience, knowledge, skills and time to exercise their duties.

Best practice

The charter or internal regulations should specify the qualifications of members of the Management Board and heads of major divisions. Members of the Management Board should generally be those who:

- Can be trusted by shareholders, directors, other managers and employees of the company.
- Can consider the interests of all stakeholders and make well-reasoned decisions.
- Possess the relevant professional expertise, education and appropriate organizational skills.
- Possess (international) business experience, knowledge of national economic, political, legal and social issues, as well as knowledge of the market, products and competitors (national and international).
- Have the ability to translate knowledge and experience into practical solutions that can be applied to the company.

Moreover, a background check on candidates should be conducted to determine if there is a possible record of criminal or administrative offences. Evidence of such offences would likely result in rejection of a candidate.

7.5. Appointment and Dismissal of the CEO and other members of the Management Board

The LOE and international best practices set out the requirements regarding the appointment, replacement, and dismissal of the CEO as follows:

- The BoD will appoint the CEO.[10]
- The maximum term of the CEO shall not exceed five years, but may be re-appointed for an unlimited number of terms.[11]
- Management Board members will be appointed for a certain period and may be re-appointed.
- The Company Charter specifies other members of the Management Board.
- The Company Charter's internal regulations determine specific procedures for appointing, replacing, and dismissing Management Board members and may also set nomination procedures.

High-level personnel decisions in general, specifically the selection of Management Board members except for the Chief Internal Auditor[12], are best accomplished by the CEO in tandem with the BoD. Personnel decisions should not be political. The assessment of skills and qualifications of Management Board candidates is best done by someone who works closely with them. Shareholders or a BoD seeking stringent oversight should focus on setting outcome-oriented policies rather than engaging in micromanagement of selection. Establishing precise terms of reference for critical executive roles is essential. It is a standard corporate governance practice that the Board appoints the CEO, who assembles the Management Board under BoD guidance.

10 *LOE, Article 162, Clause 1.*

11 *LOE, Article 162, Clause 2.*

12 *Who should be appointed by the Audit Committee. It is best practice that the Audit Committee is responsible for appointing the Chief Internal Auditor and removing it from the post. The Chief Internal Auditor should primarily report to the chair of the Audit Committee.*

Shareholders should have the opportunity to receive sufficient information (in writing and electronic form) about candidates for the position of CEO and Management Board before the GMS. Up-to-date information should also be made available to all shareholders during the GMS. The information about candidates for the executive bodies should include the following:

- Identity of the candidate, including age and gender.
- Candidate's educational background.
- Positions held by the candidate during its professional career.
- Positions held by the candidate at the time of its nomination.
- Any existing relationships that the candidate has with the company.
- Candidate's Board membership (either the Management Board or BoD) in other legal entities.
- Candidate's relationships with affiliated persons, including major business partners of the company.
- Information related to any circumstances that may affect the candidate's ability to exercise their duties.
- Any refusal by the candidate to provide requested information.

The Governor of State Bank of Viet Nam must approve the list of candidates for the CEO position of a bank.[13]

13 Circular No. 22/2018/TT-NHNN, Articles 3 and 4.

7.6. Employment Contracts for Executives

Under Vietnamese law, a company must enter into employment contracts with the CEO and Management Board members[14], as it does with other employees.

In addition to general information concerning contracting parties, contracts for company managers should include:

- Start and end dates of the contract.
- Rights and duties of the CEO or Management Board member.
- Rights and duties of the company.
- Detailed remuneration, including benefits and other privileges (e.g., discounts on company share purchases under the Employee Stock Purchase Plan, health insurance, reimbursement for housing/transportation costs).
- Terms and conditions, including penalties for failure to carry out specific duties and responsibilities.
- Confidentiality clauses during the term of contract and after the executive leaves the company, regardless of the reason for leaving.
- Non-competition clauses that apply during and after an executive's employment with the company.
- A commitment to protect the interests of the company and its shareholders.
- Grounds for early termination.
- Indemnification.

14 *LOE, Article 162, Clause 4.*

Best practice

A public company may consider delegating duties related to appointing the CEO and some senior executives to a Nomination and Remuneration Committee. The committee may, for instance, perform the following tasks:

- Choose the candidates for directors and the CEO.
- Review and approve other senior appointments.
- Organize Board evaluations and conduct performance appraisals of directors, the CEO and other senior executives.
- Ensure succession planning for the Board, the CEO, and other key directors.
- Dismiss the CEO and other members of the Executive Board when necessary.
- Draft or evaluate the nomination and appointment procedures for Management Board members.
- Periodically assess the size and composition of the Management Board and criteria for appointment and make recommendations for change where appropriate.

7.7. Meeting and Working Procedures

The Company Charter, internal regulations or a specific resolution by the BoD should establish the following:

- Frequency of Management Board meetings.
- Procedures for organizing and conducting Management Board meetings.
- Procedures for making decisions during Management Board meetings.

The charter, internal regulations, or a specific resolution by the BoD should establish who has the power to convene a meeting of the Management Board and specify procedures for convening and conducting them. It is common practice for the CEO to have this power. However, all management members should have a voice in Management Board meetings and setting agenda items. While the CEO leads Management Board meetings, other management level committee meetings will be led by other executives.

Meeting notification: Internal regulations should determine the most convenient and appropriate way to deliver meeting notices and materials to Management Board members, who should receive a meeting notice and detailed agenda sufficiently in advance to ensure preparation time to participate effectively.

Quorum of Management Board meetings: Refers to the number of members who must participate in the meeting before it can make a valid decision. The charter, internal regulations or a specific resolution by the BoD should specify the required quorum for Management Board meetings. Typically, the quorum should not be less than half the total number of Management Board members. A Management Board meeting without a quorum cannot make valid decisions.

Voting during Management Board meetings: A simple majority of Management Board members who participate in the meeting should be sufficient to approve decisions unless the charter, internal regulations or a specific resolution by the BoD requires a supermajority vote. Each Management Board member should have one vote. The charter, internal regulations or a resolution by the BoD can specify that the CEO can cast a deciding vote in the case of a tie.

Minutes of Management Board meetings: The Corporate Secretary should be responsible for recording minutes of all Management Board meetings. Although there is no legal requirement for minutes to be kept in the company archives, as a matter of good corporate practice, all minutes of Management Board meetings should be kept in the company archives or minutes book.

The minutes of Management Board meetings should include the following information:

- Location and time of the meeting.
- Names of meeting attendees.
- Meeting agenda.
- Issues on the agenda, as well as the voting results per issue.
- Decisions made by the Management Board.
- Rationale for the decisions.

The CEO should sign the minutes of Management Board meetings. To practice good corporate governance and improve transparency, the minutes of the Management Board meetings should be made available upon the request of:

- BoD or Audit Committee members.
- External Auditor.
- Supervisory Board and its members.
- A shareholder (or a group of shareholders) possessing voting shares.

7.8. Remuneration

Executive remuneration is essential to attract managerial talent. Excessive executive remuneration packages, on the other hand, are often perceived as an unjustified privilege of power. Consequently, it is of the utmost importance that executive compensation be competitive, yet stay within reasonable limits and ideally be in relation to a peer company.

The LOE explicitly specifies that the CEO and other managers are entitled to salaries and bonuses. The BoD has the power and authority to determine the salaries and bonuses of the CEO and other critical executive bodies whose appointment or dismissal falls within its powers.[15] The CEO's and other managers' salaries shall be included in the operating costs of the company by the Law on Corporate Income Tax. They shall be presented as a separate item in the company's annual financial statements and must be approved by the GMS at its annual meeting.[16]

When setting remuneration policies for the Management Board, it is important the BoD considers performance-related factors based on the company's key performance indicators. Some issues that have a bearing on remuneration are:

- Scope of responsibilities.
- Required type and level of qualifications.
- Experience of the candidates.
- Comparable levels of remuneration in peer companies and the industry.
- Financial performance of the company.

15 *LOE, Article 163, Clause 2(c).*
16 *LOE, Article 163, Clause 3 and Circular No. 116/2020/TT-BTC, Model Charter, Article 34, Clause 4.*

Best practice

International corporate governance practice typically divides a senior executive's remuneration into two parts: a base/fixed salary and a variable part (performance-related compensation). An executive's base salary is usually based on its relevant background and experience and ideally should be comparable to the executive compensation in a peer group of companies. On the other hand, variable compensation is generally based on the executive's performance and contribution to the company's financial performance.

Commonly in other countries, variable compensation represents a large part of an executive's remuneration package to optimize performance. Variable compensation should align the executive's interests with the company's and its shareholders' long-term interests. There are many ways to link executive pay to individual and company performance. Some typical financial indicators utilized in variable compensation plans are:

- Earnings before interest, taxes, depreciation and amortization (EBITDA).
- Operating profit.
- Return on Assets (ROA).
- Return on Investment (ROI) or Equity (ROE).
- Return on Capital Employed (ROCE).
- Economic Value Added (EVA).
- Achievement of specific individual objectives.

Non-financial indicators are equally important and valuable in managing executive performance and can be framed around the following:

- Customers (customer satisfaction levels, retention rates).
- Operational processes and efficiency (quality, cycle time and cost measures, and after-sales service).
- Internal growth/knowledge management (training programs, employee satisfaction rates, absenteeism and turnover).
- Robust control environment (internal audit findings).
- Carbon emission reductions.

A typical form of variable compensation is stock options or performance-related bonuses. It is recommended that companies seek shareholder approval prior to providing stock and option-based compensation, since such forms of compensation incur considerable hidden costs for shareholders. These costs are hidden since accounting practices do not sufficiently reveal the actual price tag of option-based compensation plans. For this reason, many companies are increasingly moving to amend their accounting and disclosure procedures. In addition, some exchanges, such as the New York Stock Exchange, now require shareholder approval of all equity-based compensation plans.[17]

While remuneration plans may attract top executive talent and drive better performance, the field of executive remuneration is complex and often a focus of shareholder and public criticism. Companies that introduce such plans, particularly stock option plans, should do so with a good deal of circumspection and a maximum level of transparency.

Best practice

In other jurisdictions, executives may be dismissed without cause under certain circumstances and will receive severance payments as compensation. This may occur when a company has been acquired, and the acquirer wishes to install new management. These severance plans are sometimes referred to as "golden parachutes". A golden parachute is effectively a clause in an executive's employment contract stipulating significant benefits in case of a merger or takeover where a executive's employment is terminated. These benefits can take the form of severance pay, a bonus, stock options, or a combination thereof. Like other forms of compensation, the use of golden parachute clauses often attracts criticism. The GMS or the company's internal rules will determine whether companies will provide managers with an "appreciation bonus/fee" in the case of a merger or takeover.

The company must seek shareholders' approval if it is to provide executives with a golden parachute or any other form of severance payment.

17 *The New York Stock Exchange Listed Company Manual (New York: New York Stock Exchange, 2009), Article 703.09 Stock Option, Stock Purchase and Other Remuneration, https://www.sec.gov/files/rules/sro/nyse/2009/34-61067.pdf*

7.9. Performance Evaluations

Periodic performance evaluations serve as an important tool for overseeing a company's Management Board. They can help create a system of constant performance management and provide insights into identifying required steps to improve the Board's capabilities and functioning.

The Company Charter or internal regulations may stipulate that the BoD evaluates the performance of executive bodies at least annually and more frequently if necessary. The BoD may also find it useful to receive evaluations on the performance of the executive bodies carried out by the CEO and Management Board members within the framework of the company's human resources performance evaluation and planning process.

NOTES

NOTES

Chapter 8

CORPORATE SECRETARY

8 | Corporate Secretary

Table of Contents

The Chairperson's Checklist

- ☑ Does the company have a Corporate Secretary? Does the company need a Corporate Secretary? What contributions can a Corporate Secretary make to the company's governing bodies?
- ☑ Is the position of Corporate Secretary filled on a full-time basis, or does the Corporate Secretary combine its functions with other duties?
- ☑ Does the Corporate Secretary have an adequate mix of professional and personal skills and competencies?
- ☑ How does the company regulate the activities of the Corporate Secretary? Has the company mentioned the position of Corporate Secretary in its charter or internal regulations, or even adopted internal regulations for the Corporate Secretary?
- ☑ Has the company determined the obligation of the Board of Directors (BoD) and management to ensure that the Corporate Secretary has access to all information necessary to perform its duties? Are directors and managers obliged to provide the Corporate Secretary with all information requested or needed to fulfil its duties?
- ☑ Does the Corporate Secretary serve as an effective link between the BoD and management of the company?
- ☑ What is the Corporate Secretary's role in ensuring timely and material disclosure to investors and the public?
- ☑ What role does the Corporate Secretary play in planning and organizing the General Meeting of Shareholders (GMS)?
- ☑ How does the Corporate Secretary assist the BoD in preparing for and conducting Board meetings?

- ☑ Does the Corporate Secretary play a meaningful role in the BoD's training and evaluation?
- ☑ Does the Corporate Secretary advise the Board on the applicable laws, regulations, standards, and codes?
- ☑ Does the Corporate Secretary play a role in ensuring compliance with legal, shareholding, and other stakeholder requirements? Does the Corporate Secretary work together with the company's legal and investor relations departments?

The Corporate Secretary plays an essential role in a company's governance and administration by providing critical support to enable the BoD and Management Board to perform their duties and responsibilities.

This chapter focuses on the Corporate Secretary's functions, qualifications, and authority in implementing good corporate governance practices.

8.1. Roles and Duties of the Corporate Secretary

Establishing the Corporate Secretary role is widely adopted as a global norm through regulations, legislation, and corporate governance principles, standards, and codes across nations.

"In today's world, the role of the Corporate Secretary has no one meaning and covers a multitude of tasks and responsibilities. That said, the role lies at the heart of the governance systems of companies and is receiving ever great focus."

—David Jackson, Corporate Secretary, BP Plc[1]

The term "Corporate Secretary" is more commonly used in the United States, Canada and Eastern Europe, whereas "company secretary" is prevalent in the United Kingdom, Australia, South Africa and some Asian markets such as Singapore and Thailand. Additionally, "board secretary" is another frequently used term.

Commonly, Vietnamese companies have a BoD secretary[2] or office.[3] In contrast to the BoD secretary, the Corporate Secretary position is relatively new to most Vietnamese companies.[4] An assessment of ASEAN Corporate Governance Scorecard (ACGS) 2019 findings revealed that few corporate secretaries in Viet Nam are trained in legal, accountancy, or company secretarial practices.[5]

The Viet Nam Corporate Governance Code of Best Practices[6] recommends that the Board appoint a professionally qualified Corporate Secretary directly accountable to the BoD on all matters related to the proper

1 *As quoted in IFC The Corporate Secretary: The Governance Professional Handbook. 2016. Washington, DC.*

2 *"Thư Ký Hội Đồng Quản Trị" in Vietnamese language.*

3 *"Văn Phòng Hội Đồng Quản Trị" in Vietnamese language. The main functions of the BoD secretary or office are to assist the BoD administratively, such as organizing BoD or GMS meetings, drafting meeting minutes or conducting other administrative procedures in relation to functions of the BoD (e.g. certifying the transfer of shares to shareholders and issuing new share certificates).*

4 *Although the BoD secretary or office may perform certain roles of a Corporate Secretary, some important functions of the Corporate Secretary are not covered, such as developing company corporate governance policies and practices, legal and organizational support to the BoD or assisting in resolving corporate conflicts. In contrast to a Corporate Secretary, a background in law is not a required qualification for a BoD secretary in most Vietnamese companies.*

5 *https://www.adb.org/publications/asean-corporate-governance-scorecard-reports-assessments-2019*

6 *Viet Nam Corporate Governance Code of Best Practices, Principle 2.3.*

functioning of the Board. Requirements for Vietnamese companies to retain a Corporate Secretary vary according to the respective corporate structure. According to the law, the Board can appoint a Corporate Secretary to support it. The Model Charter additionally requires that a public company must appoint at least one person as an officer in charge of corporate governance, who may concurrently hold the position of the Company Secretary.[7]

The Corporate Secretary plays an essential role in a company's governance and administration by providing critical support to enable the BoD and other key governing bodies to perform their duties and responsibilities. According to ACGS 2019[8], most publicly-listed companies in Malaysia, the Philippines and Singapore acknowledged the significant role of the Corporate Secretary in supporting the Board to meet its responsibilities and ensure good corporate governance practices. This position has a wide range of responsibilities that cover four key areas: governance, advice, communication and compliance.

According to the Viet Nam Corporate Governance Code of Best Practices[9], the Corporate Secretary's primary function is to provide professional guidance to shareholders, boards, individual directors, management and other stakeholders on the governance aspects of strategic decisions. The Corporate Secretary typically acts as a bridge for information, communication, advice, and arbitration between the Board and management. The Corporate Secretary also acts as a bridge between the company and its shareholders and stakeholders. However, in large-sized companies, this is the role of an "investor relations officer".

According to the Law on Enterprises (LOE) and Model Charter, the rights and obligations of the Corporate Secretary include:[10]

- Assist in the organization of meetings of the GMS or BoD. Prepare minutes of meetings and provide guidance on procedures for lawful issuance of resolutions of the BoD.
- Assist members of the BoD to exercise assigned rights and perform assigned obligations.

7 *LOE, Article 156, Clause 5 and Circular No. 116/2020/TT-BTC, Model Charter, Article 32.*

8 *https://www.adb.org/publications/asean-corporate-governance-scorecard-reports-assessments-2019*

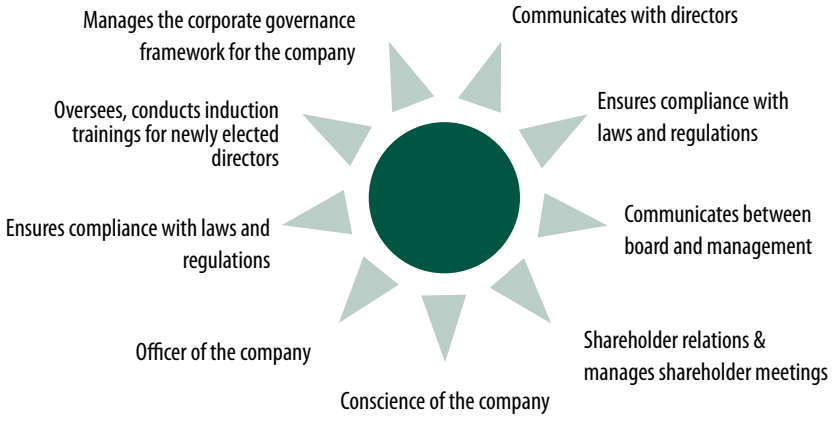
9 *Viet Nam Corporate Governance Code of Best Practices, Principle 2, items 2.3.1-4.*

10 *LOE, Article 156, Clause 5 and Circular No. 116/2020/TT-BTC, Model Charter, Article 32, Clause 3.*

- Assist the BoD to apply and implement corporate governance principles. Provide financial information, copies of BoD meeting minutes and other information for members of the BoD and Supervisory Board. Oversee and report to the BoD on the company's information disclosure.
- Assist the company in building its relationship with shareholders and protect the lawful rights and interests of shareholders.
- Comply with obligations to provide and publicly disclose information and administrative procedures.
- Protect confidentiality in accordance with regulations of law and the Company's Charter.

The duties of a Corporate Secretary will vary depending on the type of organization, the sector it operates in, and the structures, policies, and procedures it adopts. Best practice suggest that the Company Charter, corporate governance regulations and other internal documents should define in detail the Corporate Secretary's authority and the duty of all governing bodies to assist the Corporate Secretary in discharging its duties. Figure 1 highlights some duties often carried out by the Corporate Secretary.

Figure 1. Role of a Corporate Secretary



Source: IFC Corporate Secretary Toolkit, 2013

8.1.1. Developing Corporate Governance Policies and Practices

The Corporate Secretary can play a key role in developing the company's corporate governance policies, practices and monitoring compliance with such policies. In performing this function, the Corporate Secretary should review the company's policies regularly and compare them against international best practices to stay abreast of the latest developments in corporate governance, including changes to relevant national and international laws and regulations. Any breaches should be communicated to the BoD and Management Board. By reviewing the company's policies regularly, the Corporate Secretary ensures the company maintains solid and up-to-date corporate governance standards.

8.1.2. Legal and Organizational Support of the BoD

a) Providing assistance to directors on governance issues

While Vietnamese law is silent on this authority of the Corporate Secretary, best practices recommend that the Corporate Secretary should be familiar with all local requirements for BoD duties, whether these are set out in statute, regulations, case law, articles of association, or corporate governance best practice. The Corporate Secretary should advise the Board on how to apply its duties and liabilities and communicate such information as part of a director's induction and the directors' annual training program.[11]

b) Providing assistance to directors on compliance issues

The Corporate Secretary must also assist the company to ensure it meets all information disclosure obligations and follows procedures for conducting the GMS and BoD meetings. In doing so, the Corporate Secretary's role is to monitor the company's compliance with all relevant laws, external and internal regulations. The Corporate Secretary should not render legal advice that falls outside the scope of its duties. The company should, therefore, clearly delineate the duties of the Corporate Secretary from those of its legal counsel.

The Corporate Secretary should notify the Chairperson of any possible violations of corporate procedures if and when they become aware of such violations, that may include:

- Alleged illegal acts or omissions by corporate officers or other corporate employees in fulfilling their legal duties and obligations.

11 *IFC Corporate Secretary Toolkit 2013, Chapter 7.*

- Violations of procedures regulating the organization of the GMS, BoD meetings, information disclosure, and shareholder rights protection.

8.1.3. Organizing BoD Meetings

The Corporate Secretary of a public company is responsible for organizing BoD meetings. Although BoD meetings are ultimately the responsibility of the Chairperson, the Corporate Secretary handles all administrative and organizational matters such as:

- Assisting the person in preparing the agenda.
- Developing presentations on substantive and procedural issues under discussion.
- Preparing briefs for boardroom discussions.

This is the reason why it is recommended that the Chairperson organizes BoD meetings together with the Corporate Secretary.

It is also advisable that the Corporate Secretary be responsible for communicating with other members of the BoD and organizing and conducting Board meetings. These activities include:

- Giving notice of BoD meetings to all directors.
- Distributing and then collecting the completed voting ballots and written opinions of directors who are not physically present at the meeting.
- Forwarding the ballots and written opinions to the Chairperson.
- Conducting other activities to organize mutual communication between BoD members and the Chairperson between Board meetings.

In addition, the Corporate Secretary should help ensure that procedures for BoD meetings are followed.

Along with the Chairperson, the Corporate Secretary is responsible for drafting the minutes of BoD meetings, as well as keeping them in the company's archives.

Best practice

In preparing for Board meetings, the Corporate Secretary would typically be responsible for the following actions:[12]

(1) Setting the dates for the Board meeting after liaising with the Chairperson and CEO.

(2) Ensuring that the Board is properly constituted and that directors have been appropriately appointed and are operating within their terms.

(3) Notifying the directors of the time, date, and place of the meeting with a sufficient notice period for their preparation.

(4) Meeting the Chairperson to develop the agenda for the meeting.

(5) Ensuring all papers for Board meetings are well prepared and timely distributed.

(6) Ensuring that the Board receives information, in a format that is easily digestible, before a Board meeting and that Board members are briefed before a discussion takes place or a decision is made by the Board.

(7) Organizing the attendance of presenters and advisers.

(8) Organizing logistics arrangements, such as venue, equipment, security, refreshments, seating arrangements, and Board etiquette.

(9) Organizing any associated events, such as lunches, dinners, or committee meetings.

(10) Briefing the Chairperson before the meeting.

(11) Informing the Chairperson or directors of pre-discussion items on the agenda which require expertise not available on the Board.

(12) Preparing any formal resolutions that need to be passed at the meeting.

(13) Ensuring availability of any supporting documents that might be referred to, such as accounts, memorandums and articles of association.

(14) Checking that telephone numbers have been obtained and if the meeting is to be held by audio/video conference.

(15) Ensuring there is a quorum for the meeting.

(16) Checking if any directors have potential conflicts of interest in any issue to be considered at the meeting. Discuss these potential conflicts of interest with the director concerned before the meeting, and advise the Chairperson.

(17) Checking if the Board requires independent professional advice on any agenda items.

(18) Organizing payment of allowances for directors to attend the meeting.

(19) Ensuring that equipment – such as projector, laptop and video conferencing system – are operating properly.

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12 *IFC Corporate Secretary Toolkit 2013, Chapter 2.*

Role of the Corporate Secretary during a Board meeting:[13]

(1) Ensuring that the appropriate person chairs the meeting.

(2) Ensuring that a quorum is present and continues to be present throughout the meeting.

(3) Informing the Chairperson and BoD members if any director has a potential conflict of interest.

(4) Ensuring that the meeting complies with the company's constitution, policies, and procedures and with all relevant laws, regulations, standards, and codes of best practice.

(5) Advising the Chairperson if a director has not received the notice of meeting or a particular agenda item may be added to the agenda at the start of the meeting or any other business.

(6) Coordinating the entry of presenters for their designated segment of the meeting.

(7) Ensuring that discussions during Board meetings are conducted in an open, engaging and respectful manner.

(8) Assisting the Chairperson in fostering energy, purpose, and trust at Board meetings.

(9) Assisting the Chairperson in adhering to allocated time limits on presentations during meetings.

(10) Arrange voting at Board meetings.

(11) Taking notes of the proceedings, instructions given, key discussion points, decisions taken, and what information led the Board to make its decisions.

(12) Assisting the Chair to engender purposeful meeting dynamics.

Role of the Corporate Secretary after a Board meeting:[14]

(1) Removing any confidential material from the boardroom.

(2) Communicating Board decisions to management and relevant stakeholders.

(3) Updating the Board's annual calendar.

(4) Drafting minutes.

(5) Following up on actions.

(6) Organizing further independent professional advice, if requested by the Board or individual directors.

Others:

(1) Cultivating a sense of commitment to the Board.

(2) Organizing an induction program for new Board members.

(3) Encouraging recognition, beyond their fees, of Board members' contributions and the value of the Board to the organization.

(4) Overseeing a transparent process.

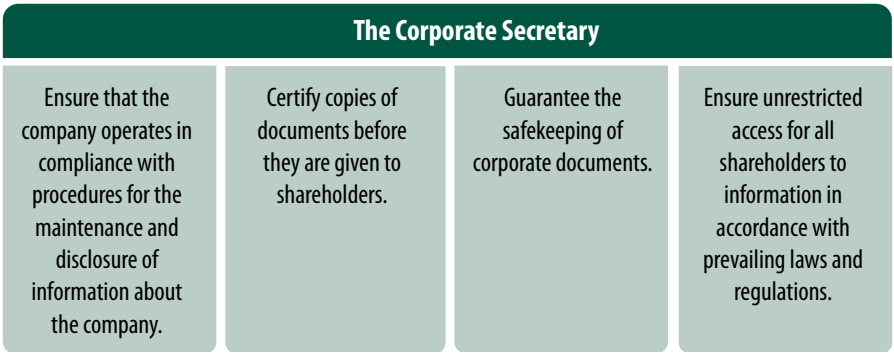
13 *IFC Corporate Secretary Toolkit 2013, Chapter 3.*

14 *IFC Corporate Secretary Toolkit 2013, Chapter 4.*

8.1.4. Ensure Information Disclosure and Transparency

The Corporate Secretary can play an important role in supporting the BoD and CEO to meet their respective obligations to disclose material information on a timely basis to external institutions and the company's shareholders following financial market regulations. The Corporate Secretary also helps to maintain transparency in corporate procedures and acts as a liaison point between the BoD and management.

Figure 2. Roles of the Corporate Secretary in Information Disclosure



8.1.5. Protecting Shareholder Rights

This separation of ownership and control has been the focus of companies, securities laws and regulations, as well as corporate governance best practices, which have developed globally to ensure the rights and assets of company investors/owners are protected from the self-interest of managers. The position of the Corporate Secretary is part of this framework of protection that has evolved over the years.

The role of the Corporate Secretary in protecting shareholder ownership typically would include providing the services listed in Figure 3:

Figure 3. Role of the Corporate Secretary with Shareholders	
Roles with Shareholders	Ensuring that a new shareholder's interest is registered
	Organizing the transfer or transmission of shares from one shareholder to another
	Dealing with shareholders who cease to be members
	Advising on and drafting shareholder agreements
	Ensuring that shareholder powers and rights are protected
	Protecting shareholders from abuse: such as insider trading, dilution, tunneling, related-party transactions
	Issuing/cancelling shares
	Advising on and organizing capital actions

Source: IFC Corporate Secretary: The Governance Professional 2016, Chapter 9

a) Organizing the GMS

The Corporate Secretary plays a vital role in organizing the GMS. Figure 4 shows the functions of the Corporate Secretary according to best practices in this regard:

Figure 4. Role of the Corporate Secretary in the GMS	
Before the meeting	(1) Setting the date and ensuring timely notice of the GMS to shareholders and issuing of press notifications.
	(2) Advising the Board on the timing and location of the GMS.
	(3) Managing all logistical arrangements, such as refreshments, gifts, venue setting, security, disability access and equipment.
	(4) Checking health and safety requirements to hold a meeting.
	(5) Developing an agenda for the meeting.
	(6) Preparing and distributing meeting materials.
	(7) Planning for voting.
	(8) Planning for and briefing the Chairperson on the Q&A session.
	(9) Taking measures to resolve any conflicts arising when preparing and conducting the GMS.
	(10) Organizing associated events.
	(11) Organizing media attendance.

On the day of the meeting	(1) Ensuring that all directors and relevant senior executives are in attendance.
	(2) Reading the notice of GMS.
	(3) Reading the auditor's report.
	(4) Proposing and seconding of resolutions.
	(5) Organizing questions from shareholders.
	(6) Assisting the Chair of the GMS in determining the validity of any proxies presented and collating proxies.
	(7) Handling shareholder requests to change resolutions and other procedural issues.
	(8) Informing shareholders of the voting results.
	(9) Keeping order at the GMS.
	(10) Managing communication flows at the meeting to keep all attendees informed.
After the meeting	(1) Filing resolutions.
	(2) Preparing minutes.
	(3) Arranging the payment of dividends (if approved at the meeting).

Source: IFC Corporate Secretary: The Governance Professional 2016, Chapter 10

b) Liaising between Shareholders during Control Transactions

Vietnamese regulations do not cover the role of the Corporate Secretary in the case of a control transaction, which is a transaction that results in a change of control of the company. Best practices recommend that the Corporate Secretary act as a liaison between the controlling shareholder(s) and the company's remaining shareholders. The Corporate Secretary does this by ensuring that the mandatory offer made by the bidder is distributed to all shareholders. The Corporate Secretary should follow the procedures for the distribution of the mandatory offer to non-controlling shareholders. The same procedures can be applied to squeeze-out and sell-out procedures. This role of the Corporate Secretary also includes active co-operation with external persons (brokers, dealers and banks), specialized and authorized to realize those activities. The Corporate Secretary should also communicate with minority shareholders to inform them about their rights in the context of takeovers.

c) Assisting in Enforcing Shareholder Rights

Best practices suggest that the Corporate Secretary should:

- Ensure that the company takes proper notice of all shareholder petitions that are submitted.
- Channel all shareholder inquiries to the appropriate governing bodies and departments.
- Resolve any conflicts, especially those concerning the maintenance of the shareholder register, promptly and fairly.

d) Assisting in Resolving Corporate Conflicts

Corporate conflicts can arise between the company's BoD, management, and shareholders. If so, the Corporate Secretary should take responsibility for liaising between the conflicting parties. The Corporate Secretary must also notify the BoD Chairperson of any existing or potential conflicts so they may be dealt with appropriately.

A company's effectiveness in preventing and resolving conflict depends on its capacity to respond to legitimate complaints. The Corporate Secretary should register inquiries, letters, and demands filed by shareholders and review, record, and duly transmit them to the governing bodies with the authority to resolve the conflict. The Corporate Secretary also needs to periodically follow up on a complaint's status to ensure it is fully addressed and either resolved or rejected, as appropriate.

8.1.6. Facilitate the Flow of Information

The Corporate Secretary plays a crucial role in assisting directors to provide the BoD with timely, regular, and comprehensive information to execute their duties and responsibilities properly. Such information typically includes:

- Minutes of BoD meetings.
- Decisions and documents approved by the BoD.

- Minutes of meetings and reports prepared by the Audit Committee, Internal Auditor, Supervisory Board and the External Auditor, or any other committees established by BoD.
- Executive reports and presentations.
- Legal and compliance updates.
- Strategic plans and risk assessments.
- Proposals (e.g., mergers and acquisitions).
- Financial documents.

8.1.7. Facilitate Induction Programs for New Board Members

The Corporate Secretary should brief newly elected directors on the following:

- Corporate procedures regulating the company's governing bodies.
- Corporate structure and company officers.
- Company's internal documents and other documents.
- Decisions of the GMS, BoD and Management Board that are in effect.
- Any other relevant information required by directors for the proper discharge of their duties. This could include industry-specific information, recent market trends, ongoing projects, legal considerations, or any other information deemed pertinent for directors to contribute to Board discussions and decision-making effectively.

8.2. Qualifications of a Corporate Secretary

When selecting a Corporate Secretary, the BoD should use a range of sources to determine the general requirements and specific criteria used to evaluate candidates for the position. Importantly, the Corporate Secretary also needs to have an impeccable reputation. Companies must avoid appointing individuals with a criminal record or who have been connected to administrative offences.

Best practice recommends that this position be filled by a dedicated employee in a full-time senior management position. Large companies may find it necessary to establish an office of the Corporate Secretary to be staffed by several officers. Additional staffing may be helpful for companies with many directors, management, and shareholders. Should a company decide to establish an office of the Corporate Secretary, it may wish to specify the office's responsibilities in the internal company regulations or other documents. In smaller companies, the legal counsel or a person holding a similar position may carry out the duties of the Corporate Secretary. However, the Corporate Secretary should devote sufficient time to its responsibilities and duties. Positions should only be shared if this does not prevent the Corporate Secretary from effectively fulfilling its duties.

8.2.1. Qualifications and Skills

The LOE and Model Charter do not specify any requirements for the Corporate Secretary. It is recommended that the BoD assess a candidate's education, work experience, professional qualities, and skills. The Company Charter should outline the general requirements for candidates. In contrast, other general documents adopted by the BoD should contain more detailed and specific criteria for evaluating such candidates, such as the corporate governance code or internal regulations for the Corporate Secretary. A detailed Corporate Secretary job description is the responsibility of the BoD and must be developed in conjunction with the contract signed between the Corporate Secretary and the BoD. At the same time, it is essential to note that the Corporate Secretary's term of office must be stipulated by the Company Charter.

To act in the company's and its shareholders' interests at all times, the Corporate Secretary must be shielded from undue influence from management and other parties. The Corporate Secretary should, thus, be accountable to and controlled by the BoD. The Corporate Secretary may not concurrently work for the company's External Auditor and should not be affiliated to the external auditor, its officers, be a family member of the CEO or a business partner.

Some jurisdictions, such as Australia, require the company to disclose the Corporate Secretary's experience and qualifications in the annual report.[15]

Figure 5 illustrates the skills required to effectively perform the role of Corporate Secretary.

Figure 5. Skills required for a Corporate Secretary

A Corporate Secretary:
✓ Communicates respectfully, diplomatically and effectively.
✓ Is an active listener.
✓ Brings issues to the surface, especially those relating to reputational risk.
✓ Describes common concerns and interests.
✓ Generates alternative solutions.
✓ Respects and upholds confidential information.
✓ Is respected by all parties.
✓ Disagrees constructively.
✓ Emphasizes commercially-minded approaches.

Source: IFC Corporate Secretary Toolkit, 2013

8.2.2. Continuing Education and Professional Development

The Corporate Secretary will keep abreast of the latest legal and regulatory developments and internationally recognized best practices. The Corporate Secretary shall provide periodic updates to the company's directors and senior managers and is expected to coordinate closely with the company's legal department in this context.

15 *The Australian Institute of Company Directors: Role of the Company Secretary: https://www.aicd.com.au/content/dam/aicd/pdf/tools-resources/director-tools/organisation/role-of-the-company-secretary.pdf*

Continuing education and professional development, therefore, are vital for the Corporate Secretary to navigate the evolving landscape of governance and compliance. This education may include courses, seminars, workshops, and certifications tailored to corporate governance, legal compliance, ethics, communication, and leadership. The Corporate Secretary should seek qualifications or certificates that can enhance its expertise and credibility. Some examples are chartered secretary, certified corporate secretary, certified governance professional, and globally recognized certifications focused on corporate governance, company law, compliance, and ethical standards. Engaging with professional associations and networks of fellow practitioners provides access to resources, networking opportunities, and continuous professional development for a Corporate Secretary seeking to remain current in the field.

Professional development cultivates expertise and skills in effective communication, minute-taking, shareholder relations and corporate law. This enhances the Corporate Secretary's ability to support the Board and management, while upholding transparency, integrity, and accountability within the organization.

The Viet Nam Institute of Company Directors' Corporate Secretary Master Program, with technical support from IFC, provides a practical understanding of various aspects of the role and responsibilities of a Corporate Secretary as a corporate governance professional.

8.3. Appointment and Dismissal

A company's internal regulations should set out the procedures for nominating and appointing the Corporate Secretary. The BoD is responsible for the appointment of the Corporate Secretary.[16] The BoD should produce a detailed terms of reference, which may include the Corporate Secretary's authority, duties, and responsibilities beyond those required by law, its term of office, and other relevant provisions. In addition, the Corporate Secretary's contract of employment should precisely define the remuneration and other rights and duties that apply to the position.

8.3.1. Information about Candidates for the Corporate Secretary

Before deciding on the appropriate candidate to fill the Corporate Secretary role, the BoD should possess all relevant necessary information to assess a candidate's qualifications, experience, and personal qualities. A nominee for the position of Corporate Secretary should provide the BoD with sufficient information to evaluate its candidacy. Candidates should, at a minimum, be required to provide evidence of their:

- Educational background.
- Employment in other companies.
- Any relationship they may have with the company, its BoD and executive management, its affiliated persons and significant business partners.
- Number and type of company shares they own, if any.
- Declaration of non-conviction for criminal or administrative offences.
- Any other aspects and circumstances that may influence the performance as Corporate Secretary in accordance with general company documents and BoD's requests.

This information may be supplemented by personal references and interviews with directors, particularly the Chairperson. A good personal rapport between the Chairperson, other directors, and the Corporate Secretary will be important in maintaining effective working relationships.

16 *LOE, Article 156, Clause 5.*

The Corporate Secretary should notify the BoD immediately of any changes in circumstances that may influence their ability to effectively serve as the company's Corporate Secretary.

8.3.2. Contract with the Corporate Secretary

Remuneration and other rights and duties of the Corporate Secretary are precisely defined by a contract concluded between the BoD and Corporate Secretary in the form of an employment contract. The BoD may offer an employment contract to the Corporate Secretary. An employment contract can be fixed or short-term, but should not be longer than five years. As highlighted above, large companies are well advised to employ a Corporate Secretary on a full-time basis to ensure duties are fully executed.

The Chairperson of the BoD is authorized to draft the contract that will be concluded with a Corporate Secretary.

In jurisdictions with directors and officers indemnity insurance, it is advisable to include the Corporate Secretary. Additionally, there may be regulatory filing obligations upon the appointment and departure of the Corporate Secretary.

8.3.3. Performance Appraisal of the Corporate Secretary

Assessing the performance of a Corporate Secretary is crucial for ensuring effective governance, compliance and a well-supported Board within an organization. Among its principles, the King Reports on Corporate Governance, namely the King IV Code, requires the governing body to ensure that performance appraisals of the BoD, Chairperson, directors, CEO, and Corporate Secretary result in continuous improved performance and effectiveness.[17]

The Corporate Secretary's performance appraisal should be conducted by the Board Chairperson, with support from the Human Resources department. The approach could be a 360-degree appraisal process, where feedback is gathered from the Corporate Secretary's immediate work circle, including the Board, along with a self-evaluation. Additionally, the performance evaluation could consider inputs from external sources like

17 *https://www.werksmans.com/wp-content/uploads/2013/05/061741-WERKSMANS-king-iv-booklet.pdf*

customers, suppliers, or other stakeholders if relevant. Having a clear set of key performance indicators for the Corporate Secretary reflecting the roles of governance, advice, communication, and compliance is necessary for performance appraisal.[18]

- *Compliance*: Evaluate the Corporate Secretary's adherence to regulatory requirements, corporate governance guidelines, and internal policies. This includes ensuring accurate record-keeping, timely filings, and compliance with applicable laws.
- *Board support and communication*: Assess the quality of support provided to the BoD. This involves evaluating the clarity, completeness, and timeliness of communication, as well as the effectiveness of Board meeting preparations and follow-ups.
- *Ethical conduct*: Gauge the Corporate Secretary's commitment to ethical conduct and integrity in carrying out its duties. This includes maintaining confidentiality, avoiding conflicts of interest, and promoting transparency in decision-making processes.
- *Stakeholder relations*: Evaluate the Corporate Secretary's ability to manage relationships with internal and external stakeholders such as shareholders, regulatory bodies, and others. This involves effective communication, responsiveness to inquiries, and facilitation of shareholder engagement initiatives.
- *Risk management*: Assess the Corporate Secretary's contribution to risk management processes within the organization. This includes identifying potential governance risks, implementing controls to mitigate them, and ensuring appropriate disclosure of risks to stakeholders.
- *Feedback from Board and management*: Solicit feedback from Board members, executive management, and other stakeholders on the Corporate Secretary's performance.

18 *IFC Corporate Secretary: Governance Professional Handbook 2016.*

- *Continuous improvement*: Consider the Corporate Secretary's self-evaluation and efforts towards professional development and process enhancement. This involves staying updated on industry best practices, seeking opportunities for skills development, and implementing improvements to governance processes.

The Institute of Directors in Southern Africa provides an excellent example of the Corporate Secretary performance appraisal template.[19]

8.3.4. Dismissal

The removal of the Corporate Secretary should be approved by the whole Board to ensure fair dismissal. Upon departure, the Corporate Secretary is typically asked to inform the Board if any governance issues related to their exit. These reasons should be recorded in the minutes of the Board meeting.[20]

Some jurisdictions may require regulatory filing when a Corporate Secretary leaves the company. In Australia, for example, the company is required to notify the Australian Securities and Investments Commission (ASIC) within 28 days of resignation/retirement.[21] In South Africa, the Company Act[22] requires that if the Corporate Secretary is removed from office by the Board, it may require the company to include a statement in the directors' report in its annual financial statements relating to that financial year, setting out the Company Secretary's contention as to the circumstances that resulted in the removal.

19 *The Institute of Directors in Southern Africa: Practice Notes King III Chapter 2: Company Secretary Evaluation Questionnaire. https://cdn.ymaws.com/www.iodsa.co.za/resource/collection/24CB4885-33FA-4D34-BB84-E559E336FF4E/King_III_Ch_2_Company_Secretary_Evaluation_Questionnaire_Aug_2011.pdf*

20 *IFC Corporate Secretary: Governance Professional Handbook 2016.*

21 *The Australian Institute of Company Directors: Role of the Company Secretary: https://www.aicd.com.au/content/dam/aicd/pdf/tools-resources/director-tools/organisation/role-of-the-company-secretary.pdf*

22 *South Africa's Company Act (2008) Article 89. Resignation or removal of the Company Secretary.*

NOTES

Chapter 9

CONTROL ENVIRONMENT

9 | Control Environment

Table of contents

The Chairperson's Checklist

Risk Governance and Internal Control:

- ☑ Does the company have an adequate risk management system in place?
- ☑ Does the company adopt the "Three Lines" model of risk management, internal control and internal audit?
- ☑ Does the Board approve risk appetite?
- ☑ Has the company established a Chief Risk Officer position, or equivalent, with unfettered access to the Board?
- ☑ Does this system also cover risks at the subsidiary level?
- ☑ How does the company identify business, operational, financial, reputational, cybersecurity, environmental and social (E&S) risks?
- ☑ Does the company have an adequate internal control system in place? Does the company have formal internal control policies and procedures? Are these documents periodically reviewed?
- ☑ Is the control environment built in accordance with international standards?

Internal Audit:

- ☑ Does the Internal Audit function regularly interface with External Auditors? Is the Internal Audit accountable to the Board?
- ☑ Is the Internal Audit function independent, objective, and risk-based with an unlimited scope of activity?
- ☑ Does the Head of Internal Audit report to the Audit Committee and administratively to management?
- ☑ Is the quality of the Internal Audit function subject to periodic quality assessment by a third party?

Compliance:

- ☑ Does the company have a comprehensive compliance program with a mechanism to report wrongdoing and misconduct? Does the company review the compliance program annually?
- ☑ Does the company have a designated Compliance Officer who reports to the Audit Committee or equivalent and administratively to management?

The Supervisory Board:

- ☑ Is the Supervisory Board fulfilling its function and duties?
- ☑ Has the Supervisory Board ever found and reported on possible misstatements or other violations to the General Meeting of Shareholders (GMS)?
- ☑ Who are the members of the Supervisory Board? Are the members fully independent from management? Are they elected by shareholders and do they comply with independent director requirements?
- ☑ Do the Supervisory Board members have relevant qualifications and experience?
- ☑ Does the Supervisory Board meet regularly and respond to all shareholder requests and inquiries?
- ☑ Does the Internal Auditor report to the Supervisory Board? Are there barriers that could discourage the Internal Auditor from reporting its findings?

The Board of Director's (BoD) Audit Committee:

- ☑ Should the company's BoD have an Audit Committee? What are the costs and benefits? What needs to be done to ensure there are no conflicts between the Supervisory Board and the Audit Committee in relation to the use of the internal audit function?
- ☑ If the company has an Audit Committee, are all members non-executive and is the majority, including the committee chair, independent?
- ☑ Does the chair of the Audit Committee have the requisite professional and interpersonal skills? Do members of the Audit Committee collectively have knowledge in terms of internal audit, International Financial Reporting Standards (IFRS) and Vietnamese Accounting Standard (VAS) accounting, compliance, financial reporting and control?
- ☑ Does the Audit Committee meet often enough to perform its duties effectively? Does it place the necessary and appropriate issues on the agenda?
- ☑ Does the Audit Committee add value to BoD's discussions covering audit, risk, internal control and financial reporting?

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- ☑ Does the Audit Committee receive the necessary information to perform its duties effectively? Does it have the resources to hire outside accounting or legal advice? Does the Audit Committee have access to and meet periodically with External Auditors and the Head of Internal Audit?
- ☑ Does the Audit Committee conduct performance evaluations on a regular basis?
- ☑ Does the Audit Committee manage the relationship with the External Auditor, agree on the scope and audit fees, and undertake a periodic quality assessment of the External Auditor using relevant Audit Quality Indicators?

The External Audit:

- ☑ Does the company have an independent External Auditor? Does the External Auditor provide other, non-audit services to the company that could compromise its independence? Are audit partners rotated?
- ☑ How is the External Auditor selected and assessed on independence? Does an open tender process take place? If so, who organizes this tender process? Does the company have a rotation policy for External Auditors?
- ☑ To whom does the External Auditor report?
- ☑ How is the audit scope determined, and what factors contribute to defining materiality in the audit process? How does the External Auditor assess and test the effectiveness of the company's internal controls? Does the External Auditor provide written management letters?
- ☑ What methods are used to identify and evaluate risks that may impact the financial statements? How does the External Auditor ensure continuity in the audit team, and what measures are in place to maintain auditor independence?
- ☑ Does the External Auditor participate in the annual GMS and answer all questions posed by shareholders?

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Subsidiary Governance:

- ☑ Can the company identify its subsidiaries?
- ☑ Does the company have policies and procedures to control the creation and dissolution of subsidiaries?
- ☑ Does the company have a centralized subsidiary governance function? Are subsidiaries categorized based on complexity and an appropriate governance framework applied to each category?
- ☑ Does the Board exercise risk and control oversight over the organizational structure and activities of its subsidiaries, including E&S matters?

Internal and external audit frameworks are essential tools for effective management and oversight of a company, concurrently fostering transparent and sound financial reporting. Several internal structures and external agents are involved in managing and overseeing company finances and operations. These bodies are diverse in their nature, functions and reporting lines. Some are mandatory, while others are optional.

Under the Law on Enterprises (LOE), every joint stock company is entitled to decide its organizational and management structure by one of the two following models[1]:

- (a) GMS, BoD, Supervisory Board and CEO: If a joint stock company has less than 11 shareholders and institutional shareholders hold less than 50 percent of total shares of the company, it is not required to have a Supervisory Board.
- (b) GMS, BoD and CEO: In this case, at least 20 percent of members of the BoD shall be independent, and there shall be an Audit Committee under the BoD. The organizational structure, functions, and tasks of the Audit Committee shall be specified in the Company Charter, and the BoD shall issue the terms of reference of the Audit Committee.

This chapter discusses the role, authority and duties of these various bodies in detail and how they effectively control or provide oversight of control in a company.

1 *LOE (2020), Article 137.*

9.1. Risk Governance

Successful governance of risk is central to the success of all organizations. Risk management has evolved significantly from its original emphasis on operational risks. Key differentiators of recent international standards on risk management (such as ISO 31000:2018, COSO Enterprise Risk Management—Integrated Framework) from traditional risk management are the linking of critical risks into an organization's strategic objectives, the expansion of responsibility for managing risks across the organization, and a broader definition of risk as "the effect of uncertainty on objectives", which therefore includes strategic, reputational, financial, E&S, and information technology risks, among others, as opposed to focusing solely on operational risks.

The BoD and Management Board are ultimately responsible for determining the nature and extent of risks an organization is willing to take to achieve its strategic objectives and ensuring these risks are identified and managed properly. The Management Board is responsible for implementing the risk management system, while the BoD monitors and reviews its implementation. The Viet Nam CG Code of Best Practices recommends the following:[2]

- The BoD should ensure the integration of strategy, risk and control and oversee the effectiveness of the company's internal control system.
- The BoD should oversee the company's enterprise-wide risk management and ensure the risk management activities help the company make better and risk-informed strategic decisions and manage risks within the company's risk appetite.
- The BoD should enforce clear lines of responsibility and accountability throughout the organization.
- The BoD should ensure that the foundation and framework for a cyber-resilient company is properly established. The BoD, with assistance from the Audit and Risk Committees, should periodically review the effectiveness of the company's internal controls. The BoD's agenda on internal control should not be static. It should be tailored to the issues and risks that demand the BoD's highest attention.

2 *Viet Nam CG Code of Best Practices, Principle 7.*

- The internal control system should have forward-looking and proactive perspectives to anticipate potential risks.
- Audit and Risk Committees should organize face-to-face meetings with the executive team to understand the most pressing internal control issues.

IFC's Corporate Governance Progression Matrix for Listed Companies considers if the company has established a risk management framework with a Chief Risk Officer or equivalent with unfettered access to the Board. The Chief Risk Officer reports directly to the board-level Risk Management Committee or equivalent.[3] It also recommends that the Board routinely monitor risk management and compliance with policies and procedures.

Best practice

The purpose of risk management is the creation and protection of value. It improves performance, encourages innovation and supports the achievement of objectives. To ensure effective and efficient risk management, ISO 31000:2018 recommends that organizations comply with the following principles:[4]

a) **Integrated:** Risk management is integral to all organizational activities.

b) **Structured and comprehensive:** A structured and thorough approach to risk management contributes to consistent and comparable results.

c) **Customized:** The risk management framework and process are customized and proportionate to the organization's external and internal context related to its objectives.

d) **Inclusive:** Appropriate and timely involvement of stakeholders enables consideration of their knowledge, views, and perceptions. This results in improved awareness and informed risk management.

e) **Dynamic:** Risks can emerge, change or disappear as an organization's external and internal context changes. Risk management anticipates, detects, acknowledges and responds to those changes and events appropriately and promptly.

f) **Best available information:** The inputs to risk management are based on historical and current information, as well as on future expectations. Risk management explicitly considers any limitations and uncertainties associated with such information and expectations. Information should be timely, transparent and available to relevant stakeholders.

g) **Human and cultural factors:** Human behavior and culture significantly influence all aspects of risk management at each level and stage.

h) **Continual improvement:** Risk management is continually improved through learning and experiences.

3 *Please refer to Chapter 6 for the responsibilities and composition of the Risk Management Committee.*

4 *ISO 31000:2018. Principles. ISO 31000:2018(en), Risk management — Guidelines.*

9.2. Internal Control

The management of risk requires the establishment and maintenance of an effective internal control system. Internal control is "a process designed and effected by the BoD, senior management, and all levels of personnel to provide reasonable assurance on the achievement of objectives through efficient and effective operations; reliable, complete and timely financial and management information; and compliance with applicable laws, regulations, and the organization's policies and procedures".5 Internal control is not merely about standards, policies, procedures, systems and forms, but also refers to people, behavior and actions taken at every level of an organization to affect internal control. Therefore, internal control can provide reasonable, not absolute, assurance that an organization can achieve its objectives under these categories: operations (effectiveness and efficiency of the entity's operations, including operational and financial goals and safeguarding assets against loss), reporting (reliability, timeliness, and transparency of internal and external financial and non-financial reporting), and compliance (adherence to relevant laws and regulations).

The Viet Nam CG Code of Best Practices sets out a principle on internal control: "The BoD should ensure integration of strategy, risk, and control and oversee the effectiveness of the company's internal control system."[6] In addition, the BoD should set up an Audit Committee to ensure that proper internal controls are maintained and the company is in compliance with all relevant laws and regulations. An internal audit function should also be established to provide objective assurance and consulting activity designed to add value and improve an organization's operations. [7]

5 *Viet Nam CG Code of Best Practices, Common CG Glossary.*

6 *Viet Nam CG Code of Best Practices, Principle 7.1.*

7 *Viet Nam CG Code of Best Practices, Principle 7.2.*

Best practice

The company should establish a reliable system of internal controls that ensures the achievement of its strategic objectives, with periodic updates provided to the Board.

The company's internal controls should be designed using a relevant framework (e.g., COSO, COBIT, BASEL).

COSO: The Committee of Sponsoring Organizations of the Treadway Commission (COSO) provides thought leadership through the development of frameworks and guidance on enterprise risk management, internal control and fraud deterrence.

As per IFC's Internal Control Handbook[8], an effective internal control system significantly contributes to an entity's preparedness for changes in the economic and market landscape. For an internal control system to be considered adequate, all five components of the COSO model should be present and functioning accordingly. Moreover, the components should operate as an integrated system. Every entity is unique in its mission, structure and operation, so organizations are not expected to have identical internal control systems. While the COSO model defines the foundation blocks of internal control, it is up to each entity to decide on specific activities and an in-house structure of internal control systems. The ultimate design and composition of an internal control system should fit the entity's objectives and the environment in which it operates.

COBIT: Is a framework developed by the Information System Audit and Control Association (ISACA) for the governance and management of an enterprise's information and technology, aimed at the whole enterprise.

BASEL: The Basel Committee on Banking Supervision provides frameworks for internal control and risk management systems in banking organizations.

Three Lines Model:[9]

The Three Lines Model is most effective when adapted to align with the organization's objectives and circumstances. Management and the governing body determine how an organization is structured and how roles are assigned. The governing body may establish committees to provide additional oversight for particular aspects of its responsibility, such as audit, risk, finance, planning, and compensation. Within management, there are likely to be functional and hierarchical arrangements and an increasing tendency toward specialization as organizations grow in size and complexity.

The model is based on six fundamental principles:

Governance: An organization's governance must have appropriate structures and processes that enable accountability, action, assurance, and advice.

Governing Body Roles: The governing body ensures appropriate processes and structures are in place for effective governance. It also ensures that objectives and activities are aligned and prioritized with those of relevant stakeholders.

8 *IFC Internal Control Handbook, Page 10.*

9 *Three-Lines-Model-Updated.pdf (theiia.org).*

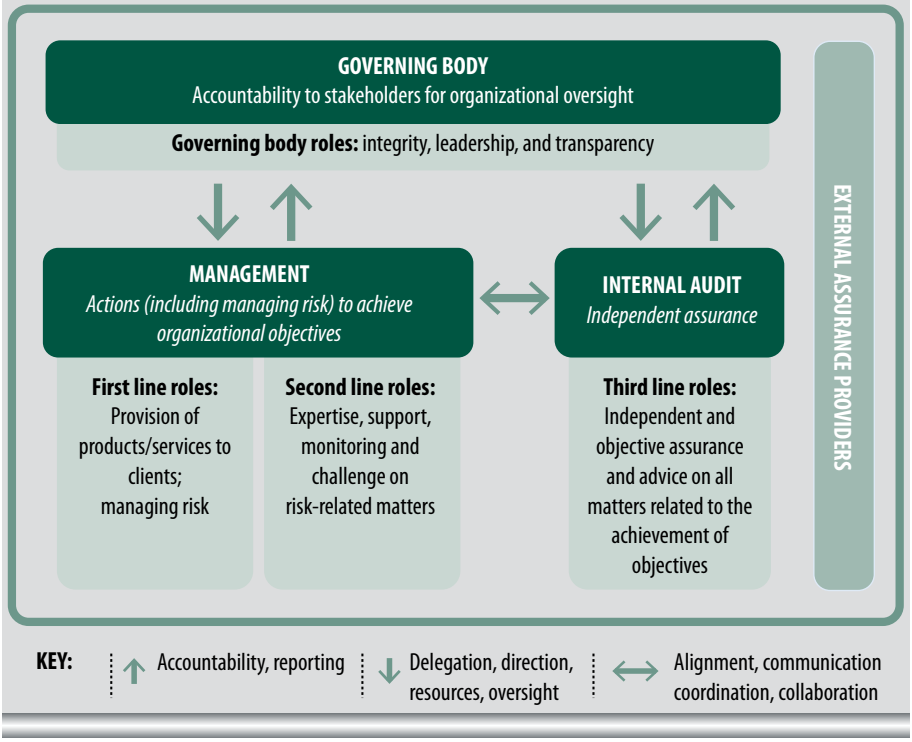
Management and First and Second Line Roles: Management activities include first and second line roles in achieving organizational objectives. First line roles are more associated with delivering products, services and specific support functions. Second line roles often provide assistance focused on managing risk. Both first and second line roles operate concurrently.

Third Line Roles: Internal audit provides independent and objective assurance and advice on the adequacy and effectiveness of governance and risk management.

Third Line Independence: Internal audit must maintain independence from management so as not to impair its objectivity, authority, and credibility.

Creating and Protecting Value: These three lines work together to create and protect value when aligned and prioritized with stakeholder interests. Alignment is achieved through communication, cooperation, and collaboration.

Figure 1. IIA's Three Lines Model



To gain a better understanding of the internal control system, in the following section, we shall discuss the internal control principles, elements of internal control systems, bodies and persons responsible for internal control as well as the roles of internal auditing in the internal control system.

9.2.1. Elements of the Internal Control System

The internal control system includes the following inter-related elements:[10]

- **Control environment:** A control environment is a set of standards, processes, and structures that provide the foundation for internal control across the organization. Components of a control environment include the organization's integrity and ethical values, the parameters that enable the Board to carry out its oversight responsibilities, the organizational structure and assignment of authority and responsibility, the process for attracting and retaining human resources and performance measures, incentives and rewards to ensure accountability and performance.

- **Risk assessment:** Risk assessment is the process of identifying and assessing risks to achieve a company's objectives, which forms a basis for determining how these risks should be managed. Central to risk assessment is the establishment of specific objectives related to operations, reporting and compliance, which enables identifying and managing risks related to these objectives.

- **Control activities:** Control activities are the actions that emanate from policies and procedures to mitigate risks to acceptable levels. Control activities occur throughout the organization at all levels and functions. They include various activities, such as approvals, authorizations, verifications, reconciliations, reviews of operating performance, security of assets, and segregation of duties. Control activities should be strict at the top and bottom of the company's operations, lending credibility to the control environment and setting the tone from senior management to ensure all employees comply.

- **Information and communication**: Companies must identify, obtain, generate and disseminate pertinent information in a form and within a timeframe that enables employees to carry out their responsibilities effectively. Effective communication should flow up, down, and across the organization. All personnel should receive a clear message from senior management that control responsibilities must be taken seriously. Furthermore, they must understand their role in the internal control system and how individual activities relate to the work of others. It is essential that management does not limit itself to communicating on a control measure itself, but correctly emphasizes the meaning and purpose of various internal control elements. Employees should

10 *Internal Control - Integrated Framework (Committee of Sponsoring Organizations of the Treadway Commission, 2013), 12-14.*

also have a means of communicating significant information upstream. The company should communicate with external parties – such as customers, suppliers, regulators, and shareholders – regarding matters affecting the functioning of internal control.

- **Monitoring activities**: An internal control system needs to be monitored over time to assess the quality of its performance. This is accomplished through ongoing evaluations, separate evaluations, or some combination of the two. Ongoing monitoring occurs during operations and is built into business processes at different levels of the organization. It includes regular management and supervisory activities and other actions personnel take in performing their duties. The scope and frequency of separate evaluations depend primarily on assessing the risks and effectiveness of ongoing monitoring procedures. Internal control deficiencies should be reported upstream, with the most severe matters reported directly to the BoD. The BoD and management need to formulate sanctions to be imposed due to control violations on an *ex-ante* basis.

9.2.2. Internal Control Principles

Internal control helps companies achieve essential business objectives as well as sustain and improve performance. Designing and implementing an effective internal control system can be challenging, while operating that system effectively and efficiently is crucial. New and rapidly changing business models, greater use and dependence on technology, increasing regulatory requirements and scrutiny, globalization and other challenges demand that any system of internal control be agile in adapting to changes in business, operating, and regulatory environments. An effective internal control system demands more than adherence to policies and procedures: it requires judgment. Management and the BoD use judgment to determine control. Management and other personnel use judgment daily to select, develop, and deploy controls across the entity. Management and Internal Auditors, among other personnel, apply judgment as they monitor and assess the effectiveness of the internal control system. Internal control is not a serial process, but a dynamic and integrated process.

In Viet Nam, Circular No. 13/2018/TT-NHNN regulates the internal control system applicable to credit institutions, and Circular No. 70/2022/TT-BTC regulates the internal control of insurance and reinsurance enterprises. Although these regulations apply to financial institutions, it is recommended

that enterprises generally refer to them. The internal control system of a credit institution must meet the following requirements:[11]

- The internal control system must be appropriate to the scale, conditions, and complexity of the institution's business activities. It must also have sufficient financial, human, and IT resources to ensure its effectiveness and create and maintain an internal control culture and work ethic for the institution.
- Credit institutions must have internal control regulations that should be approved by authorized governance bodies.
- The internal control system must have three lines as follows:

  a) The first line has the functions of risk identification, control and minimization, carried out by the following departments:

     (i) Business departments (also including product development), other revenue-generating departments, and departments responsible for making risk-bearing decisions.

     (ii) Departments responsible for risk limit allocation, risk management and risk minimization (affiliated with a business department or independent) in each type of transaction and business activity.

     (iii) Human Resource and Accounting departments.

  b) The second line has the functions of formulating risk management policies and internal regulations on risk management, measuring and monitoring risk by rules of law, carried out by the Compliance and Risk Management departments.[12]

  c) The third line has the internal audit function, which is carried out by the Internal Audit Department.[13]

- Discussions (agreements and disagreements) and conclusions on the internal control system in meetings held by the BoD, Supervisory Board, Audit Committee, Human Resource Committee, Risk Committee, Capital Management Committee, Asset-Liability Committee (ALCO) and any other relevant committees must be documented in writing.

11 *Circular No. 13/2018/TT-NHNN, Article 5.*

12 *Circular No. 13/2018/TT-NHNN, Articles 18 and 22.*

13 *Circular No. 13/2018/TT-NHNN, Article 68.*

- The related regulations on independent internal audits in commercial and foreign banks' branches carry out independent internal control system assessments.

Best practice

COSO's Internal Control—Integrated Framework enables organizations to effectively and efficiently develop internal control systems that adapt to changing business and operating environments, mitigate risks to acceptable levels, and support sound decision-making and governance of the organization. The framework provides 17 principles, each mapped directly to one of the five components of internal control. Points of focus are intended to provide helpful guidance to assist management in designing, implementing and conducting internal controls and assessing whether relevant principles are present and functioning. The graphic shows the number of points of focus underlying each principle, 77 in all, as provided by the framework:[14]

Components	Principles	No. of Points of Focus
Control Environment	1. Commitment to integrity and ethical values	4
	2. Independent board of directors oversight	4
	3. Structures, reporting lines, authorities, responsibilities	3
	4. Attract, develop and retain competent people	4
	5. People held accountable for internal control	5
Risk Assessment	6. Clear objectives specified	5
	7. Risks identified to achievement of objectives	5
	8. Potential for fraud considered	4
	9. Significant changes identified and assessed	3
Control Activities	10. Control activities selected and developed	6
	11. General IT controls selected and developed	4
	12. Controls deployed through policies and procedures	6
Information & Communication	13. Quality information obtained, generated and used	5
	14. Internal control information internally communicated	4
	15. Internal control information externally communicated	5
Monitoring Activities	16. Ongoing and/or separate evaluations conducted	7
	17. Internal control deficiencies evaluated and communicated	3

14 *COSO, 2013 Internal Control – Integrated Framework: See executive summary at https://www.coso.org/_files/ugd/3059fc_1df7d5dd38074006bce8fdf621a942cf.pdf*

9.2.3. Internal Control over Sustainability Reporting

Sustainability reporting provides transparency on a company's environmental, social and governance (ESG) practices, allowing stakeholders to assess its commitment to sustainable development. It also helps organizations identify and manage risks, improve operational efficiency, and build long-term value.

In March 2023, COSO released a ground-breaking study accompanied by supplemental guidance designed to help companies achieve effective internal control over sustainability reporting. This guidance leverages the globally recognized COSO Internal Control—Integrated Framework. COSO believes that implementing this framework will enhance trust and confidence in ESG and sustainability reporting, public disclosures, and enterprise decision-making. Good internal controls are essential for business sustainable development and apply well beyond compliance and mandatory external disclosures.

COSO highlights the following recommendations for a robust internal control system over sustainability reporting[15]:

1. Companies should be committed to ensuring effective internal control over sustainability-related matters, including operations, compliance, and various types of reporting (external, internal, non-financial, and compliance).

2. While effective internal control is achieved when the 17 principles are present and functioning, customization and adaptation are key as this will differ to some degree at each organization based on maturity, industry, resources, and requirements.

3. Companies should work with others to determine the best organizational structures, roles, and responsibilities to create the desired results, achieve appropriate internal and external efficiencies, and achieve effective internal control. This includes the Board and Board committees, management, operations, compliance, and internal audit. The Three Lines Model can be especially helpful in delineating these responsibilities.

15 *COSO, 2023, Achieving Effective Internal Control over Sustainability Reporting (ICSR): Building Trust and Confidence through the COSO Internal Control – Integrated Framework: https://www.coso.org/_files/ugd/719ba0_0b33989b84454d1682399ab5c71e49cb.pdf.*

4. Companies should educate themselves on new sustainability topics.
5. Companies can take advantage of other relevant COSO materials on subjects such as ERM and ESG, cloud computing, and others (available at *www.coso.org*).
6. Internal assurance and confidence in sustainability reporting need to exist before external assurance. Companies should ensure that the internal audit function can provide objective assurance and other advice.
7. Companies should make ESG reporting (internal and external), automated, efficient, and continuous.
8. Sustainability reporting is a fast-moving area. So, monitoring activities are key in terms of evaluating progress and knowing when to make corrections and enhancements.
9. COSO is for all organizations to build effective internal controls to meet their objectives, manage risk, evolve, and succeed in all areas of their business and activities.
10. It is crucial for companies to form a cross-functional team consisting of experts in sustainable business and in internal controls and reporting.

9.3. Supervisory Board

The Supervisory Board controls the operations and financial activities of the company. Its primary function is to supervise the BoD and CEO concerning the management and administration of the company. This includes inspecting the reasonableness, legality, truthfulness and prudence in the management and administration of business operations, and the systematic nature, consistency and appropriateness of statistics and accounting work and preparation of financial statements.[16]

A joint stock company can choose to have a Supervisory Board or a Audit Committee. For joint stock companies with less than 11 shareholders and institutional shareholders holding less than 50 percent of the company's total shares, they are not required to establish a Supervisory Board.[17]

9.3.1. Composition and Requirements for Supervisors

A Supervisory Board of a joint stock company shall have three to five members, each serving a term of no more than five years. Members can be re-elected for unlimited terms.[18] More than half of the Supervisory Board must reside permanently in Viet Nam.[19]

16 *LOE, Article 170, Clauses 1 & 2.*

17 *LOE, Article 137, Clause 1a.*

18 *LOE, Article 168, Clause 1.*

19 *Circular No.116/2020/TT-BTC, Model Charter, Article 38, Clause 1; and Model Regulation on the operation of the Supervisory Board, Article 4, Clause 2.*

Best practice

Many Vietnamese companies adopt the two-tier governance model, akin to those prevalent in various jurisdictions like Austria, Denmark, Finland, Germany, the Netherlands and Switzerland in Europe or China and Indonesia in Asia. This model segregates the BoD into a Supervisory Board and an Executive Board of executive directors.[20] Although Vietnamese firms adhere to this structure, subtle discrepancies exist in maintaining the Supervisory Board. Notably, Supervisory Board members are not non-executive directors but are elected by shareholders, potentially including employees, compromising independence. According to the current LOE (2020), the Supervisory Board has three to five members who can serve an unlimited number of terms.[21]

However, according to good corporate governance practices, as the Supervisory Board assumes the critical role of an Audit Committee in providing management oversight, the independence requirements applied to Audit Committee members should also be extended to them, including the potential loss of independence after serving more than nine years.

Supervisors shall satisfy the following criteria and conditions:[22]

- Is not in the group of people allowed to establish and manage enterprises in Viet Nam by the LOE.[23]
- Has been trained in one of the fields of economics, finance, accounting, auditing, law, business administration or a field in line with the enterprise's business operation.
- Is not a person with family relationships with members of the BoD, CEO and other managers.
- Is not a manager of the company.
- Do not work in the company's Accounting or Finance departments.

20 *The Corporate Governance Institute: What is a two-tiered board structure?: https://www.thecorporategovernanceinstitute.com/insights/lexicon/what-is-a-two-tiered-board-structure/#:~:text=In%20the%20two%2Dtiered%20system%2C%20the%20management%20board%20looks%20after,management%20board%20features%20executive%20directors.*

21 *LOE, Article 168, Clause 1.*

22 *LOE, Article 169, Clause 1 and Circular No. 116/2020/TT-BTC, Model Charter, Article 37, Clause 2.*

23 *LOE, Article 17, Clause 2*

- Is not a member or employee of the independent accredited audit organization that has been auditing the company's financial statements over the last three years.

In addition, supervisors of a public company must not be relatives of managers of the company and parent company, representatives of the company's investment, or representatives of the State's investment in the company and parent company.[24]

9.3.2. Authorities

The Supervisory Board has the rights and obligations to:[25]

- Supervise the BoD and CEO concerning management and administration of the company.
- Inspect the reasonableness, legality, truthfulness and prudence in the management and administration of business operations and the systematic nature, consistency, and appropriateness of statistics and accounting work and preparation of financial statements.
- Evaluate the completeness and lawfulness of reports on business, half-yearly and annual financial statements and reports on the evaluation of management of the BoD, and submit evaluation reports at the annual meeting of GMS.
- Review contracts and transactions with related persons within the approval authority of the BoD or GMS and make recommendations about contracts that need to be approved by the BoD or GMS. Review, inspect and evaluate the effectiveness and efficiency of the internal control, internal audit, risk management and early warning systems of the company.
- Review books of account, records of accounts, and other documents of the company. This includes the management and administration of company operations if deemed necessary or under a resolution of the GMS or as requested by a shareholder or group of shareholders.
- Carry out inspections of issues required to be inspected by a shareholder or group of shareholders.

24 *Circular No. 116/2020/TT-BTC, Model Regulation on the operation of the Supervisory Board, Article 5, Clause 2.*

25 *LOE, Article 170.*

- Recommend to the BoD or GMS any changes and improvements in the organizational and management structure, supervision and administration of business operations of the company.
- Give immediate written notice to the BoD and request the person in breach of a company manager's obligations to cease the breach and take measures to remedy any consequences.
- Attend and participate in discussions at meetings of the GMS, meetings of the BoD and other meetings of the company. An independent consultant or the company's Internal Audit department performs the assigned duties. Consult the BoD before submission of reports, conclusions and recommendations to the GMS.
- Inspect specific issues relevant to company management and administration at the request of shareholders.
- Request the BoD to convene an extraordinary GMS.
- Convene the GMS, instead of the BoD, within 30 days if the BoD fails to do so.[26]
- Request the chairperson of the BoD to convene a meeting of the BoD.
- Examine, extract, and copy all or part of the list of related persons and interests of the company's directors, supervisors, CEO and other managers.
- Submit and request the GMS to approve the list of accredited audit organizations that will audit the company's financial statements. Accredited audit organizations shall also audit the company's operations where necessary.
- Supervise the company's finances and lawfulness of operations of members of the BoD, the CEO, and other managers.
- Cooperate with the BoD, CEO and shareholders.
- Send a written notice to the BoD within 48 hours after a member of the BoD, CEO, or another manager discovers violations against the law or the Company Charter. Request the violator stops committing the violations and take remedial measures.

26 *LOE, Article 140, Clause 3; and Circular No. 116/2020/TT-BTC, Model Regulation on the operation of the Supervisory Board, Article 11.*

- Witness the vote counting by the BoD and issue a vote counting record if the BoD requests ratification of the GMS' resolution by ballot.
- The Head of the Supervisory Board shall preside over the election of the chair of the GMS if the Chairperson is absent or temporarily unable to work. At the same time, the remaining members of the BoD cannot elect a chair. In this case, the person who receives the most votes shall chair the meeting.

The Supervisory Board has the following responsibilities:[27]

- To comply with the law, the Company Charter, resolutions of the GMS and professional ethics during the exercise of delegated rights and obligations.
- To exercise their delegated powers and perform their delegated obligations honestly, prudently, and to the best of their ability to assure the company's legitimate interests.
- To be loyal to the interests of the company and shareholders. Do not abuse their position and powers nor use information, know-how, business opportunities, and other assets of the company for personal benefits or benefits of other organizations or individuals.
- Be accountable to the shareholders for supervision tasks it performs.
- Formulate regulations on the operation of the Supervisory Board and submit them to the GMS for ratification.
- In the case of failure to perform responsibilities that cause a loss to the company or other persons, supervisors shall be personally or jointly liable to compensate for loss. Income and other benefits that the supervisor gains due to the breach shall be returned to the company.
- Where it is discovered that a Supervisory Board member commits a breach during the exercise of delegated rights and obligations, it shall be notified to the Supervisory Board in writing, requesting the person in breach to cease the act of breaching and to remedy any consequences.

27 *LOE, Article 173, and Circular No. 116/2020/TT-BTC, Model Regulation on the operation of the Supervisory Board, Article 11.*

Responsibility to convene an extraordinary GMS

The Supervisory Board shall convene the GMS instead of the BoD within 30 days if the BoD fails to convene the GMS in the following cases:[28]

- The number of members of the Supervisory Board drops below the minimum number prescribed by law.
- It is requested by the shareholder or group of shareholders holding 5 percent or more of the total number of ordinary shares or holding a smaller percentage in compliance with the Company Charter.
- An extraordinary GMS is requested by the Supervisory Board, but not convened by the BoD.

In the case of failure to convene the above GMS as per regulations, the Supervisory Board shall pay damages incurred by the company.[29] The company shall reimburse the costs of convening and conducting the GMS.

Responsibility for BoD meetings

- Supervisors have the right to attend all BoD meetings and discuss issues, but not vote.[30]
- The Supervisory Board has the right to request the BoD chairperson to convene a meeting of the BoD.[31]

Access to information

The Supervisory Board has the right to receive the following documents and information in the same manner as sent to members of the BoD: [32]

- Invitation to the meeting, absentee ballots to members of the BoD and attached documents.
- Resolutions, decisions and minutes of meetings of the BoD and GMS.
- CEO reports submitted to the BoD or other documents issued by the company.

28 *LOE, Article 140, Clause 3; and Circular No. 116/2020/TT-BTC, Model Regulation on the operation of the Supervisory Board, Article 13, Clause 1.*

29 *Circular No. 116/2020/TT-BTC, Model Regulation on the operation of the Supervisory Board, Article 13, Clause 2.*

30 *LOE, Article 157, Clause 7.*

31 *LOE, Article 157, Clause 3a and Circular No. 116/2020/TT-BTC, Model Regulation on the operation of the Supervisory Board, Article 11, Clause 15.*

32 *LOE, Article 171, Clause 1.*

- Supervisors are entitled to access company files and documents retained in the head office, branches and other locations. They also have the right to access the workplaces of managers and employees during work hours.[33]
- The BoD, members of the BoD, CEO and other managers must provide in full, accurately and on time all information and documents relating to the company's management, administration and business operations upon demand by supervisors or the Supervisory Board.[34]

By end of the financial year, the BoD shall prepare and send to the Supervisory Board the following reports and material for appraisal at least 30 days prior to the opening day of the annual meeting of the GMS, unless otherwise stipulated by the Company Charter:[35]

- Report on the business results of the company.
- Financial statements.
- Report on the evaluation of the management and operation of the company.

Best practice

In some countries, additional authorities and duties of the Supervisory Board include the authority to:

- Investigate cases of using insider information.
- Check the timeliness of payments to contractors and mandatory budget payments.
- Check the timeliness of the accrual and payment of dividends, as well as the timely meeting of the company's other financial obligations.
- Check the appropriateness of using company reserves and other funds.
- Check the timeliness of payment for the company's issued shares.
- Oversee the timeliness of the valuation of the company's net assets.
- Request and receive information concerning related parties and related party transactions.
- Review the financial condition of the company, specifically its solvency, liquidity of assets, and creditworthiness.

33 *LOE, Article 171, Clause 2.*

34 *LOE, Article 171, Clause 3.*

35 *LOE, Article 175, Clause 1, 2.*

Rights and obligations of the head of the Supervisory Board[36]

- Convene meetings of the Supervisory Board.
- Request the BoD, the CEO and other managers to provide relevant information for reporting to the Supervisory Board.
- Prepare and sign reports of the Supervisory Board after consulting with the BoD for submission to the GMS.

Members of the Supervisory Board are independent of one another and shall cooperate in performing common tasks to fulfil their duties. The Chairperson of the Supervisory Board shall coordinate its operations, but does not have the right to control its members.[37]

9.3.3. Election and Dismissal

Nomination of members

A shareholder or group of shareholders holding at least 10 percent of total ordinary shares or a smaller amount specified in the Company Charter is entitled to nominate one or more candidates to the Supervisory Board. The nomination should be prior to the opening of the GMS. [38]

If the number of candidates nominated by these stakeholders is smaller than the maximum permissible number specified in the GMS decision, the BoD, Supervisory Board, and other shareholders shall nominate the remaining candidates.[39]

If the number of candidates is fewer than three, the incumbent Supervisory Board shall nominate more candidates or organize the nomination in accordance with the Company Charter, internal CG regulations, and operating regulations of the Supervisory Board. This must be announced before the GMS votes for members of the Supervisory Board as prescribed by law.[40]

36 *Circular No. 116/2020/TT-BTC, Model Charter, Article 38, Clause 2.*

37 *Circular No. 116/2020/TT-BTC, Model Regulation on the operation of the Supervisory Board, Article 19.*

38 *Circular No. 116/2020/TT-BTC, Model Regulation on the operation of the Supervisory Board, Article 7, Clause 1a.*

39 *Circular No. 116/2020/TT-BTC, Model Regulation on the operation of the Supervisory Board, Article 7, Clause 1b.*

40 *Circular No. 116/2020/TT-BTC, Model Charter, Article 36, Clause 2 and Model Regulation on the operation of the Supervisory Board, Article 7, Clause 2.*

The procedure for nominating candidates to the company's Supervisory Board is identical to that for nominating candidates to the BoD.[41] The Company Charter can require that additional information about candidates be included in the proposal for their nominations.

The list of candidates for the Supervisory Board of a bank must be approved by the Governor of the State Bank of Viet Nam.[42]

Election of supervisors

The election and dismissal of Supervisory Board members is within the authority of the GMS.[43]

All members of the Supervisory Board shall be elected by cumulative voting.[44] This means each shareholder has several votes equivalent to their shares multiplied by the number of members of the Supervisory Board and may cast all or some votes for one or some candidates. Elected members of the Supervisory Board shall be chosen according to the number of votes received in descending order until the minimum number specified in the Company Charter is reached. In case two or more candidates for the last member of the Supervisory Board receive the same number of votes, they will undergo a further round of voting or be selected according to voting regulations of the Company Charter. [45]

The term of a supervisor shall not exceed five years, and can be re-elected for an unlimited number of terms.[46] Nevertheless, in alignment with sound corporate governance principles, as the Supervisory Board takes on the vital functions of an Audit Committee, the independence criteria applicable to Audit Committee members should similarly be extended to them. This extension encompasses considerations, such as the potential compromise of independence after a tenure exceeding nine years to ensure independence of management and other functions.

41 *Circular No. 116/2020/TT-BTC, Model Charter, Article 36, Clause 1.*

42 *Circular No. 22/2018/TT-NHNN, Articles 3 and 4.*

43 *LOE, Article 138, Clause 2c.*

44 *LOE, Article 148, Clause 3.*

45 *Circular No. 116/2020/TT-BTC, Model Charter, Article 38, Clause 1 and Model Regulation on the operation of the Supervisory Board, Article 8, Clause 2.*

46 *LOE, Article 168, Clause 1.*

Where the term of office of supervisors expires at the same time, and supervisors of the new term of office have not been elected, the supervisors with expired terms shall continue to perform their rights and obligations until those of the new term of office are elected and take over the duties.[47]

The head of the Supervisory Board shall be elected among its members. The election, dismissal and discharge of the head of the Supervisory Board shall be carried out under the majority rule.[48]

Dismissal of Supervisory Board members

Only the GMS can dismiss Supervisory Board members before the end of their term. Supervisory Board members can be discharged or removed in the following cases:[49]

- No longer meeting the criteria and conditions for supervisors.
- Not exercising their rights and obligations for six consecutive months, except in *force majeure* events.
- Failing to fulfill the assigned tasks and duties.
- Committing multiple or severe breaches of obligations of supervisors as stipulated in this law and the Company Charter.
- Having a letter of resignation which is approved.
- Other cases specified in the resolution of the GMS.

Besides, a supervisor can be removed at any time according to a resolution of the GMS.[50]

47 *LOE, Article 168, Clause 3.*

48 *Circular No. 116/2020/TT-BTC, Model Regulation on the operation of the Supervisory Board, Article 6, Clause 2.*

49 *LOE, Article 174; and Circular No. 116/2020/TT-BTC, Model Charter, Article 37, Clauses 3 and 4 and Model Regulation on the operation of the Supervisory Board, Article 9.*

50 *LOE, Article 174, Clause 2d.*

9.3.4. Contracts with Members

Although not regulated in any legal documents, Supervisory Board members will have contracts with the company in the form of regular labor contracts.

Best practice

The charter or internal regulations should specify who signs the contract on behalf of the company. In principle, the Chairperson of the GMS or BoD should do this. If, on the other hand, the CEO or another executive signs the contract, this would likely affect the independence of the Supervisory Board, either in appearance or fact. Of course, the authority to sign the contract does not imply the authority to negotiate or alter contract terms. Key elements and terms of the contract, such as remuneration, are subject to the GMS's approval.

9.3.5. Remuneration of Supervisors

Unless stipulated in the Company Charter, salaries, remuneration, bonuses and other benefits of Supervisory Board members shall be implemented in accordance with the following provisions:[51]

- The GMS shall decide on the total amount of salaries, remuneration, bonuses, other benefits and the annual operating budget of the Supervisory Board.
- Supervisors shall be reimbursed for expenses for meals, accommodation, travel and the use of independent consultancy services at reasonable rates. The total amount of such remuneration and expenses shall not exceed the total annual operating budget of the Supervisory Board approved by the GMS unless otherwise decided by the GMS.

In compliance with the law, the Supervisory Board's salaries and operating costs shall be included in the company's business expenses.

51 *LOE, Article 172; and Circular No. 116/2020/TT-BTC, Model Charter, Article 41, Clause 1.*

Best practice

According to the OECD[52], members of the Supervisory Board should receive a fixed annual remuneration devoid of variable components. They should not be granted performance-based pay, shares or company pension rights, nor receive severance pay upon exiting the Supervisory Board. Remuneration for the Supervisory Board undergoes periodic assessment, with external expert guidance sought as needed.

Typically, Supervisory Board members do not receive short-term bonuses or performance-related compensation to prevent alignment of interests with executive managers, which could compromise their independence and encourage excessive short-term risk-taking.

9.3.6. Operating Procedures and Meetings of the Supervisory Board

A Supervisory Board's operating procedures can be specified in the Company Charter or preferably in the company's internal regulations on the operation of the Supervisory Board, approved by the GMS. The Supervisory Board may issue rules on Supervisory Board meetings and how the Supervisory Board operates after consulting the BoD.

Under the Model Charter, the Supervisory Board must meet at least twice each year, and the minimum number of members attending a meeting must be two-thirds of the total members.[53]

The Supervisory Board is entitled to request that members of the BoD, the CEO, and representatives of the accredited audit organization participate in its meetings and clarify raised issues.[54]

The minutes of the Supervisory Board meetings must be detailed and clear. The minute-taker and participating members shall sign the minutes of the meeting. Minutes of Supervisory Board meetings shall be kept as important documents of the company to determine each member's responsibility on Supervisory Board resolutions.[55]

52 *OECD (2022), Remuneration of Boards of Directors and Executive Management in State-Owned Enterprises, OECD Publishing, Paris, https://doi.org/10.1787/80d6dc04-en. While this survey of the OECD was conducted on state-owned enterprises in multiple countries, its recommendations can be applied for Supervisory Boards' remuneration in other types of entities.*

53 *Circular No. 116/2020/TT-BTC, Model Charter, Article 40, Clause 1; and Model Regulations on the operation of the Supervisory Board, Article 14, Clause 1.*

54 *Circular No. 116/2020/TT-BTC, Model Charter, Article 40, Clause 2; and Model Regulations on the operation of the Supervisory Board, Article 14, Clause 2*

55 *Circular No. 116/2020/TT-BTC, Model Charter, Article 40, Clause 1; and Model Regulations on the operation of the Supervisory Board, Article 15.*

Best practice

The charter or internal regulations should provide the Head of the Supervisory Board with the responsibility to:

- Call, organize and preside over Supervisory Board meetings.
- Prepare and sign meeting minutes and other decisions.
- Represent the Supervisory Board in meetings with third parties.
- Cast a deciding vote at meetings in instances of a tied vote.
- Cooperate with the BoD Chairperson.

The charter or internal regulations should specify what constitutes a quorum and define the voting procedures. The quorum should comprise at least half of the members, and decisions should be approved by a simple majority vote.

In performing its duties, the Supervisory Board may inspect all company documents, check their credibility and the integrity of data presented, request reports and explanations from the BoD, management and employees. In performing its duties, a company's Supervisory Board may engage the services of external specialists at an appropriate rate.

In some circumstances, a shareholder or group of shareholders who own more than 5 percent of total common shares for a continuous period of at least six months or a smaller ratio as stipulated in the Company Charter may request the Supervisory Board to carry out extraordinary inspections. The Supervisory Board shall carry out inspections within seven working days from the date of receipt of request and submit a report on issues to be inspected to the BoD and the requesting shareholder or group of shareholders within 15 days from the date of completion of inspection. Furthermore, inspections may not disrupt the everyday activities of the BoD nor interrupt the administration of the company's business operations.[56]

56 *LOE, Article 170, Clause 6.*

9.3.7. Reporting

The Supervisory Board shall submit the following reports to the GMS, including:[57]

- Company annual report from the BoD (including a report on the company's business results, financial statements, and reports on the evaluation of management and operations of the company) together with the appraisal report of the Supervisory Board. Appraisal reports must be stored at the company's head office no later than 10 working days prior to the opening day of the GMS, unless otherwise stipulated in the Company Charter.[58]
- Self-assessment report on the performance of the Supervisory Board and its members.
- Remunerations, operating costs and other benefits of the Supervisory Board and each of its members.
- Summaries of meetings of the Supervisory Board, verdicts and proposals of the Supervisory Board, supervision results of the company's operations and finance.
- Assessment reports on transactions between the company, subsidiary companies and other companies exceeding 50 percent of charter capital held by the public company and members of the BoD, the CEO and their related persons, transactions between the company and companies whose founders or managers are members of the BoD over the last three years before the transaction date.
- Results of supervision of the BoD, CEO and other managers.
- Evaluation of cooperation between the Supervisory Board, BoD, CEO and shareholders.

Best practice

All members of the Supervisory Board should sign the report and:

- Those who have not signed the report explain why they have not done so.
- Indicate that a member refused to sign and was unwilling to explain such refusal.

Supervisory Board members who attend the GMS should allow shareholders to ask questions and discuss inspection results.

57 *Circular No. 116/2020/TT-BTC, Model Regulation on the operation of the Supervisory Board, Article 16.*

58 *LOE, Article 175, Clause 4.*

9.4. Audit Committee

According to the organizational structure without a Supervisory Board, a joint stock company must have at least 20 percent independent directors on the Board, and the BoD must establish an Audit Committee.[59]

9.4.1. Composition and Requirements for Members of the Audit Committee

The Audit Committee is a specialized body of the BoD and has at least two members. [60]

Members of the Audit Committee shall satisfy the following criteria and conditions: [61]

- Have knowledge of accounting and auditing, understand laws and the company's business.
- Do not work in the Accounting Department or Finance Department of the company.
- Is not a member or employee of an audit organization that implemented the company's financial statements in the previous three years.
- Is a non-executive (independent) member of the BoD.

The Chairperson of the Audit Committee must have a bachelor's degree or higher in one of the following majors: economics, finance, accounting, auditing, law, or business administration. The Chairperson shall be an independent member of the BoD. [62]

59 *LOE 2020, Article 137, Clause 1b.*

60 *LOE 2020, Article 161, Clause 1 and Circular No. 116/2020/TT-BTC, Model Charter, Article 43.*

61 *LOE 2020, Article 161, Clause 1 and Circular No. 116/2020/TT-BTC, Model Charter, Article 43.*

62 *LOE 2020, Article 161, Clause 1 and Circular No. 116/2020/TT-BTC, Model Charter, Article 43.*

Best practice

According to Viet Nam's Corporate Governance Code of Best Practices, members of the Audit Committee must be financially literate. An experienced financial expert should chair the Audit Committee. The chairperson's independence, aptitude, and leadership skills are crucial for the committee's success.

The Audit Committee should also be composed entirely of independent directors. If this is not practically possible, an independent director should chair the Audit Committee, which should be composed solely of non-executive directors.

9.4.2. Authorities

The LOE and Model Charter regulates the Audit Committee's duties and responsibilities as follows:[63]

- Oversee the integrity of the financial statements of the company and any formal disclosures relating to the company's financial performance.
- Review the company's internal control and risk management systems.
- Review related party transactions under the authority of the BoD or GMS and make recommendations on these transactions.
- Oversee the company's internal audit function.
- Recommend the appointment, remuneration and terms of engagement of the External Auditor for the BoD's review and approval before submitting to the GMS for final approval.
- Monitor and assess the independence and objectivity of the External Auditors and the effectiveness of the audit process, primarily when the company uses non-audit services of the External Auditors.
- Monitor to ensure the company's compliance with all legal and regulatory requirements and other internal regulations of the company.
- Access documents about the company's operation, discuss with other members of the BoD, CEO, Chief Accountant and other managers to collect information serving the operation of the Audit Committee.

63 *LOE, Article 161, Clause 3 and Circular No. 116/2020/TT-BTC, Model Charter, Article 44.*

- Request representatives of the accredited audit organization to participate in the Audit Committee meetings and explain issues relevant to audited financial statements.
- Use external legal counselling, accounting and other counselling services where necessary.
- Formulate policies on detection and management of risks and submit to the BoD, propose solutions for risks during the company's operation.
- Submit a written report to the BoD whenever a member of the BoD, CEO or another manager fails to fulfil their responsibilities prescribed in the LOE and the Company Charter.
- Formulate Audit Committee operation regulations and submit them to the BoD for ratification.

Best practice

The National Association of Corporate Directors, an international independent training institute for directors in the United States, has identified the following risk indicators that a Audit Committee should monitor and examine closely:

- Complex business arrangements which appear to serve little practical purpose.
- Large last-minute transactions that result in significant revenues in quarterly or annual reports.
- Dismissal or changes to the appointed auditor following accounting or auditing disagreements.
- Overly optimistic news releases in which the CEO seeks to entice investors into believing in future growth.
- Widely dispersed business locations with decentralized management and a poor internal reporting system.
- Inconsistencies between management discussions, analysis and underlying financial statements.
- Insistence by the Chief Financial Officer that s/he be present at all Audit Committee meetings.
- A consistently close or exact match between planned and reported results, and managers who consistently achieve 100 per cent of their bonus opportunities.
- Hesitancy, evasiveness, or lack of specifics from management or auditors regarding questions about the financial statements.

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- Frequent differences of view between management and the External Auditor.
- A pattern of shipping most of the month's or quarter's sales in the last week or day.
- The internal audit operates under scope restrictions, such as the Internal Auditor not having a direct line of communication to the Audit Committee.
- Unusual balance sheet changes, or changes in trends and important financial statement relationships. For example, receivables growing faster than revenues, or accounts payable that are continually delayed.
- Unusual accounting policies, particularly for revenue recognition and cost deferrals, such as recognizing revenues before products have been shipped ("bill and hold") or deferring cost items normally expensed when incurred.
- Accounting methods that appear to favor form over substance.
- Accounting principles/practices at variance with industry norms.
- Numerous or recurring unrecorded or "waived" adjustments detected in connection with the annual audit.

9.4.3. Nomination of Members of the Audit Committee[64]

The Chair and other members of the Audit Committee shall be nominated by the BoD and shall not be executives of the company.

The designation of the Chair and other members of the Audit Committee is subject to approval by the BoD during its meeting.

9.4.4. Operating Procedures and Meetings of the Audit Committee

The Audit Committee should determine and oversee the audit quality indicators (External Auditor's compliance with independence requirements, years of audit experience and industry specialization, attrition rate) and oversee the work of the External Auditor and effectiveness of the audit process. The committee should review the company's policies on the External Auditor (selection, rotation, performance assessment) and report the committee's recommendations to the BoD for any modification of such policies.[65] Other functions of the Audit Committee involve overseeing an ethical environment, internal control and risk management, and internal audit and compliance.

64 *Circular No. 116/2020/TT-BTC, Model Charter, Article 42.*

65 *Viet Nam CG Code of Best Practices, Recommended Practices 7.6.2.*

The Audit Committee conducts meetings at least twice each year. The minutes of a meeting must be detailed, clear, and stored carefully. The minute-taker and members of the Audit Committee participating in a meeting shall sign the meeting minutes. [66]

The Audit Committee adopts its decisions by voting at the meetings, absentee voting or other forms specified in the Company Charter or the Audit Committee's operating regulations. Each Audit Committee member shall have one vote. Unless a higher ratio is prescribed by the Company Charter or the Audit Committee's operating regulations, a decision by the Audit Committee shall be adopted if it is voted for by a majority of attending members. In case of equal votes, the Chair of the Audit Committee shall have the casting vote.[67]

Best practice

In some countries, the Audit Committee is required to conduct monthly meetings. However, meeting once a month may be regarded as onerous, burdensome, and costly. The new United Kingdom Combined Code suggests that Audit Committee meetings be held to coincide with key financial reporting and audit cycle dates, with no fewer than three regular meetings per year. The Chair of the Audit Committee will likely call additional meetings to establish ongoing and informal contact with the Chairperson of the BoD and CEO.

9.4.5. Access to Information and Resources

To perform its function effectively, the Audit Committee should have the authority to investigate any matter under its purview. Its members should have unfettered access to all documents and corporate information, including full cooperation by management. The Corporate Secretary often plays a crucial role in this respect by facilitating a flow of information to fulfil the Audit Committee's requests. The Audit Committee should also be provided with reasonable resources needed to fulfil its functions.

The Audit Committee should receive results of the annual risk assessment, internal audit reports, results of quality assessment and the improvement plan of the Internal Audit Department, updates on crucial audit issues, and extensions on audit resolutions.[68]

66 *LOE, Article 161, Clause 1 and Circular No. 116/2020/TT-BTC, Model Charter, Article 45, Clause 1.*

67 *LOE, Article 161, Clause 2 and Circular No. 116/2020/TT-BTC, Model Charter, Article 45, Clause 2.*

68 *Viet Nam CG Code of Best Practices, Recommended Practices 7.2.4.*

9.4.6. Reporting

Independent members of the BoD in the Audit Committee shall report during the annual GMS. Such a report shall have the following content:[69]

- Director fees, operating costs and other benefits of the Audit Committee and each of its members as prescribed in the LOE and Company Charter.
- Summaries of meetings of the Audit Committee, its verdicts and proposals.
- Results of supervision of the company's financial statements, finance and operations.
- Evaluation of transactions between the company, subsidiary companies and companies exceeding 50 percent of charter capital held by the company with members of the BoD, CEO, other executives of the company and their related persons, transactions between the company with companies whose founders or managers are members of the BoD, CEO, or executives over the last three years before the transaction date, and other related party transactions.
- Evaluation of the company's internal control and risk management system.
- Supervision report on the BoD, CEO, and other executives of the company.
- Cooperation between the Audit Committee and the BoD, CEO, and shareholders.

69 *Circular No. 116/2020/TT-BTC, Model Charter, Article 46.*

Best practice

IFC Sample Audit Committee Charter

Audit Committee Charter for Company ABC

Date Approved by the Board: DD/MM/YYYY

- Objective
- Committee Composition
- Procedures for Meetings
- Compensation
- Functions and Responsibilities
- Committee Performance Evaluation
- Access to Advisors and Training
- Reporting Obligations

Please see the chapter appendix for detailed content of IFC's Sample Audit Committee Charter.

9.5. Internal Audit

9.5.1. Roles of the Internal Audit

Internal auditing is an independent, objective assurance and advisory service designed to add value and improve an organization's operations.[70] The Internal Audit evaluates the control environment, assesses risks and controls, communicates its findings to the BoD (through the Audit Committee or Supervisory Board) and management, and makes suggestions for improvements. An internal audit does not only cover the company's finances, but also its operations, systems, and procedures. Thus, it helps companies accomplish objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and corporate governance processes. Listed companies and State-owned companies are legally required to have an internal audit function.[71]

Internal audits provide reasonable assurance to the BoD and management regarding:

- Efficiency and effectiveness of operations for the overall entity, divisions, subsidiaries, operating units, and business functions.
- Risk management framework (including risk identification, risk assessment, response, and monitoring).
- Internal control environment, including safeguarding of assets and soundness and integrity of reporting processes.
- Compliance with regulations, policies, and procedures.

The internal audit should apply the Vietnamese Standards on Internal Audit[72] and run on the following principles:[73]

- Independence: An Internal Auditor shall not be assigned to tasks subject to internal audits. The organizattion must ensure the Internal Audit does not encounter interference, whilst performing reporting and assessment tasks.

70 *2024 Global Internal Audit Standards, The Institute of Internal Auditors.*

71 *Decree No. 05/2019/NĐ-CP, Article 10, Clause 1.*

72 *Circular No. 8/2021/TT-BTC of the Ministry of Finance on promulgation of Vietnamese Standards on Internal Audit and the principles of professional ethics for internal audits.*

73 *Decree No. 05/2019/NĐ-CP, Article 5.*

- Objectivity: An Internal Auditor must ensure objectivity, accuracy, reliability and equality while performing internal audit tasks.
- Comply with laws and be held legally liable for internal audit activities.

Best practice

The core principles articulate internal audit effectiveness, and they should all be present and operating effectively.[74] The domains and the corresponding principles are as follows:

Ethics and Professionalism

(1) Demonstrate integrity.
(2) Maintain objectivity.
(3) Demonstrate competency.
(4) Exercise due professional care.
(5) Maintain confidentiality.

Governing the Internal Audit Function

(6) Authorized by the Board.
(7) Positioned independently.
(8) Overseen by the Board.

Managing the Internal Audit Function

(9) Plan strategically.
(10) Manage resources.
(11) Communicate effectively.
(12) Enhance quality.

Performing Internal Audit Services

(13) Plan engagement effectively.
(14) Conduct engagement work.
(15) Communicate engagement results and monitor action plans.

74 *Institute of Internal Auditors (IIA. The IIA's International Professional Practices Framework (IPPF), IPPF | Technical guidance | IIA*

9.5.2. Requirements for Internal Auditors

Internal auditors shall satisfy the following criteria and conditions: [75]

- Hold undergraduate degrees in majors meeting audit requirements and acquire sufficient and updated knowledge about assigned internal audit sectors.
- Have at least five years' work experience in industries relevant to training majors or at least three years' experience working for their current employer or at least three years' experience working in the audit, accounting or inspection field.
- Acquire general knowledge and understanding of laws and business operations of audited units and be competent in collecting, analyzing, assessing, and consolidating information and have knowledge and skills related to internal audits.
- Have not been subject to any disciplinary actions imposed on any violation arising from economic or financial administration or accounting activities.

To ensure independence and objectivity to counter inequality, prejudice and conflict of interests, the Internal Auditor should:[76]

- Not be allowed to carry out the internal audit of internal regulations, policies, procedures or processes that they assume the primary responsibility for formulation thereof.
- Not be involved in conflicts of rights and economic interests with audited units or divisions. Internal Auditors shall not be entitled to carry out the internal audit of units or divisions managed by related persons.
- Not be allowed to engage in auditing activities and divisions under assigned duties and authority within the maximum period of three years from the date of grant of decision on exclusion from these activities or tasks of management of these divisions.

75 *Decree No. 05/2019/NĐ-CP, Article 11.*

76 *Decree No. 05/2019/NĐ-CP, Article 6, Clause 3.*

The Head of Internal Audit is appointed and dismissed by the BoD as per a request from the Chairperson of the Supervisory Board/Audit Committee. The Deputy Head of Internal Audit and other positions are appointed and dismissed by BoD as per a request of the Chairperson of the Supervisory Board/Audit Committee based on the recommendation of the Head of Internal Audit.[77]

9.5.3. Authorities

The Internal Audit Department has the following duties:[78]

- Design internal audit processes and submit them to the Chief Audit Executive for approval.
- Prepare risk-based annual internal audit plans for submission to the Supervisory Board/Audit Committee to request its approval and implement internal audits according to approved audit plans.
- Implement internal audit policies, processes, and procedures already approved and ensure quality and effectiveness.
- Carry out unscheduled audits and provide inputs/advice to the BoD at its request.
- Make recommendations about correcting and remedying errors and proposing measures to improve and increase the efficiency and performance of internal audit systems.
- Prepare audit reports.
- Inform and send internal audit results on time in accordance with regulations in force.
- Develop, modify, supplement and optimize internal audit approaches and the scope of internal audits to keep abreast of growth of their units.
- Provide agencies, units and enterprises with counselling for selection and control of independent external audit services to use these services in a cost-efficient and effective manner.

77 *Circular No. 44/2011/TT-NHNN, Article 14.*

78 *Decree No. 05/2019/NĐ-CP, Article 20.*

- Present internal audit opinions upon request so the BoD can consider making decisions on budget estimates, distribution and allocation of the estimated budget, final budget accounts, financial and managerial reporting.
- Maintain effective communication with the External Auditor.
- Perform other tasks assigned by the BoD or under legislative regulations.

The responsibilities of Internal Audit Department include:[79]

- Keep documents and information confidential by law and the internal audit regulations of the company.
- Take responsibility for results of internal audit activities for evaluations, conclusions, recommendations and proposals in internal audit reports.
- Monitor, urge and check the results of implementation of recommendations of units in the company after internal audits.
- Organize training to improve and ensure professional capacity for the Internal Auditor.

Rights of Internal Audit Departments:[80]

- Receive resources, complete and timely information, materials and records necessary for internal audit activities, including estimates, distribution and allocation of budgets, preparation of accounting and final accounts of payments of budgetary units, financial and managerial reports, strategies for business activities of enterprises and other reports relating to the audited unit's organization and operations.
- Handle and inspect professional processes, procedures, and assets during the internal audit process. Interview staff of audited units about issues related to audit matters.
- Access documents, records, and meeting minutes from the BoD and other entities related to internal audit activities.
- Attend internal meetings in accordance with laws and regulations of audited units' regulations or internal rules.

79 *Decree No. 05/2019/NĐ-CP, Article 21.*

80 *Decree No. 05/2019/NĐ-CP, Article 22.*

- Oversee, assess and monitor corrective and remedial actions of senior management of the audited units and departments against errors and non-conformance outlined and recommended in audit reports.
- Be protected against any uncooperative actions of audited departments/ units.
- Have access to training to improve Internal Audit Department staff competencies.
- Have total discretion to perform tasks specified in approved audit plans.
- Exercise other rights defined under the company's laws and internal audit regulations.

Responsibilities of the Internal Auditor:[81]

- Carry out internal audit plans that have already been approved.
- Identify information that is sufficient, reliable, proper and valid to accomplish audit objectives.
- Rely on appropriate analyses and assessments to give independent and unbiased audit conclusions and results.
- Retain relevant information to support audit conclusions and produce audit results.
- Be responsible for delivering results of the assigned audits.
- Protect confidential information by law.
- Continuously enhance professional capabilities and adhere to professional ethical standards.
- Assume other responsibilities prescribed by laws and internal audit regulations of the business.

81 *Decree No. 05/2019/NĐ-CP, Article 23, Clause 1.*

Best practice

- The Internal Audit Department is advised to expand its audit scope by incorporating assurance and advisory audits. This involves cultivating a comprehensive understanding of the organization's strategic objectives and conducting a meticulous risk assessment to identify areas or processes not presently under audit. Prioritizing these areas based on their risk levels is crucial, and enhancing stakeholder relationships will contribute to achieving this objective.
- Simultaneously, it is recommended the Internal Audit Department formalize its annual labor planning process, adopting standardized forms and methodologies. This measure aims to enhance the efficiency and effectiveness of managing human resources within the department, considering audit and non-audit activities in the labor plan.
- To ensure effective engagement-based risk assessment and maintain audit consistency and quality, the Internal Audit Department should develop Risk and Control Matrices for each audit engagement and emphasize assurance audits. Identifying material risks before each engagement and conducting a thorough analysis of relevant functions or processes during the audit will enhance the value and effectiveness of audit activities, contributing to the organization's objectives while mitigating potential risks.
- The Internal Audit Department should document its sampling methodology, providing an explanation of the techniques that Internal Auditors can utilize and offer guidance on factors to consider when determining the sample size. The risk and control matrices within the audit planning process should encompass details of the sampling methodology, and working papers should include specifics of methods used during the audit execution process.
- Internal audit reports should be prepared following a risk-based reporting approach, facilitating risk-based monitoring of audit observations.
- Furthermore, the Internal Audit Department should conduct a competency and skills assessment annually. Any identified competency gaps should be addressed through recruiting new auditors and providing training. Additionally, the Internal Audit Department should develop a quality assurance and improvement plan, incorporating internal and external assessments. Per the Global Internal Audit Standards, external assessments must be conducted at least once every five years by a qualified, independent assessor or assessment team from outside the organization.

Chief Audit Executive (CAE):[82]

- Manage the internal audit to perform the tasks as prescribed.
- Ensure Internal Auditors are regularly trained have sufficient qualifications and professional capacity to perform their tasks.
- Ensure the independence, objectivity and honesty of the internal audit.
- Report to the BoD and CEO when detecting weaknesses or existing problems in the internal control system.
- Take responsibility for the audit results performed by the internal audit.
- Keep the confidential information in accordance with the law.
- Other responsibilities as prescribed by law and regulation on internal audit of the company.

9.5.4. Duties of the Board and other Persons involved in Internal Audit

The BoD:[83]

- Issue regulations on internal audits of the company.
- Create favorable conditions for the Internal Auditor to fully implement its rights and obligations as prescribed.
- Review, examine and evaluate the effectiveness and efficiency of the internal audit and ensure the quality of internal audit activities.
- Provide the necessary resources for the internal audit.
- Issue decisions on implementing recommendations of the internal audit, direct and monitor company units to implement internal audit recommendations and take timely measures to deal with recommendations and proposals of the internal audit.

82 *Decree No. 05/2019/NĐ-CP, Article 24.*

83 *Decree No. 05/2019/NĐ-CP, Article 26.*

- Approve and adjust the annual internal audit plan to ensure that the plan is oriented by risks.

Other Internal Auditor duties in accordance with the law and internal audit regulations of the company CEO:[84]

Best practice

In accordance with best practices, the Audit Committee/Supervisory Board is responsible for evaluating the performance of the Chief Audit Executive and establishing appropriate compensation, including salary, bonus, and other remuneration. Additionally, the Audit Committee/Supervisory Board should review and approve the allocation of the Internal Audit Department's annual budget to uphold the department's independence.

The Audit Committee/Supervisory Board shall meet periodically with the Chief Audit Executive in sessions without senior management present.

The evaluation criteria for Internal Auditor's performance should primarily derive from the successful attainment of its functional objectives, such as successfully completing the internal audit plan, rather than being contingent on the company's financial performance.

- Create favorable conditions for the Internal Auditor to perform the assigned tasks and direct the company's units to cooperate in accordance with the internal audit regulations.
- Direct company units to implement recommendations agreed upon with the Internal Auditor or recommendations under the BoD's decisions and notify the Internal Auditor of implementation of these recommendations.
- Ensure that the Internal Auditor is fully informed about changes and new problems arising in the operation of the company to identify relevant risks early.
- Other duties for the Internal Auditor in accordance with the law and internal audit regulations of the company.

84 *Decree No. 05/2019/NĐ-CP, Article 27.*

Best practice

The CEO plays a pivotal role in fostering a culture of supporting internal auditing within the organization. This involves:

- **Welcoming credible challenges:** The CEO demonstrates a commitment to the internal audit function by actively encouraging and embracing credible challenges. This support extends to welcoming independent risk management and internal audit perspectives, fostering an environment where constructive scrutiny is valued.[85]
- **Inclusion in decision-making:** The internal audit is integrated into critical decision-making processes, including policy development, the deployment of new products and services, changes in strategy and tactical plans, organizational and structural changes. This inclusion ensures that the insights and risk assessments that internal audit provides are considered integral to key business initiatives.
- **Policy development:** The CEO actively involves the Internal Auditor in developing organizational policies. This collaboration ensures that policies are compliant and thoroughly assessed for potential risks and vulnerabilities.
- **New product and service deployment:** The Internal Auditor is consulted and actively participates in the planning and deploying new products and services. The CEO recognizes the importance of the Internal Auditor's expertise in identifying and mitigating risks associated with these initiatives.
- **Strategic changes:** During changes in organizational strategy, the CEO ensures that the Internal Auditor is a key contributor. This involves leveraging the Internal Auditor's insights to assess the potential risks and challenges associated with strategic shifts, enabling informed decision-making.

Audited units:[86]

- Provide all necessary information, documents, and records for the internal audit's activities at the Internal Auditor's request in an honest and accurate manner without concealing information.
- Immediately notify the Internal Auditor when detecting weaknesses, shortcomings, errors, risks, fraudulent transactions, risks of or large losses of assets.

85 *Source: Department of the Treasury, Office of the Comptroller of the Currency (OCC), 12 CFR Parts 30 and 170.*

86 *Decree No. 05/2019/NĐ-CP, Article 28.*

- Implement the recommendations agreed with the Internal Auditor or under BoD decisions.
- Create supportive conditions for the Internal Auditor to work efficiently.
- Other responsibilities regarding the internal audit in accordance with the law and Internal Audit regulations of the company.

9.5.5. Operating Procedures of Internal Audit

The BoD has the authority to issue the Internal Audit operating procedures, which must include at least the following contents: [87]

- Objectives and scope of operation.
- Positions, tasks, powers and responsibilities of the Internal Audit Department within the entity and relationships with other departments.
- Requirements for independence, objectivity, basic principles, requirements for professional qualifications, quality assurance of internal audit and other relevant contents.

The Chief Audit Executive should develop a detailed internal audit process suitable to the operation of the enterprise and consult with the CEO before submitting it to the Audit Committee/Supervisory Board or the BoD for endorsement.[88] The internal audit processes shall include regulations and specific instructions on methods of assessment of risks, preparing annual internal audit plans, planning each internal audit, procedures for carrying out internal audits, preparing and submitting audit reports, monitoring and supervising post-audit corrections, keeping track of implementation of post-audit recommendations, filing records and documents related to internal audits.[89]

The Internal Audit Department prepares an internal audit plan based on the annual risk assessment results and consults the Audit Committee/ Supervisory Board before submitting it to the BoD for approval. The internal audit plan should include audit scope, subjects of audit, audit objectives,

87 *Decree No. 05/2019/NĐ-CP, Article 12, Clause 1; and Circular No. 66/2020/TT-BTC, Model Operating procedures of Internal Audits.*

88 *Circular No. 66/2020/TT-BTC, Model Operating procedures of Internal Audit, Article 18.*

89 *Decree No. 05/2019/NĐ-CP, Article 12, Clause 2.*

audit subject matters, audit year, audit time, audit schedule, and requirements concerning the budget and resources used for the next fiscal/calendar year. The internal audit plan must be developed based on the priority of the risk-based approach, taking into account the comments of the BoD and Audit Committee/Supervisory Board. The Chief Audit Executive should make a comprehensive risk assessment of operations, professional processes or units/departments to plan the internal audit, review and adjust the plan if necessary in response to changes arising from business, risks, operations, programs, systems and controls of the company.[90]

The role of internal audits in Environmental, Social, and Governance (ESG) should be considered throughout the entire internal audit lifecycle. For instance, the annual risk assessment should encompass ESG-related risks. For more detailed guidance, please refer to the "Guideline for Internal Auditors on ESG-Related Risks and Opportunities" developed by IIA Viet Nam in collaboration with IFC.

9.5.6. Reporting

An internal audit report must clarify the extent, opinions and conclusions related to audited matters and bases for giving such opinions and conclusions weaknesses, unresolved issues, defaults, defects, violations and recommended actions, recommended measures for rationalization and improvement of auditing processes, optimization of policies on management of risks and organizational structure of each audited unit (if any). [91]

Internal audit reports must have opinions from senior management of departments/units being audited. In cases where audited departments/units have contentious opinions on audit results, internal audit reports shall need to clarify contentious opinions of audited departments/units. [92]

'The annual audit report must be submitted to the BoD within 60 days from the completion of a financial year.

An annual internal audit report must include, but not be limited to,

90 *Circular No. 66/2020/TT-BTC, Model Operating procedures of Internal Audit, Article 17.*

91 *Decree No. 05/2019/NĐ-CP, Article 16, Clause 2; Circular No. 66/2020/TT-BTC, Model Operating procedures of Internal Audit, Article 19, Clause 1b.*

92 *Decree No. 05/2019/NĐ-CP, Article 16, Clause 3; Circular No. 66/2020/TT-BTC, Model Operating procedures of Internal Audit, Article 19, Clause 1c.*

the following:[93]

- Proposed internal audit plan and completed audit work.
- Material violations or errors identified, corrective measures recommended by the internal audit.
- Assessment of the internal control system relating to audited activities and recommendations to enhance the internal system.
- Implementation status of measures, recommendations and proposals provided by the internal audit.
- Evaluation of internal audit performance already attained, as well as development directions.

9.6. External Audit

An independent audit conducted by an External Auditor is an essential element of a company's control framework. The External Auditor's role is to express an opinion on whether the company's financial statements are prepared in accordance with an identified financial reporting framework and whether they are reliable. The External Auditor provides shareholders, managers, employees, and market participants with an independent opinion on the company's financial position and, if performed correctly, should attest to the accuracy of the statements. An independent audit conducted by a publicly recognized and accredited accounting firm enhances the company's credibility and its prospects for attracting investment.

93 *Decree No. 05/2019/NĐ-CP, Article 16, Clause 5; Circular No. 66/2020/TT-BTC, Model Operating procedures of Internal Audit, Article 19, Clause 2b.*

The following critical aspects concern external audits:

- Management is responsible for preparing and presenting the company's financial statements.
- The External Auditor is responsible for forming and expressing an opinion on the financial statements prepared by management.
- The audit of the financial statements does not relieve management or those charged with governance of their responsibilities.[94]

The External Auditor should be independent, well-qualified to carry out their duties, and free of conflicts of interest. The External Auditor should provide only an audit opinion and refrain from giving any other non-audit services to the company. Financial statements should be audited by national standards and International Standards on Auditing (ISA).[95]

The BoD should establish the criteria for selecting External Auditors and evaluating their quality of work, as well as set procedures for following up on their recommendations.[96]

9.6.1. When an Annual External Audit is Required

The Law on Independent Audit requires that the annual financial statements of the following organizations must be audited by an independent and eligible audit firm:[97]

- Enterprises with foreign investment.
- Credit institutions established and operating under the Law on Credit Institutions.
- Financial institutions, insurance enterprises, insurance brokerage firms.
- Public companies, issuers, and securities trading organizations.
- Additionally, listed companies must be audited by an accredited auditing company that is on the list of audit companies accredited by the State Securities Commission for audits under conditions specified by the MOF.[98]

94 *International Standard on Auditing (ISA), IAASB Handbook ISA 260 (ifac.org).*

95 *Viet Nam CG Code of Best Practices, Recommended Practices 7.6.3.*

96 *Viet Nam CG Code of Best Practices, Principle 7.6.*

97 *Law on Independent Audit (Law No. 67/2011/QH12), Article 37; and Decree No. 17/2012/NĐ-CP, Article 15.*

98 *Decree No. 17/2012/NĐ-CP, Article 15; Circular No. 96/2020/TT-BTC, Article 10, Clause 1 and LOS, Article 21.*

9.6.2. Rights and Duties of the External Auditor

In conducting a company's External Audit, the External Auditor (or auditing firm) has the right to:[99]

- Receive fees for services provided to clients.
- Request that audited companies sufficiently and promptly provide necessary information documents, and explain issues related to the audit.
- Request an inventory of assets and compare the debt related to the audited contents of the audited company.
- Inspect all records and documents related to the economic and financial operations of the audited company.
- Request, inspect, and confirm economic and financial information related to the audited companies from relevant sources inside and outside such entities.
- Request the related organizations and individuals to provide necessary documents and information related to the audited content through the audited company.

Meanwhile, the External Auditor should abide by the following obligations:[100]

- Operate by the content stated in the certificate of eligibility for providing audit services.
- Adequality allocate professional human resources to ensure the quality of audit service delivery.
- Compensate clients for damage caused by audit team members based on the service agreement and relevant regulations.
- Notify the audited company of any identified violations of laws in terms of its economic, financial, and accounting activities.
- Provide information about audit practitioners, the auditing firm, and branches of foreign auditing firms in Viet Nam to relevant State authorities.
- Take responsibility before laws and the audited company for the audit results under the audit contract.

99 *Law on Independent Audit (LOIA) (Law No. 67/2011/QH12), Article 28, Clause 1.*

100 *LOIA, Article 29.*

- Take responsibility towards the users of the audit results when the users: (i) have a direct interest in the audit results of the audited entity as of the date of the audit report, (ii) possess reasonable understanding of financial statements and the basis of financial statement preparation, including accounting standards, accounting policies, and relevant legal regulations, (iii) exercise caution when using information from the audited financial statements.
- Decline to provide the audit service when assessed that independence cannot be ensured, there is insufficient professional competence, or the auditing requirements are not met.
- Decline to perform an audit when the client or audited entity requests actions contrary to professional ethics, expertise, or legal regulations.

Best practice

The External Auditor will often submit, and companies seeking to implement good corporate governance should demand, what is referred to as a management letter in addition to the audit report. The management letter typically covers all material weaknesses in the company's internal control, accounting, and operating procedures. The purpose of the letter is to provide constructive suggestions to management concerning improvements for such procedures.

The findings contained in the management letter are "non-reportable" to third parties, yet require corrective action by management. Companies wishing to attract external finance should know that investors typically request a copy of the management letter.

9.6.3. Rights and Duties of the Audited Company

The audited company has the right to:[101]

- Select an auditing firm, branches of a foreign auditing firm or practicing auditors who meet the legal requirements for professional practice to engage in audit contracts, except where otherwise stipulated by law.
- Require the auditing firm to provide relevant information in its registration dossier for audit pratices and details about the practicing auditors and the auditing firm conducting the audit.

101 LOIA, Article 38.

- Decline to provide information that is not related to the scope of the audit.
- Request replacing a member participating in the audit when there are grounds to believe that the member has violated the principles of independent auditing during the audit process.
- Discuss and provide written explanations regarding issues outlined in the draft audit report if found to be inadequate.
- Lodge a complaint to the relevant authority about the conduct of an auditor participating in the audit process when there is evidence to suggest that their behaviour violates the law.
- Request compensation for any damages caused by the auditing firm.

The audited company is obligated to:[102]

- Provide complete, accurate, truthful, timely and objective information/ documents according to requirements of the auditing firm and practicing auditors, and take legal responsibility for the information provided.
- Fulfil requests of auditors about the collection of audit evidence as per auditing standards, and rectify identified discrepancies to ensure the audit report contains an unqualified opinion on areas that cannot be qualified.
- Coordinate with and facilitate the audit activities during engagement.
- Take no actions that limit the scope of the audit.
- Review recommendations of the auditing firm regarding the existence of errors or deficiencies in financial statements and compliance with legal requirements to implement timely corrective actions.
- Inform sufficiently and timely all violations of laws and breaches of audit contract acted by auditors/auditing firms to the authorized State authority.
- Pay audit fees in accordance with the terms provided in the audit contract.
- In case the entity has signed audit contracts with the same auditing firm for three consecutive years or more, the company must request the External Auditor change the practicing auditor signing the audit report.

102 LOIA, Article 39.

9.6.4. Appointment

The Model Charter stipulates that the GMS shall approve the selection of the company's External Auditor.[103] At the GMS, an independent auditing company which legally operates in Viet Nam and is permitted by the SSC to audit listed companies shall be appointed to carry out the audit of the company for the next financial year based on terms and conditions as agreed by the BoD. The Supervisory Board or Audit Committee affiliated with the BoD shall propose the selection of an independent auditing company, fees for auditing and all issues relating to the withdrawal or removal of the independent auditing company.[104]

Best practice

International guidelines, such as those set by the International Organization of Securities Commissions, recommend that companies guard against the following threats to auditor independence:[105]

- Self-interest, where an auditor could benefit from a financial or other forms of interest in or relationship with the company being audited, such as an investment in the company or undue dependence on fees from assurance or non-assurance services.
- Self-review, such as performance of services for an audit client that result in the audit firm auditing its work.
- Advocacy, such as acting as an advocate for an audit client's position in dealings with third parties.
- Familiarity, such as lengthy association of an audit engagement partner or other key engagement personnel with a particular client, or a recent former partner or senior staff member of an audit firm serving as chief financial officer or in some other key management role at an audit client.
- Intimidation, such as threat of replacement of an auditor over a disagreement on the application of an accounting principle.

103 *Circular No. 116/2020/TT-BTC, Model Charter, Article 51.*

104 *Circular No. 116/2020/TT-BTC, Model Charter, Article 39, Clause 1.*

105 *Principles of Auditor Independence and the Role of Corporate Governance in Monitoring an Auditor's Independence (International Organization of Securities Commissions, 2002), 4-5, https://www.iosco.org/library/pubdocs/pdf/IOSCOPD133.pdf*

a) Who Can Be an External Auditor

Any legal entity licensed to perform auditing services can be appointed as an External Auditor. However, as mentioned above, the External Auditor of public companies must be an independent and eligible auditing company approved and announced by the MOF. In addition, the External Auditor of a listed company must be approved by the SSC.

In general, an auditing company must meet the following conditions for its establishment and operation:[106]

- Obtain a business registration certificate, enterprise registration certificate, or investment registration certificate.
- Have at least five auditors, including at least two auditors with capital contributions (for a limited liability company), at least two auditors as partners (for partnerships), or at least two auditors as business owners (for a private company).
- The legal representative, the CEO, must be a professional auditor.

Besides the above conditions, to be accepted to conduct audits for public companies, an auditing company must meet the following conditions:[107]

- Have charter capital of at least VND6 billion for both domestic companies and foreign-invested subsidiaries, and regularly maintain the owners' equity of at least VND6 billion on the balance sheet.
- Have at least 10 practicing auditors, including the CEO.
- Have provided auditing services in Viet Nam for at least 24 months, calculated from the date of confirmation by the competent authority of the first registration list for auditing practice or from the date of the initial issuance of the certificate of eligibility for providing audit services until the date of application to conduct audits.

106 *LOIA, Article 21.*

107 *Decree No. 84/2016/ND-CP, Article 5, Clause 1 and Decree No. 151/2018/ND-CP, Article 1, Clauses 1a & 2a.*

- Have issued auditor's reports on the annual financial statements for at least 200[108] audited companies from October 1 of the previous year to September 30 of the submitted year.

In addition, the auditors must meet all the requirements to be accepted to conduct audits for public companies:[109]

- Have full civil legal capacity.
- Have good ethics and a sense of responsibility, integrity, honesty, and objectivity.
- Hold a bachelor's degree or higher in finance, banking, accounting, auditing or other majors as prescribed by the MOF.
- Hold an audit practicing certificate issued by the MOF.
- To be on the list of registered practicing auditors verified by the MOF at the time of application for conducting the audit.
- Have had at least two years' work experience from the date of being granted a public practice certificate to the date of application for conducting the audit.
- Is not a shareholder or legal representative of voting shareholders of the audited companies.
- Was not a senior manager, a member of the Supervisory Board, or Chief Accountant of the audited companies within the last two years.
- Did not provide bookkeeping services, prepare financial statements, or conduct an internal audit for the audited company in the preceding year or is not currently providing such services or any other services that may impact the independence of the practicing auditor as per the ethical standards of the accounting and auditing profession.
- Is not a parent, spouse, child or sibling of individuals with direct or significant indirect financial interests in the audited entity, as defined by the ethical standards of the accounting and auditing profession, or those holding managerial positions, executive roles, or members of the Supervisory Board, as well as the Chief Accountant of the audited entity.

108 *The requirement is 250 audit reports on annual financial statements if the auditing firm is to qualify to audit listed companies (Decree No. 84/2016/ND-CP, Article 5, Clause 2c and Decree No. 151/2018/ND-CP, Article 1, Clause 1b).*

109 *LOIA, Article 14, Clause 1 & Article 19; and Decree No. 84/2016/ND-CP, Article 6.*

The External Auditor must be independent of the company and its management. In particular, an auditing firm cannot provide auditing services under the following conditions:[110]

- Is currently providing bookkeeping, financial reporting, internal auditing, asset valuation services, management or financial consultancies, or any other services that may impact the independence of the practicing auditor as per the ethical standards of the accounting and auditing profession or having performed such services in the preceding year for the audited company.
- Auditors, employees or managers of the auditing firm are shareholders or have other economic or financial relationships with the audited entity, as defined by the ethical standards of the accounting and auditing profession.
- Individuals responsible for the management and operation of the auditing firm have parents, spouses, children or siblings who are members, shareholders, or those with significant influence on the audited entity or are responsible for the management, operation, Supervisory Board members or the Chief Accountant of the audited entity.
- Individuals responsible for the management operations, members of the Supervisory Board, or the Chief Accountant of the audited entity are also shareholders or those significantly influencing the auditing firm.
- The auditing firm and the audited company have the same founder or founding entity.
- The audited company was the auditor of the auditing firm in the preceding year or is currently providing such service.

The MOF shall be responsible for determining and making public announcements on the list of auditing companies and auditors eligible to conduct audits for public companies:[111]

110 *LOIA, Article 30, Clause 1.*

111 *LOIA, Article 11, Clause 2i.*

Best practice

In the United States, the 2002 Sarbanes-Oxley Act prohibits public accounting firms from providing non-audit services to their audit clients including: (1) bookkeeping or other services related to the accounting records or financial statements of the audit client, (2) financial information systems design and implementation, (3) appraisal or valuation services, fairness opinions, or contribution in-kind reports, (4) actuarial services, (5) internal audit outsourcing services, (6) management functions or human resources, (7) broker or dealer, investment adviser, or investment banking services, (8) legal services and expert services unrelated to the audit and (9) any other service that the BoD determines, by regulation, is impermissible.[112]

An exception to this rule is made should non-audit services that are not listed above be pre-approved by the BoD. The Audit Committee should, however, disclose these services to investors in periodic reports. Another exception is made when the non-audit services constitute less than 5 percent of the total amount of revenues paid to its auditor. These services were not recognized to be non-audit services at the time of engagement, and the Audit Committee promptly approves these services prior to completion of the audit.

b) The Contract with the External Auditor

The company must enter into a contract with the External Auditor once approved by the GMS. The LOE does not specify who must sign the contract on behalf of the company. In practice, this is often the CEO. The contract with the auditing company stipulates the rights and duties of the External Auditor and the company and may include any additional terms that the parties agree upon.

9.6.5. Remuneration

The company pays for the auditor/auditing firm's services. The Supervisory Board must review the External Auditor fees and submit its recommendations to the BoD.[113] Significantly, compensation procedures and the amount of compensation must be determined independently of the audit results.

112 *The Sarbanes-Oxley Act of 2002, Section 201(a). See also: https://www.govinfo.gov/content/pkg/COMPS-1883/pdf/COMPS-1883.pdf.*

113 *Circular No. 116/2020/TT-BTC, Model Charter, Article 39, Clause 1.*

The auditing firm and audited company may agree on the auditing service charge in the audit contract according to the following basis:[114]

- Content, volume and nature of the work.
- Time and working conditions of auditors.
- Qualification, experience and reputation of auditors and the auditing firm.
- Level of responsibility and the audit duration.

In addition, the audit service fees are calculated using the following methods:[115]

- Calculated according to working hours and a charge rate per hour of auditors.
- Calculated according to the services provided within agreed fixed package fees.
- Calculated under multi-period audit contracts with fixed fees for each period.

9.6.6. Reporting

For listed companies, the External Auditor shall prepare an audit report and submit it to the BoD within two months from the end of the financial year.

- The External Auditor presents its conclusions on the reliability of the company's financial statements and compliance with accounting procedures. The opinion paragraph of the auditor's report should state the auditor's opinion as to whether the financial statements give a true and fair view in all material respects in accordance with the financial reporting framework used by the company and, where appropriate, whether the financial statements comply with statutory requirements.

The External Auditor must prepare a report on the annual audit that includes:

- Opinions on the accuracy of the company's reports and other financial documents.
- Information on violations of accounting or financial reporting procedures, disclosure rules and relevant laws and regulations.

114 LOIA, Article 44, Clause 1.

115 LOIA, Article 44, Clause 2

Best practice

The External Auditor should divulge (potential) errors, misconduct, and violations of regulations or the company's internal rules during audits and report them immediately to the Audit Committee/Supervisory Board or BoD. The External Auditor should make the company aware, as soon as practical and at an appropriate level of responsibility, of material weaknesses in the design or operation of accounting and internal control systems which have come to the auditor's attention. The Audit Committee or Supervisory Board should take appropriate steps to remedy these problems.

If the company plans to seek access to international capital markets, the External Auditor should prepare the report in accordance with the International Standards on Auditing (ISA) issued by the International Federation of Accountants (IFAC). The audit report must give an opinion on the financial statements prepared in accordance with the International Financial Reporting Standards (IFRS) adopted by the International Accounting Standards Board (IASB).

Best practice

The External Auditor should participate in the GMS and answer shareholder questions concerning the audit report. Moreover, the Audit Committee or Supervisory Board should evaluate:

- Whether the audit was made in accordance with the established procedures and whether the External Auditor omitted any matters in carrying out the audit.
- The opinion of the External Auditor before it is presented at the GMS.

9.6.7. Liabilities

Vietnamese law does not clearly determine the source of liabilities (civil, administrative, or criminal) that will apply to a licensed auditor, and auditors may instead be liable under all three. Because the auditor or auditing firm may potentially be liable for civil, administrative and criminal infractions, they should be adequately insured by a reputable (domestic or international) insurance provider with appropriate coverage. As a general rule, insurance should cover risks associated with inaccuracies in the audit opinion and failure to properly apply the International Standards on Auditing and a code of ethics for professional accountants.

a) Civil Liability

The grounds and terms of civil liabilities are usually specified in the contract between the auditor or auditing firm and the audited company. The licensed auditor and audit firm must maintain confidentiality regarding the company's operations. The company may seek compensation for any resulting losses if the auditor or auditing firm divulge confidential information.

b) Administrative Liability

Auditing and accounting regulations state that the licensed auditor bears administrative liability if they conduct specific actions which fall into administrative sanctions under prevailing laws and regulations in Viet Nam regarding public accountants, including manipulating or assisting to manipulate or falsifying data related to the services provided. The administrative sanctions vary from recommendations, written warnings, and penalties to revocation of licenses.[116] The maximum fine for a administrative sanction is up to VND100 million.[117]

c) Criminal Liability

The Law on Accounting stipulates that when a licensed auditor uses its authority for its own purposes and violates the rights of a company or related parties, the licensed auditor may be prosecuted.[118]

116 *Law on Independent Audit (Law No. 67/2011/QH12), Article 60; and Decree No. 41/2018/ND-CP.*

117 *Decree No. 41/2018/ND-CP, Article 6, Clause 1.*

118 *Law on Independent Audit (Law No. 67/2011/QH12), Article 60, Clause 2.*

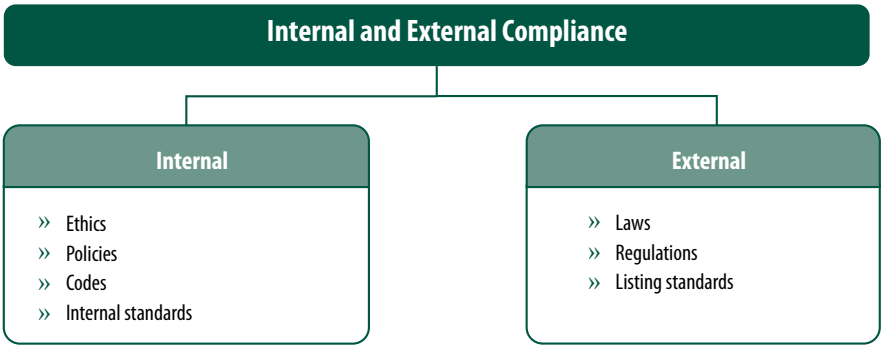
9.7. Compliance

Establishing a compliance function within a company is crucial for several reasons. Firstly, it helps ensure the organization is operating within the bounds of law. This includes adherence to internal policies set by the company itself and external regulations imposed by governmental bodies or industry standards. By having a dedicated compliance function, companies can systematically monitor and enforce these rules and regulations across all levels of the organization. This not only mitigates the risk of legal repercussions, but also fosters a culture of integrity and ethical behavior within the company.

Moreover, shareholders have a vested interest in ensuring that the companies they invest in are being run legally, responsibly and ethically. A robust compliance function provides this assurance by demonstrating that the company takes regulatory compliance seriously and has effective oversight processes in place to minimize potential liabilities.

In essence, the compliance function acts as a safeguard against legal and reputational risks, helps companies maintain trust with shareholders, customers and other stakeholders, upholds the company's values and protects its reputation in the marketplace.

Figure 2. The Compliance Function



9.7.1. Compliance Function Responsibilities

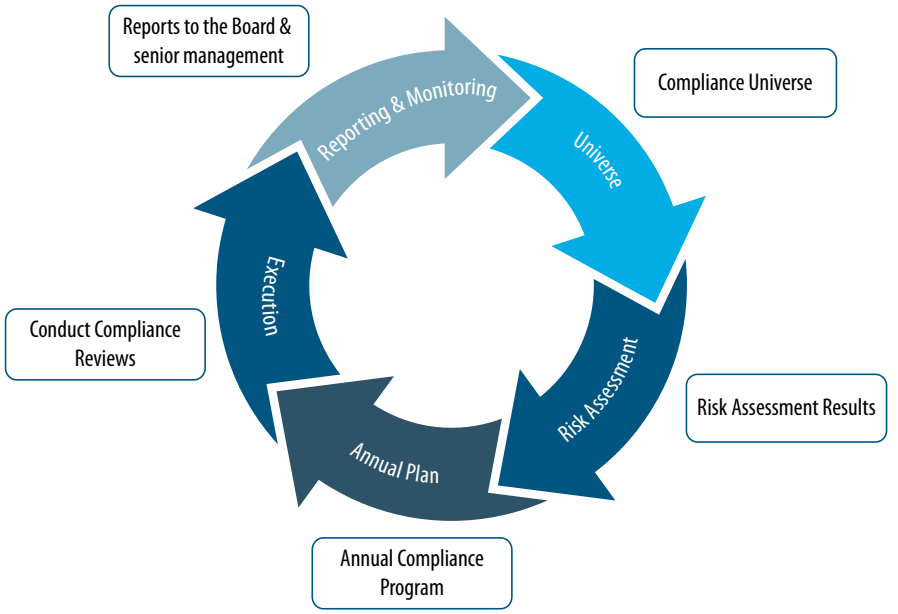
The compliance function has the following responsibilities.

- *Monitoring regulatory changes and advice*: The compliance function should advise senior management on laws, rules and standards, including keeping them informed of any developments in these areas.
- *Guidance and education:* The function assists senior management in establishing policies and procedures. The compliance function is often responsible for developing and maintaining a comprehensive set of policies and procedures that outline the company's expectations regarding ethical conduct, regulatory compliance, and risk management. It also educates staff on compliance issues. It should also serve as a contact point within the company for compliance enquiries.
- *Identification, measurement and assessment:* The compliance function identifies, documents, and assesses the compliance risks and evaluates the appropriateness of the company's compliance procedures and guidelines. It is also the unit that follows up with identified deficiencies.
- *Monitoring, testing and reporting:* The compliance function monitors and tests compliance and reports the results to senior management. The function should report regularly to senior management on all compliance matters to keep them informed about the company's compliance status and any emerging risks or issues. It may also serve as a point of contact for regulatory authorities and other external stakeholders.
- *Statutory responsibilities and liaison:* The compliance function assumes specific statutory responsibilities and liaising with relevant external bodies for compliance reporting.
- *Compliance program:* The compliance function should design and implement a compliance program that sets out its planned activities of the year. The program should be risk-based and subject to oversight by the head of compliance.
- *Promoting a culture of compliance*: Finally, the compliance function plays a key role in fostering a culture of integrity, ethics, and compliance throughout the organization. This may involve promoting awareness and understanding of compliance requirements, recognizing and rewarding ethical behavior, and providing channels for reporting concerns or misconduct.

Compliance typically reports to the company's senior executives, though leading practices call for compliance officers to report directly to the Board and/or the Audit Committee. The Audit Committee has a responsibility to understand and oversee the compliance process. Consequently, compliance officers have a dual reporting line to a senior executive or the CEO and the Audit Committee. From a legal and reputational risk perspective, it is important that the Board receives regular updates from the compliance officer as to the compliance risks at the company.

9.7.2. Compliance Function Life Cycle

Figure 3. Compliance Function Life Cycle



Compliance is an ongoing process of assessment, planning, execution, and review. The compliance function life cycle, therefore, can be broken down into several key stages, each of which plays a crucial role in ensuring effective compliance management within an organization.

Compliance Universe: The organization identifies the complete scope of compliance obligations that it needs to adhere to including laws, regulations, standards, and internal policies.

Risk Assessment: The organization identifies and analyzes potential issues that could negatively impact the organization, focusing on compliance risks. The risk assessment results identify the levels of compliance risk in various areas of the organization, which informs the further stages in the life cycle.

Annual Plan: A strategic plan developed annually, based on the results of the risk assessment, outlining the compliance activities to be undertaken throughout the year.

Execution of the Annual Plan and Conducting Compliance Review: The implementation phase where the activities, defined in the annual plan, are carried out. The organization annually reviews and evaluates the effectiveness of compliance efforts, policies, and procedures.

Reporting to the Board and Senior Management: This involves tracking the execution of the compliance plan, monitoring implementation of recommendations, reporting on its progress and the effectiveness of the compliance program to ensure compliance activities are completed as intended.

Best practice

Viet Nam Corporate Governance Code of Best Practices[119] recommends that the compliance unit should have a direct reporting line to the Board to be able to discharge its function more independently. The Head of Compliance should have the necessary standing and authority within the company. The head should have direct and unfettered access to the Board or a board-level committee (Risk Committee, Audit Committee). The Board or its related committee should receive periodic updates from the compliance function.

119 *Viet Nam Corporate Governance Code of Best Practices, 2019. Principle 7, Recommendation 7.3.2*

9.8. Subsidiary Governance

The responsibilities of subsidiary boards vary depending on the ownership structure and nature of the subsidiary.[120] Even though subsidiary boards often operate under the influence of the parent company, they have a legal duty to act loyally and in the best interests of the subsidiary and all its shareholders, not just the majority shareholder. Further details about the responsibilities of the Board and governance structure for a subsidiary depend on the type of subsidiary.

When a subsidiary is entirely owned by the parent company, there are no conflicts of interest, as the parent represents all shareholders. The Board's loyalty is to the parent, and the parent company may choose the level of autonomy granted to the subsidiary's board.

However, in cases where there are minority shareholders besides the parent, subsidiary boards must balance the interests of both the parent and the minority shareholders. When conflicts arise, the Board must manage these fairly to treat all shareholders equitably.

If the subsidiary is a listed entity and its shares are traded on a stock exchange, the Board is also bound by securities market regulations, which are designed to protect minority shareholders. This may require the Board to resist directions from the parent company that conflict with these regulations.

If the subsidiary is a part of a joint venture, they are typically governed by multiple major shareholders and require the Board to coordinate the interests of these various parties. The governance frameworks differ significantly from those of wholly-owned or partially-owned subsidiaries.

Overall, the primary responsibility of subsidiary boards is to ensure that the subsidiary operates in a manner that is fair and lawful for all stakeholders, balancing the directives of the parent company with legal obligations and the interests of all shareholders.

Related party transactions, particularly within a corporate group, often raise governance concerns due to potential conflicts of interest between a subsidiary and its parent or other group entities. These transactions can include management fees, dividends, employment of specific individuals,

120 *https://www.oecd.org/en/publications/duties-and-responsibilities-of-boards-in-company-groups_859ec8fe-en.html*

business opportunities redirected to other group entities, or financial support to distressed members of the group. The risk is that such transactions might favor the parent company or the group at the expense of the subsidiary, potentially harming minority shareholders and other stakeholders.

This issue is exacerbated by the high frequency and broad scope of intra-group transactions. For instance, some groups use centralized cash management systems that shuffle cash between entities daily, which might disadvantage some companies by stripping them of potential investment opportunities with their free cash, though it could potentially benefit them later.

To address these conflicts, several measures are typically implemented:

- *Disclosure*: Ensuring that all related party transactions are fully disclosed. IAS 24 (Related Party Disclosure) requires disclosure of related party transactions annually in the financial statements. In addition, it is mandatory that listed companies report detailed information on related party transactions in the corporate governance report.
- *Board Approval and/or Shareholder Approval*: Requiring the subsidiary's Board or shareholders to approve transactions, depending on their magnitude, would ensure they are in the subsidiary's best interest (see Chapter 11 for more information on the role of the Board and shareholders in related party transactions).
- *Prohibition*: Outright banning of certain types of transactions deemed too harmful to minority shareholders or the subsidiary.

These governance measures aim to balance the interests within a group, ensuring that transactions are fair and do not unduly disadvantage any part of the group, especially minority stakeholders.

Many corporate failures and scandals can be traced back to governance failures within subsidiaries. As such, effectively managing subsidiary governance is crucial for mitigating risks associated with these entities and should be considered a key component of a company's overall governance structure. This is particularly important for groups with overseas subsidiaries, where mitigating risks becomes even more critical.

IFC's Model Policy on Subsidiary Governance is provided in the Appendix.

CHAPTER APPENDIX

Audit Committee Charter for Company ABC

Date Approved by the Board: DD/MM/YYYY

Objective

1. The Board of Directors ("Board") of the Company has resolved to establish an Audit Committee (the "Committee"). The Committee's function is one of oversight, and is separate to that of the Company's management, internal Audit Department and External Auditor.

2. The primary responsibilities of the Committee are to assist the Board in:

   a) **fulfilling** its oversight of the integrity of the financial statements of the Company and its consolidated subsidiaries and any formal announcements relating to the Company's financial performance;

   b) **reviewing** the Company's internal financial controls, internal control and risk management systems;

   c) **monitoring** and reviewing the effectiveness of the Company's internal audit function;

   d) **recommending** to the Board that the External Auditor be put to the shareholders for their approval in general meeting, and approving the remuneration and terms of engagement of the External Auditor;

   e) **monitoring** and reviewing the External Auditors' independence and objectivity and the effectiveness of the audit process;

   f) **developing** and implementing policy on the engagement of the External Auditor to supply non-audit services; and

   g) **ensuring** the Company's compliance with all legal and regulatory requirements and other internal regulations of the Company.

Committee Composition

1. The Committee shall be appointed by a majority vote of the Board from among its members. The Committee shall consist of no fewer than three members, the exact number to be determined from time to time by the Board, all of whom shall be non-executive directors and a majority of whom shall meet the independence requirements set out in the [Relevant Regulations]. The Chairperson of the Board shall not be a member of the Committee.

2. As long as they remain directors of the Company, members shall serve for a period of one year, with the possibility of re-election so long as each relevant member continues to be independent.

3. At least one of the Committee members shall have recent and relevant financial expertise, as determined by the Board.

4. The Board shall designate one member of the Committee to act as its Chair, who shall meet the independence requirements. The Committee Chair, with input from the other members of the Committee, shall set the agenda for Committee meetings, which shall be distributed to the Board, and shall attend the annual general meeting of the Company's shareholders to discuss with shareholders matters within the responsibility of the Committee. Where the Committee Chair or his designee is unable to attend a Committee meeting, the remaining members present should elect one of their number present to chair the meeting.

5. The secretary of the Company or his designee shall act as secretary to the Committee.

6. The Committee may request that any director, officer, member of the internal audit function or other employee of the Company, or any other persons whose advice and counsel are sought by the Committee, attend any meeting and provide such pertinent information as the Committee requests. The head of internal audit function shall meet with the Committee at least annually without the presence of the management. The Committee may exclude from its meetings any persons it deems appropriate in order for it to fulfil its responsibilities.

7. The Company's External Auditor will be invited to attend meetings of the Committee on a regular basis, and shall meet with the Committee at least annually without the presence of the management.

Procedures for Meetings

1. The Committee shall meet as often as it deems necessary but in any case at least four times per year, held to coincide with key dates in the financial reporting and audit cycle, at such times and places as determined by the Committee Chair, with further meetings to occur, or actions to be taken by unanimous written consent, when deemed necessary or desirable by the Committee or its Chair. Special meetings may be convened upon the request of the Board, CEO, the head of internal audit function and the audit partner of the Company's External Auditor. The Committee shall develop and approve the annual calendar of its meetings.

2. Meetings of the Committee may be conducted when the members are physically present or in the form of either video- or audio-conferences.

3. Notice and details of meetings shall be given to members of the Committee at least five working days in advance, unless otherwise agreed unanimously.

4. Two members of the Committee shall constitute a quorum, provided that each is an independent director. When more than two members are present, the act of the majority of such members at a meeting at which a quorum exists, shall be the act of the Committee, and when only two members are present, the unanimous vote of the two members shall constitute the act of the Committee. In addition, the Committee can take action at any time by unanimous written consent.

5. The Committee shall keep minutes of its meetings which shall be circulated to members for objections and approval. If no objection is lodged within five business days, the minutes shall be approved. Once approved, such minutes shall be provided to the Board.

6. Except as expressly provided in these Terms of Reference, the Committee shall set its own rules of procedure.

Compensation

No member of the Committee may receive, directly or indirectly, any compensation from the Company other than (i) any fees paid to directors for service on the Board, (ii) additional fees paid to directors for service on a committee of the Board (including the Committee) or as the Chairperson of any committee and (iii) a pension or other deferred compensation for prior

service that is not contingent on future service on the Board as long as it does not compromise the Committee member's independence.

Functions and Responsibilities

The Committee shall have such authority as it may require to carry out any functions and obligations as may be stipulated by the internal regulations of the Company or recommended or required of it by the [Relevant Regulations]. In particular, and without limitation to the foregoing, the Committee shall have the following specific authority (in addition to any other authority that the Board may from time to time delegate to the Committee):

1. Information Seeking

The Committee shall be authorized to:

a) Investigate any activity within its authority as outlined in this charter; and

b) Seek any information that it requires from any employee of the Company, and all employees are directed to cooperate with any request made by the Committee.

2. Internal Audit

a) The Committee shall:

- **monitor** and review the effectiveness and organizational structure of the Company's internal audit function in the context of the Company's overall risk management system;
- **approve** the appointment and removal of the head of the internal audit function, review the qualifications and effectiveness of internal audit personnel;
- **consider** and approve the remit of the internal audit function and ensure it has adequate resources and appropriate access to information to enable it to perform its function effectively and in accordance with the relevant professional standards;
- **review** and assess the annual internal audit plan;
- **review** promptly all reports on the Company from the internal auditors;

- **review** and monitor management's responsiveness to the findings and recommendations of the internal auditor; and
- **meet** the head of internal audit at least once a year, without management being present, to discuss their remit and any issues arising from the internal audits carried out. In addition, the head of internal audit shall be given the right of direct access to the Chair of the Board and to the Committee.

3. External Auditors

a) The Committee shall consider and make recommendations to the Board, to be put to shareholders for approval, in relation to the appointment, re-appointment and removal of the Company's External Auditors. The Committee shall oversee the selection process for new auditors and if an auditor resigns the Committee shall investigate the issues leading to this and decide whether any action is required.

b) The Company's External Auditors shall report directly to the Committee.

c) In addition to its responsibilities above, the Committee shall oversee the relationship with the External Auditor including (but not limited to):

- **approval** of their remuneration, whether fees for audit or non-audit services and that the level of fees is appropriate to enable an adequate audit to be conducted;
- **approval** of their terms of engagement, including any engagement letter issued at the start of each audit and the scope of the audit;
- **assessing** annually their independence and objectivity taking into account relevant professional and regulatory requirements and the relationship with the auditor as a whole, including the provision of any non-audit services;
- **satisfying** itself that there are no relationships (such as family, employment, investment, financial or business) between the auditor and the company (other than in the ordinary course of business);
- **agreeing** with the Board a policy on the employment of former employees of the company's auditor, then monitoring the implementation of this policy;

- **monitoring** the auditor's compliance with relevant ethical and professional guidance on the rotation of audit partners, the level of fees paid by the company compared to the overall fee income of the firm, office and partner and other related requirements; and
- **assessing** annually their qualifications, expertise and resources and the effectiveness of the audit process which shall include a report from the External Auditor on their own internal quality procedures;

d) The Committee shall develop and implement policy on the supply of non-audit services by the External Auditor, taking into account relevant ethical guidance and legal requirements regarding the matter.

e) The Committee shall consider whether, in order to assure the continuing independence of the External Auditors, there should be regular rotation of the lead audit partner.

f) The Committee shall review and discuss with the Board, External Auditors and the Company's internal auditors the performance and adequacy of the Company's internal audit function, including its responsibilities, budget, staffing, and any proposed changes in the scope or procedures of the internal audit year on year. The Committee shall monitor and review management's responses to recommendations of the External Auditor, including those in the Management Letter.

4. Financial Reporting and Financial Statements

a) The Committee shall monitor, review and assess the integrity of the financial statements of the Company and any formal announcements relating to the Company's financial performance, and review any significant reporting issues and judgments contained therein.

b) The Committee shall discuss with management and External Auditors on a quarterly basis (except in respect of the final quarter), review and approve prior to the approval by the Board, the quarterly financial statements.

c) The Committee shall discuss with management and External Auditors on an annual basis, review and approve prior to the approval by the Board, the annual financial statements.

d) The Committee shall discuss with management and External Auditors

prior to their release, Company disclosures required by laws, rules and regulations, including announcements of a price sensitive nature.

e) The Committee shall discuss with the external auditors the results of any audit or review of the Company's financial information (prior to the release of such information) and the matters required to be disclosed in them by applicable standards.

f) The Committee shall review and challenge where necessary:

- the consistency of, and any changes to, accounting policies both on a year on year basis and across the company/group;
- the methods used to account for significant or unusual transactions where different approaches are possible;
- whether the company has followed appropriate accounting standards and made appropriate estimates and judgments, taking into account the views of the external auditor;
- the clarity of disclosure in the company's financial reports and the context in which statements are made; and
- all material information presented with the financial statements, such as the operating and financial review and the corporate governance statement (insofar as it relates to the audit and risk management).

g) The Committee shall review the findings of the audit with the external auditor. This shall include but not be limited to, the following;

- a discussion of any major issues which arose during the audit,
- any accounting and audit judgments, and
- levels of errors identified during the audit.

h) The Committee shall review with the internal auditors and the external auditors their annual audit plans and the degree of coordination of such plans and ensure that it is consistent with the scope of the audit engagement.

i) The Committee shall oversee and regularly review the adequacy and performance of established procedures for (a) the receipt, retention and

treatment of complaints received by the Company regarding financial reporting, accounting, internal accounting controls and/or auditing matters; and (b) the confidential, anonymous submission by Company employees of concerns regarding questionable financial reporting, accounting, auditing or other matters. The Committee's objective shall be to ensure that arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action.

5. Internal Controls and Risk Management

a) The Committee shall monitor and review the internal control and risk management systems of the Company.

b) The Committee shall review all material related party transactions prior to the Board consideration.

c) The Committee shall discuss the Company's disclosure controls and procedures (including any significant internal control deficiencies or material weaknesses and any changes implemented in light of material control deficiencies or weaknesses) with the Board and external auditors on a quarterly basis (prior to issuing quarterly or annual financial statements).

d) The Committee shall discuss with management, the internal auditors and the external auditors the Company's policies with respect to risk assessment and risk management. This discussion should cover the Company's risk tolerance, major financial and non-financial risk exposures and the steps management has taken to monitor and control these exposures.

6. Compliance

a) The Committee shall review the findings of any examinations by regulatory and supervisory agencies.

b) The Committee shall review with the Company's legal counsel, the internal auditors and other appropriate parties, legal matters that may have a material impact on the Company's financial statements and compliance procedures, and any material reports received from or communications with regulators or government agencies.

Committee Performance Evaluation

The Committee shall review its own performance at least annually in such manner as it deems appropriate, and submit such evaluation, including any recommendations for change, to the full Board for review, discussion and approval.

Access to Advisors and Training

1. The Committee shall have its own budget and the authority to engage and obtain advice and assistance from internal or external legal, accounting or other advisors, without having to seek Board approval and at the Company's expense.

2. The Committee shall make determinations with respect to the payment of the Company's external auditors and other advisors retained by the Committee.

3. Members of the Committee shall receive appropriate training on taking office and on an ongoing and timely basis to ensure that they can carry out their functions.

Reporting Obligations

1. The Committee shall maintain minutes of its meetings and shall give regular reports to the Board, including on the Committee's actions, conclusions and recommendations and such other matters as the Board shall from time to time specify. Reports to the Board may take the form of oral reports by the Chair of the Committee or any other member of the Committee designated by the Committee to give such report.

2. In addition to the Committee's reporting obligations above, it shall prepare a report describing the Committee's work in discharging its responsibilities to be included in the Company's Annual Report.

3. This charter, as may be amended from time to time, shall be posted on the website of the Company.

NOTES

NOTES

Chapter 10

INFORMATION DISCLOSURE

10 | Information Disclosure

Table of Contents

The Chairperson's Checklist

- ☑ Does the company have a written disclosure policy? Does the policy fully express the company's commitment to transparency?
- ☑ Is the disclosure policy readily available to market participants and other interested parties?
- ☑ Does the company fully comply with its legal disclosure obligations? What systems are in place to ensure complete and timely disclosure of material information?
- ☑ Are executives and directors fully aware of the personal and corporate repercussions of false or incomplete disclosures? Do executives and directors act accordingly to ensure good disclosure?
- ☑ Is the company's ownership structure transparent and are significant ultimate beneficial shareholders fully disclosed? Is information on the number of shares of all classes held by controlling shareholders and their affiliates (ownership concentration) and is disclosure accurate and timely?
- ☑ What steps are taken to ensure the company's financial position is clearly communicated to the markets?
- ☑ Are financial statements prepared as per the International Financial Reporting Standards (IFRS) or equivalent? Are financial statements audited as per International Standards on Auditing (ISA) standards?
- ☑ Are financial statements audited by an accepted external auditing firm?
- ☑ Does the company disclose its risk appetite in qualitative and quantitative information, especially banks?
- ☑ Is the disclosure fair? For example, does the company ensure that all investors receive information at the same time, not giving special access to a privileged few individuals or institutional investors?

- ☑ Are all disclosures and communications with shareholders and stakeholders made available online in a relevant, equal and timely fashion?
- ☑ Is the dividend policy disclosed?
- ☑ Is executive compensation disclosed?
- ☑ Does the company have a policy on insider trading, and does it enforce this policy? What systems are in place to manage the flow of insider and other sensitive information?
- ☑ Does the company appreciate the importance of making voluntary disclosures to the market? If so, how does it ensure the integrity of this information and that its disclosure is not merely for marketing or public relations purposes?
- ☑ Does the company disclose its code of ethics or conduct?

Does the company provide periodic non-financial disclosures of environmental, social and governance (ESG) and sustainability issues of concern to stakeholders in the annual report or any other format by a minimum national requirement or highest international standards, such as Global Reporting Initiative (GRI), Integrated Reporting Council (IIRC) and Sustainable Assurance Standards Board (SASB).

- Are ESG data subject to an annual audit by an independent provider?
- Does the company truly understand the definition of commercially sensitive information? Or does the company hide behind protections provided for sensitive information to withhold important material facts from the markets?

In the case of joint stock companies with the capital participation of foreign shareholders, how does the company's disclosure compare to international disclosure requirements, for example, the G20 and Organisation for Economic Co-operation and Development (OECD) Principles of Corporate Governance, IFRS Sustainability Disclosure Standards (IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information and IFRS S2 Climate-related Disclosures), Task Force on Climate-related Financial Disclosures (TCFD) and GRI Standards.

There are two primary forms of market regulations: substantive rules-based and disclosure-based regulations. Both regulatory approaches seek to protect shareholders and ensure fair and stable financial markets. Rules-based regulations set down what companies can and cannot do and seek to establish a wide-reaching set of rules that cover several potential scenarios. Disclosure-based regulations rely more heavily upon market mechanisms to punish and reward specific corporate behavior. Such regulations shift part of the responsibility for protecting investors to market participants, applying the motto *caveat emptor* or buyer beware. Disclosure-based regulations are partly predicated upon the assumption that markets are better at policing corporate misconduct than regulatory agencies and disclosure is an effective and inexpensive substitute for substantive regulations. In practice, the two approaches are almost always combined, though some countries rely more heavily on disclosure than others.

For disclosure-based regulations to work effectively, several elements and incentives need to work together. These include a proper legal and regulatory environment, effective enforcement mechanisms, such as regulators that screen financial information for misstatements, and courts that provide adequate redress. An independent External Auditor also plays an essential role in providing assurance to markets, as does an active and interested appraiser who questions company strategies and communications. Finally, a competent and vigilant Board of Directors (BoD) is crucial. It is broadly accepted that even the best disclosure system cannot thwart individuals intentionally defrauding a company and its shareholders. Adequate disclosure cannot be fully effective without a BoD that is uniformly intolerant of obfuscation.

While disclosure-based regulations may function imperfectly in an emerging market, disclosure is critical and only likely to grow in importance in Viet Nam as its financial markets mature. Particular importance must be attached to financial and operating results, related party transactions and ownership structures among the broad palette of disclosures.

Companies must inform the markets, in which they operate, of all matters relevant to their financial status and business outlook. In the corporate governance context, information disclosure refers to processes through which a company ensures all interested parties can access relevant corporate information through efficient and transparent procedures.

Access to material financial and non-financial information helps to protect shareholder rights by allowing shareholders to assess the company's position and respond to changes relevant to their concerns. Disclosure also benefits companies by allowing them to demonstrate corporate responsibility towards shareholders, act transparently toward the markets, and maintain public confidence and trust. Finally, transparency and disclosure fill information gaps for investors, creditors, suppliers, customers and employees and, as a result, can positively impact a company's revenues or its access to human and financial capital.

10.1. Regulatory Framework

The primary legal instruments regulating the disclosure and reporting obligations of issuers, public companies, and all other supporting institutions and professions that support the country's capital markets are the Law on Securities (LOS) and Circular No. 96/2020/TT-BTC, which governs the disclosure of information on the securities market.

Under the LOS, the following rules of disclosure are imposed on public companies:[1]

- Information disclosed must be adequate, accurate and timely.
- The disclosing entities are legally responsible for the information they disclose. In case of changes to disclosed information, the disclosing entity shall promptly disclose the changes and reasons for those changes.
- When disclosing information, the disclosing entities shall simultaneously send an information disclosure report to the State Securities Commission (SSC) and the organization at which the securities are listed or registered.
- The company's information shall be disclosed by its legal representative or authorized spokesperson. Individuals disclose their own information or delegate disclosure to authorized organizations or individuals.

1 *LOS, Article 119 and Circular No. 96/2020/TT-BTC, Article 4.*

Best practice

Principles of Corporate Disclosure and Transparency in Emerging Markets:[2]

- **Connected**. Links strategic, governance, and financial information.
- **Integrated**. Sustainability addressed as part of the company's core management and governance functions.
- **Open**. Promotes a culture of openness and transparency within and outside the organization, based on dialogue and feedback loops and a dynamic information management system.
- **Inclusive**. Supports dialogue and mutual learning between the company and its stakeholders.
- **Material**. Relevant, based on the context of operation, especially in emerging markets.
- **Credible/reliable**. Robust management process for internal data collection and external verification, including ESG information.

Disclosure of information on the securities market must be made in Vietnamese language and should be accompanied by an English translation where applicable.[3] Best practice recommends that information published on the company's website be available in Vietnamese and English languages.[4] The disclosing entities are liable for archiving and preserving periodically disclosed information and that of public company registration in print (if applicable) and electronic data for at least 10 years.[5]

Disclosure requirements for public companies differ from those of private companies, where more stringent rules apply to listed and non-listed public companies. This is due to the typically widely dispersed ownership base that public companies hold and, therefore, the number of shareholders these companies are accountable to. Private companies that do not rely on public investment must only comply with minimal disclosure requirements in the Law on Enterprises (LOE)[6] and are not subject to SSC reporting obligations.

2 *IFC Disclosure and Transparency Toolkit, page 6.*
3 *Circular No. 96/2020/TT-BTC, Article 5.*
4 *Viet Nam Corporate Governance Code of Best Practices, Recommended Practice 8.2.2.*
5 *Circular No. 96/2020/TT-BTC, Article 4, Clause 5a.*
6 *LOE, Article 176.*

Best practice

The following principles provide a foundation for solid information disclosure practices:

- Information should be provided on a regular and timely basis.
- Information should be easily and broadly available.
- Information should be accurate, complete, and reliable.
- Information should be consistent, relevant, and adequately documented.

10.2. Person in Charge of Information Disclosure

The law requires the public company to disclose information through its legal representative or attorney-in-fact. The legal representative shall assume responsibility for the adequacy, accuracy and timeliness of information disclosed by the attorney-in-fact. In case information needs to be disclosed, but both the legal representative and attorney-in-fact are absent, the member holding the highest position in the BoD shall take charge of information disclosure. If two or more members have the same highest position, other members of the BoD shall elect or appoint a member to take charge of information disclosure.[7]

Information about the person in charge of information disclosure must be reported to the SSC and stock exchanges within 24 hours from the adequate time of appointment, authorization or replacement of the person in charge of information disclosure. The report on the person in charge of information disclosure must include: [8]

- The power of attorney to disclose information.[9]
- The curriculum vitae. [10]

7 *LOS, Article 119, Clause 4; and Circular No. 96/2020/TT-BTC, Article 6, Clause 1a.*
8 *Circular No. 96/2020/TT-BTC, Article 6, Clause 1b.*
9 *Circular No. 96/2020/TT-BTC, Appendix I.*
10 *Circular No. 96/2020/TT-BTC, Appendix III.*

The Viet Nam Corporate Governance Code of Best Practices suggests that the Board should establish guidelines and procedures for information disclosure to shareholders and other stakeholders as well as oversee its enforcement. The Audit Committee should oversee all financial and non-financial reporting by the policy. The company should have a dedicated investor relations function responsible for overseeing external communications and statutory filings.[11]

10.3. Information Classification

10.3.1. Confidential Information

As a signatory to the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS),[12] some forms of business information may be commercially sensitive. The Viet Nam's Law on Intellectual Property defines trade secrets consistently with the relevant definition, under the TRIPS Agreement, as information in technology and business that has economic value, which is not known by the public, and where the owner of the information takes steps to maintain its confidentiality. Examples include technical and scientific information such as formulae, manufacturing methods and specifications, designs and computer coding, as well as commercial and financial information such as customer lists, customer buying preferences and requirements, pricing information, marketing and business plans, supplier arrangements, internal cost structures, and other similar non-public details.[13]

A trade secret shall be eligible for protection when it satisfies the following conditions:[14]

- It is not common knowledge and not easily obtained.
- When used in business, it will give the information holder an advantage over an entity that does not have or use such knowledge.

11 *Viet Nam Corporate Governance Code of Best Practices, Principle 8.*

12 *Agreement on Trade-Related Aspects of Intellectual Property Rights, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S.299 (TRIPS Agreement).*

13 *TRIPS Agreement, Article 39(2).*

14 *Law on Intellectual Property, Article 84.*

- It is protected by its owner by necessary means so such information will not be disclosed and be difficult to access.

Best practice

Companies should be clear on what indeed constitutes confidential information and should not interpret the broad definitions provided by law so widely as to withhold relevant information from investors and material stakeholders. Companies are well advised to develop written policies and procedures and define what should be considered confidential in their internal regulations. For example, they can consider personal data as confidential information and forbid the collection, storage, usage, and dissemination of private information without the person's consent, unless otherwise provided by a court decision.

10.3.2. Insider Information

Insider trading encompasses both legal and prohibited activity. Insider trading occurs legally every day when corporate insiders[15] buy or sell shares in their own companies within the confines of company policy, law and regulations. There is also an illegal variety of insider dealing. This dealing takes place when those with access to insider information use their knowledge to reap profits or avoid losses on the stock market. Investors lacking access to insider information often pay the price of insider dealing.

Another, far more significant, cost of insider dealing is the damage done to the credibility of securities markets. One of the main reasons that capital is readily available in the world's most successful stock markets is that investors essentially trust them to be fair. The common belief in some countries that privileged investors should be allowed to profit from their access to insider information may explain, in part, relatively low public share ownership in these countries. Governments cannot afford to ignore insider dealing if they hope to promote an active securities market and attract international investment. The same applies to a BoD that wishes to protect shareholders and attract investment.

15 *LOS, Article 4, Clause 45 defines corporate insiders as including the persons holding important positions in the management of an enterprise, public fund or public investment company.*

An "insider" typically refers to individuals who have access to confidential information about a company due to its position within that organization. This can include employees, officers, directors, or anyone associated with the company who has access to non-public information.

Insider information is often sensitive and can significantly impact financial markets if improperly disclosed or used for personal gain. Regulations regarding insider trading are in place to prevent individuals from exploiting such information to gain unfair advantages in trading securities.

In Viet Nam, insider information is defined as any non-public information of a precise nature relating to a public company, listed entity, trading registration organization, public fund, or a public securities investment company that if disclosed, could directly or indirectly, significantly influence the securities' prices of the company on the market.[16] An insider is a person holding key positions in managing an enterprise, public fund or public investment company. The law defines an "insider" broadly as:[17]

- The BoD Chairperson and other directors, legal representative, Chief Executive Officer, deputy CEOs, Chief Financial Officer (CFO), Chief Accountant, and persons holding equivalent positions elected by the General Meeting of Shareholders (GMS) or designated by BoD. The head and members of the Supervisory Board, members of the Audit Committee, a Corporate Secretary or those in charge of corporate governance, and authorized spokespersons.
- Insiders of a public fund or public investment company who are members of the representative board of a public fund or BoD members of a public investment company, executives of a public fund or public investment company, or internal actors of a securities investment fund management company (hereinafter referred to as "fund management company").

Insiders are prohibited from using insider information to buy or sell securities for themselves or another person, revelation or provision of internal information, or advising another person to buy or sell securities based on internal information.[18]

16 *LOS, Article 4, Clause 44.*
17 *LOS, Article 4, Clause 45.*
18 *LOS, Article 12, Clause 2.*

Vietnamese legislation also recognizes criminal responsibility for insider information abuses. Namely, persons who may be considered insiders have an obligation to keep insider information confidential and violating this regulation may lead to administrative penalties or criminal liabilities depending on the nature and severity of the violation.[19]

Best practice

Disclosure of inside information may substantially affect the market value of shares and other company securities. Therefore, persons may not use inside information to which they have access to execute transactions or transfer inside information to a third party. Illegal use of inside information can damage shareholder interests and adversely affect the financial status and reputation of the company involved as well as the securities markets more broadly. The company should have a written policy on insider dealing in place and vigorously enforce it. The company's Internal Auditor should monitor whether directors, managers, and other officers comply with the law, regulations, and internal rules on insider dealing.

10.3.3. Disclosure versus Transparency

Disclosure is sometimes confused with transparency. Companies may disclose an enormous amount of information that is of no value to its users, while withholding essential data. Disclosure can be irrelevant or, worse, manipulated in such a way as to conceal the accurate picture of the state of the enterprise. For example, while many companies disclose ownership as required by law, the actual owners and extent of their control often remain hidden behind complex legal structures, such as unique purpose entities, offshore holding companies and trusts. A robust disclosure regime that promotes absolute transparency is a pivotal feature of market-based monitoring of companies and is central to shareholders' ability to exercise their ownership rights on an informed basis.

19 *LOS, Article 132.*

10.3.4. Liabilities for Non-Disclosure

As a rule, companies that provide false, incomplete or distorted information will be liable for damages caused to shareholders and investors. Besides the company, all persons involved in the preparation of disclosed information will also be liable if they either knew, or by the nature of their work, should have known the information was false. For example, the Chairperson of the BoD, Chief Accountant or person fulfilling this function, and the External Auditor will be deemed responsible. [20] They are jointly and severally liable to the issuer for any damage caused to investors because of untruthful, incomplete, and misleading information. If investors believe they have suffered damage, they can file claims with a court.

Depending on the nature and severity of their violation, organizations and individuals who violate legal provisions on information disclosure shall be disciplined, subject to administrative penalties or criminal prosecution. If damage is caused, they shall pay compensation as prescribed by the law.[21] The maximum sanction for violations that cause significant harm will be a five-year prison sentence[22] and a fine of up to VND3 billion.[23]

20 *LOS, Article 132, Clause 1.*

21 *LOS, Article 132, Clause 1.*

22 *Criminal Code, Articles 209 to 212.*

23 *LOS, Article 132, Clause 4 and Decree 156/2020/ND-CP, Article 5, Clause 2.*

10.4. Disclosure Items

The OECD Principles suggest that companies make timely and accurate disclosure of all material matters, including financial and non-financial situations, performance, ownership, and company governance.[24] The key concept underpinning the OECD's recommendation is the concept of materiality, meaning the extent to which information or an event will impact a company's share price and, therefore, affect investors' decisions. The materiality principle sets boundaries around the scope of information that companies must disclose. The concept recognizes that disclosure obligations which are too demanding – such as forcing companies to disclose information beyond what is relevant to shareholders, investors and the market – may impose high administrative costs that adversely impact business.

The United States Supreme Court defines materiality as "An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote".[25]

Whether information is material to a company's operations depends on various factors, including its business activities, company size, and ownership structure. For example, damage of VND130 million worth of paper inventory in a large, publicly-traded company will be of little importance to the investor. On the other hand, it may be material to a small family-owned print shop. Materiality is, consequently, a relative concept that is often difficult to define with great precision. Companies and auditors sometimes apply certain numerical thresholds to simplify its application, such as corporate events that cost the company 5 percent or more of its earnings. However, these thresholds can only serve as a starting point for a more rigorous application of materiality.

Vietnamese regulations also recognize the concept of materiality. In addition to mandatory, itemized information, they prescribe all other matters relevant to understanding the company's legal, financial, and profit situation. As such, companies must assess matters and litigation that may significantly affect the price of securities and provide those assessments to the public.

24 *G20/OECD Principles of Corporate Governance, Principle V on Disclosure and Transparency. See also: https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/09/g20-oecd-principles-of-corporate-governance-2023_60836fcb/ed750b30-en.pdf.*

25 *Business Roundtable (2015). The Materiality Standard for Public Company Disclosure: Maintain What Works: https://s3.amazonaws.com/brt.org/archive/reports/Materiality%20White%20Paper%20FINAL%2009-29-15.pdf*

Best practice

According to the IFRS: "Information is material if omitting, misstating or obscuring it could reasonably be expected to influence the decisions that the primary users of general purpose financial statements make on the basis of those financial statements, which provide financial information about a specific reporting entity."[26]

Similarly, under the new IFRS S1 and S2 standards for sustainability reporting, sustainability-related financial information is material if omitting, misstating, or obscuring such information could be expected to influence decisions that the primary users of general purpose financial reporting make based on that reporting.[27]

The G20/OECD Principles of Corporate Governance (2023) call for disclosure of all material information in the following areas:[28]

- Financial and operating results.
- Company objectives and sustainability-related information.
- Capital structures, group structures, and their control arrangements.
- Major share ownership, including beneficial owners and voting rights.
- Information about the composition of the Board and its members, including their qualifications, selection process, other company directorships and whether they are regarded as independent.
- Remuneration of Board members and key executives.
- Related party transactions.
- Foreseeable risk factors.
- Governance structure and policies, including the extent of compliance with national corporate governance codes or policies and the process by which they are implemented.
- Debt contracts, including the risk of non-compliance with covenants.

The Viet Nam Corporate Governance Code of Best Practices[29] recommends that the Board ensures disclosure of key non-financial information, including Environmental and Social (E&S) reporting. The Board should ensure the company's disclosure of its significant E&S impacts and strategies for managing E&S risks. This information should adhere to globally recognized standards, such as those set by the IIRC, the GRI, or SASB, and undergo independent verification.

26 *IFRS Standards Project Summary and Feedback Statement (2018): https://www.ifrs.org/content/dam/ifrs/project/conceptual-framework/fact-sheet-project-summary-and-feedback-statement/conceptual-framework-feedback-statement.pdf*

27 *IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information and IFRS S2 Climate-related Disclosures.*

28 *G20/OECD Principles of Corporate Governance (2023).*

29 *The Viet Nam Corporate Governance Code of Best Practices, Principle 8.3.*

Vietnamese legislation covers these essentials in considerable detail. The following sub-sections discuss Vietnamese requirements and disclosure practices regarding the above-mentioned disclosure items.

10.4.1. Company Information

a) Contents of company registration

Upon issuance or a change to the content of an enterprise registration certificate, the enterprise must make a public disclosure on the National Enterprise Registration portal within 30 days from the date of disclosure and shall pay fees in compliance with the law. The disclosed information shall contain the contents of the enterprise registration certificate and the following information:[30]

- Lines of business.
- List of founding and foreign shareholders (if any).

Additionally, the public company shall disclose its company status and the information disclosure statement about the company on its website, as well as media of the SSC within seven days from the day the SSC confirms completion of public company registration.[31]

b) Company development orientation

Markets, shareholders and other stakeholders need to be aware of the company's development orientation. This should encompass the company's main objectives, development strategies in the medium and long terms, and corporate objectives regarding the corporate environment, society and community sustainability. The communication of company objectives can either be legally required or voluntary.

30 *LOE, Article 21.*

31 *Decree No. 96/2020/TT-BTC, Article 9.*

Best practice

Comparative legislation requires that company objectives (such as issuance of securities, acquisition plans, replacement and sales of assets, or research and development) be disclosed in the prospectus. In addition, annual and interim reports must contain forward-looking information, including sources of revenue, plans for new production procedures, expansion or reduction of production, new product development, substitution of old products, modernization or repair of fixed assets and modification of the types of company activities. In addition, the annual report must outline the company's position in the industry, prioritized areas of activity and development trends.

Voluntary disclosure may cover issues such as the company's policies concerning business ethics, E&S issues, and other public policy commitments. This information can help to properly evaluate the company's prospective performance, its relationship with various stakeholders and communities in which it operates, and the steps the company has taken to implement its objectives. As with other types of disclosure, the quality of information provided to the public is greatly enhanced by adhering to a widely accepted standard.[32]

Best practice

The 2023 G20/OECD Principles of Corporate Governance recommends that in addition to their commercial objectives, companies should disclose material policies and performance metrics related to E&S matters.

Companies may disclose their objectives in the charter, company-level corporate governance code, and ethics code. Regardless of the form, companies should ensure this information is readily accessible to the public, for example, on their websites.

32 *For a general discussion of non-financial disclosure, see the OECD's Guidelines for Multinational Enterprises. See the OECD website at: https://www.oecd.org/ or consult the guidelines directly at: https://www.oecd.org/corporate/mne/.*

c) Material foreseeable risk factors

Consideration of risk, along with return, is one of the most critical concerns for any investor. Foreseeable risk factors may include particular ones to specific industries, for example, employee strikes will have greater impacts on manufacturing and other industries heavily dependent on labor. Other sources of risk may be related to regulatory changes, political circumstances, commodities pricing, E&S factors, market conditions, interest and currency fluctuation risks.

10.4.2. Corporate Governance

Major Share Ownership and Voting Rights

Major share ownership

Shareholders should be informed about company ownership structures to understand their rights, role and authority in governing the company and influencing its policy. Depending on the size of ownership, shareholders have various degrees of influence over decision-making in a company. Legislation provides greater rights to shareholders with more significant holdings.

For investors and others with interests in a company, it is vital to know who is in a position to make or influence decisions. For this reason, complete information on the amount of issued capital, its increases and decreases, the rights attached to shares of different types and classes, and the number of shareholders is crucial.

Under Vietnamese regulations, companies must disclose every principal shareholder (i.e., those who own 5 percent or more of total voting-right shares).[33] Vietnamese regulations also require organizations or individuals and their related parties, upon becoming or no longer major shareholders of a public company, to disclose information and notify the issuing company, SSC, and the relevant stock exchange within five working days from the date of change in major shareholdership. Similar disclosures are required for any increase or decrease by 1 percent or more in ownership of equity shares with voting rights.[34]

33 *Circular No. 96/2020/TT-BTC, Article 3, Clause 3.*

34 *Circular No. 96/2020/TT-BTC, Article 31, Clauses 1 & 2.*

Best practice

Companies seeking to disclose their ownership structure may wish to follow examples under United States and European Union regulations. United States regulations define a beneficial owner as any person who, directly or indirectly, through any contract arrangement, understanding, relationship, or otherwise has or shares:

- Voting power, which includes the power to vote or to direct the voting of such a security and/or
- Investment power that includes the power to dispose or direct the disposition of such security.

United States securities law states that any person who is directly or indirectly the beneficial owner of more than 5 percent of any equity security class shall notify the issuer and each exchange, where the security is traded, of such an acquisition within 10 days, as well as any increase or decrease of 1 percent or more. If the beneficial owner acts in concert with other institutions or persons, their names and the relationship with the beneficial owner must be disclosed.

The European Union (EU) Directive of 2004, amended by the EU Directive 2022/2464 on corporate sustainability reporting to be transposed by July 6, 2024[35], provides a framework for disclosure. In summary:

- Article 9 stipulates that investors must disclose the acquisition or disposal of major shareholdings in public companies based on thresholds starting at 5 percent and continuing at intervals of 5 percent up to 30 percent of voting rights, charter capital, or both.
- Article 11(2) shortens the reporting obligation of the acquirer to the company and the competent regulatory authority from seven calendar days to five business days as well as of the company to the public from nine calendar days to three business days.
- Article 2 extends the definition of "security holder" to include custodians and those holding securities for clearing and settlement purposes.
- Article 11(5) extends notification requirements to various classes of shares, such as warrants and convertible bonds, if the holdings reach or fall below the thresholds defined in Article 9.

35 *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32004L0109*

- According to the rules introduced by EU Directive 2022/2464 on corporate sustainability reporting, all companies listed in EU-regulated markets must disclose information in their management report relating to the company's impact on sustainability matters (such as environmental, social and human rights and governance factors) and information necessary to understand how sustainability factors affect its development, performance and position. The application of these rules will be phased in from 2024 to 2026 depending on size and complexity.

All member states have introduced this directive by law or regulation. In addition, the European Union Takeover Bids Directive regulates transparency issues, including disclosing beneficial ownership structures. Public companies in the European Union must disclose relevant information in their annual reports, including:

- Structure of their capital.
- Any restrictions on the free transferability of securities.
- Significant direct and indirect shareholdings (including pyramid schemes and cross-shareholdings).
- Holders of any securities with special control rights.
- System of control of any employee share scheme where the control rights are not exercised directly by employees.
- Restrictions on voting rights.
- Shareholder agreements known to the company.
- Rules governing the appointment and replacement of Board members.
- Significant agreements made by the company that take effect upon a change of control.

Capital Structures, Group Structures and their Control Arrangements

Company groups often consist of complex arrangements with numerous subsidiary layers operating across different industries and regions. This complexity can create challenges for shareholders, particularly those without controlling interests, as they may struggle to influence corporate decisions and comprehend associated risks. Meanwhile, controlling shareholders may exploit the structure to derive personal gains at the expense of the company group.[36]

36 *G20/OECD Principles of Corporate Governance (2023).*

Indirect Control

Shareholders owning less than the majority of shares can exercise indirect control over the company through pyramid structures and cross shareholdings. Relationships with related parties may also influence a company's control structure.

Best practice

The G20 High-Level Principles on Beneficial Ownership Transparency[37] recommend that countries develop a strong and precise definition of beneficial owner that captures the natural person(s) who ultimately own or control the legal person or arrangement. The G20 Principles cover the following elements:

- Definition of a beneficial owner.
- Risk assessments relating to legal entities and arrangements.
- Beneficial ownership information of legal entities.
- Access to beneficial ownership of legal entities.
- Beneficial ownership information of trusts.
- Access to beneficial ownership of trusts.
- Roles and responsibilities of financial institutions, businesses and supporting professionals.
- Domestic and international cooperation.
- Beneficial ownership information and tax evasion.
- Bearer shares and nominees.

The G20 Principles recommend that a beneficial owner should be defined as "a natural person who directly or indirectly exercises ultimate control over a legal entity of arrangement" and that ownership should be interpreted widely to cover control through other means besides legal ownership.

Notably, the G20 Principles emphasize the need for companies to collect and maintain information on their ultimate beneficial owners. For example, in 2016, the United Kingdom amended the Companies Act 2006 to include new provisions requiring companies to obtain information on beneficial ownership by shareholders and for all nominee shareholders to inform the company if shares are owned on behalf of a third person. The United Kingdom also requires companies to register these details with the Companies House and the government's registrar of companies to enable the government to maintain records of beneficial ownership information.

37 *G20 High-Level Principles on Beneficial Ownership Transparency (The World Bank and UNODC, 2015), https://star.worldbank.org/resources/g20-high-level-principles-beneficial-ownership-transparency.*

Shareholder Agreements and Voting Caps

In addition to ownership relationships, shareholders often employ various mechanisms to consolidate control.

Shareholder agreements and voting caps can also impact control. Shareholder (voting) agreements typically oblige parties to vote as a block and may give first-refusal rights for the purchase of shares to another shareholder. Shareholder agreements enable groups of shareholders with relatively small individual stakes to collectively wield significant influence. These agreements typically grant participants preferential rights to acquire shares and may impose restrictions on share sales for a specified period. Shareholder agreements can cover many issues, including which candidates to nominate for the BoD or the selection of the Chairperson, and are clearly of material interest to shareholders. While difficult to detect, companies should make reasonable efforts to obtain information about the existence of shareholder agreements and disclose such information to all shareholders. In principle, parties to shareholder agreements should voluntarily disclose this information themselves. Some jurisdictions monitor and regulate these agreements to prevent abuse.

Voting caps are another tool used to redistribute control by limiting the number of votes a shareholder can cast, irrespective of shareholdings. As such, caps go against the principle of one share, one vote and control proportional to ownership. Voting caps are often used to either entrench the position of existing controlling shareholders or management and are rarely supported by good faith investors. The LOE implicitly prohibits voting caps by introducing the mandatory one share, one vote principle.[38] By law, it contains the provision under which a joint stock company is prohibited from limiting voting rights by maximizing the number of votes of one shareholder.

Shareholder agreements and voting caps are common tools to consolidate control, often necessitating regulatory oversight. Disclosure of these structures is crucial for informed decision-making by all stakeholders and protection of minority shareholders' interest.[39]

Public companies in Viet Nam are legally required to disclose information about the expected record date for the exercising of rights of existing shareholders at least 10 days before the scheduled record date or at

38 *LOE, Article 115, Clause 1a.*

39 *G20/OECD Principles of Corporate Governance (2023).*

least 20 days before the expected record date for the existing shareholders to attend the GMS.[40]

Foreign shareholders

A joint stock company, other than a listed company, shall notify the Business Registration Office in the locality where the company has its head office no later than three working days after it obtains or changes information on: [41]

- Full name, nationality, passport number, contact address, number of shares and classes of shares of an individual foreign national shareholder.
- Enterprise name and code, head office address, number of shares and classes of shares of the institutional foreign shareholder, and full name, nationality, passport number, and contact address of the authorized representative in respect of an institutional foreign shareholder.

Public companies must disclose the maximum threshold of its foreign holdings and any changes therein on its website, the websites of the stock exchange and Viet Nam Securities Depository and Clearing Corporation (VSDC), and the media of SSC.[42]

Information about the Annual GMS and Extraordinary GMS

The law requires that at least 21 days before the opening date of the GMS, unless a more extended period is specified in the Company Charter, the public company disclosure on its website and those of the SSC and the stock exchange (for a listed company) of information about the meeting of the GMS, including an invitation to the GMS, meeting agenda, votes, meeting documents and draft resolution on each issue in the agenda.[43] The Viet Nam Corporate Governance Code of Best Practices recommends that the minutes of the annual GMS and extraordinary GMS should be available on the company website within 24 hours after the meeting.

The extraordinary events of a public company must be publicly disclosed within 24 hours. Extraordinary events are specified

40 *Circular No. 96/2020/TT-BTC, Article 11, Clause 4.*
41 *LOE, Article 176, Clause 3.*
42 *Circular No. 96/2020/TT-BTC, Article 13, Clause 2.*
43 *Circular No. 96/2020/TT-BTC, Article 10, Clause 3.*

in the Article 11 of Circular No. 96/2020/TT-BTC. Disclosure of information about the extraordinary event or ratification of an extraordinary GMS resolution can be done through a paper ballot should include: [44]

- Information about the extraordinary GMS.
- In case of ratification of a GMS resolution by ballot, at least 10 days before the deadline for submission of the ballot, unless an extended period is specified in the Company Charter, the public company must disclose the ballot, the draft resolution of the GMS and explanations thereof on its website and send them to all shareholders.

Best practice

Participating in the GMS is a fundamental shareholder right and shareholders need to be provided with information necessary for them to vote at the GMS. According to the G20/OECD Principles of Corporate Governance (2023): "Shareholders should be furnished with sufficient and timely information concerning the date, format, location and agenda of general meetings, as well as fully detailed and timely information regarding the issues to be decided at the meeting."[45]

Of the jurisdictions surveyed by the OECD in Factsheet 2023, 51 percent require notification 15-21 days before the meeting, with recent trends showing an increase in notice periods.[46] Another 39 percent provide for longer notice periods, for example in Australia, Canada, Germany, Hungary, Indonesia, Italy, the Netherlands, and the United States. The European Union Shareholders' Rights Directive mandates a notice period of at least 21 days for general shareholder meetings. However, in Chile, Japan, New Zealand, Republic of Korea and Singapore, the minimum mandatory notice period is less than 15 days.

The Viet Nam Corporate Governance Code of Best Practices recommends that the Board send the notice of annual and extraordinary shareholders' meetings with sufficient and relevant information, at least 21 days before the meeting[47], similar to what is currently required under law.

In some other jurisdictions, such as Colombia and Hong Kong (China), the respective voluntary corporate governance code's recommendations serve as a means to advocate for longer notice periods.

44 *Circular No. 96/2020/TT-BTC, Article 11, Clause 1c and Clause 3.*

45 *G20/OECD Principles of Corporate Governance (2023), sub-Principle II.C.1.*

46 *OECD (2023). OECD Corporate Governance Factbook 2023, OECD Publishing, Paris, https://www.oecd.org/en/publications/oecd-corporate-governance-factbook-2023_6d912314-en.html.*

47 *Viet Nam Corporate Governance Code of Best Practices, Principle 9.2.*

Corporate Governance Structures and Policies

When assessing a company's governance structure, market participants may want to obtain information on its governing bodies, including the division of authority between shareholders, directors and executives, as well as the company's corporate governance policy, its commitment to corporate governance principles and compliance mechanisms.

Commitment to Corporate Governance

Market participants are keenly interested to understand the level of a company's commitment to good governance practices. They wish to determine whether a company sees governance as a public relations, "box-ticking" or "window dressing" exercise, or whether the company is, in fact, willing "to do right" by shareholders and to institute and implement real change as necessary and appropriate. While good disclosure is insufficient to consistently and uniformly ensure good corporate governance, it is one way of demonstrating a company's commitment to its shareholders and stakeholders.

Corporate Governance Structures

Companies must describe their governance structures, including the authority of each governing body and internal control mechanisms, in their prospectus and annual reports. Also, companies should regulate and make procedures for convening and conducting the GMS publicly available through their internal documents and make GMS decisions publicly available through material events reports.

Corporate Governance Policies

The Company Charter is a document that sets the rules and procedures of a company's governance system and should be made publicly available. Company-level corporate governance codes also highlight general corporate governance concepts and structures. Internal regulations provide more detailed guidance on processes. Companies should make this information readily accessible to interested parties at minimal cost.

Best practice

Corporate governance best practice recommends that companies develop disclosure policies that will be binding on the company once approved by the Board. Some suggested policies include:

- Structure and responsibilities of the Disclosure Committee, if there is one.
- List of information the company intends to disclose.
- Rules for communicating with the media, as well as the source and frequency of communications.
- Media contacts, including press conferences, publications, brochures, and booklets.
- Requirements for executive bodies to conduct meetings for shareholders and analysts.
- Procedures for answering questions from all shareholders.
- List of information, documents, and materials to be provided to all shareholders for the GMS.
- Procedures for identification and treatment of insider information.
- Other internal policies or regulations, including a code of ethics, E&S policies, and internal rules that apply to the BoD.

Companies should disclose information about corporate conflicts resulting from improper implementation of corporate governance principles/practices the company declared binding upon itself. Also, companies must adhere to the "comply or explain" principle in applying accepted corporate governance rules, recommendations and explain the reasons for deviations from implementation in practice.

Companies should also disclose information about changes in the identity of, or contractual arrangements with, the company's External Auditor and other externally engaged persons who provide the company with services that have a material impact on the company's business operations (such as law firms engaged for representation in major litigation).

Corporate Governance Report

A public company must disclose information about the corporate governance report within 30 days from the first six months of the year and the end of the calendar year. [48]

48 *Circular No. 96/2020/TT-BTC, Article 10, Clause 4.*

The corporate governance report should consist of the following contents:[49]

1. Activities of the GMS.
2. BoD report:

- Information about members of the BoD.
- Supervision of the Management Board by the BoD.
- Activities of BoD subcommittees (if any).
- List of resolutions/decisions of the BoD.

3. Supervisory Board or Audit Committee Report:

- Information about members of the Supervisory Board or Audit Committee.
- List of meetings of the Supervisory Board or Audit Committee.
- Supervision of the BoD, Management Board, and shareholders by the Supervisory Board or Audit Committee.

4. Information about members of the Management Board: name, date of birth, qualification, and date of appointment/dismissal.
5. Information about the Chief Accountant: name, date of birth, qualification, and date of appointment/dismissal.
6. Training courses on corporate governance.
7. Details of affiliated persons of the public company and transactions of affiliated persons of the company.
8. Share transactions of internal persons and their affiliated persons.

The corporate governance report must be approved by the chairperson of the company.

49 *Circular No. 96/2020/TT-BTC, Appendix V.*

Best practice

According to the Viet Nam Corporate Governance Code of Best Practices,[50] the BoD should ensure that the remuneration of Board members and key executives is disclosed publicly to inform shareholders with regards to remuneration, performance and value creation.

The company's annual report should include the policy and criteria for setting remuneration, as well as names, amounts and breakdown of remuneration and other payments and benefits paid by the company and its subsidiaries of:

a) Each director, member of the Supervisory Board (if applicable) and the CEO.

b) Top key management personnel (who are not directors or the CEO).

10.4.3. Financial and Operating Results

a) Presenting Financial Information

Information about the financial results, performance, and operations of the company is of utmost importance for shareholders, potential investors, creditors and other stakeholders. The following list constitutes the most typical forms of, and additions to, financial reporting:[51]

- **Balance sheet** provides a snapshot of the company's assets, capital and liabilities on a particular date. To skilled analysts, it provides essential information on, among other things, the degree of risk an investment in the company carries or its ability to pay creditors.
- **Income statement** provides information on the company's performance during a specified period. Income statements may be organized in several different ways. According to internationally recognized practice, income statements must show: 1) revenues or sales, 2) the results of operating activities, 3) financing costs, 4) income from associates and joint ventures, 5) taxes, 6) profit or loss from ordinary activities and 7) net profit or loss. The income statement demonstrates business sustainability.

50 *Viet Nam Corporate Governance Code of Best Practices, Principle 8.4.*

51 *Law on Accounting (LOA), Article 29, Circular 96, Articles 10 & 14. Decision No. 155/2020/ND-CP, Articles 29 & 298.*

- **Cash flow statements** illustrate a company's sources and uses of cash. It lists all changes affecting cash in operations, investments and financing. For example, net operating income increases cash, purchasing a plant is an investment that decreases cash, and issuing shares or bonds is a financing activity that increases cash.

- **Explanatory notes to the financial statements** help explain the company's financial statements by providing important details and insights into how the company prepared its accounts. It also briefly describes features of the company's activities, its leading performance indicators and factors that affected the company's financial results, as well as decisions on financial statements and distribution of net profit reviews. This refers to any relevant information enabling users to receive a complete and objective picture of the company's financial condition, financial results for the reporting period and any changes in its financial position. The notes to the financial statements must expressly state the contents of related party transactions by Vietnamese Accounting Standard (VAS) No. 26 and the circular providing guidelines on VAS No. 26. The notes must also contain segment reporting as stipulated in VAS No. 28 and its attached guiding circular. Furthermore, this part contains, when needed, the statement of changes in owners' equity that shows all changes in the charter, additional paid-in and reserve capital, and retained earnings. In addition, it provides information on changes in statutory and additional funds and briefs on net assets.

- Finally, the **External Auditor's report** allows an independent External Auditor to express an opinion on whether the company's financial statements are prepared, in all material respects, by an identified financial reporting framework and whether they are reliable. This provides shareholders, managers, employees and market participants with an independent opinion about the company's financial position and, if performed correctly, should attest to the accuracy of statements. The annual financial statements of all public and listed companies must be audited by an independent and eligible audit firm (listed companies must be audited by an accredited auditing company that is on the list of audit companies accredited by the SSC for audit under conditions specified by the Ministry of Finance).[52] Annual audited financial statements must be submitted for review and approval by the GMS.[53]

52 *Circular No. 96/2020/TT-BTC, Articles 10 & 14. LOS, Article 4, Clause 11.*

53 *LOE, Article 175, Clause 2.*

Best practice

International best practice also calls for management's discussion and analysis (MD&A), which provides management's view on the company's performance and future prospects. The MD&A, typically disclosed in the company's annual report, should:

- Complement as well as supplement financial statements.
- Have a forward-looking orientation.
- Focus on long-term value creation.
- Integrate long- and short-term perspectives.
- Present information that is significant to the decision-making needs of users.
- Embody the qualities of reliability, comparability, consistency, relevance and understandability.

The MD&A presents a more analytical and qualitative view than the rest of the financial statements.[54]

b) Preparing Financial Information

Regulations, accounting and other standards will determine the specific content and format of financial statements. Taken together and compared over time, financial statements should provide a well-rounded picture of the company's operations and financial position. Companies should implement the following principles when preparing their financial information:[55]

- **Accrual-based accounting**, according to which revenues and expenses are booked over time and not at the point of payment or receipt of funds. This requires that sales and expenses relating or pertaining to a particular timeline be recorded in the period of occurrence irrespective of when the amount was received or paid.[56]

- **Going concern assumption** means that financial statements are prepared in the belief that the company is operating and will continue to operate for the foreseeable future and that it has neither the intention nor necessity of

54 *See further guidance from SEC on MD&A: https://www.sec.gov/rules/1989/05/managements-discussion-and-analysis-financial-condition-and-results-operations*

55 *VAS No. 01 – General Standard.*

56 *VAS No. 01, Article 3.*

liquidation or of materially curtailing the scale of its operations. The going concern assumption is a fundamental principle in the preparation of financial statements. For this reason, it is recognized that management is responsible for assessing the entity's ability to continue as a going concern. However, management's assessment may not always involve detailed analysis, mainly when there is a history of profitable operations and ready access to financial resources.[57]

- **Consistency**, which states that the selected accounting regulations and methods must be applied consistently during the annual accounting period. In case of changes to selected accounting regulations and methods, the accounting unit must provide an explanation in the financial statements.[58]

- **Separation of assets and liabilities**, meaning that the assets (fixed and current) and liabilities (debt payables and equity of owners) should be recorded separately from those of the company's owners and other organizations.[59]

- **Completeness of information disclosure**, meaning that the company's financial statements should disclose all material business facts and results (actually and potentially) that may impact the economic decision-making of those who use and refer to these documents. An omission of such information may cause the records to be false or misleading and unreliable.[60]

- **Timeliness**, meaning the company needs to publish reports quickly, as up-to-date information is of much more value to users than older information that events may have superseded. The public company must disclose its audited annual financial statements within 10 days from the day on which the auditor's report is signed by the audit organization and within 90 days from the end of the fiscal year.[61]

- **Conservatism**, requiring a company to make prudent and deliberate accounting choices and estimate when future events would negatively impact its financial conditions.

57 *VAS No. 01, Article 4.*
58 *VAS No. 01, Article 7 (or LOA, Article 6, Clause 2).*
59 *LOA, Article 9, Clause 3.*
60 *LOA, Article 32, Clause 2.*
61 *Circular No. 96/2020/TT-BTC, Article 10, Clause 1c.*

- **Substance over form**, meaning that the company should record transactions and events in a manner that accurately reflects their substance and economic realities (which should prevail), not merely their legal form.
- **An analytical outlook,** means the sum of analytical accounts should be equal to the synthetic account.[62]
- **Balance between benefits and costs**, given the complexity and breadth of specific reporting requirements, smaller companies can tailor financial information to be cost-effective. This concept, however, should not be used to deny users information. The presumption must be that information required by law and accounting standards should be provided to users unless there is a clear indication that the cost outweighs the benefit.
- **Matching**. Expenses are matched to the appropriately related revenues to determine earnings for the period.[63]

Best practice

Companies should prepare their financial statements according to an internationally accepted body of accounting standards to access international capital markets or improve the quality of financial reporting. The IFRS and United States Generally Accepted Accounting Principles (U.S. GAAP) are the most widely recognized standards.[64]

In addition to standard financial reporting according to the VAS, a company may consider reporting in accordance with IFRS for the following reasons:

- IFRS has clear economic logic and provides better information to management than current Vietnamese accounting standards.
- There is a global convergence of national standards towards IFRS.
- Unification of standards will allow users of financial statements to "read" all financial statements under standard rules.
- Implementing IFRS could help Vietnamese companies decrease expenses of attracting investment.

62 *LOA, Article 6.*

63 *LOA, Article 7.*

64 *U.S. GAAP is available on the Financial Accounting Standard Board's website: http://www.fasb.org. A summary of IFRS is available on the International Accounting Standard Board's website: http://www.iasb.org.*

Applying IFRS typically has the following impacts on the balance sheet of a standard Vietnamese company:

- The need to prepare consolidated financial statements (International Accounting Standard (IAS) 27.7/11).
- Inventories can no longer be generally carried at cost, but at the lower cost or net realizable value (IAS 2.6).
- A significant change in the value of fixed assets.
- Use of a fair market valuation rather than the historical cost approach for many assets and liabilities.
- Appearance of new financial instruments, particularly derivatives.
- Recognition of assets and liabilities, the control over which does not stem directly from participation in equity.

Additional items are included in the income statement, such as fair value adjustments for financial instruments and recognition or recovery of asset impairment. Disclosures also become more informative and user-oriented.

c) Disclosing Financial Information

Financial information will typically be presented in different forms and at other times throughout the financial year. Financial and operating results will appear in the prospectus, annual report, and annual, semi-annual and quarterly financial statements.

Circular No. 96 on disclosure of information in the securities market determines that all public companies are obliged to disclose annual audited financial statements within 10 days from the date the audit organization signs the audit report. The date of completion of annual financial statements shall be no later than 90 days from the last day of the financial reporting period.[65]

Listed companies and large-scale public companies[66] must disclose additional financial information as follows:

- Quarterly financial statements must be complete interim financial statements,

65 *Circular No. 96/2020/TT-BTC, Article 10, Clause 1c.*

66 *According to Circular No. 96/2020/TT-BTC, Article 18: A public company shall disclose information as a large-scale public company according to regulations of this circular from the time its equity is VND120 billion or more as shown in the latest audited annual financial statements. The company continues the obligation to disclose information as a large-scale public company, within one year from the date on which it ceases to be a large-scale public company.*

as prescribed in the Accounting Standard "Interim financial statements."[67]

- The full text of the quarterly financial statements or reviewed quarterly financial statements (if any) shall be disclosed with the review conclusions and the company's explanation, in case qualified review conclusions are given to reviewed quarterly financial statements.[68]
- Quarterly financial statements must be disclosed within 20 days from the end of a quarter. This deadline could be extended to 30 days for a parent company required to prepare consolidated financial statements. The reviewed quarterly financial statements (if any) are disclosed within five days from the day the audit organization signs the review report and within 45 days from the end of the quarter.[69]
- Explanations for occurrence of any of the following events must be provided in quarterly financial statements:[70]
  - Net profit after-tax fluctuates more than 10 percent during a current period compared with a previous (year) period.
  - After-tax profit of the reporting period is negative. Year-over-year profit is changed from a positive number to a negative number or vice versa.
  - After an audit or review, the after-tax profit of the reporting period varies by at least 5 percent and is changed from a positive number to a negative number or vice versa.
- Quarterly financial statements must be disclosed in the information disclosure media of the SSC and stock exchange and be disclosed and archived at the company for at least five years.[71]
- Semi-annual financial statements must be complete interim financial statements, as prescribed in the Accounting Standard "Interim financial statements," and contain financial figures for the first six months of the company's fiscal year.[72]

67 *Circular No. 96/2020/TT-BTC, Article 14, Clause 3a.*
68 *Circular No. 96/2020/TT-BTC, Article 14, Clause 3.*
69 *Circular No. 96/2020/TT-BTC, Article 14, Clause 3c.*
70 *Circular No. 96/2020/TT-BTC, Article 14, Clause 4.*
71 *Circular No. 96/2020/TT-BTC, Article 4, Clause 5b.*
72 *Circular No. 96/2020/TT-BTC, Article 14, Clause 2a.*

- Semi-year financial statements must be reviewed according to the Standard on Review of Financial Statements. The full text of the half-year financial statements shall be disclosed together with the review conclusions and the company's explanation about any qualified review conclusion. [73]
- Semi-annual financial statements must be disclosed within five days from the day the audit organization signs the review report and 45 days from the end of the first six months of the fiscal year (or 60 days for a parent company).[74]
- Disclosed semi-annual financial statements must be archived in print (if applicable) and electronic data for at least 10 years and must also be archived and published on the company's website for at least five years.[54]

Best practice

Companies should disclose all material information, on a timely basis and in such a manner to make the information as precise and understandable to users as possible. Companies should adhere to the spirit of the law and not limit themselves to minimum standards of statutory disclosure.

d) Financial Information in a Corporate Group

A crucial component to ensure transparency in the context of a corporate group is for all subsidiary companies to fully disclose all intra-group relations, transactions, financial terms, and consolidated accounts. Vietnamese regulations also require companies to prepare consolidated financial statements and individual financial reports on all subsidiary companies within the group. This data will form an integral component of the prospectus documents.[75]

73 *Circular No. 96/2020/TT-BTC, Article 14, Clause 2b.*

74 *Circular No. 96/2020/TT-BTC, Article 14, Clause 2c.*

75 *LOA, Article 29, Clause 2b.*

Best practice

When preparing consolidated accounts, companies should follow uniform accounting policies for the parent and its subsidiaries. If this is not practical, the company must disclose the proportion of items in the consolidated financial statements in which different accounting policies have been applied. In the parent's separate financial statements, subsidiaries may be shown at cost, at re-valued amounts or using the equity method. IFRS stipulates that a company's consolidated accounts should include at least:

- Name, ownership, and voting percentages for each significant subsidiary.
- Reason for not consolidating a subsidiary.
- Nature of the relationship if the parent does not own more than 50 percent of the voting power of a consolidated subsidiary.
- Nature of the relationship if the parent owns more than 50 percent of the voting power of a subsidiary excluded from consolidation.
- Effect of acquisitions and disposals of subsidiaries during the period.
- In the parent company's separate financial statements, a description of its methods to monitor the accounts of subsidiaries.

10.4.4. *Ad hoc* Information Disclosure

The public company shall disclose material information on an *ad hoc* basis within 24 hours from the occurrence of one of the following events:[76]

a) The company's account at a bank or foreign branch bank is frozen at the request of a competent authority or when the payment service provider suspects fraud or illegal activities relevant to the account.

b) The company receives a decision from a competent authority or issues a decision on suspension of part or all its business operations, changes to the enterprise registration information, revocation of the enterprise registration certificate and the revision, suspension or revocation of the license for establishment and operation or operating license.

76 *LOS, Article 120, Clause 2 and Circular No. 96/2020/TT-BTC, Article 11.*

c) Decisions of an extraordinary GMS are ratified. Documents to be disclosed include the resolution of the GMS, minutes of the GMS and enclosed documents, and resolution or vote counting records (if shareholders' opinions are collected by questionnaire survey). If the GMS approves the delisting, the public company shall disclose information about such delisting and the ratio of "yes" votes of non-majority shareholders.

d) The company's decision to repurchase its shares or sell treasury stocks, the date of exercising the right to purchase shares of bondholders or the date of conversion of convertible bonds into shares, decisions on overseas offerings of securities and decisions relevant to the offering and issuance of securities.

dd) Decisions on dividends, method and time of dividend payment, decisions on stock splits and reverse stock splits.

e) Decisions on the enterprise's reorganization (full or partial division, consolidation, merger or conversion of enterprise), dissolution or bankruptcy, changes in Tax Identification Number (TIN), company's name or seal, relocation, establishment or closure of head office, branches, factories or representative offices, promulgation or revisions to the Company Charter, strategies, medium-term development plans and annual business plans of the company.

g) Decisions on any changes to the accounting period, accounting policies (except changes of accounting policies due to changes in the law, notification that the auditing enterprise has signed the contract for audit of annual financial statements or a change in audit enterprise, after having signed the contract) and cancellation of the signed audit contract.

h) Decisions on capital contributions, purchases of stakes in a company that turns it into a subsidiary or associate company or sales of stakes in a company that make it no longer a subsidiary or associate company or dissolution of that subsidiary or associate company.

i) Decisions of the GMS or BoD on ratification of contracts/transactions between the public company and its internal actors or their affiliated persons or affiliated persons of the public company.

j) Changes in voting shares. The time limit for information disclosure is determined as follows:

- If the company issues additional shares or converts bonds or preference shares into shares, the time limit for information disclosure shall be counted from the date on which the company submits the report to the SSC on issuance or conversion results in accordance with regulations of the law on issuance of securities.
- If the company repurchases its shares or sells treasury stocks, the time limit for information disclosure shall be counted from the date on which the company submits a report on transaction results in accordance with regulations.
- If the company repurchases shares from its employees in accordance with regulations on employee share ownership or repurchases odd-lot shares at the request of shareholders or the securities company purchases its shares for fixing transaction errors or repurchases odd-lot shares, it shall disclose information within 10 first days of the month based on completed transactions and updated information up to the disclosure date.

k) The company changes, appoints, re-appoints or dismisses its internal actors, receives resignation letters from its internal actors (effective dates must be disclosed in accordance with the LOE and the Company Charter). The company shall also send the curriculum vitaes of its internal actors, made according to the form in Appendix III of Circular No. 96/2020/TT-BTC, to the SSC and the stock exchange.

l) Decisions to buy or sell assets or conduct any transaction whose value exceeds 15 percent of total asset of the company according to the latest audited annual financial statements or latest reviewed half-year financial statements. If the public company is a parent company, the consolidated financial statements shall be used.

m) Any charge against the company or its internal actor, decision on detention or criminal prosecution against the company's internal actor.

n) Effective court judgments or decisions on the company's operations, decisions on imposition of penalties for tax offences.

o) The court's notice of receipt of the company's bankruptcy petition.

p) Upon receipt of any event or information that may affect the company's securities prices, the company is required to confirm or correct such an event or information.

q) Occurrence of any event that considerably affects the company's business or corporate governance.

r) Approval or cancellation of listing at a foreign stock exchange.

For listed and large-scale public companies, the additional information must be disclosed:[77]

- Decision on increasing or decreasing charter capital.
- Decision on investment in an organization, project, borrowing, lending or another transaction whose value is at least 10 percent of total assets of the company according to the latest audited annual financial statements or latest reviewed half-year financial statements (or consolidated financial statements if the public company is a parent company).
- Decision on capital contribution worth at least 50 percent of charter capital of an organization (determined according to the charter capital of that organization before receipt of contributed capital).

Disclosure of information about share repurchase and sale of treasury stocks: If a public company repurchases its shares or sells treasury stocks, it shall disclose information in accordance with regulations on share repurchases and sales of treasury stocks. In case of a share repurchase, after all repurchased shares are fully paid for, if the total assets in the company's accounting books are reduced by more than 10 percent, the company shall send a notification to all its creditors and disclose information within 15 days from the payment date.[78]

Disclosure of material transactions must be made via publications and the company's website as well as on information channels of the SSC or exchanges.[79] Furthermore, in Circular No. 96, it is also stipulated that when disclosing material information, public companies shall clearly state the occurred event, its cause, plan and solutions (if any).[80]

77 *Circular No. 96/2020/TT-BTC, Article 15.*

78 *Circular No. 96/2020/TT-BTC, Article 13, Clause 3.*

79 *Circular No. 96/2020/TT-BTC, Article 4, Clauses 3 and 5b.*

80 *Circular No. 96/2020/TT-BTC, Article 11, Clause 2.*

Best practice

Companies should include the following information on material transactions in their annual reports:

- A list of all material transactions concluded by the company during the reporting year.
- A list of transactions considered material based on the definition in the Company Charter.
- Key terms of each material transaction.

10.4.5. Sustainability Reports

A business' commitment to sustainability, transparency and its E&S impacts are directly correlated to its long-term performance and profitability. The Viet Nam Corporate Governance Code of Best Practices suggests that E&S information should be prepared in accordance with globally-accepted standards, such as those issued by the IIRC, GRI or SASB, and subject to independent verification.[81]

Public companies are required to prepare and disclose the following E&S-related content in their annual report at a minimum: [82]

- Environmental impacts of greenhouse gas emissions, and company measures and initiatives to reduce such emissions.
- Management of raw materials.
- Energy consumption and company energy efficiency measures and initiatives.
- Water consumption, water recycled and reused.
- Compliance with the law on environmental protection.
- Policies related to employees: number of employees, average wages of workers, employee training and labor policies to ensure health, safety and welfare.

81 *Viet Nam Corporate Governance Code of Best Practices, Recommended Practices 8.3.3.*

82 *Circular No. 96/2020/TT-BTC, Article 10, Clause 2.*

- Report on responsibility for local community.
- Report on green capital market activities under guidance of the SSC.

It is not mandatory for companies operating in the finance, banking, securities and insurance sectors to report environmental impacts, raw material and energy consumption.

Best practice

- Sustainability disclosure should be consistent, comparable, reliable and include retrospective and forward-looking material information that a reasonable investor would consider important in making an investment or voting decision.
- Sustainability information should be considered material if it can reasonably be expected to influence an investor's assessment of a company's value. If consistent with a jurisdiction's legal and disclosure requirements, such assessments may also consider sustainability matters critical to a company's key stakeholders or a company's influence on non-diversifiable risks.
- Sustainability disclosure frameworks should be consistent with high-quality, understandable, enforceable and internationally-accepted core standards that facilitate the comparability of sustainability disclosure across markets.
- Governance over and disclosure of sustainability matters, financial reporting and other corporate information should be connected.
- If a company publicly sets a sustainability-related goal or target, the disclosure framework should ensure that verifiable metrics are disclosed to allow investors to assess the credibility and progress toward meeting the announced goal or target.
- Phasing in of requirements should be considered for annual assurance attestations by an independent, competent and qualified assurance service provider in accordance with high-quality international assurance standards to provide an external and objective assessment of a company's sustainability disclosure.

(Source: G20/OECD Principles of Corporate Governance, 2023)

Best practice

Although financial performance reporting holds significance, it does not stand alone as the only indicator of success and resilience. Offering transparent information regarding a company's management and performance in the realms of ESG—including the incorporation of material ESG issues into the company's strategy and operations—can offer valuable insights into the company's decision-making quality and long-term sustainability.

Benefits of disclosure include providing insights that allow stakeholders to:

i. Understand key stakeholder priorities and concerns.

ii. Better assess a company's risks and opportunities and how these are being managed or pursued.

iii. Assess a company's ability to execute strategies that achieve multiple objectives, both financial and non-financial.

Furthermore, adequate disclosure enables comparisons across companies and sectors.

Open and accountable disclosure plays a crucial role in fostering trust among diverse stakeholders, encompassing customers and communities. In sectors where transparency has grown to address particular risks, there is evidence that the resulting boost in accountability can yield broad positive effects, enhancing operational efficiency and facilitating market access.

The advantages of ESG disclosure extend beyond large publicly-traded companies. While SMEs are typically not obligated to adhere to mandatory reporting standards, some opt for voluntary disclosure. Reporting may, for instance, better position SMEs to become suppliers to larger firms. As multinationals are under increasing pressure to report and manage supply chain risks, they are requiring their main suppliers to also report on ESG policies and performance.[83]

(Source: IFC ESG Guidebook)

83 *Intel, (May 2020). Corporate Responsibility at Intel, 2019-2020 Report, http://csrreportbuilder.intel.com/pdfbuilder/pdfs/CSR-2019- 20-Full-Report.pdf*

Figure 1. IFC's Model for Annual Report[84]

RESOURCE. IFC DISCLOSURE & TRANSPARENCY PROGRAM MODEL FOR ANNUAL REPORT

1. STRATEGY

- Operating Environment
- Business Model
- Strategy and Strategic Objectives
- Risk Analysis and Response
- Materiality Assessment
- Stakeholder Engagement
- Key Performance Indicators

2. GOVERNANCE

- Commitment to ESG
- Board of Directors
- Control Environment
- Treatment of Minority Shareholders
- Governance of Stakeholder Engagement

3. PERFORMANCE

- Financial Performance
- Financial Resources
- Sustainability Performance
- Financial and Sustainability Statements
- Key Performance Indicators
- Verification

84 *IFC (2018) Beyond the Balance Sheet: IFC Toolkit for Disclosure and Transparency.*

INTERNATIONAL SUSTAINABILITY REPORTING FRAMEWORK

Sustainability Reporting Standards

In June 2023, the International Sustainability Standards Board (ISSB) issued its first two IFRS® Sustainability Disclosure Standards, IFRS S1 *General Requirements for Disclosure of Sustainability-related Financial Information* and IFRS S2 *Climate-related Disclosures.*[85] The standards cover four core areas: (1) Governance: the governance processes, controls and procedures that a company uses to monitor and manage sustainability-related risks and opportunities, (2) Strategy: the approach a company uses to manage sustainability-related risks and opportunities, (3) Risk Management: the processes a company uses to identify, assess, prioritize and monitor sustainability-related risks and opportunities and (4) Metrics and Targets: the company's performance in relation to sustainability-related risks and opportunities. Companies must consider the applicability of the industry-based SASB Standards[86] when applying the IFRS Sustainability Disclosure Standards. The standards are to be applied as of January 1, 2024.

Other popular sustainability reporting frameworks include GRI Standards, Integrated Reporting Framework (part of the IFRS Foundation), Task Force on Climate-related Financial Disclosures (TCFD) Recommendations (part of the IFRS Foundation). Please refer to https://www.ifcbeyondthebalancesheet.org/understanding-global-reporting-frameworks for further details.

The Global Reporting Initiative (GRI) issues three series of reporting standards, namely Universal Standards, Sector Standards, and Topic Standards.[87] Organizations can utilize the GRI Standards to compile a comprehensive sustainability report in line with these guidelines. Alternatively, they can select specific standards or portions thereof to share targeted information with particular audiences, such as disclosing climate change impacts for investors and consumers.

85 *Source: https://www.ifrs.org/groups/international-sustainability-standards-board/.*

86 *https://sasb.ifrs.org/*

87 *https://www.globalreporting.org/media/wtaf14tw/a-short-introduction-to-the-gri-standards.pdf*

The Standards include disclosures that offer a structured way for organizations to report on their activities and impacts. These disclosures may contain requirements which are mandatory reporting elements and recommendations which suggest, but do not mandate, certain information or actions. *GRI Universal Standards* apply to all organizations, and consist of GRI 1: Foundation 2021 (GRI 1), GRI 2: General Disclosures 2021 (GRI 2), and GRI 3: Material Topics 2021 (GRI 3).

GRI Sector Standards are being developed for 40 sectors starting with those with the highest impact, such as oil and gas, agriculture, aquaculture, and fishing. The Standards identify topics that are typically material for most organizations within a specific sector and recommend relevant disclosures for reporting on these topics.

The GRI Topic Standards contain disclosures for providing information on topics, for example, standards on waste, occupational health and safety, and tax.

10.4.6. Prospectus

The public offer of securities may only be performed with prior registration of the prospectus with the SSC. A prospectus provides material information on the company so investors can make informed decisions on the merits of potential investments. Prospectuses set forth the nature and object of shares, debentures or other securities, and the investment and risk characteristics of the issue. Investors must be furnished with a prospectus before purchasing securities.

10.5. Annual Report

The public company must prepare its annual report and disclose it within 20 days from the date of disclosure of its audited annual financial statements and within 110 days from the end of the fiscal year. [88]

Circular No. 96 contains detailed provisions setting out the information that companies must disclose annually as follows:[89]

1. ***General information***

- The company's full name, certificate of business registration number, charter capital, owner's capital, business address, establishment and development process.
- Business lines and locations of the business.
- Information about governance model, business organization.
- Development orientations.
- Specify the risks which could affect the production and business operations or the realization of the company's objectives, including environmental risks.

2. Operation of the company in the fiscal year

- Situation of production and business operations.
- Organization and human resources.
- Investment activities, project implementation.
- Financial situation, and major financial indicators.
- Shareholders structure, change in the owner's equity.
- ESG report of the company.

88 *Circular No. 96/2020/TT-BTC, Article 10, Clause 2.*
89 *Circular No. 96/2020/TT-BTC, Appendix IV.*

3. Assessment of the Management Board

- Assessment of operating results.
- Financial situation: assets and debt payable.
- Improvements in organizational structure, policies and management.
- Development plans for the future.
- Assessment report related to E&S responsibilities of the company.

4. Assessment of the BoD

- Assessment of the BoD on company operations, including the assessment related to E&S responsibilities.
- Assessment of the BoD on Management Board's performance.
- Plans and orientations of the BoD.

5. Corporate governance

- BoD: members and structure of the BoD, list of sub-committees, activities of independent members.
- Supervisory Board/Audit Committee: members and structure, activities of members.
- Transactions, remuneration and benefits of the BoD, Management Board, and Supervisory Board/Audit Committee.

6. Financial statements

- Auditor's opinions.
- Audited financial statements.

Financial information included in the annual report must correspond to that in the company's audited annual financial statements.

The annual report must be confirmed by the signature of the company's legal representative.

The LOE requires joint stock companies, other than public companies, to publish annual reports on the evaluation of operational results of the BoD and Supervisory Board.

The Corporate Secretary plays a pivotal role in orchestrating the annual report and oversees all of its facets of disclosure. Additionally, internal company departments and groups serve as valuable sources of input for report preparation. The Chapter Appendix outlines recommendations on which internal entities can serve as essential resources for various components of the report, along with examples of pertinent questions to consider during the preparation process, extracted from IFC's recommended framework for internal planning for annual report preparation.[90]

Beyond compliance, best practices of disclosure and transparency should characterize ESG reporting and how such matters are integrated into the company's strategy, culture, and risk management, with information subject to independent verification and assurance.

90 *IFC (2018) Beyond the Balance Sheet: IFC Toolkit for Disclosure and Transparency.*

10.6. Corporate Websites

Corporate websites can be an exceptionally powerful means of communication as they are easily accessible to the public at low cost. More Vietnamese companies are using the internet as an official disclosure channel. At a minimum, a joint stock company shall publish the following information on its website:[91]

- Company Charter.
- Curricula vitae, educational qualifications and work experience of members of the Board of Management, Supervisors, and CEO of the company.
- Annual financial reports approved by the GMS.
- Annual reports on evaluation of operational results of the BoD and Supervisory Board.

Public companies are required by law to establish a website. Public companies must set up a website when carrying out public company registration procedures with the SSC and stock exchange and publicize the website address and any changes related to the website address within three working days from the date of the website address going live or changed. The website must allow the display of the time when the information is posted and must enable investors to search and access data.

The website must contain business lines and information to be published on the National Business Registration Portal in accordance with the LOE and any changes thereof, have a separate page for relationship with shareholders (investors), on which the Company Charter, information disclosure regulations, company administration regulations (if any), operation regulations of the BoD, Supervisory Board (if any), prospectus (if any), information disclosed on a periodic or *ad hoc* basis and on request.[92] This information must be retained and accessed on the company's website for at least five years.[93]

91 *LOE, Article 176, Clause 2.*

92 *Circular No. 96/2020/TT-BTC, Article 7, Clause 2.*

93 *Circular No. 96/2020/TT-BTC, Article 4, Clause 5.*

Best practice

The Viet Nam Corporate Governance Code of Best Practices suggests that:[94]

- The company should establish and continuously update a corporate website. The Board of a listed company should ensure that all information provided via its website is available in both Vietnamese and English languages.
- The company should allow investors and analysts to ask their questions related to company operations. This can be achieved through open meetings with investors/ analysts, press conferences, analyst's briefings or in other formats allowed by the company and subject to guidance defined in the applicable legislation/listing rule.

10.7. Mass Media

Channels to disclose information include:[95] a) website of the reporting/ disclosing entity, b) disclosure platform operated by the SSC, c) website of stock exchanges and other disclosure platforms operated by stock exchanges, d) website of VSDC and e) other mass media channels.

The print media is an additional channel for disclosure. Although print publication may entail additional costs, it is a recognized legal channel for disclosure. Many companies disclose information about new products, major contracts, acquisitions, financial results, production plans and securities issues in print media in addition to their websites.

94 *Viet Nam Corporate Governance Code of Best Practices, Recommended Practices 8.2.2 and 8.2.3.*

95 *Circular No. 96/2020/TT-BTC, Article 7, Clause 1.*

CHAPTER APPENDIX

INTERNAL RESOURCES FOR THE ANNUAL REPORT, AND KEY QUESTIONS TO ASK[96]

Type of Information	Who Would This Information Come From?	Questions to Think About
Strategy		
Business Model	• Strategy • Operations	• What does the company do, what makes it distinctive? Its customers, products or services, or business processes? • Does the company have a clear business model? Can this be clearly articulated and/or presented in a diagram? • What are the inputs, outputs, and outcomes of the company's activities? Its key relationships?
Business Environment	• Strategy • Operations • Sustainability	• Where does the company operate? • What is the internal operating environment? • What is the external environment, and what are the trends in the environment? • How does the company's structure relate to its environment?
Strategic Objectives	• Strategy • Executive Management • Board of Directors • Sustainability	• Where does the company want to go, and how does it intend to get there? • How does the company preserve and create value? • What are the short- and long-term objectives? • What financial and nonfinancial KPIs are used to ensure that the company is delivering on its strategy? • How does the strategy respond to the business environment? In other words, why is the strategy the right strategy? • What is the governance for the strategy? How is the board involved?
Risk Analysis and Response	• Risk Management • Executive Management • Board of Directors	• What are the specific risks that may affect the company's ability to create value in the short and long term? • Why does management believe these are the key risks? • How are these risks assessed? • How are they managed or mitigated? • How does the company see these risks changing over time? • How are new or emergent risks identified?
Sustainability Opportunities and Risks	• Sustainability • Strategy • Risk Management • Executive Management • Board of Directors	• What are the issues that affect financial performance, social/development impact, reputation, and license to operate? • What are the issues that have an impact on the company's ability to create value? • Is there a process for determining these issues? • If so, how does this process feed into management priorities?

96 *Beyond the Balance Sheet | IFC Toolkit for Disclosure and Transparency (2018): https://www.ifc.org/content/dam/ifc/doc/mgrt/beyond-the-balance-sheet-ifc-toolkit-for-disclosure-transparency.pdf*

Type of Information	Who Would This Information Come From?	Questions to Think About
Introducing Key Performance Indicators	• Strategy • Risk Management • Operations	• How are KPIs chosen? Are they related to the company strategy? Are they used to evaluate performance? • Do KPIs allow for performance comparisons over time and with similar companies?
Corporate Governance		
Leadership and Culture	• Executive Management • Board of Directors • Board and Committee Chairs	• What does the company stand for? • How is the company's culture defined and embedded throughout the company? What are the company's values? • What are the relevant governance policies? • How are these policies implemented in practice? • What were the major focus areas for governance during the year?
Structure and Functioning of the Board of Directors	• Board of Directors • Board and Committee Chairs, including Nomination	• What is the process to elect directors? • What is the company's governance structure? • What are the different committees of the board? • Was the effectiveness of governance (or the board) reviewed during the year? • How does the board oversee sustainability?
Control Environment	• Legal and Compliance • Risk Management • Internal Controls • Internal Audit • Audit or Risk Committee	• What is the company's risk appetite? • What systems are in place to ensure compliance? • What does the control environment look like? • Does the company use a three-lines-of-defense model of risk management, internal controls, and internal audit? • How does the board oversee this, and how is it accountable? • Are there any suggestions for improvement from the external auditors?
Treatment of Minority Shareholders	• Finance and Accounting • Legal and Compliance • Remuneration Committee	• Who owns the company? How is it controlled? • Is there a significant indirect ownership? • Are there any controlling shareholders? Who are they and what is their role? Are there succession policies in place? • What are the rights of minority shareholders, including during a change of control? • What is the remuneration policy? • What remuneration was awarded to the board and key executives in the current year? • Does remuneration link to strategy? Does it link to performance? • What is the policy on related-party transactions? • Were significant transactions entered into or still in effect during the reporting period?

Type of Information	Who Would This Information Come From?	Questions to Think About
Governance of Stakeholder Engagement	• Sustainability • Board of Directors • Strategy	• Who are the company's stakeholders, and what impact do the company's activities have on them? • How are stakeholder concerns integrated into the strategy? • What is the processes to manage stakeholder concerns, including grievance mechanisms and external communication? • What is the role of the board?
Financial Position and Performance		
Performance	• Executive Management • Board of Directors • Strategy • Finance and Accounting • Sustainability • Risk Management	• What are the company's operational and financial results? • What are some of the major trends driving operational and financial results, including investment needs, intangibles, and sustainability? • What are the company's nonfinancial results, including on the management of sustainability risks and opportunities? • How are different dimensions of performance (financial, operational, sustainability) linked? • What are future performance targets and the outlook for future performance?
Financial Statements	• Accounting and Finance • Legal and Compliance • Audit and/or Finance Committee • External Auditor	• What are the local requirements for financial reporting and auditing? • What accounting standard should be followed—locally, globally? • What additional financial information is required or recommended for the industry sector? • How is the business segmented? • What is the result of the external audit?
Sustainability Statements	• Executive Management • Board of Directors • Sustainability • Strategy • Finance and Accounting	• What are the cross-cutting, industry-specific, and entity-specific metrics that the company follows year on year? • Is it possible to present more than one year's worth of data, for comparison? • What reporting/accounting standards should be used? Can it be audited? • What explanation is needed to ensure that the data are understandable and comparable?

NOTES

CHAPTER 11

RELATED PARTY TRANSACTIONS (RPTs)

11 | RELATED PARTY TRANSACTIONS

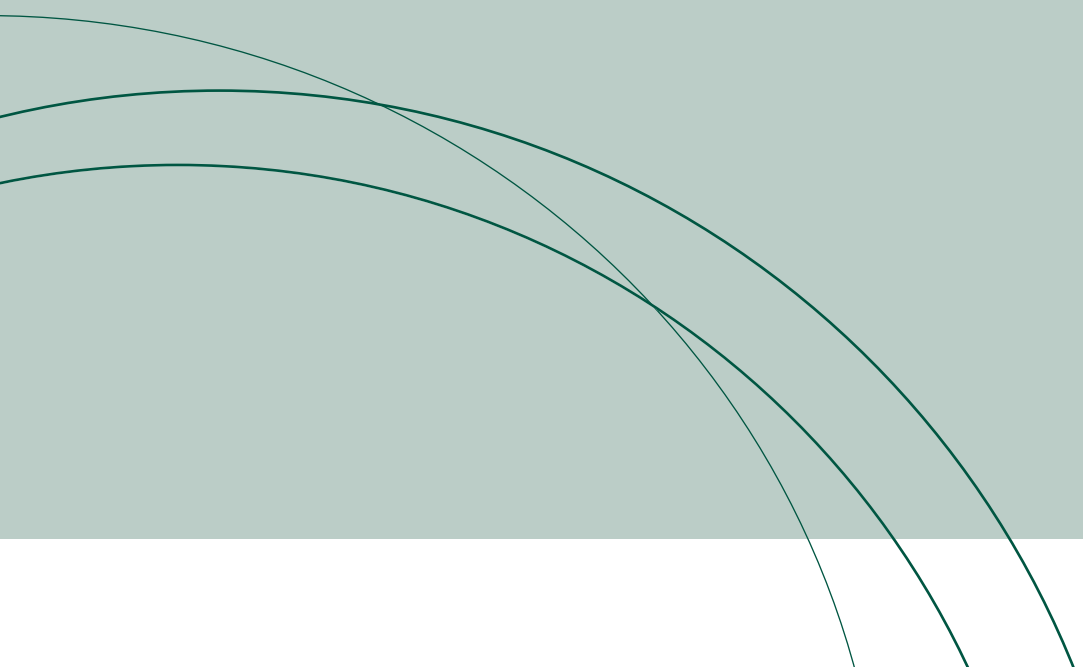


Table of contents

The Chairperson's Checklist

- ☑ Does the company have a formal process in place to identify and disclose Related Party Transactions (RPTs)?
- ☑ What policies are in place to address and manage conflicts of interest that may arise during the consideration or approval of RPTs?
- ☑ Are there periodic reviews or assessments of the effectiveness of procedures and controls in place for handling RPTs?
- ☑ Does the company practice aggregating and treating similar transactions involving a related party or entity as a single transaction when assessing materiality thresholds, even if individual transactions are below the *de minimis* level?
- ☑ Is there a regular reporting mechanism to the Board and shareholders that includes the total amount of exposure to all related parties and details any write-offs related to RPTs?
- ☑ Does the Board of Directors (BoD) ensure that related parties properly disclose their interest in transactions? Do related parties abstain from participating in discussing and voting on such transactions?
- ☑ Does the BoD ensure that all legal requirements for the approval of RPTs are adhered to? What role do independent directors play in RPTs?
- ☑ Does the BoD take adequate measures to disclose information on RPTs and related parties?
- ☑ Do all directors understand their liability for violating procedures while approving RPTs?
- ☑ How does the company communicate information about significant RPTs to its shareholders, and what mechanisms are in place for shareholder feedback and approval?
- ☑ Is there a formal training program for directors to ensure they stay informed of evolving governance practices, especially regarding RPTs?
- ☑ How does the company involve External Auditors in reviewing and assessing the integrity of RPTs and their impact on financial reporting?

- ☑ How does the company manage records or a database related to RPTs, and how is this information accessible to relevant stakeholders?
- ☑ How are risk management, compliance, and internal auditing contributing to the monitoring of RPTs, and what steps is the Board taking to oversee the whistleblowing function specifically for RPTs?

RPTs involve parties that are either insiders or related to the company, such as directors, managers, large shareholders, or parties related to them. Some RPTs have legitimate purposes and can be conducted fairly, others cannot. Regardless, they are easily abused and warrant particular attention since they may reduce the value of the company and expropriate shareholder rights. Legislation contains detailed procedures to discourage insiders from entering into RPTs and to help ensure fairness when an RPT takes place.

This chapter examines the legal and regulatory frameworks governing RPTs in Viet Nam, and compares these with international best practices. The discussion aims to illustrate effective strategies that Vietnamese companies can adopt to uphold strong governance standards and protect shareholder interests during significant corporate events.

11.1. Definition of a RPT

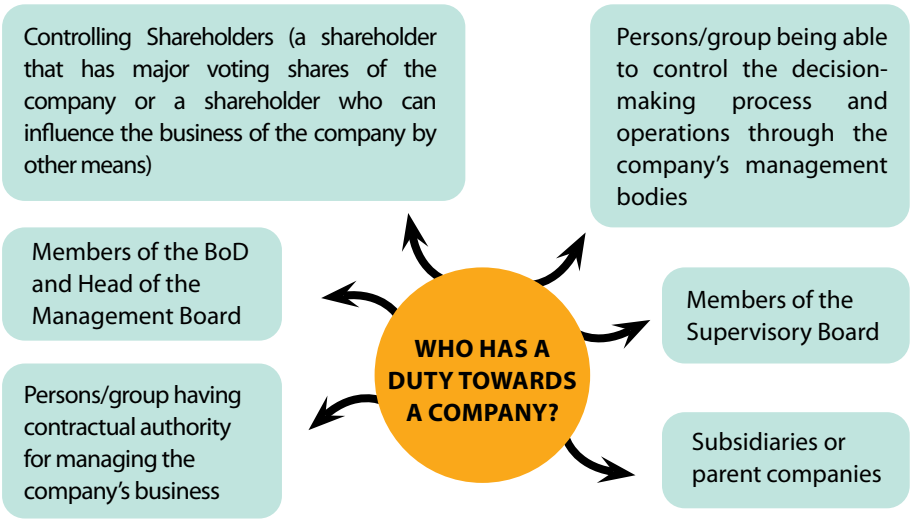
RPTs can occur not only between the company and its directors, managers, and large shareholders, but also within groups of companies (holding structures) where transactions between the parent and subsidiary companies frequently occur. In other words, RPTs are transactions amongst related parties of the company.

For a transaction to be considered an RPT, each party involved in the transaction must check whether two conditions are met.

a) Potential Related Parties/Persons that Have a Duty Towards a Company and Connected Persons

Several parties can be defined as related if they play a role in a transaction. In Viet Nam, related parties encompass all those parties/persons that have duties towards the company.[1] Such parties are presented in Figure 1.

Figure 1. Persons that Have Duties towards the Company



1 *Law on Enterprises (LOE), Article 4, Clause 23.*

Besides persons who have duties towards the company, a potential related party could also be a family member (connected persons). Family members of a person with a duty towards a company include a spouse, natural father, natural mother, adoptive father, adoptive mother, father-in-law, mother-in-law, natural children, adopted children, son-in-law, daughter-in-law, biological siblings, brothers-in-law or sisters-in-law.

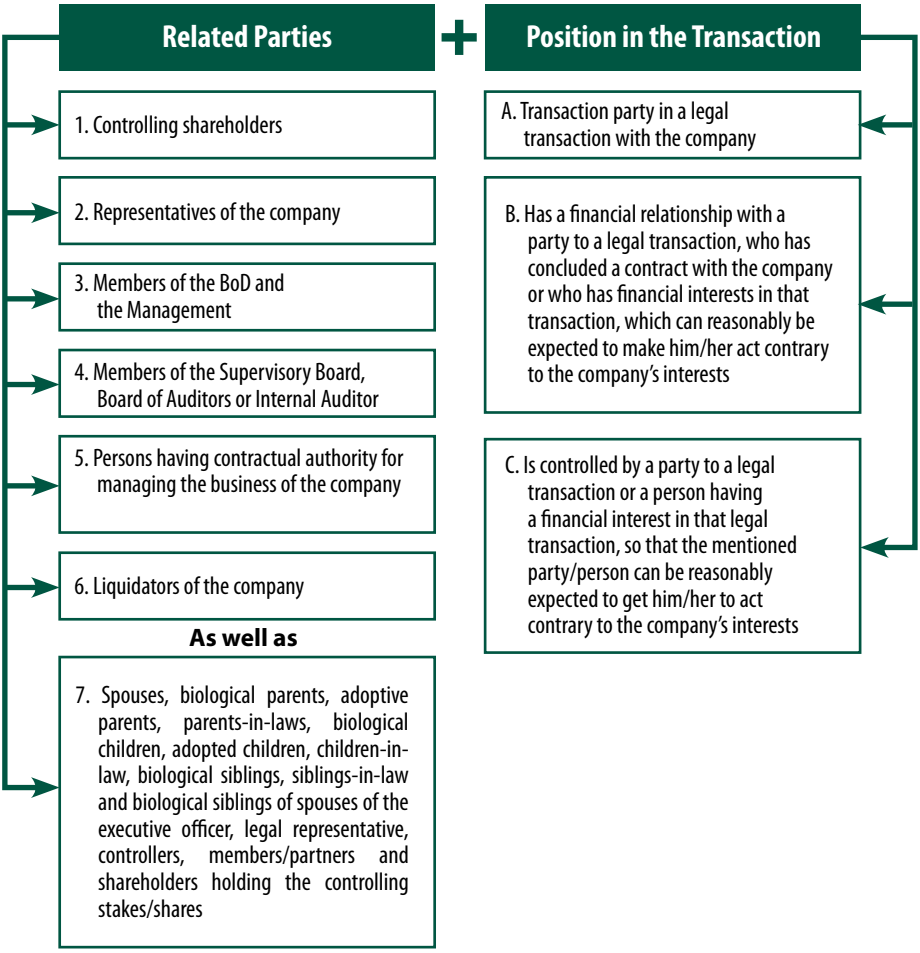
b) Related Parties are Involved in the Transactions

For the purposes of defining RPTs, the parties specified in the previous section must be involved in the transaction in one of the following capacities:

- Act as a transaction party in a legal transaction with the company.
- Has a financial relationship with a party to a legal transaction, who has concluded a contract with the company or who has financial interests in that transaction, which can reasonably be expected to make it act contrary to the company's interests.
- Is controlled by a party to a legal transaction or a person having a financial interest in that legal transaction, so the mentioned party/person can be reasonably expected to influence he or she to act contrary to the company's interests.

Figure 2 depicts components of a RPT, which must be present in a transaction.

Figure 2. Components of a RPT



To determine whether a transaction is a RPT, it is necessary for an interested party from the left column of Figure 2, to be involved in the transaction as indicated in the right column of Figure 2. In practice, this means that a company must create a list of related parties and always check whether any of these parties (1–6 of the left column) or their related persons (7 of the left column) is involved in each and every transaction carried out by the company, as mentioned in A-C of the right column.

Best practice

The G20/OECD Principles of Corporate Governance provide a general definition of related parties, including entities that control or are under common control with the company, along with significant shareholders including members of their families and key management personnel.[2]

International Accounting Standard (IAS) No. 24 provides a more detailed definition, with parties considered to be related if one party has the ability to control the other party or exercise significant influence or joint control over the other party in making financial and operating decisions.[3] A party is related to an entity if:

1. Directly, or indirectly through one or more intermediaries, the party:
   - Controls, is controlled by, or is under common control with, the entity (this includes parents, subsidiaries, and fellow subsidiaries).
   - Has an interest in the entity that gives it significant influence over the entity.
   - Has joint control over the entity.
2. The party is an associate (as defined in IAS 28 Investments in Associates) of the entity.[4]
3. The party is a joint venture, in which the entity is a venture (see IAS 31 Interests in Joint ventures).[5]
4. The party is a member of the key management personnel of the entity or its parent.
5. The party is a close member of the family of any individual referred to in (1) or (4).
6. The party is an entity that is controlled, jointly controlled, or significantly influenced by or for which significant voting power in such entity resides with, directly or indirectly, any individual referred to in (4) or (5).
7. The party has a post-employment benefit plan for the benefit of employees of the entity, or of any entity that is a related party of the entity.

2 *G20/OECD Principles of Corporate Governance 2023, Page 32.*

3 *See also: International Accounting Standard Plus website at: http://www.iasplus.com/standard/ias24.htm*

4 *See also: International Accounting Standard Plus website at: http://www.iasb.org/NR/rdonlyres/8E1664C6-AD47-4B84-A8D7-88476F1D83AC/0/IAS28.pdf*

5 *See also: International Accounting Standard Plus website at: http://www.iasb.org/NR/rdonlyres/13E1409D-1100-4AF5-A7D9-B5AC69E40CB1/0/IAS31.pdf*

At the same time, IAS 24 specifies which parties are not deemed to be related:

- Two enterprises simply because they have a director or key manager in common.
- Two parties who share joint control over a joint venture.
- Providers of finance, trade unions, public utilities, government departments and agencies in the course of their normal dealings with an enterprise.
- A single customer, supplier, franchisor, distributor, or general agent with whom an enterprise transacts a significant volume of business merely by virtue of the resulting economic dependence.

Financial Accounting Standards Board (FASB) statement No. 57 defines a related party as affiliates of an enterprise, trusts for the benefit of employees, owners and their family members, investment entities accounted for by the equity method by the firm, management and other large shareholders or parties that influence a firm's policy.

Comparative practice

RPTs are common in the context of groups of companies, for example in parent-subsidiary relations. If one company dominates another, there is a risk that the parent will utilize the subsidiary for its own business objectives, without care for the subsidiary's long-term financial viability. In these cases, the creditors and shareholders of both the subsidiary and parent may be put at risk often unknowingly.

- The risk for creditors at the subsidiary level is obvious. But the risk is present at the parent level as well, as the subsidiary's insolvency can greatly damage the surviving parent.
- Shareholders are also put at risk, although the position of shareholders at the subsidiary level is weaker. On the one hand, shareholders at the subsidiary level often benefit from being part of the parent's business. On the other hand, they may have to contribute to the parent's welfare to their own detriment.

11.2. Approving RPTs

RPTs should be approved and conducted in a manner that ensures proper management of conflicts of interest and protects the interests of the company and its shareholders.[6] According to the Law on Enterprises (LOE), RPTs which are contracts and transactions between the company and the following parties must be approved by either the General Meeting of Shareholders (GMS) or the BoD:[7]

- A shareholder or the authorized representative of an institutional shareholder holding more than 10 percent of ordinary shares of the company and their related persons.
- Members of the BoD, the CEO and their related persons.
- Companies owned by members of the BoD, Supervisors, CEO and other managers or companies of which the related person(s) of BoD members, Supervisors, the CEO and other senior executives own at least 10 percent of charter capital, declared as required under LOE, Article 164, Clause 2.[8]

a) Approval by the BoD

The BoD shall ratify all RPTs valued at less than 35 percent of the total value of assets recorded in the most recent financial statements, or a smaller percentage as stipulated in the Company Charter.[9]

The procedure:[10]

- The person representing the company to sign the contract or transaction shall notify the BoD and supervisors of the parties involved in such a contract or transaction, and enclose the draft of the contract or main contents of the transaction.
- The BoD shall make a decision on approval of the contract or transaction within 15 days from the date of receipt of the notice, unless another time-limit is provided in the Company Charter.

6 *Viet Nam Corporate Governance Code of Best Practices, Principle 9.5.*
7 *LOE, Article 167.*
8 *LOE, Article 164, Clause 2.*
9 *LOE, Article 167, Clause 2; and Circular No. 116/2020/TT-BTC, BoD Charter, Article 12.*
10 *LOE, Article 167, Clause 2; and Circular No. 116/2020/TT-BTC, BoD Charter, Article 12.*

- Members of the BoD with related interests with parties to the contract or transaction shall not have the right to vote.

b) Approval by the GMS

The GMS shall ratify the following RPTs: [11]

- Contracts and transactions valued at 35 percent or more of the total value of assets recorded in the most recent financial statements.
- Contracts and transactions for borrowing, lending or sale of assets valued at more than 10 percent of the total value of assets of the enterprise, as recorded in the most recent financial statements, between the company and a shareholder holding 51 percent or more of the total number of voting shares of its related person.

The procedure: [12]

- The person representing the company to sign a contract or transaction shall notify the BoD and supervisors about the parties involved in such a contract or transaction, and enclose the draft of the contract or notice of the main contents of the transaction.
- The BoD shall submit the draft contract or transaction or explain the main contents of the contract or transaction at the GMS or conduct absentee voting by shareholders.
- Shareholders with related interests to the parties to the contract shall not have the right to vote.
- Contracts and transactions shall be approved where agreed by shareholders representing 65 percent of the total number of votes of all attending shareholders at the GMS or by shareholders representing 50 percent or more of the total number of votes of all shareholders entitled to vote in case of absentee voting,[13] unless otherwise provided in the Company Charter.

11 *LOE, Article 167, Clause 3.*
12 *LOE, Article 167, Clause 4.*
13 *LOE, Article 148, Clauses 1 and 2.*

Best Practice

The Viet Nam Corporate Governance Code of Best Practices[14] suggests that:

- The Board must ensure that transactions between related parties are conducted according to market practices in all aspects (e.g. price, term, guarantees, and general conditions). All RPTs if they occur, should be subject to strict review and (dis)approval processes following the defined approval matrix, and should be properly disclosed.
- Members of the Board and key executives should be required to disclose to the Board whether they directly, indirectly or on behalf of third parties have a material interest in any transaction or matter directly affecting the company.
- In the case of RPTs that are large in scale or which could shape the company's strategic direction or capital structure, shareholders should have the right to approve such RPTs.

The approval process ensures that all RPTs are appropriately approved. Figure 3 illustrates an example of a suggested approval process for commercial banks in Viet Nam, extracted from the Viet Nam Guidebook for Banks: Related Party Transactions published by the State Bank of Viet Nam and IFC.

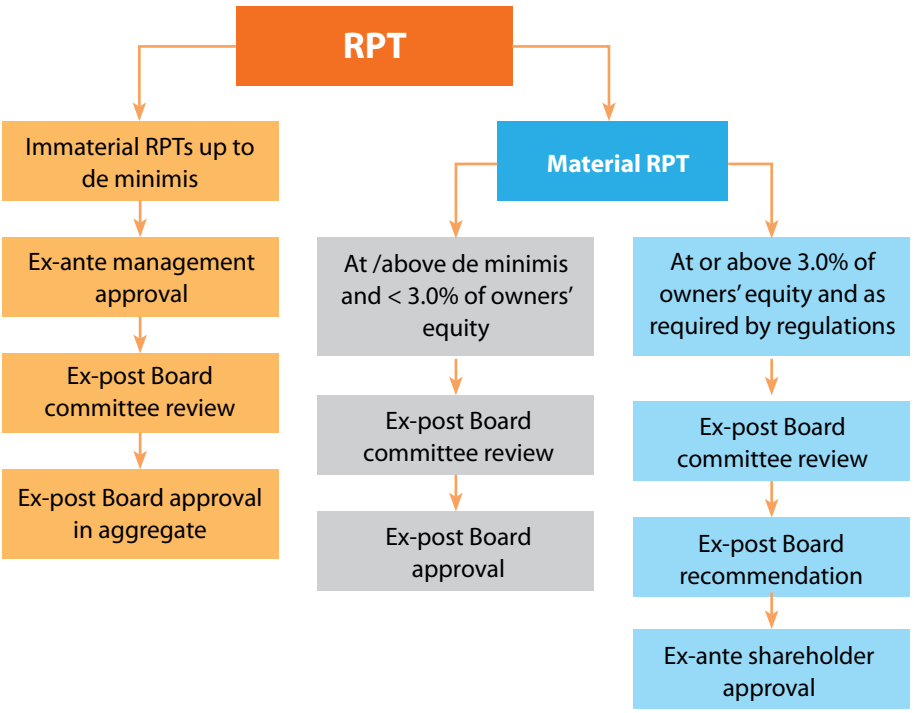
According to the guidebook, all related parties and RPTs should be reported to the Board. The regulator should set a low *'de minimis'* level for each individual RPT or aggregated similar RPTs with one related party, below which they shall be (dis)approved initially by management, reported to the Board and should be approved *ex-post* in aggregate by the Board. The guidebook also suggests that companies should elect to set a low *'de minimis'* level, lower than any level set by a regulator to demonstrate commitment to controlling RPTs.

Material RPTs are those of greater significance, at or above the *'de minimis'* threshold, must be subject to strict *ex-ante* decision-making and (dis) approval processes by the Board and/or shareholders.

Effectively, this framework ensures that all RPTs will be approved, or recommended, by the Board either *ex-post* or *ex-ante*. Some even larger and more material transactions will require shareholder approval.

14 *Viet Nam Corporate Governance Code of Best Practices, Principle 9.5.*

Figure 3. An RPT approval process for banks



c) Required Information for the Decision to Approve RPTs

The law requires that insiders of public companies and affiliated persons of these insiders must report to the SSC and the stock exchange before conducting purchases/sales of securities of listing companies, including the off-exchange transactions (presents, inheritance, transfer or receipt of subscription rights) within three working days or more prior to the transaction dates. The expected trade dates must not exceed 30 days from the date that the transaction is registered, and are only allowed to launch on the transaction day following the date that such information is disclosed by the stock exchange. The contents of the report must follow Circular No. 96, with detailed information on:[15]

15 *Circular No. 96/2020/TT-BTC, Article 33, Clause 1 and the sample/template of report enclosed in the circular.*

- Parties involved in the transaction.
- Other beneficiaries of the transaction (if any).
- Value of the transaction.
- Assets and services involved in the transaction.
- Any other significant terms and conditions related to the transaction.

d) Criteria for approval:

To ensure that RPTs are approved duly in the best interests of the company, the following issues must be addressed in the reviewing process[16]:

The RPT:

- is in the best interests of the company;
- has a sound business purpose for the related party and is in the ordinary business of the company;
- counterparty is clearly identified, including challenges presented through cross shareholdings and opacity of beneficial shareholders;
- is with a party (an related party) that has the capacity to deliver the service as structured and agreed;
- is on terms and conditions not more favorable than any other similar transaction in similar circumstances, suitable and substantively correct, including all contractual terms;
- if it is part of a set of more complex transactions, that they have a sound business purpose and the company's interests are not impacted by the complexity of associated transactions;
- has been fully documented, appraised by non-interested staff;
- has been independently valued and financial projections rigorously checked if relevant;
- is the result of substantive, independent oversight to protect the company's interests;

16 *Adapted from the IFC's Viet Nam Guidebook for Banks: Related Party Transactions (2015).*

- recognizes the size and impact of all the related party's interests in the transaction;
- cross border impacts in the transaction have been fully investigated and understood;
- recognizes the impact of the RPT on the company and the impact is within the company's own risk appetite and framework, especially for banks;
- has been identified and correctly classified as a material or immaterial RPT;
- has complied with all other applicable company policies and processes and regulatory requirements; and
- the final recommendation is sound, reasonable and justifiable in light of all the facts.

Best Practice

The Viet Nam Corporate Governance Code of Best Practices[17] suggests the Board submits the transaction for shareholder approval and discloses the following information (before concluding the transaction and in the company's annual report):

- The identity of the ultimate beneficiaries, including any controlling owner and party affiliated with the controlling owner with any direct/indirect ownership interests in the company.
- Other businesses in which the controlling shareholder has a significant interest.
- Shareholder agreements (e.g. commitments to related party payments such as license fees, service agreements and loans).

17 *Viet Nam Corporate Governance Code of Best Practices, Principle 9.5.*

11.3. Identifying RPTs

Any RPT should be properly approved before it can be concluded. However, in practice, not all transactions follow such procedures.

There are different reasons for this, including when the BoD and shareholders may not always know whether the transaction involves related parties, in particular when insiders have concealed their affiliation and personal interest. In such cases, non-executive and independent directors will need to play the lead role in identifying and disclosing RPTs. Creating the list of related parties and their position in the transaction is just one aspect, made difficult by the fact that most ownership structures remain opaque. The materiality of these transactions is another important issue. Indeed, while the nature of some RPTs is easily identifiable, others are structured in an elaborate manner involving complicated offshore schemes.

Best Practice

The BoD composition and experience will largely determine the success of identifying RPTs. Independent directors who enjoy an arms-length relationship with directors will certainly play a key role in this respect. The External Auditor's role is also important. The BoD and the Audit Committee/Supervisory Board will want to ensure that the company's External Auditor uses the full range of audit procedures to evaluate self-dealing by management, such as interest-free borrowing, asset sales that diverge from appraisal value, in-kind transactions, and loans made without scheduled terms.

11.4. Disclosure Requirements

Declarations: Members of the BoD, supervisors, the CEO and other managers of the company must declare their relevant interests to the company, including:[18]

- Enterprise names and codes, head office addresses, business lines of enterprises in which they own or hold a capital contribution or shares, ratio and time of owning or holding capital contribution or shares.
- Enterprise names and codes, head office addresses, business lines of enterprises in which their related persons own, jointly or separately, hold a capital contribution or shares of 10 percent or more of charter capital.

Details on RPTs: For all material RPTs concluded or contemplated during the past year, disclosure should include the following information:

- Name of the related party.
- Type of related party (parent, entity with joint control of or significant influence over the company, subsidiary, associate, joint venture, key management personnel, other related parties).
- Value of the transaction.
- General type of the transaction (sale of goods, provision of services, loan).
- Any outstanding balances, contingencies, or bad debts or impairments involving the transaction.

For significant transactions, it might be useful to include additional details:

- Terms of the transaction (interest rate and duration for a loan, cost per hour, and hours of consulting).
- Reasonableness (market benchmarks, transaction process, such as competitive tender).
- Third-party evaluation of the transaction, if any.

18 *LOE, Article 164, Clause 2.*

The declarations and details on RPTs must be reported to the GMS at its annual meeting and must be retained in the head office of the company. In necessary cases, part or all of the contents of the list mentioned above may be retained at branches of the company. Shareholders, authorized representatives of shareholders, members of the BoD or the Supervisory Board, the CEO and other managers have the right to review and copy part or all of the contents declared. [19]

Comparative Practice

Company laws of many countries require persons who are related parties to disclose information to the BoD, the Audit Committee/Supervisory Board, and the External Auditor regarding:

- Legal entities in which they, either independently or together with affiliated persons, own a certain percentage of voting shares.
- Legal entities in which they hold managerial positions.
- Pending or planned transactions in which they may be considered a related party.

Moreover, disclosure of beneficial ownership is an important aspect in detecting RPTs. If the identity of the company's true owners is hidden, then it is extremely challenging to establish whether the parties in the transaction are related.

In addition, public companies must follow disclosure requirements on RPTs as stated in Article 127 of the Law on Securities and Article 31 of Circular No. 96/2020/TT-BTC. Furthermore, companies are required to follow Vietnamese Accounting Standard No. 26 on related party disclosures.

19 *LOE, Article 164, Clause 4.*

Best Practice

Companies should be required to include the following information regarding RPTs in their annual report:

- A list of RPTs concluded by the company during the reporting year.
- Significant terms and conditions of each RPT.
- The governing body that approved any RPT.

In addition, securities regulations should require that companies disclose the following information on RPTs:

- Minutes of the meeting of the approving body, including information on the quorum and voting results.
- The list of persons with whom transactions may be qualified as RPT and the list of those persons with whom transactions have already been approved by the company.
- Information on related parties before the placement starts, in case of an open subscription.
- The prospectus and quarterly reports must provide information on RPTs.

Accounting legislation typically requires companies to disclose information on operations with related parties in their accounting documents.

Best Practice

IFRS IAS 24 on Related Party Disclosures requires disclosure of the nature of the related-party relationship as well as information about those transactions and outstanding balances, including commitments, necessary for users to understand the potential effect of the relationship on the financial statements.

G20/OECD Principles state that it is "essential to fully disclose all material RPT and the terms of such transactions to the market individually." The principles also suggest disclosing "the policy/criteria adopted for determining material RPT."

ICGN Global Governance Principles: "The process for reviewing and monitoring RPT should be disclosed. For significant transactions, a committee of independent directors should be established to vet and approve the transaction. This can be a separate committee or an existing committee comprised of independent directors, for example the Audit Committee. The committee should review significant RPTs to determine whether they are in the best interests of the company and, if so, to determine which terms are fair and reasonable. The conclusion of committee deliberations on significant RPT should be disclosed in the company's annual report to shareholders."

11.5. Invalidation of RPTs

A RPT can be challenged by a third party (such as a shareholder or creditor) if it does not obtain the necessary approvals in accordance with all legal requirements, or is not proven to be in the company's best interests at the time it is concluded or executed. Any party that feels disadvantaged may file an objection to the company or the Court. The transaction will be null and void in accordance with a Court decision and settled in compliance with the law.[20]

Best Practice

If the company can seek to invalidate a transaction that was not concluded in accordance with its internal approval procedures, this may create undue problems for the counterpart. It is recommended to follow the example of some western jurisdictions where the company needs to prove that the counterpart in the transaction knew or must have known of the irregularity in its approval.

Companies should closely monitor the following indicators of possibly abusive RPTs[21]:

- Borrowing or lending on an interest-free or low interest basis or one that is significantly different from the rates prevailing at the time of the transaction, especially for banks.
- Selling or buying real estate at prices significantly at variance with the appraised value.
- Exchanging property for a similar property in a non-monetary transaction.
- Unrealistic valuations.
- Circular or complex arrangements between related parties.
- Transactions with 'unnecessary middle person' or highly complex transactions or transactions with entities with overly complex organizational structures.

20 *LOE, Article 167, Clause 5.*

21 *Adapted from the IFC's Vietnamese Guidebook for Banks: Related Party Transactions (2015).*

- Payments for services at inflated prices.
- Transactions occurring, but not being recognized in accounting systems and unusual transactions at quarter or year end.
- Significant RPTs at the end of the reporting period.
- Capital transactions by several related parties linked to one another or linked to a significant shareholder.
- Existence of RPTs that do not receive the approval required under the Law on Credit.

Institutions, the LOE, or the relevant Company Charter or RPT policy.

11.6. Liability for Violation of Procedural Requirements

Related parties can be held liable for losses caused to the company because of a transaction that was concluded in violation of procedural requirements. If several persons are held responsible for losses, they are jointly and severally liable.

Best Practice

The Viet Nam Corporate Governance Code of Best Practices suggest companies issue a written policy on RPT (approved by the Board) and publish on it their website. This policy should incorporate, as a minimum, the following elements:[22]

i. Policy objective.
ii. Definitions.
iii. Policy owner.
iv. Applicability of the policy.
v. Identification of related parties and RPTs, including thresholds and disclosure requirements.
vi. Notification, accountabilities, and processes.
vii. Review and (dis)approval processes.
viii. Monitoring of RPTs.
ix. Transparency and disclosure/reporting of RPTs.
x. Publication and promotion of the policy.

22 *Viet Nam Corporate Governance Code of Best Practices, Recommended Practices 9.5.3.*

NOTES

Chapter 12

DIVIDENDS

12 | DIVIDENDS

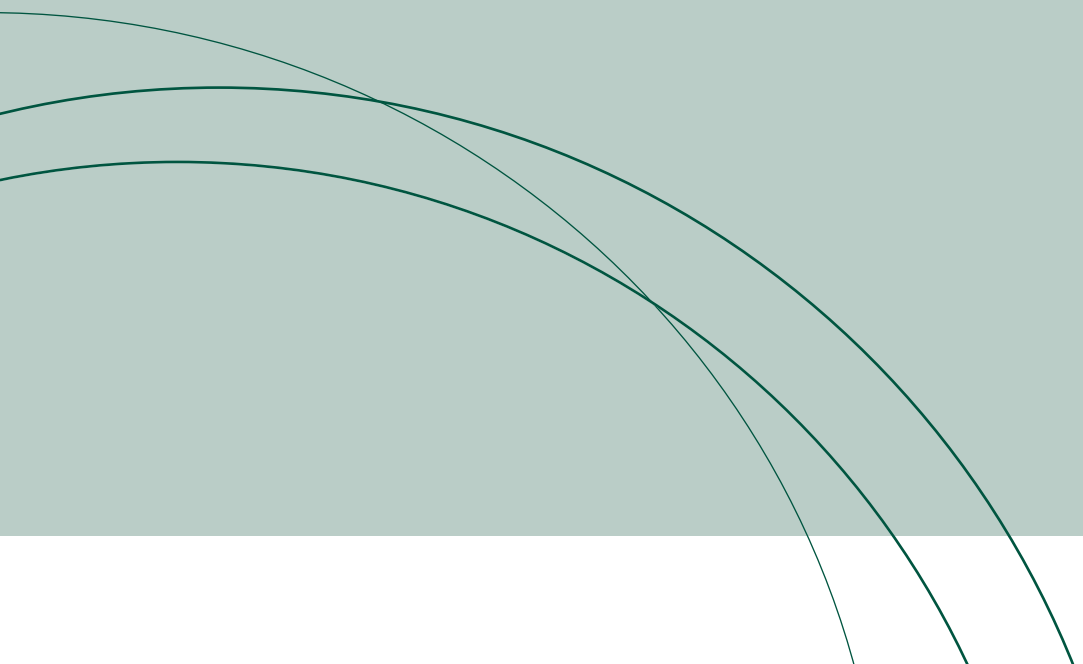


Table of Contents

The Chairperson's Checklist

- ☑ Has the company developed a dividend policy and which primary issues does it address? How often does the company review and reassess its dividend policy to ensure it remains relevant and aligned with corporate objectives? How does the company's dividend policy align with its overall capital allocation strategy and long-term financial goals?
- ☑ Does the General Meeting of Shareholders (GMS) make responsible decisions concerning the use of net profits to pay annual dividends versus reinvesting these profits?
- ☑ Are there considerations of tax implications related to dividend payments, and how does the company communicate these to shareholders?
- ☑ Does the Board of Directors (BoD) properly communicate its dividend policy to shareholders and potential investors? If it deviates from this policy, what are the reasons for doing so?
- ☑ Does the company properly disclose information about its dividend policy and dividend history in a timely manner?
- ☑ Does the BoD propose intermediary dividends? How does the BoD ensure this is done in the best interests of the company?
- ☑ How does the company calculate its dividends?
- ☑ Does the BoD ensure that creditor rights are protected when it declares and pays dividends to shareholders?
- ☑ Does the company benchmark its dividend practices against industry peers and consider market expectations when determining dividend levels?

Successful companies generate profits that can either be reinvested in the company or paid out to shareholders as dividends. In Viet Nam, there is an expectation – particularly among minority shareholders with small holdings – for companies to make dividend payments in reasonable amounts rather than to retain profits. Most Vietnamese companies need additional capital, for which there is no immediate alternative source other than company earnings. Since internally-generated financing is one of the few viable sources of available funding, the decision to make dividend payments is often challenging for Vietnamese companies.

This chapter discusses dividends from the perspectives of both shareholders and creditors, the procedure for declaring and paying dividends, as well as a company's dividend policy.

12.1. General Provisions on Dividends

Shareholders have a right to share in the profits of a company. They may do so by enjoying capital gains (an increase in the market value of shares they hold in the company) and/or receiving dividend payments. As such, dividends represent an essential shareholder right, which plays a vital role in the decision to invest in a company.

"Dividend" is defined as the amount of net profit to be paid out for each share as cash or other forms of assets.[1]

In contrast, the payment of dividends through paying out cash to shareholders may decrease the company's cash and assets available to service debt on a timely basis. From this vantage point, dividends are also viewed in the light of preserving creditor rights by following specific rules. To protect creditor rights, legislation imposes certain limitations on the types and payment of dividends.

The Law on Enterprises (LOE) sets out minimum obligations with respect to the distribution of company profits and protection of creditor interests. Dividends paid on ordinary shares shall be determined according to realized net profit, while the dividend payment shall be sourced from retained profit of the company. A joint stock company may pay dividends for ordinary shares only when the company has satisfied the following conditions: [2]

- The company has fulfilled its tax obligations and other financial obligations in compliance with the law.
- The company has set aside all funds, and previous losses are offset as prescribed by law and the Company Charter.
- After paying all dividends, the company is still able to pay its debts and other property obligations that become due.

Dividends on preference shares shall be paid in accordance with the respective conditions applicable to each class of preference shares.[3] In Viet Nam, there are no regulations or guidance on whether companies can

1 *LOE, Article 4, Clause 5.*
2 *LOE, Article 135, Clause 2.*
3 *LOE, Article 135, Clause 1.*

establish separate funds for dividend payments on preference shares. However, in common practice, dividends on preference shares can be paid out of funds specifically established for that purpose. Under no circumstances can dividends be paid out of the charter capital.

12.1.1. Dividend Rights

Owners of ordinary and dividend preference shares have different dividend rights.

The ordinary shareholders are entitled to receive dividends at the rate decided by the GMS.[4] The dividends paid for ordinary shares are determined based on the realized net profit and sourced from the company's retained earnings. That is, the company's after-tax profit after deducting financial obligations. Part of the profit will be used to pay dividends to common shareholders.[5]

On the other hand, owners of preference shares have the right to receive dividend payments in accordance with specific conditions applicable to each type of preference shares.[6] Dividend preference shareholders have the following rights:[7]

- To receive higher dividends than that of an ordinary share or at an annual fixed rate.
- Annually paid dividends shall include fixed dividends and bonus dividends.
- A fixed dividend is paid regardless of the company's business outcomes.
- The specific rate of fixed dividends and the method for determination of bonus dividends shall be stipulated in dividend preference share certificates.

Shareholders who have only made payment for a portion of subscribed shares shall have the right to receive dividends in proportion to the number of paid shares.[8] For public companies, the Model Charter also stipulates that

4 *LOE, Article 115, Clause 1b.*
5 *LOE, Article 135, Clause 2.*
6 *LOE, Article 135, Clause 1.*
7 *LOE, Article 117, Clause 1.*
8 *LOE, Article 113, Clause 3b.*

shares, not fully paid for, do not entitle their owners to dividends.[9] Although there is no specific regulation on the treatment of dividend rights regarding treasury shares[10], it is common practice that the company's treasury shares do not carry voting power nor payout dividends.

12.1.2. Forms of Dividend Payments

Dividends may be paid in cash, by company shares, or by other assets as provided in the Company Charter.[11]

Where payment is made in cash, it shall be made in Vietnamese dong. The payment may be carried out directly or through banks on the basis of detailed information about bank accounts provided by the shareholders.[12] Cash dividend payments can also be credited to the investors' brokerage accounts that hold the shares.

In case dividends are paid with shares, the company is required to register an increase to charter capital, which is equal to the total par value of shares used as dividend payment within 10 days from completion of the dividend payment.[13] Dividends of shares listed/registered on other stock exchanges may be paid via securities companies or Viet Nam Securities Depository and Clearing Corporation (VSDC). [14]

The ***dividend payment with assets*** shall depend on provisions of the Company Charter. The dividends paid to shareholders may be goods or products of the company.

Decision-Making Authority Regarding Dividends

The BoD has the authority to propose dividend rates to propose dividend rates to be paid at the GMS.[15] Then, the GMS shall make decisions on classes of shares and the total number of authorized shares of each class, and decide the annual dividend rate for each class of shares.[16] Based on these

9 *Circular No. 116/2020/TT-BTC, Model Charter, Article 9, Clause 2.*

10 *Decree No. 155/2020/ND-CP, Article 3, Clause 3: Treasury share means a share previously issued by a joint stock company, but was repurchased, redeemed or otherwise acquired by that company.*

11 *LOE, Article 135, Clause 3.*

12 *Circular No. 116/2020/TT-BTC, Model Charter, Article 51, Clause 4.*

13 *LOE, Article 135, Clause 6.*

14 *Circular No. 116/2020/TT-BTC, Model Charter, Article 51, Clause 4.*

15 *LOE, Article 153, Clause 2o.*

16 *LOE, Article 138, Clause 2b.*

decisions, the BoD shall determine the rate of dividend paid for each share, deadline and method of such payment of dividends.[17]

In case a public company is a parent company that issues shares to pay dividends, the profit proposed to pay the dividends must not exceed the undistributed after-tax profit on the audited consolidated financial statements.[18]

The GMS approves or disapproves the BoD's dividend payment proposal with more than 50 percent of the total number of votes of all attending shareholders at the GMS.

Credit institutions and insurance companies must get approval from the State Bank of Viet Nam or the Ministry of Finance on the request to increase charter capital for the issuance of shares used as dividend payment.[19]

12.1.3. Dividend Amounts

In Viet Nam, the dividend amount is typically expressed as a percentage of face value, which is VND10,000 per share. For example, if a company's dividend payment is announced at 5 percent, investors will get a VND500 per share dividend.

The priority of the BoD, when determining how and in what amounts to pay out dividends, should be to maximize the value for shareholders. The target pay-out ratio, defined as the percentage of net income to be paid out as cash dividends, should be in accordance with shareholder preferences. More specifically, shareholder preferences may be to receive either capital gains (for example, the opportunity to use excess cash to buy back shares or re-invest in the company), or dividends, or a combination of the two. The BoD will then need to define its optimal dividend policy, which should strike a balance between distributing current dividends and supporting sustainable growth.

For any given company, the optimal pay-out ratio is determined by four factors:

- Investor preference for capital gains versus dividends.

17 *LOE, Article 135, Clause 4.*

18 *Decree No. 155/2020/ND-CP, Article 60, Clause 2.*

19 *Decree No. 155/2020/ND-CP, Article 60, Clause 4.*

- The company's investment opportunities (for example, companies with excess cash, but limited investment opportunities, would typically distribute a large percentage of their income to shareholders via dividends. In contrast, companies in high-growth sectors typically reinvest their profits into the business).
- The company's target capital structure.
- The availability and cost of external capital.

In corporate finance, based on the considerations of the above-mentioned factors, companies typically choose from the following popular types of dividend policies:

- *Stable dividend policy*: Companies implementing this policy commit to distributing a consistent dividend amount regularly, independent of fluctuations in their earnings. This approach offers shareholders a sense of reliability, as they can anticipate a steady stream of income. During periods of high profitability, the company may reserve surplus funds to support the same level of dividend payment during less profitable times, ensuring a stable dividend rate.
- *Constant payout ratio dividend policy:* This policy ensures a steady dividend payout that corresponds to a fixed percentage of the company's earnings. This distributes dividends based on this ratio, whether earnings rise or fall. This also means that the dividend amounts can vary in line with the company's profitability. As a result, shareholders receive a portion of the company's profits directly proportional to its financial performance, making this approach particularly appealing during periods of strong earnings growth and much less so during challenging economic times.
- *Residual dividend policy:* The residual dividend policy adopts a unique strategy. Companies adhering to this policy allocate dividends only after meeting all financial commitments and capital expenditure investment needs. Essentially, dividends are paid from the remaining funds (the residual), once the capital expenses to be financed from earnings are settled, investments are made, and an adequate cash reserve is maintained. Consequently, the amount of dividends paid annually can differ substantially due to the company's financial health and reinvestment requirements.
- *No dividend policy*: Some companies may choose to reinvest all their earnings and, therefore, not pay dividends at all. These companies tend to be growth-focused with good reinvestment opportunities and an ability to

generate solid returns on equity in their capital projects. Due to the lack of dividend payouts, these companies tend to attract growth investors rather than income investors. Successful reinvestments can substantially enhance a company's growth, potentially leading to a significant increase in share value over the long term. However, these companies may need to reconsider their dividend policy to distribute more earnings back to investors when good opportunities for reinvestment run out.

Stability in dividend payments is important to shareholders, and many rely on dividends to meet their own expenses. For this reason, it is essential that companies achieve a careful balance with respect to the stability and dependability of their dividend policy.

12.2. Procedures for Declaring and Paying

The LOE regulates that an annual GMS meeting shall discuss and ratify the rate of dividend payable on each class of share,[20] and dividends shall be paid in full within six months from the date of closing of the annual GMS.[21]

Following Articles 135 and 139 of the LOE, to declare and pay dividends, a company should follow specific steps, as summarized in Figure 1.

Figure 1. Procedure for Declaring and Paying Dividends

Step 1: The BoD makes a proposal to the GMS on the dividend rates to be paid and the method for payment of dividend.
Step 2: The GMS discusses and ratifies the annual rate of dividend payable on each class of share and the method of payment from the company's retained profit.
Step 3: The BoD prepares a list of shareholders entitled to receive dividends, the rate of dividend paid for each share, and the time for dividend payment no later than 30 days before the dividend payment.
Step 4: The company sends the notice of payment of dividends to shareholders at least 15 days prior to the actual payment of dividends.
Step 5: The company pays the declared dividends. Such dividends must be paid in full within six months from the date of closing of the annual GMS.

20 *LOE, Article 139, Clause 3e.*

21 *LOE, Article 135, Clause 4.*

Best practice

Viet Nam Corporate Governance Code of Best Practices recommends that the Board develops and implements a fair and consistent dividend policy[22]:

- The Board should adopt a clear and transparent policy on the dividend distribution and payment process. Shareholders should be given full information on the conditions of dividend distribution and payout procedures, with no hindrance for shareholders in obtaining their dividends.
- Cash dividends should be paid within 30 days after adoption of the relevant resolution. In case of a company resolution to pay dividends by shares, the script dividends should be paid within 60 days.
- The company is responsible for paying all declared dividends. Accordingly, the Board shall be liable to its shareholders for the failure to discharge this duty, pursuant to the applicable legislation.
- The Board should disclose the dividend policy via the company's website.[23]

12.2.1. Declaring Dividends

The decision to declare dividends is made by the BoD based on the decision regarding the distribution of profits (losses) of the company approved by the Annual General Meeting of Shareholders (AGM). The notice of payment of dividends shall be sent by a method guaranteed to reach shareholders at the addresses registered in the register of shareholders at least 15 days prior to the actual payment of dividends. The notice shall contain the following particulars:[24]

- Name and head office address of the company.
- Full name, contact address, nationality, number of personal legal documents in respect of an individual shareholder.
- Enterprise name and code or number of institutional legal documents, head office address in respect of an institutional shareholder.
- Number of shares of each class of shareholder, dividend rate for each share and total amount of dividend to be paid to the shareholder.

22 *Viet Nam Corporate Governance Code of Best Practices, Principle 9.3.*

23 *Viet Nam Corporate Governance Code of Best Practices, Recommended Practices 9.3.1.*

24 *LOE, Article 135, Clause 4.*

- Time and method for payment of dividends.
- Full names and signatures of the Chairperson of the BoD and the legal representative of the company.

Dividend payments must also consider the priority rights of shareholders who hold preferred shares, or other classes of shares with special dividend rights, as regulated in the Company Charter. Until a company has declared and paid in full shareholders with priority rights to dividends – including accumulated dividends, as specified by the Company Charter, it cannot declare and pay dividends for other preferred or common shares. Further, the company cannot declare dividends for common shares, or any share class with lesser priority, until the claims of priority shareholders have been paid.

Best practice

To help shareholders properly assess a company's capacity to make dividend payments, companies are advised to:

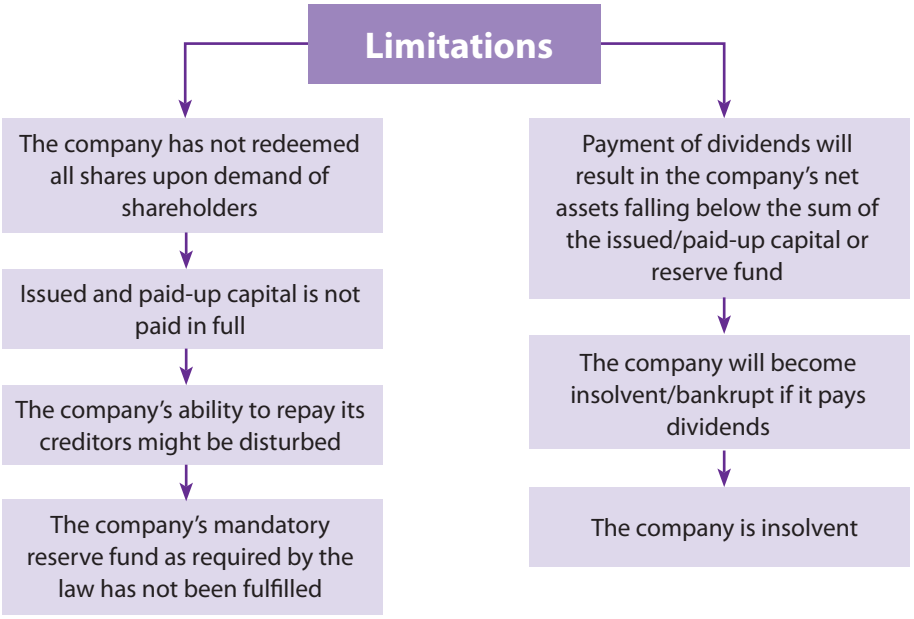
- Establish a transparent and shareholder-friendly mechanism for evaluating the payment of dividends.
- Provide sufficient information to shareholders to enable them to understand the conditions that must be met before the company will pay dividends.
- Provide sufficient information to shareholders to enable them to understand the procedures for payment of dividends.
- Ensure there is no misleading information that might influence shareholders' assessment of policies governing dividend payments.
- Provide simple dividend payment procedures.
- Impose (financial) sanctions on the Chief Executive Officer (CEO) and Management Board members for incomplete or delayed payments of declared dividends.

A dividend report is a useful tool for assessing a listed company's dividend policy and prior history of making dividend payments. Commercial accounting firms and other organizations typically produce these reports to track the dividend performance of listed companies. They are usually available for a fee.

When the Company Cannot Declare Dividends?

Under normal circumstances, shareholders and directors control the major decisions taken by a company. However, the Company Charter and the company's debt contracts can specify other circumstances in which the company will be prohibited from declaring dividends. Certain provisions in corporate bonds and other debt contracts, for example, may significantly limit the discretion of management and shareholders, such as covenants that restrict dividend payouts, that require creditors' approval for divestment of major assets, or penalize debtors if financial leverage exceeds a predetermined threshold. Figure 2 outlines the circumstances[25] under which the company is prohibited from declaring dividends (however, this list is not exhaustive).

Figure 2. When a Company Cannot Declare Dividends



25 *LOE, Article 135.2.*

12.2.2. Shareholder List

For the purpose of making a dividend payment, the BoD shall compile a list of shareholders eligible to receive dividends. This list must be prepared no later than 30 days before the dividend payment.[26] The list of shareholders entitled to receive dividends is determined from the record of shareholders in the register book of shareholders kept at the company's headquarters or by VSDCC on a specific date. This date, upon which such record is to be compiled, is called the "ex-dividend date".

There is no specific regulation or guidance on the determination of the ex-dividend date. However, Circular No. 96/2020/TT-BTC stipulates that a public company shall disclose information on the projected last day of registration for existing shareholders to exercise their rights at least 10 days in advance or at least 20 days prior if the registration is for participation in the GMS before the projected last day of registration.[27]

Shareholders included in the list, as of the ex-dividend date, are entitled to receive any dividends the company pays out to shareholders. Consequently, shareholders who own shares on the ex-dividend date and sell them after that date, but before the dividend is paid, retain the right to receive dividends.[28] Shareholders who purchase shares after the ex-dividend date are not entitled to receive dividends until the next declaration of dividends.

Where dividends on shares of a specified type and class are declared, each shareholder must receive dividends in accordance with the number of shares of the type and class owned.

26 *LOE, Article 135, Clause 4.*

27 *Circular No. 96/2020/TT-BTC, Article 11, Clause 4.*

28 *LOE, Article 135, Clause 5.*

12.2.3. Paying Dividends

A company is obliged to pay dividends after they have been declared and within six months from the annual GMS's closing date.[29]

When making dividend payments in cash to individual investors, the company must withhold personal income tax, which is equal to 5 percent of the total dividend to be paid before making the payment.[30]

The company is responsible for paying all declared dividends. Accordingly, the Board shall be liable to its shareholders for failing to discharge this duty, pursuant to the applicable legislation.[31]

12.3. Information Disclosure on Dividends

A company must make the GMS and BoD resolution on distribution of profits available to all its shareholders,[32] including information on the dividend policy, type of shares, dividend rates, ex-dividend date, deadline and procedure for such payment of dividends.

Companies should inform the markets of their dividend policy, for example, through the print media. This disclosure should be in the same publication specified by the charter for publishing the GMS notice. It is essential that shareholders receive information, at a very minimum, on the following issues:

- Method the company uses to determine the portion of profits that may be paid as dividends.
- Conditions under which dividends may be paid.
- Minimum amount of dividends payable for shares of each type and class.
- Criteria the BoD uses in deciding on the recommendation to declare dividends.
- Procedure for dividend payment, including the time, place and form of payment.

29 *LOE, Article 135, Clause 4.*

30 *Circular No. 111/2013/TT-BTC, Article 10, Clause 2.*

31 *Viet Nam Corporate Governance Code of Best Practices, Recommended Practices 9.3.3 and LOE, Article 136.*

32 *Circular No. 96/2020/TT-BTC, Article 11, Clause 1dd(đ).*

Companies are free to change their dividend policies at any time. However, corporate officers should be aware that this may inconvenience their shareholders and send adverse, if unintended, signals to the markets.

For public companies, information on distribution of dividends must be published on the company's website with submission of a report to the State Securities Commission (SSC) and stock exchange at which the securities are listed or registered. This includes relevant decisions on dividends, method and time of dividend payment within 24 hours from the GMS and BoD. [33]

Companies must also include a report on dividend payments in their annual report.[34]

For the issuance of shares to pay public company dividends, the company must send the document dossier on the share issuance to the SSC, [35] which includes:[36]

- Report of issuance of shares to pay dividends: information about the issuer (name, address, stock code, information on the business registration certificate), quantity and value of ordinary shares, information on treasury shares, preferred shares and stock issuance plan.[37]
- GMS decision on the issuance plan.
- BoD decision on implementation of the issuance plan.
- Audited financial statements.
- Decision of GMS or BoD approving the plan to handle odd shares.

Within seven working days from the date of full receipt of the company's full issuance of the document dossier, the SSC shall notify the issuer in writing and post it on the website of the SSC.[38]

Within seven working days from the date on which the SSC notifies of the receipt of the full issuance document dossier, the issuer must publish

33 *Circular No. 96/2020/TT-BTC, Article 11, Clause 1dd(đ).*
34 *Circular No. 96/2020/TT-BTC, Appendix IV.*
35 *Decree No. 155/2020/ND-CP, Article 69, Clause 1.*
36 *Decree No. 155/2020/ND-CP, Article 61.*
37 *Decree No. 155/2020/ND-CP, Appendix Form No.16.*
38 *Decree No. 155/2020/ND-CP, Article 69, Clause 2.*

the Notice of Issuance on the company's website, and the stock exchange. The above information must be disclosed at least seven working days before the end of the issuance.[39] The end date of the issuance must not exceed 45 days from the date on which the SSC notifies of receipt of complete report documents.[40]

Within 15 days from the end of the issuance, the issuer must send a report on the results of the issuance to the SSC and publish this information on the company's website and the stock exchange.[41]

39 *Decree No. 155/2020/ND-CP, Article 69, Clause 3.*

40 *Decree No. 155/2020/ND-CP, Article 69, Clause 4.*

41 *Decree No. 155/2020/ND-CP, Article 69, Clause 6.*

NOTES

Chapter 13

CHARTER CAPITAL

13 | CHARTER CAPITAL

Table of Contents

The Chairperson's Checklist

- ☑ Has the founding General Meeting of Shareholders (GMS) established whether shares have been subscribed and paid in properly and whether contributions in-kind have been brought in conformity with the law? Has the founding GMS decided whether the company's founders have paid their initial contributions and that in-kind contributions have been properly valued?
- ☑ Does the Board of Directors (BoD) have a clear understanding of the financial needs of the company and the different corporate finance methods? Is the BoD authorized to increase the charter capital? Does the BoD take care to avoid diluting the ownership of shareholders when deciding to restrict or preclude pre-emptive rights of shareholders?
- ☑ Are capital increases justified? Does the company provide shareholders with sufficient information about the reasons for capital increases and how shareholders could be impacted by such capital changes?
- ☑ Does the BoD ensure that charter capital and consequently the creditors are adequately protected in cases of charter capital decreases? Does the BoD make decisions regarding the buyback of company shares? Has the BoD ensured that all shareholders who submit shares are treated equitably?
- ☑ How does the BoD ensure that the reserve fund is utilized in the best interests of the company? What other funds has the company established?

The Law on Enterprises (LOE) and other related regulations attach certain protective functions to charter capital, protecting shareholders from dilution and providing a minimum guarantee that obligations toward company creditors will be fulfilled. Although the charter capital alone cannot fulfil this role, it creates one element of guarantee over creditor interest.

For shareholders, the size of the charter capital is crucial as it directly influences their rights, which are proportionate to their charter capital

investment. Charter capital[1] is defined legally rather than economically. As such, it exists purely in the realm of accounting as recorded on the balance sheet. Because of this, its role as a protective measure is frequently seen as merely procedural. Nevertheless, it remains a mandatory aspect of establishing a company under the law, which outlines specific regulations for changing charter capital. This chapter also explores additional mechanisms designed to safeguard shareholder and creditor rights, including the company's repurchase of its shares, share redemption, cross-shareholding arrangements, and the establishment of statutory reserves.

13.1. General Provisions

Charter capital is a crucial aspect of the legal framework of a joint stock company. It is defined as a commercial entity, whose charter capital is determined and divided into a specified number of shares. These shares validate the company shareholders' rights in relation to their stake in the company.

Charter capital has important legal implications for:

- Determining a shareholder's liability.
- Determining a shareholder's rights, proportionate to their share in the charter capital.
- Identifying the minimum value of assets required to protect creditor rights. Creditors can rely on these assets when seeking to ensure the company will fulfil its contractual obligations.

13.1.1. Definition of Charter Capital

Charter capital of a joint stock company is the total par value of sold shares of all classes. The charter capital of a joint stock company upon enterprise registration is the total par value of subscribed shares of all classes as stated in the Company Charter.[2] The number of subscribed shares is the number of shares fully paid up by shareholders.

1 *The term "charter capital" is Vốn điều lệ in Vietnamese language.*

2 *LOE, Article 4, Clause 33 and Article 112, Clause 1.*

Based on this definition, it should be noted that the charter capital recorded in the business registration is not necessarily the charter capital of the company. Cases in which the two may differ include when the company issues new shares to increase its charter capital, but these shares are not fully paid in.

13.1.2. Legal Capital or Minimum Charter Capital

Legal capital means the minimum level of capital as stipulated by law to establish a company. In Viet Nam, the legal capital is regulated separately for each kind of business and industry by the government under specialized legislation and differs among industries. Companies doing business in industries that require legal capital need to maintain it at no less than this level of capital during their operations.

It is worth noting that LOE No. 59/2020/QH14 does not define "legal capital". The term was defined in LOE No. 60/2005/QH11 and referred to in Decree No. 155/2020/ND-CP, which is the minimum capital required by a conditional business line. Legal capital is often referred in industry-specific regulations. The business must contribute the full amount of legal capital from the start of its operations in regulated industries.

Not every type of business is required to have minimum charter capital to be entitled to establish a company. Businesses required to meet legal capital requirements include those in the banking, securities, insurance, travel and tourism, labor services and gold trading sectors, amongst others. Commercial banks, for example, require a minimum legal capital of VND3,000 billion, finance companies (VND500 billion), and microfinance institutions (VND5 billion).[3] The required legal capital of securities brokerage companies is VND25 billion.[4] Life insurance companies (excluding pension insurance) and health insurance firms must have a minimum legal capital of VND600 billion.[5]

The legal capital requirement is to protect the benefits of consumers, creditors and other stakeholders of companies operating in an industry.

3 *Decree No. 86/2019/ND-CP, Article 2.*

4 *Decree No. 155/2020/ND-CP, Article 175.*

5 *Decree No. 73/2016/ND-CP, Article 10, Clause 2a.*

13.1.3. Charter Capital and Share Capital

Authorized shares are the maximum number of shares that a company can issue, also known as capital stock. This number is specified initially in the Company Charter, but it can be changed with shareholder approval. Authorized shares are defined as the total shares that the GMS decides to issue for capital mobilization. The number of authorized shares of a joint stock company, upon its registration, is the total number of shares to be offered by the company to raise capital, including subscribed and unsubscribed shares.[6]

The company is not required to issue all shares it has authorized. Typically, a larger number of shares is authorized than required to give the company flexibility to issue more shares as needed and reduce legal costs for each authorization. If the company chooses not to issue authorized shares, these shares are referred to as authorized, but unissued shares.[7]

Only those shares issued and fully paid constitute the charter capital. According to the LOE, shareholders shall make full payment for the subscribed shares within 90 days from the date of being granted the Enterprise Registration Certificate unless a shorter time limit is prescribed by the Company Charter or share subscription agreement. Where a member contributes its capital contribution with assets, the time for transport, import, and administrative procedures for transfer of ownership of such assets shall not count toward this capital contribution time limit. [8]

During its business operations, the company may decide to issue additional shares to increase the charter capital.

13.1.4. Full Payment of Shares

Shares issued and subscribed during the establishment of the company must be paid in full within 90 days from the date of being granted the Enterprise Registration Certificate.[9]

Where any shareholder has not fully paid or has only partially paid for a number of subscribed shares, the following provisions shall apply:[10]

6 *LOE, Article 112, Clause 3.*
7 *LOE, Article 112, Clause 4.*
8 *LOE, Article 113, Clause 1.*
9 *LOE, Article 113, Clause 1.*
10 *LOE, Article 113, Clause 3.*

- A shareholder who fails to pay for the subscribed shares shall automatically no longer be a shareholder of the company and must not transfer the right to purchase such shares to another person.
- A shareholder who has only made payment for a portion of the subscribed shares shall have the right to vote and receive dividends and other rights in proportion to the number of paid shares, while not transferring the right to purchase the number of unpaid shares to another person.
- Unpaid shares shall be deemed unsold shares, and the BoD shall be entitled to offer such shares for sale again.
- Within 30 days from the deadline for payment for subscribed shares, the company shall register the change of charter capital with the par value of shares fully paid for, except when unpaid shares have been sold during this time limit and registered for changes of founding shareholders.

If all subscribed shares of all founding shareholders are not paid in full, all founding shareholders shall jointly be responsible for all debts and obligations of the company to the extent of the value of unpaid shares.

For listed companies, the Model Charter stipulates that where a shareholder fails to pay the committed amount to purchase shares in full and on time, the BoD shall notify and have the right to request such shareholder pay the unpaid amount and take liability in proportion to the total face value of subscribed shares to the company for damage caused by the failure to fully pay for the shares within a specified period of time (at least seven days from the noticing date). If shareholders still do not pay for the shares purchased within this time period, the BoD is entitled to withdraw the shares not fully and punctually paid for, if such a request is not fulfilled. Any withdrawn shares shall be the assets of the company. The BoD may directly sell or authorize to sell or re-distribute such shares to, or resolve them in favor of, the individuals who owned such withdrawn shares or to other entities, under the conditions and methods the BoD considers appropriate. Shareholders holding withdrawn shares are required to waive their ownership status with respect to such shares, but still have liability in proportion to the total nominal value of subscribed shares upon withdrawal under the BoD decision from the date of withdrawal to the date of payment. The BoD shall have full power to make a decision on enforcement of payment of amounts payable at the time of withdrawal.[11]

11 *Circular No.116/2020/TT-BTC, Model Charter, Article 10.*

13.1.5. Contributions to the Charter Capital

In general, assets contributed as capital include Vietnamese dong, freely convertible foreign currency, gold, land use rights, intellectual property rights, technologies, technical know-how, and other assets that can be valued in Vietnamese dong.[12] Assets contributed to an enterprise upon its establishment shall be valued by members or founding shareholders on the principle of consensus or by a valuation organization. If the valuation is conducted by an external valuation organization, the value of assets contributed as capital shall be approved by at least 50 per cent of members or founding shareholders. Where the assets contributed as capital are valued at more than their actual value at the time of capital contribution, members or founding shareholders must jointly make additional contributions in an amount equal to the difference between the valuation and actual value of assets contributed as capital at the time of completion of valuation, and shall be jointly liable for any loss or damage caused by the contributed assets being valued intentionally at more than their actual value.[13]

Assets contributed as capital during the course of operations shall be valued on the basis of agreement between the owner or Members Council in the case of a limited liability company or partnership or the BoD in the case of a joint stock company and the capital contributor or by an evaluation organization. Where assets contributed as capital are valued at more than their actual value at the time of capital contribution, the capital contributors or members of the BoD in the case of a joint stock company shall jointly make an additional contribution in an amount equal to the difference between the valuation and actual value of assets contributed as capital at the time of completion of valuation, and shall be jointly liable for any loss and damage caused by the contributed assets being valued intentionally at more than their actual value.[14]

12 *LOE, Article 34, Clause 1.*
13 *LOE, Article 36, Clause 2.*
14 *LOE, Article 36, Clause 3.*

Best practice

A shareholder, employee, contractor or any person otherwise affiliated with a company should be prohibited from conducting appraisals for that organization.

It is advisable that a company engage a properly accredited, licensed independent appraiser to determine the market value of property, appraise debts, and evaluate liabilities. An independent appraiser can also provide crucial support to management and shareholders during the reorganization process of the company.

It is also good corporate practice to insure an independent appraiser against civil liability.

13.2. Increasing Charter Capital

Various factors – such as market conditions, business expansion, and other forms of corporate restructuring – may necessitate an increase in a company's charter capital. A company can achieve this increase through:

- External sources, such as attracting financial resources from existing shareholders or new capital contributors, or
- Internal sources, where the company uses its own funds by converting internal reserves to capital.

This section discusses the most important issues a company must address when increasing its charter capital.

13.2.1. Methods to Increase Charter Capital

Increases in charter capital can be realized through various methods as stipulated in the LOE (2020) and Law on Securities (LOS) 2019.

1. Issuing additional shares:

A joint stock company may increase its charter capital by issuing additional shares. This process is governed by Article 123 of the LOE (2020), which outlines the procedures and conditions for share issuances. Additionally, the LOS (2019) provides detailed regulations on public offerings and private

placements of shares, specifying the conditions for a public offering of shares, including requirements related to charter capital, profitability, and shareholder structure.[15]

To increase its charter capital, the company must obtain shareholders' approval of its capital increase plan. Share offering involves increasing the number of shares authorized for sale and selling these shares.[16] The types of share offerings are specified in the LOE as follows[17]:

- *Offering shares to existing shareholders*: In this case, the company offers all shares to existing shareholders in proportion to their current shareholding(s).[18,19] Shareholders may transfer their right to buy shares to other persons.[20] If the offered shares are undersubscribed, the BoD is entitled to sell the remaining number of authorized shares to the company's shareholders and other persons under conditions not more favorable than those offered to the shareholders, unless otherwise accepted by the GMS or prescribed by securities laws.[21] Shares are considered sold when they are fully paid for and information about the buyer is fully recorded in the shareholder register.[22]
- *Public offering of shares*: When conducting a public share offering, listed and public joint stock companies must comply with current securities laws.[23,24]
- *Private placement of shares*: For private share offerings by non-public joint stock companies, conditions in Clause 1, Article 125, LOE (2020) must be met, specifically:
  - Not offering through public media.
  - Offering to fewer than 100 investors, excluding professional securities investors, or only to professional securities investors.

15 *LOS, Article 15, Clause 2.*
16 *LOE, Article 123.*
17 *LOE, Article 123, Clause 2.*
18 *For public joint stock companies, share offerings to existing shareholders are conducted according to LOE, Article 124, Clause 1.*
19 *For non-public joint stock companies, share offerings to existing shareholders are conducted according to LOE, Article 124, Clause 2.*
20 *LOE, Article 124, Clause 2.c.*
21 *LOE, Article 124, Clause 3.*
22 *LOE, Article 124, Clause 4.*
23 *LOE, Article 123, Clause 2.c. and Clause 3.*
24 *LOS, Article 15, Clause 2.*

The company shall register the change in charter capital within 10 days from the day on which the share offering is complete.[25]

2. Converting bonds into shares

Another method is the conversion of issued convertible bonds into shares. This approach is addressed in Article 130 of the LOE[26], which allows for the issuance of convertible bonds and their subsequent conversion into shares, thereby increasing the company's charter capital. Article 15 of the LOS specifies conditions that a company must satisfy to issue convertible bonds to the public. The charter capital increase shall be affected only when conditions for converting bonds into shares, as prescribed by law and stated in the plan on issuance of convertible bonds, are fully met.

3. Paying dividends in shares

A company can also increase its charter capital by paying dividends in the form of shares instead of cash. This method is detailed in Article 135, LOE[27], permitting companies to issue additional shares to existing shareholders as a form of dividend payment, effectively raising the charter capital.

Public companies that wish to issue shares for payment of dividends to current shareholders to increase charter capital must have that issuance adopted by the GMS and sufficient sources for issuance from after-tax profits reflected on their latest audited financial statements.[28]

4. Merging with or acquiring another company

Increasing charter capital through mergers or acquisitions is another viable method in which merging companies can consolidate their charter capital. The acquired company transfers all assets, rights, obligations, and legitimate interests to the acquiring company, thereby terminating the existence of the acquired company.[29]

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25 *LOE, Article 123, Clause 4.*

26 *LOE, Article 130, Clauses 1 & 2.*

27 *LOE, Article 135, Clause 3.*

28 *Decree No. 155/2020/ND-CP, Article 60.*

29 *LOE, Article 201, Clause 1.*

5. Using capital surplus to increase charter capital

Companies may utilize a capital surplus to increase charter capital. This process involves transferring amounts from these reserves to the charter capital account.[30] Capital surplus (or the share premium account) refers to additional paid-in capital (any excess on the issuance of shares with a par value), any gains or losses made on repurchasing its own shares, and any value that results from the sale of complex financial instruments. Additional paid-in capital is common in joint stock companies in Viet Nam. When a company issues additional shares with a fixed par value per share (typically VND10,000 per share) for sale to realize a charter capital increase, the selling price of the shares may be higher or lower than the par value. This difference is recognized as additional paid-in capital, also known as contributed capital in excess of par or contributed surplus.

It is important to note that there will be changes to current provisions regulating this activity. At the time of publishing this manual, the option to use a capital surplus to increase charter capital is regulated by Circular No. 19/2003/TT-BTC (March 20, 2003) by the Ministry of Finance (MOF) guiding increases and reductions of charter capital and management of treasury shares in joint stock companies. However, on April 17, 2023, the MOF issued Document No. 3755/BTC-TCDN to solicit public input on the proposed abolition of Circular No. 19. If this circular is abolished by the MOF, there will be no provision allowing a joint stock company to transfer a capital surplus to increase its charter capital because the option will not be listed under options for a joint stock company to raise capital under the LOE. In contrast to joint stock companies, public companies have a solid legal foundation for transferring a capital surplus to increase charter capital based on Decree No. 155/2020/ND-CP.[31]

30 *Circular No. 19/2003/TT-BTC and Decree No. 155/2020/ND-CP.*

31 *According to Decree No. 155/2020/ND-CP, Article 62 providing detailed regulations for implementing certain provisions of the LOS, public companies are permitted to issue shares to increase share capital from the owner's equity.*

The following internal resources may be employed by the company for the purpose of capitalization, albeit further specific access conditions may apply[32]:

- Share premium.
- Development investment reserves.
- Undistributed post-tax profits.
- Other equity reserves used for charter capital increases as prescribed by law.

The right to gratis shares based on an increase in a company's share capital from internal sources available for such purposes is reserved exclusively for company shareholders, as of the date specified in the decision to issue new shares out of internal sources. The shareholder has that right in proportion to its shares in the existing company's share capital.

Any increase in charter capital must comply with the procedures and conditions set forth in the aforementioned laws. The BoD must prepare plans to increase the charter capital for submission to the GMS for approval and register the change with the appropriate business registration authority.

Technically, every method of increasing the charter capital can be done by issuance of additional shares. In many countries, companies can increase charter capital by issuing shares with a higher nominal value. However, companies must offer new shares issued in the context of a charter capital increase to existing shareholders in proportion to their shareholdings in the same share class. This provision applies unless the increase is part of an Employee Stock Ownership Plan (ESOP) or a private offering of securities.

Funding sources for capital increases under the aforementioned methods include contributions, a conditional capital increase and capital surplus. All methods to increase the charter capital are summarized in Table 1.

32 *Under Circular No. 19/2003/TT-BTC, there are rules for increasing charter capital out of a capital surplus. For a capital surplus from treasury shares, the company can use the whole surplus to increase its charter capital. For a surplus from newly-issued shares for new investment projects, the surplus can be used to increase charter capital only three years after the new project is operational. For a surplus from newly-issued shares for restructuring debt, the surplus can be used to increase the charter capital one year after issuance. However, this circular is under consideration to be abolished.*

Table 1. Increasing the Charter Capital

	Capital Increase Against Contributions	Conditional Capital Increase	Capital Increase out of a Capital Surplus, Retained Earnings and Other Funds
Source	External	External	Internal
Contributors	Shareholders and third parties.	Owners of convertible bonds.	The company (using funds available from internal sources as defined).
Purpose	To attract additional funding. It will, however, dilute the holdings of existing shareholders if they are unwilling/unable to make use of their pre-emptive rights.	To allow owners of convertible bonds to use their rights of conversion into shares.	To increase the company's equity and decrease the company's funds and reserves available for distribution.
Recipients	Existing shareholders and third parties.	Owners of convertible bonds.	Only existing shareholders.
Changing the Company's Ownership Structure	Possibly.	Yes.	No.
Method of Capital Increase	Issuance of additional shares.	Issuance of additional shares.	Issuance of additional shares.
Method of Placement	Subscription (open or closed).	Conversion.	Distribution.
Approving Governing Bodies	GMS, unless delegated to the BoD.	GMS.	GMS.
Pre-emptive Rights	Yes.	No.	No.

13.2.2. Ownership Rights Protection When Increasing the Charter Capital

If the charter capital is expanded through external contributions, it is probable that the ownership composition of the company will undergo changes. As highlighted earlier, the issuance of new shares tends to dilute the ownership stakes of current shareholders. Consequently, there is a standing principle that grants existing shareholders pre-emptive rights to safeguard them against such dilution.[33]

When increasing the charter capital from internal sources, additional shares must be distributed to all owners of shares of each type and class. In addition, the number of new shares of each type and class distributed to each shareholder must be pro-rated to the number of shares already held.

Currently, in Viet Nam, there is no specific regulation on the treatment of fractional shares. However, market practice is that the number of additional shares issued will be rounded down to a unit of share. The BoD shall decide how to treat the remaining shares due to rounding by repurchasing those shares as treasury shares or transferring the face value of those shares to fund investment and development.

Best practice

Typically, the number of additional shares issued will be rounded down to a unit of share. The GMS shall decide how to treat the residual surplus of shares due to rounding. Some companies may transfer the face value of these shares to fund investment and development, others may repurchase the shares to be kept in the company's reserves.

When a public company intends to issue shares for the purpose of paying dividends to its existing shareholders and to increase the company's charter capital, it may do so on condition that:

- The GMS approves the action, and
- The company has sufficient funds to service the issuance from after-tax profits, based on the company's latest audited financial statements.

33 *LOE, Article 49, Clause 1d, and Article 115, Clause 1c, and Circular No. 116/2020/TT-BTC, Model Charter, Article 12, Clause 1c.*

13.2.3. Procedural Guarantees for Increasing the Charter Capital

The LOE and securities regulations outline specific protocols that public companies are required to adhere to when changing their charter capital, with the primary objective of safeguarding shareholder rights. The SSC plays a pivotal role in this process by granting approval and registering share issuances, thereby ensuring the legality of the capital increase and promoting sound corporate governance practices.

For joint stock banks, the increase in charter capital needs to be approved by the State Bank of Viet Nam (SBV). The process and procedures as well as the application dossiers for approval of the change in joint stock banks' charter capital are regulated under Articles 11 to 17 of Circular No. 50/2018/TT-NHNN (dated December 31, 2018) prescribing dossiers, orders and procedures for approving changes by commercial banks and foreign bank branches.

Under Decree No. 155/2020/ND-CP on detailing and guiding the implementation of a number of articles of the LOS (Decree No. 155) by the government (dated December 31, 2020), the private placement of shares shall be managed by the following State authorities:[34]

- SBV: in case the issuing organization is a credit institution.
- MOF: in case the issuing organization is an insurance company.
- SSC: for other public companies (except for credit institutions and insurance companies).

At a company level, the GMS or BoD play the leading role in increasing the charter capital, depending on the method chosen and authority for decision-making in the procedure for increasing the charter capital.

GMS Makes the Decision to Increase Capital

The LOE stipulates that the BoD shall make a decision on the sale of unsold shares within the number of authorized shares approved by the GMS.

However, for public companies, it is required that the GMS approve the issuance of shares for payment of dividends and the issuance of bonus shares.[35]

34 *Decree No. 155/2020/ND-CP, Article 7.*

35 *Decree No. 155/2020/ND-CP, Articles 60 and 64.*

Under the Model Charter, the GMS shall make a decision on classes of shares and the number of new shares to be issued for each class of shares.[36] The BoD is required to propose the classes of shares that may be issued and the total number of shares of each class to be issued to the GMS.[37] A shareholder, or a group of shareholders, holding at least 5 percent of voting shares may propose the item for the agenda.[38]

The decision to increase the charter capital of a joint stock company entails making amendments to its charter. In Viet Nam, in the GMS minutes, the GMS often authorizes the BoD to amend the Company Charter regarding the article on charter capital to reflect the new charter capital increased from the issuance of additional shares.

BoD's Involvement in Decisions to Increase Capital

Under the LOE, the GMS shall make decisions on classes of shares and the total number of authorized shares of each class.[39] The BoD shall decide the sale of unsold shares within the number of authorized shares of each class and has the right to determine the raising of additional funds in other forms.[40] The BoD shall also make decisions on the selling price of company shares and bonds.[41] In general, the purpose of authorized shares is to enable the company to attract additional capital in an uncomplicated manner. Procedural requirements for increasing the charter capital by a GMS decision are cumbersome, time-consuming and costly. This may make it harder for the company to attract financing quickly in a rapidly changing business environment. For this purpose, the LOE permits companies to empower the BoD to issue authorized shares against contributions. However, the LOS limits this authority of the BoD by allowing it to make decisions on the issuance of new shares by way of private placement only. A BoD resolution or decision shall be ratified if approved by a majority of attending members. In the event of equal votes, the Chairperson of the BoD shall have the casting vote.[42]

36 *Circular No. 116/2020/TT-BTC, Model Charter, Article 15, Clause 1b.*
37 *Circular No. 116/2020/TT-BTC, Model Charter, Article 27, Clause 2b.*
38 *Circular No. 116/2020/TT-BTC, Model Charter, Article 12, Clause 2d.*
39 *LOE, Article 138, Clause 2b.*
40 *LOE, Article 153, Clause 2c.*
41 *LOE, Article 153, Clause 2d.*
42 *LOE, Article 157, Clause 12.*

Information that Must be Included in the Decision to Place Shares

The LOE stipulates that the BoD shall decide the offer prices of shares within those to be offered. However, there is no requirement on which information needs to be included in the decision to place shares.

The public offering of shares shall need to be registered with the SSC, which will then grant the company a public offering of shares certificate. For the registration of the public offering of shares, the issuing organization must submit the following documents to the SSC:[43]

- A written registration of public offering of shares.
- A prospectus.
- The issuing organization's charter.
- The GMS decision to ratify the plan for issuance, the plan for the use of capital generated by the offering and the commitment to have the shares listed or registered on the securities trading system.
- The commitments that: i) at least 15 percent of voting shares have been sold to at least 100 non-major shareholders (if the issuer's charter capital is VND1,000 billion or above, the ratio shall be 10 percent) and ii) the issuer is not undergoing criminal prosecution and does not have any unspent convictions for economic crimes.
- The major shareholders' written commitment to hold at least 20 percent of the company's charter capital for at least one year from the end of the offering.
- The contract with a securities company for public offering consulting.
- A bank's confirmation on opening an escrow account to receive payments for the offered shares.
- An issuance underwriting commitment (if any).

The public offering of shares registration dossiers must be accompanied with the BoD's decision approving those dossiers. For the public offering of credit institution securities, those dossiers must be approved in writing by the SBV. In case the public offering of an insurer leads to a change in its charter

43 *LOS, Article 18, Clause 1 & Article 15, Clause 1*

capital, the application shall be enclosed with the MOF's written approval for the change of the insurer's charter capital.[44]

Within seven days after a public offering of securities certificate becomes effective, the issuing organization shall publish an issuance announcement online or in a print newspaper for three consecutive issues.[45]

Company Practices in Viet Nam

Practically in Viet Nam, depending on the method of placement, the announcement of the share offering shall include the information presented in Table 2.

Table 2. Information Included in the Announcement on Share Offering

Information	Subscription	Conversion	Distribution
Changes to the charter capital	✓	✓	✓
Placement method (subscription, conversion or distribution)	✓	✓	✓
Contribution/payment period	✓	✓	✓
Purpose of increasing the share capital			✓
Date of conversion		✓	
Record date for holders of convertible bonds who may exercise the rights to convert bonds to shares		✓	
Rate of conversion		✓	
Record date for preparing the shareholders' list	✓		✓
To whom the shares are issued	✓		✓
Sources of issuance	✓		
Distribution period	✓		✓
Issuance price of shares or methodologies used to determine it to ensure the effective exercising of shareholder rights	✓		✓
Class of shares			✓
Transferring time for purchase rights			✓
Place for registration of buying shares, transferring purchasing rights and receiving the prospectus			✓
Bank account to receive money from shares issued.			✓

44 *LOS, Article 18, Clause 6.*

45 *LOS, Article 25, Clause 3.*

For the private placement of shares of a public company, issuing organizations shall satisfy the following requirements:[46]

- There is a decision by the GMS to ratify the plan for issuance and plan for the use of capital generated by the private placement with specific criteria and quantity of investors.
- The private placement is only available to strategic investors and professional investors.
- The transfer of privately-placed shares, convertible bonds and warrant-linked bonds is limited to three years for strategic investors and one year for professional investors from the end date of private placement, except for transfers between professional investors, transfers under an effective court judgment or decision, arbitral decision, and transfer due to inheritance as prescribed by law.
- There is an interval of at least six months between two private placements of shares, convertible bonds, warrant-linked bonds.
- The ratio of holding of shares, conversion of bonds into shares and execution of warrants by foreign investors is in line with the law.

For the private placement of shares of a non-public company, issuing organizations shall satisfy the following requirements:[47]

- The offering is not made through the mass media.
- Shares are offered to fewer than 100 investors, not including professional securities investors or only offered to professional securities investors.

Issue of Shares for In-Kind Contributions

Shares of a joint stock company can be paid in either Vietnamese dong, freely convertible foreign currency, gold, land use rights, intellectual property rights, technology, technical know-how or other assets as stipulated in the Company Charter.[48] Although the LOE allows a company to issue shares for in-kind contributions, there is no specific regulation or guidance relating to procedures or information to be included in the decision to place shares.

46 *LOS, Article 31, Clause 1.*
47 *LOE, Article 125, Clause 1.*
48 *LOE, Article 131.*

It is good practice that if the share offering decision allows shareholders to pay for additional shares with other securities, or with other assets having monetary value, such a decision should include the:

- Detailed description of the in-kind contribution.
- Person from whom they are to be acquired.
- Number and nominal value (or accountable par in case of shares without nominal value) of shares to be acquired by such contribution.

Contributed assets that are not Viet Nam dong convertible foreign currencies or gold shall be valued by members, partners, shareholders or a valuation organization and expressed as Viet Nam dong. When establishing an enterprise, assets contributed by members, partners or founding shareholders should be valued either through mutual agreement or by a professional valuation organization. If the latter approach is used, the appraised value of the contributed assets must be approved by more than 50 percent of members, partners, or founding shareholders.

Assets contributed during the operation of a company should be valued by either the owner or appropriate governing body – Board of Members/ partners for limited liability companies and partnerships, or the BoD for joint stock companies – alongside the contributor, or by an external valuation organization. In the case of the latter, the assessed value must be approved by both the contributor and relevant governing body. If an asset is found to be overvalued, the contributor, owner, and members of the Board of Members/ partners/directors are required to collectively make up the difference in value. They are also jointly liable for any damages resulting from the overvaluation.[49]

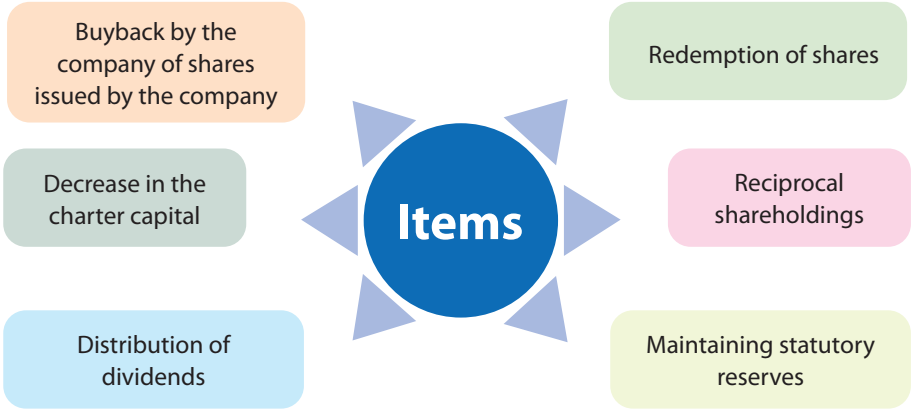
49 *LOE, Article 36.*

13.3. Protecting Charter Capital

One of the purposes of charter capital is to provide a minimum guarantee that the company will fulfil its obligations toward creditors. However, this function can only be effective if it is not linked to preserving a minimum level of company assets. The company must send a notice of the decision to reduce the company's charter capital to the authorized business registration body. The company must also commit to meeting all debts and other outstanding obligations after the reduction of charter capital takes effect.[50] Where the company operates in an industry that requires legal capital, the company cannot register to reduce charter capital to an amount not lower than the applicable legal capital.

Other actions may, in one way or another, affect the charter capital and net assets. Such actions and mechanisms, which protect against the distribution of the company's assets to shareholders or other parties to the detriment of creditors, are listed in Figure 1.

Figure 1. Protection of the Charter Capital



Source: IFC, March 2004.

50 *Decree No. 01/2021/ND-CP, Article 51, Clause 4.*

13.3.1. Decreasing Charter Capital

The practice of decreasing charter capital creates an opportunity for companies to provide returns for shareholders without paying dividends. A decrease in the charter capital can favor some shareholders at the expense of others and consequently presents potential for abuse. It is essential that companies endeavour to ensure equitable treatment of all shareholders. This holds particularly true if the company has several classes of shareholders with different rights or holders of other securities. A decrease in the charter capital reduces the level of shareholders' liability and the minimum amount of assets intended to serve as a guarantee that the company will fulfil its obligations toward creditors. Any decrease in the charter capital can be:

- Real when it involves a share buyback from shareholders.
- Nominal adjustments when reducing the charter capital to offset losses, restructuring the company's financial stance, or converting the charter capital into reserves for potential future allocation.

a) Methods of Decreasing the Charter Capital

According to the LOE, the charter capital of joint stock companies shall be reduced in the following cases: [51]

- Following a decision by the GMS, the company returns a portion of contributed capital to shareholders in proportion to their respective ratios of share ownership in the company. This is provided that the company has conducted business operations for two consecutive years or more from the date of enterprise establishment registration, and ensured that debts and other property obligations are able to be paid in full after returning to shareholders.
- The company shall repurchase its sold shares at a shareholders' request or under the company's decision.
- The shareholders fail to make full and timely payments for the charter capital.

A company may reduce its charter capital when its capital requirements decrease due to changes in its business activities, restructuring or downsizing. A reduction may also occur through mandatory cancellation of its treasury shares in accordance with the LOS.

51 *LOE, Article 112, Clause 5.*

The company may repurchase up to 30 percent of the total issued ordinary shares and part or all of the issued preferred dividend shares. The company may repurchase shares from each shareholder in proportion to their ownership percentage in the company, following the prescribed procedures. In this process, the company will buy shares from any shareholder(s) who agree to sell.[52] When a public company buys back its own shares based on the company's decision, it is required to: (1) have the GMS approve the share buyback decision to decrease charter capital, the buyback plan in which it states clearly the amount, executive time and principle to determine the repurchase price, (2) have sufficient resources to repurchase shares from capital surplus, development investment reserves, undistributed after-tax profits, and other reserves, and (3) have appointed a securities company to execute the transaction.[53] These requirements, however, do not apply to cases in which a public company repurchases shares upon any shareholders' requests.[54] Shareholders who voted against a resolution on the reorganization of the company or on changes to the rights and obligations of shareholders as stipulated in the company's charter have the right to request the company repurchases their shares. The LOS also prescribes cases in which a public company is not permitted to buy its shares back.[55] A public company that repurchases its shares either based on its own decision or as requested by shareholders must complete the procedures to reduce its charter capital by an amount equivalent to the total par value of the repurchased shares within 10 days from the date the share repurchase payment is finalized.

According to the LOS, a public company may also repurchase shares of employees according to the company's employee stock issuance regulations. It must report the total number of shares repurchased from employees to reduce charter capital at the AGM and complete procedures to reduce charter capital by an amount equivalent to the total par value of the repurchased shares within 10 days from the date of reporting to the AGM.[56]

For listed companies, in case a shareholder does not pay the full amount of shares purchased on time, these shares can be withdrawn as per a request by

52 *LOE, Article 133.*
53 *LOS, Article 36, Clause 1.*
54 *LOS, Article 36, Clause 2.*
55 *LOS, Article 36, Clause 3.*
56 *LOS, Article 36, Clause 6.*

the BoD.[57] Any withdrawn shares shall be assets of the company. The BoD may directly sell or authorize to sell or re-distribute such shares to, or resolve them, in favor of individuals who owned such withdrawn shares or to other entities, on condition and in the manner the BoD considers appropriate.[58] Within 30 days from the end of the deadline for full payment of the subscribed shares, the company must register an adjustment to the charter capital based on the par value of fully paid shares. This is except in cases where the unpaid shares have been fully sold within this period, where it must also register changes to the founding shareholders.[59]

b) Mandatory and Voluntary Decreases of the Charter Capital

In most cases, decreasing the charter capital is voluntary except for cases in which companies have purchased treasury shares, but not used them for three years and the capital contributed by their shareholders is smaller than the charter capital. In this case, they shall have to cancel the treasury shares and reduce their charter capital.[60] This implies that until the treasury shares are cancelled, they remain part of the charter capital.

c) Procedures for Decreasing the Charter Capital

It is regulated by the Ministry of Planning and Investment (MPI) regarding the registration of amendment of charter capital that the company must send a notice to the MPI. Together with this notice, is the written decision and GMS minutes on the amendment of the charter capital.[61]

d) Information Included in the Decision to Decrease the Charter Capital

Under the LOE and related regulations, there are no specific requirements on information that must be included in the decision to decrease charter capital.

57 *Circular No. 116/2020/TT-BTC, Model Charter, Article 10, Clause 3.*
58 *Circular No. 116/2020/TT-BTC, Model Charter, Article 10, Clause 4.*
59 *LOE, Article 113, Clause 3.*
60 *Circular No. 19/2003/TT-BTC, Article 5.*
61 *Decree No. 01/2021/ND-CP, Article 51, Clause 1.*

Comparative practice

The decision to decrease charter capital must include information on:

- The amount of decrease.
- The purpose of decrease.
- The procedure for decreasing the charter capital.
- The method for decreasing the charter capital.

e) Decreases in the Charter Capital and Creditor Protection

A decrease in charter capital typically affects creditor rights since it decreases the minimum amount of the company's assets serving as a guarantee that it can meet its obligations towards creditors. Under the LOE and related regulations, there is no regulation on whether the company must notify creditors of a reduction in the charter capital. It is only required that if the total asset value recorded in the company's accounting books is reduced by more than 10 percent, the company shall notify all its creditors within 15 days from the day on which the repurchased shares are fully paid for.[62] There is no further regulation or guidance on procedures on how to protect creditors' rights. The company only must commit that it will make payments to all debts and other obligations after the reduction of charter capital when it registers the charter capital decrease with the MPI.[63]

Best practice

The company should notify creditors of a reduction in the charter capital. The announcement duties fall under the authority of the Chief Executive Officer who will commonly assign this task to the Corporate Secretary or another person.

Creditors are protected through the Civil Code and the Law on Bankruptcy (LOB). Under the LOB, when realizing that a company falls into the state of insolvency, the unsecured or partially secured creditors, to which a due debt remains unpaid for three months from the due date, shall

62 *LOE, Article 134, Clause 4.*

63 *Decree No. 01/2021/ND-CP, Article 51, Clause 4.*

all have the right to file a request for bankruptcy against an insolvent entity.[64] Companies, which are incapable of paying their due debts at creditors' requests over three months from the due date, shall be regarded as falling into the state of insolvency.[65]

13.3.2. Share Buybacks

In specific situations and under particular conditions, companies are permitted to buy back their own shares, known as a share buyback. Such transactions can lead to various implications for corporate governance. Firstly, they may raise issues related to financial planning because using cash to buy back shares means less capital may be available for future business expansion. Secondly, there is a risk of infringing upon shareholders' rights if the company fails to offer all shareholders an equal chance to sell their shares back to the company.

To strengthen shareholder protection, the LOE provides that shareholders who have voted against the resolution on reorganization of the company or change of shareholders' rights and obligations in the company's charter are entitled to request the company buy back their shares. The request shall be made in writing and specify the shareholder's name and address, quantity of shares of each type, offered prices, reasons for requesting the repurchase. The request shall be sent to the company within 10 days from the day on which the previously mentioned resolution is ratified by the GMS. The company shall repurchase shares at the request of these shareholders at market prices or at prices determined following the Company Charter within 90 days from the day on which the request is received. If an agreement on the prices is not reached, both parties may request an independent organization to carry out the valuation. The company shall recommend at least three organizations to conduct valuation for the shareholders to make the final decision.[66]

In case of a company decision, the company is entitled to repurchase up to 30 percent of total sold ordinary shares, a portion or all of the sold dividend preference shares. The BoD may decide on the repurchase of no more than 10 percent of the total sold shares of each class within 12 months. Other

64 *LOB, Article 5, Clause 1.*
65 *LOB, Article 3, Clause 1*
66 *LOE, Article 132.*

cases of share repurchases shall be decided by the GMS. The BoD is entitled to impose the repurchase price. The repurchasing price of ordinary shares shall not exceed the market price at the time of repurchase, except repurchasing shares of each shareholder in proportion to their holding in the company. Repurchase prices shall not be lower than the market prices unless otherwise prescribed by the Company Charter or agreed between by the company and relevant shareholders. [67]

The company may repurchase shares held by each shareholder in proportion to its ratios of share ownership in the company and a notification of the decision on share repurchases shall be sent using a method guaranteed to reach all shareholders within 30 days from the ratification date. Any shareholders who agree to have shares repurchased shall send a written agreement using a method guaranteed to reach the company within 30 days from the notification date.[68]

The company distributes cash directly to selling shareholders and may, therefore, diminish the company's ability to service its debts or otherwise meet its obligations to creditors.

Certain rules specify how to conduct a share buyback and are summarized in Table 3. They differ depending on whether the buyback is to decrease the charter capital (specific buyback) or for any other reason (general buyback).

Table 3. Types of Buybacks

Specific	General
The shares issued by the company are repurchased and retired to reduce the company's charter capital	The shares issued by the company are repurchased for any reason
The GMS makes the decision to reduce the charter capital by retiring treasury shares, except in cases where the company's charter or by-laws specify differently	The GMS carries out the decision to purchase. Under specific legal circumstances this decision can be made by the BoD
Shares must be retired upon the buyback.	Purchased shares must be replaced or retired within a certain period.

67 *LOE, Article 133, Clauses 1, 2.*

68 *LOE, Article 133, Clause 3.*

a) Buyback Procedures

To repurchase its own shares, a company must follow the steps summarized in Table 4.

Table 4. General Buyback Procedure

Procedural steps	Buyback
Initiation	The buyback is initiated at the discretion of the BoD or a shareholder proposal.
Decision-making	The BoD may decide on the repurchase of no more than 10 percent of total sold shares of each class within 12 months. In other cases, the repurchase of shares shall be decided by the GMS.[69]
Limitations	A joint stock company may repurchase up to 30 percent of the total number of sold ordinary shares, a portion of which or all the sold dividend preference shares.[70]
Retiring shares	Shares must be retired within a certain period (three years) or replaced if the capital contributed by shareholders is smaller than the charter capital. [71]

The decision to repurchase shares issued by the company must be approved by either:

- 65 percent or more of total number of votes of all attending shareholders in the GMS[72]
- A simple majority vote of directors participating in the BoD meeting in cases where the share repurchase is 10 percent or less of each class of outstanding shares. In case of equal votes, the Chairperson of the BoD shall have the casting vote.[73]

Where a public company redeems its own shares, it shall satisfy the following requirements:[74]

- There is a GMS decision to approve the share repurchase to reduce its charter capital and a repurchase plan which specifies the repurchase quantity, time and price.

69 *LOE, Article 133, Clause 1.*
70 *LOE, Article 133.*
71 *Circular No. 19/2010/TT-BTC, Article 5.*
72 *LOE, Article 148, Clause 1.*
73 *LOE, Article 157, Clause 12.*
74 *LOS, Article 36, Clause 1.*

- The company has sufficient funds to repurchase its shares from the following sources: share premium, development investment funds, undistributed post-tax profits, other equity funds used for charter capital increases as prescribed by law.
- A securities company is assigned to carry out the transaction, unless the repurchasing company is a member of the Viet Nam stock exchange.

Where a full payment of shares to be repurchased causes a decline in the total asset value recorded in the company's accounting books by more than 10 percent, the company shall notify all its creditors within 15 days from the date of such payment.[75]

Public companies shall complete the redemption of shares within the time limit stated in their written information disclosures, which must not exceed 30 days after the date of starting transactions.[76]

b) Information Included in the Buyback Decision

There is no specific regulation regarding required information to be included in the decision to buy back shares. The LOE only stipulates information that must be included in the notification on the decision to be sent to all shareholders as follows:[77]

- Name and head office's address of the company.
- Total number of shares and classes of shares repurchased.
- Repurchase prices or rules for determination of repurchase prices.
- Procedures and deadline for payment.
- Procedures and deadline for shareholders to offer their shares to the company.

c) Limitations on Share Buybacks

A joint stock company is entitled to repurchase no more than 30 percent of the total number of sold ordinary shares, a portion or all of the sold dividend preference.[78]

75 *LOE, Article 134, Clause 4.*
76 *LOS, Article 37, Clause 6.*
77 *LOE, Article 133, Clause 3a.*
78 *LOE, Article 133.*

A joint stock company shall only pay for repurchased shares to shareholders if immediately after making full payment for the repurchased shares, the company can still fully repay its debts and other liabilities.[79]

A public company is not allowed to repurchase its own shares in the following cases:[80]

- It is conducting business operations at a loss or has overdue debts.
- It is offering shares to mobilize additional capital.
- It is offering shares in a tender offer.
- There was a share repurchase or an additional share issuance to increase capital over the last six months.

A company is not allowed to purchase shares from the following entities:[81]

- Internal actors and their related persons: Chair of the BOD or Chairperson of the Board of Members or the company Chief or members of the Board of Members, legal representative, general director (director), deputy general director (deputy director), financial director, chief accountant and persons holding equivalent positions elected or by the GMS or designated by the BoD, the Board of Members or company president. The chief and members of the Board of Members, members of the internal audit boards, secretaries, administrators and authorized spokespersons; and biological parent, adoptive parent, father- or mother-in-law, spouse, biological child, son- or daughter-in-law, sibling, brother- or sister-in-law of that individual.
- Holders of shares restricted from transfer according to law and the Company Charter.
- Major shareholders: shareholders holding at least 5 percent of the voting shares.

The public company shall complete the share buyback within the time limit specified in the information disclosure statement, which must not exceed 30 days from the beginning date.[82]

79 *LOE, Article 134, Clause 1.*
80 *LOS, Article 36, Clause 3.*
81 *LOS, Article 2, Clause 4.*
82 *LOS, Article 37, Clause 6.*

Within six months from the end of the share repurchase, the public company is not allow to offer its shares to increase charter capital, except conversion of convertible bonds into shares under commitments.[83]

d) Implementing a Share Buyback Pro-Rata

A company must notify all shareholders in writing about its decision on the repurchase of shares within 30 days from the date of approval of such decision. The shareholder must be notified of the following information including: [84]

- The company's name and head office address.
- Total number of shares and classes of shares repurchased.
- Repurchase prices or rules for determination of repurchase prices.
- Procedures and deadline for payment.
- Procedures and deadline for shareholders to offer their shares to the company.

Every shareholder holding shares of the type and class targeted for the buyback by the company is entitled to sell its shares back to the company within the designated timeframe. The company is obligated to compensate for these shares within the timeline outlined in the resolution and conveyed to shareholders through the notification.

Any shareholders who agree to have shares repurchased shall send a written agreement by a method guaranteed to reach the company within 30 days from the notification date. The written agreement shall contain the following information:[85]

- Full name, contact address, nationality, number of personal legal documents in respect of an individual shareholder.
- Enterprise name and code or number of institutional legal documents, head office address in respect of an institutional shareholder.
- The number of shares held and the number of shares agreed to be repurchased.
- Payment methods.

83 *LOS, Article 37, Clause 7.*
84 *LOE, Article 133, Clause 3a.*
85 *LOE, Article 133, Clause 3b.*

- Signature of the shareholder or his/her legal representative.

Under the LOE, there is no specific regulation or guidance in case shareholders offer more shares for sale than the company intends to buy.

Comparative practice

In other countries, the company shall purchase shares from all shareholders in a number that is proportionate to the number of shares offered by shareholders for sale.

e) Reporting and Information Disclosure on Share Buybacks:

A public company that repurchases its own shares shall report such in writing to the SSC and concurrently disclose information via the company's website and the communications platform of the SSC and Viet Nam Stock Exchange at least seven days before the date of redemption or sale. A report and written information disclosure must contain the following principal contents: [86]

- Purpose of share redemption.
- Maximum amount of shares expected to be redeemed.
- Capital sources for redemption.
- Method of transaction.
- Expected execution date.
- Pricing principles.
- A decision by the GMS to approve the share repurchase plan.
- The document confirming the transaction of securities company, unless the repurchasing company is a member of Viet Nam Stock Exchange.
- A BoD decision to approve the share repurchase plan.
- The latest audited financial statement.
- Documents proving that the company has sufficient funds to repurchase shares.

86 *LOS, Article 37.*

- Documents proving fulfilment of all conditions for share repurchases if the repurchasing company has conditional business lines.

Upon completion of the redemption, public companies must report results of the redemption to the SSC and publicly disclose information within 10 days. In case the public company does not repurchase all the expected quantity of shares, it shall submit a report and an explanation. [87]

13.3.3. Reciprocal Shareholdings

Reciprocal or cross-shareholdings frequently occur among various companies, typically arranged to create mutual influence or diversify investment portfolios. However, these cross shareholding arrangements between two or more companies can often lead to issues in governance.

For example:

- When companies raise their charter capital through mutual subscriptions to each other's shares, a single initial investment triggers two capital expansions.
- By forming a reciprocal shareholding arrangement by purchasing each other's issued shares, companies essentially facilitate an indirect distribution or repayment to those shareholders whose shares are acquired.
- Mutual shareholdings can diminish the usual sway of independent directors in both entities and supplant the standard oversight performed by shareholders on directors and officers with a self-regulatory mechanism.

The LOE circular stipulates that subsidiaries are not permitted to purchase or contribute capital in the parent company. Subsidiaries of the same parent company are not permitted to jointly contribute capital or purchase shares to have mutual cross-ownership.[88]

For commercial banks, Article 103, Clause 6 of the Law on Credit Institutions (2010) only allows commercial banks and subsidiaries to make capital contributions or buy shares of other credit institutions within conditions and limitations provided by the State Bank of Viet Nam.

87 *LOS, Article 37, Clause 5.*

88 *LOE, Article 195, Clause 2.*

13.4. Statutory and Voluntary Reserves

Beyond protecting its charter capital, a company must maintain a level of reserve funds that can be used as a safeguard to protect creditor interests. As with charter capital, such reserves only exist in accounting terms.

13.4.1. Statutory Reserve

The LOE does not require companies to have a mandatory reserve fund (statutory reserve). On the other hand, statutory reserves can be stipulated by specialized legislation. Usually, financial institutions, such as banks or insurance companies, must have statutory funds. Its main purpose is to protect creditors by ensuring that part of the company's assets, in addition to the charter capital, cannot be distributed among shareholders.

13.4.2. Other Funds

Besides statutory reserves, a company may also establish other funds (voluntary, non-obligatory reserves). The LOE does not regulate the distribution of profits. Currently, only the distribution of profits in State enterprises is regulated by the government under Article 31 of Decree No. 91/2015/ND-CP (dated October 13, 2015) on the investment of State capital in enterprises and management and use of capital and assets at enterprises and State funds invested in other companies. For joint stock companies, other funds can be established under the Company Charter or according to a GMS resolution.

a) Employees' Fund

The GMS may choose to establish a special fund from its net profits for company employees at its discretion. Since this is not a requirement under the LOE, the company must specify all details concerning the management of this fund in its charter or other internal regulations. For example, the fund can be created for the purpose of acquiring shares, provided that such shares are transferred to the company's employees.

b) Other Funds of a Company

The charter, internal regulations or a GMS decision may establish other internal funds, such as financial reserves or investment and development funds. Such internal funds are financed through the company's retained earnings from its net profits.

c) Additional Paid-In Capital

Additional paid-in capital forms part of the company's equity and is typically composed of the following sources:

- Any increase resulting from the revaluation of non-current assets.
- The positive difference between the nominal and placement values of the company's shares.

Additional paid-in capital only has an accounting meaning since there is no actual accumulation of funds. Additional paid-in capital can be used, for example, to:

- Offset the losses that arise following the revaluation of non-current assets.
- Increase the charter capital from the internal resources of the company.

NOTES

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