



**INDOCHINE
COUNSEL**

Business Law Practitioners



VIETNAM

Corporate Governance Guide

May 2022

Contents

Abbreviation	1
Overview	2
Forms of Corporate / Business Entities	2
Legislation and related regulations	2
Regulators.....	3
Management of the Company	3
Board Structure.....	3
<i>BOD</i>	4
<i>Internal Audit Committee (AC)</i>	5
<i>BOC</i>	5
<i>Directors / General Directors (GD)</i>	6
Powers, Duties and Responsibilities.....	6
<i>BOD</i>	6
<i>Director / General Director (GD)</i>	7
<i>BOC</i>	8
<i>AC</i>	8
Remuneration	9
Other sub-board committees	9
Corporate Secretary.....	10
Conflicts of interest	10
Shareholders	12
Rights & powers.....	12
Duties & responsibilities.....	14
Shareholder activism	14
Disclosure and reporting.....	15
Non-public companies	15
Public companies.....	15
<i>Periodic disclosure</i>	15
<i>Irregular disclosure</i>	16
<i>Disclosure upon request</i>	16
Environmental, Social and Governance Reporting	17
Contact Us	19

Abbreviation

AC	Internal Audit Committee (under the BOD)
BOC	Board of Controllers / Supervisory Board / Inspection Committee (Ban Kiểm Soát)
BOD / Board Chairman	Board of Directors / Board of Management (Hội đồng Quản trị) Chairman of the BOD
CG Code	2019 Vietnam Corporate Governance Code of Best Practices for Public Companies, as developed and published by the SSC with support from the International Finance Corporation (IFC)
DPI	Department of Planning and Investment
Enterprise Law	Law on Enterprises No. 59/2020/QH14 dated 17 June 2020
ESG	Environment, Social and Governance
GD	Director / General Director
GMS	General Meeting of Shareholders
GOV	Government
JSC	Joint stock company / shareholding company
LLC	Limited liability company
MM-LLC	Multi-member LLC
MOF	Ministry of Finance
Securities Law	Law on Securities No. 54/2019/QH14 dated 26 November 2019
SM-LLC	Single-member LLC
SSC	State Securities Commission (attached to the MOF)

Overview

Forms of Corporate / Business Entities

In Vietnam, the Enterprise Law provides for four types of enterprises as follows:

- (i) *Private enterprises (also known as sole proprietorships)*: Private enterprises are enterprises owned by one individual who is liable for all activities of the enterprise to the extent of all of his or her assets. Private enterprises are not entitled to issue any types of securities.
- (ii) *Partnerships*: A partnership is an enterprise in which there are at least two members being co-owners jointly conducting business under one common name as unlimited liability partners. Unlimited liability partners must be individuals and are liable for the obligations of the company to the extent of all of their assets.

Apart from unlimited liability partners, a partnership may also have contributing partners who may be organizations or individuals and who are only liable for the debts of the partnership to the extent of the amount of capital they have undertaken to contribute.

Partnerships are not entitled to issue any types of securities.

- (iii) *Limited liability companies (LLCs)*: There are two types of LLCs including single-member LLC (SM-LLC) with one member and multi-member LLC (MM-LLC) with up to 50 members. Members/owners of an LLC can be organizations or individuals and all members have limited liability. An LLC is not entitled to issue shares (except for the purpose of conversion into a JSC) but is allowed to issue bonds.
- (iv) *Joint stock companies (JSCs)*: A JSC (also known as a shareholding company) is an enterprise of which the charter capital is divided into equal portions called shares. A JSC is required to have at least three shareholders with no limitation on the maximum number of shareholders. Shareholders may be organizations or individuals and have limited liability. A JSC is entitled to issue shares, bonds and other securities.

JSCs include private joint stock companies (private companies) and public joint stock companies (public companies). A public company is a JSC which falls into one of the following circumstances: (1) it has a paid-up charter capital of at least VND30 billion and at least ten (10) percent of the voting shares held by at least 100 investors not being major shareholders; or (2) it has successfully completed its initial public offering (IPO) by registration with the State Securities Commission (the “**SSC**”).

Legislation and related regulations

In Vietnam, corporate governance is primarily governed by the Enterprise Law and its guiding documents. Public companies are required to comply with other corporate governance rules as

provided under the following legislation:

- (a) Law on Securities No. 54/2019/QH14 passed by the National Assembly dated 26 November 2019 (the “**Securities Law**”), which became effective from 1 January 2021;
- (b) Decree No. 155/2020/ND-CP of the GOV guiding the implementation of a number of articles of the Security Law with a chapter VIII specifically focused on corporate governance of public companies (“**Decree 155**”);
- (c) Circular No. 116/2020/TT-BTC of the MOF dated 31 December 2020 providing guidelines on corporate governance applicable to public companies in Decree 155, which includes, among others, standard templates of charter internal regulation on corporate governance and regulation on the operation of the BOD, the supervisory board and the audit committee, for public companies’ reference (“**Circular 116**”); and
- (d) Circular No. 96/2020/TT-BTC of the MOF dated 16 November 2020 on information disclosure obligations on the securities market (“**Circular 96**”).

The laws and guiding regulations listed above constitute the main legal framework regulating corporate governance in Vietnam. In addition to statute, the SSC issued the Vietnam Corporate Governance Code of Best Practices for Public Companies (the “**CG Code**”) in 2019. Though not mandatory, public companies and listed companies are encouraged to follow the CG Code to adopt appropriate corporate governance practices.

Financial institutions such as banks, insurers, securities companies, and fund managers must also comply with separate corporate governance rules issued by their sectoral regulators. In this guide, we focus on the general regulations of corporate governance as addressed in the Enterprise Law, the Securities Law and their guiding documents.

Regulators

In general, the enforcement of corporate governance rules falls under the competence of local licensing authorities (i.e. the provincial DPI). For public companies, the SSC is the key regulator and enforcement agency. Public companies must comply with requirements on reporting and other disclosure obligations to the SSC.

Management of the Company

In comparison with the other forms of business entities where the owners / members / partners manage their entity without a management team, there is a clear distinction between shareholders and management in a JSC. Corporate governance is therefore more prevalently enforced in the JSCs.

Board Structure

JSCs are entitled to select either of the following models of organization of management and operation:

Model 1 (Two-tier Board Structure)	Model 2 (One-tier Board Structure)
<ul style="list-style-type: none"> ▪ GMS ▪ BOD ▪ BOC ▪ Director / General Director (CEO) (GD) <p>In case a JSC has less than 11 shareholders and the shareholders being organizations together own less than 50 percent of the total shares of that JSC, it is not required to have a BOC.</p>	<ul style="list-style-type: none"> ▪ GMS ▪ BOD ▪ GD <p>For this Model 2, at least 20 percent of the BOD members must be independent members (independent directors) and there must be an internal audit committee (AC) under the BOD.</p>

BOD

The BOD comprises of 3 to 11 members (which must be natural persons) elected by the GMS by means of cumulative voting. A shareholder or a group of shareholders owning 10 percent or more of the total ordinary shares, or a smaller percentage as prescribed in the company's charter, has the right to nominate the candidates for the BOD. The chairman of the BOD (the "**Chairman**") shall be elected by and among the members of the BOD.

For public companies, at least one-third of the BOD members must be non-executive members as required under Decree 155, while the CG Code further recommends that it should be two-thirds.

In case of an unlisted public company operating under Model 2 (one-tier board structure), at least one-fifth of the BOD members must be independent members. In this case, if the number of BOD members is less than five members, then at least one member of the BOD must be independent.

Listed public companies are required to comply with the regulations on the number of BOD members as follows:

- (a) If the BOD has between three to five members, there is at least one independent member;
- (b) If the BOD has between six to eight members, there are at least two independent members; and
- (c) If the BOD has between nine to eleven members, there are at least three independent members.

To facilitate independent judgement and the integrity of the governance system, the CG Code recommends that the BOD of the public companies should have at least one-third of independent members to a substantial majority.

The independent members of the BOD must satisfy the following requirements as regulated in the

Enterprise Law:

- (a) Not be a person currently working for the company, the parent company or any subsidiary of the company; or have worked for the company, the parent company or any subsidiary of the company for at least the three preceding years;
- (b) Not be a person who is currently entitled to salary or remuneration from the company, except for allowances which the BOD members are entitled to in accordance with regulations;
- (c) Not be a person whose spouse, natural or adoptive parent, child, adopted child or sibling is a major shareholder of the company or a manager of the company or its subsidiary company;
- (d) Not be a person directly or indirectly owning at least one percent of the total voting shares in the company; and
- (e) Not being a person who was a member of the BOD, the BOC of the company for at least five preceding years, except in the case of appointment for two consecutive terms.

The term of each BOD member shall not exceed five years, and they may be re-elected for an unlimited number of terms. A BOD member of a public company is only entitled to concurrently be a BOD member of a maximum of five other companies. Regarding BOD independent members, one individual shall only be elected as an independent member of the BOD of one company for no more than two consecutive terms.

Internal Audit Committee (AC)

For JSCs operating under Model 2 (One-tier board structure), it is a mandatory requirement to have an AC as the professional body of the BOD, which consists of two or more members. The chairman of the AC must be a BOD independent member. Other members of the AC must be non-executive members of the BOD.

For public companies, members of the AC are required to have knowledge of accounting, auditing, general understanding of law and activities of the company, and not fall into cases including: (1) working in the accounting / financial departments of the company; and (2) members or staffs / employees of the auditing organization which is approved to audit the financial statements of the company in the past three years. A chairman of the AC in a public company must have a university degree or higher majoring in economics, finance, accounting, auditing, law or business administration unless the company's charter provides for higher standards.

BOC

The BOC is a specific corporate body and not a sub-committee, comprising between three to five members. The BOC members are elected by the GMS in a similar manner to the BOD. Each BOC member works for a term of a maximum of five years and may be re-elected for an unlimited number of terms. The Enterprise Law requires more than half of the members/inspectors of the BOC must

reside permanently in Vietnam. The head of the BOC must hold certain professional qualifications (i.e. a university or higher graduation degree or higher standards as provided in the company's charter) in one of the following fields: economics, finance, accounting, auditing, law, business management or other specialized faculties relating to the business activities of the company, and serve full-time.

As prescribed in the Enterprise Law, an BOC member must satisfy certain minimum criteria and conditions including but not limited to (i) not falling within the category of cases not entitled to manage enterprises, (ii) having been trained in appropriate faculties for the business operation of the company, (iii) not being a relative of BOD members, the GD or other managers of the company, and (iv) not being a manager of the company, and unless otherwise stipulated in the company's charter, is not required to be a shareholder or an employee of the company.

For public companies, members of the BOC and the head of the BOC must also comply with regulations and requirements as applicable to members and the chairman of the AC as mentioned in Section *Internal Audit Committee* above.

Directors / General Directors (GD)

The BOD appoints one member of the BOD or employs another person to be the GD of the company. The GD cannot serve a term exceeding five years, though may be re-appointed for an unlimited number of terms. For public companies, the Chairman is not allowed to concurrently be the GD. In case of failure to comply with this regulation, violating persons shall be subject to a monetary fine of up to VND100 million.

Powers, Duties and Responsibilities

BOD

The BOD is the body managing the company and has full authority to make decisions in the name of the company and to exercise the rights and perform the obligations of the company other than those reserved for the GMS (see Section *Rights & powers*). The BOD is accountable for implementing resolutions of the GMS.

The BOD passes resolutions and decisions on matters under its authority by way of voting at the meeting, collecting written opinions or otherwise as stipulated in the company's charter. Of note, each member of the BOD has one vote.

Meetings of the BOD and procedures for passing resolutions and decisions

Meetings of the BOD are to be held at least once every quarter and may be held on an extraordinary basis upon written request of (i) the BOC or an independent member of the BOD, (ii) the GD or at least five other managers, (iii) at least two members of the BOD, or (iv) other circumstance if otherwise stipulated in the company's charter.

The meeting of the BOD shall be conducted where three-quarters or more of the total BOD members

are in attendance. In case a meeting duly convened in accordance with the laws does not have sufficient attending members, the second meeting shall be convened within seven days from the proposed date of the first meeting unless the company's charter provides a shorter period. The second meeting shall be conducted where more than half of the total BOD members participate.

The BOD members are required to participate in all meetings of the BOD. The Enterprise Law provides the following cases where a member of the BOD shall be deemed to attend and vote at the meeting:

- (a) Attending and voting at the meeting in person;
- (b) Authorizing another person to attend and vote at the meeting. Such authorization must be agreed upon by a majority of members of the BOD;
- (c) Attending and voting at the meeting via an online conference, by casting an electronic vote or by other electronic forms;
- (d) Sending his or her written vote to the meeting by mail, fax or email. In case the written vote is sent to the meeting by mail, it must be enclosed in a sealed envelope and delivered to the Chairman at least one hour prior to the opening of the meeting. Written votes shall be opened only in the presence of all attendees.
- (e) Sending his or her written vote to the meeting by other means as regulated by the company's charter (if any).

Unless the company's charter provides otherwise, resolutions and decisions of the BOD are passed if approved by a majority of members in attendance. In case of an equal vote, the Chairman has the casting vote.

Director / General Director (GD)

The GD manages the day-to-day business operations of the company and is supervised by the BOD. The GD is accountable to the BOD and before the law for the exercise of his or her powers and the performance of his or her delegated obligations. In case of being the legal representative of the company, the GD is also entitled to contract on behalf of the company or to represent the company in legal proceedings involving the company.

Generally, the GD has the authority, among others, to conduct the following activities:

- (a) To make decisions on all issues relating to the day-to-day business operations of the company except those falling within the BOD's power;
- (b) To implement the BOD's resolutions and decisions;
- (c) To appoint, remove and discharge managerial positions in the company, except for those

under the authority of the BOD; and

- (d) To recruit employees and make decisions on salary and other benefits for employees of the company, including managers who may be appointed by the GD.

Apart from the above, the authority of the GD may be delegated and determined from time to time by the BOD.

BOC

Pursuant to the Enterprise Law, the BOC performs oversight of the BOD and the GD with regard to the management of the company. The BOC has the authority to review, inspect and evaluate the effectiveness and efficiency of the internal control system, internal audit and risk management of the company. To exercise such powers, the BOC is entitled to attend and discuss at meetings of the GMS, the BOD and other company's meetings. Inspectors have rights to access files and documents of the company retained in the head office, branches and other locations, as well as to access the workplace of managers and employees of the company during working hours.

The BOC and each inspector are required to exercise powers and perform obligations honestly, prudently and to the best of their ability in order to assure the maximum lawful interest of the company. They are also required to be loyal to the interests of the company and shareholders and not to abuse their positions and powers and not to use information, know-how, business opportunities and other assets of the company for their benefit or the benefit of other organizations or individuals. In case of breach of these rules causing loss to the company or other persons, violating inspectors must bear personal or joint responsibility for compensation of such losses.

AC

The AC is a sub-board committee which is mandatory under the Enterprise Law if JSCs operate under Model 2. The AC has the main powers and obligations to inspect, review and supervise all issues relating to accounting and auditing of the company, including but not limited to:

- (a) Supervision of the truthfulness of the financial statements of the company and any official announcement relating to the financial results of the company;
- (b) Review of the internal control and risk management system;
- (c) Supervision of the internal auditing division of the company; and
- (d) Monitoring and assessment of the independence and objectiveness of the auditing company and the efficiency of the auditing process, especially where the company uses non-auditing services of the auditing party.

For public companies, Decree 155 provides more rights and obligations for the AC including access to documents and discussion with the BOD members, the GD, the chief accountant and other managers

to collect information serving the activities of the AC. The meeting of the AC must be held at least twice every year. Detailed and clear meeting minutes with the signatures of the person writing the minutes and all participating AC members must be recorded and archived. Independent BOD members in the AC are responsible to report their activities at annual meetings of the GMS including remuneration and operating costs and other benefits of the AC and of each AC member, results of supervision of the AC, and report on the assessment of certain transactions including but not limited to transactions with related parties.

Remuneration

To ensure the independent and objective operation, the remuneration of the BOD and the BOC shall be decided by the GMS. The BOD makes decisions on the remuneration of the GD and other managers who are appointed by the BOD.

Pursuant to the Enterprise Law, BOD members are entitled to remuneration for work and bonuses. In which, remuneration for work is calculated on the basis of the working days which are necessary to fulfill the duties of the BOD members and the daily rate of remuneration. The BOD shall estimate the remuneration for each member based on mutual agreement. The total amount of remuneration and bonuses for the BOD shall be decided by the GMS at the annual meeting. BOD members are entitled to be reimbursed expenses for meals, accommodation and travel and other reasonable expenses in order to fulfill their delegated duties. In practice, remuneration of the BOD may be paid in form of cash, a combination of cash and shares, or a combination of cash and other means (such as dividends, services-goods, etc.).

The CG Code provides criteria for determining the remuneration of the BOD members by considering the respective roles, responsibilities and incentives in favor of each BOD member. For more details, the GMS must approve the board remuneration structure, including level and pay components (both cash-based and non-cash compensation). The BOD is encouraged to consider the appropriateness of each pay component, both in terms of fixed rates (such as retainer fee) and remuneration paid according to the company's performance (such as bonus and rewards).

Remuneration of the BOD, the GD and other managers shall be included in the business expenses of the company and shall be represented as a separate item in the annual financial statements of the company and must be reported to the GMS at annual meetings.

In terms of remuneration of the BOC, unless otherwise stipulated in the company's charter, the GMS shall make decisions on the total salaries, remuneration, bonuses and other benefits and on the annual operating budget of the BOC. BOC members shall be reimbursed for expenses for meals, accommodation, travel and use of independent consultancy services at reasonable rates. Unless otherwise decided by the GMS, the total amount of such remuneration and expenses shall not exceed the total annual operating budget approved. Salaries and operating costs of the BOC shall also be included in the business expenses of the company and must be presented in a separate item in the annual financial statements of the company.

Other sub-board committees

It is usual for the BOD of public companies to establish sub-board committees to assist with certain special matters. The CG Code recommends the BOD of public companies to form specialized committees under the BOD in order to assist the BOD in the implementation of its functions and prevention of conflicts of interest. Some types of proposed committees, apart from the audit committee include risk management committees, and corporate governance, nomination and remuneration committees. Further, such committees should have at least three non-executive BOD members, the majority of whom, including the committee chairman, should be independent.

Corporate Secretary

Pursuant to regulations of the Enterprise Law, the appointment of a secretary for the company is optional if BOD deems it necessary. The secretary of the company shall assist the BOD with, including but not limited to, convening meetings of the GMS, the BOD, recording meeting minutes; applying and implementing the corporate governance principles; building up the relationship with the shareholders and protecting the lawful rights and interests of the shareholders; and complying with information disclosure obligations of the company.

For public companies, the BOD must appoint at least one person in charge of corporate governance for the purpose of assisting the corporate governance work at the company. Such person can concurrently be the secretary of the company and must not concurrently work for the approved audit organization which audits the financial statements of the company.

Following the recommendations in the CG Code, the secretary of a public company plays a vital role in a company's governance and administration. This position has a broad range of responsibilities that cover four main areas: governance, advice, communication and compliance. In order to perform such a role effectively, the corporate secretary is required to act with the highest integrity and independence, which calls for a thorough knowledge of the business environment in which the company operates as well as the laws and regulations that govern its activities.

Conflicts of interest

Regarding disclosure of relevant interests, the Enterprise Law provides basic requirements that apply to all types of JSC as follows:

- (a) The company must gather and update a list of related persons¹ of the company and all respective contracts and transactions between such persons and the company; and

¹ As defined in the Enterprise Law, related person means any individual or organization with a direct or indirect relationship with an enterprise in the following cases:

- (a) Parent company, a manager and the legal representative of the parent company, and any person with the authority to appoint the manager of the parent company;
- (b) Any subsidiary company, and any manager and the legal representative of the subsidiary company;

- (b) BOD members, BOC members, the GD and other managers of the company must declare their relevant interests to the company, including information on enterprises that they or their related persons own or have a controlling right over, and must update information upon changes promptly.

Such lists of related persons and relevant interests must be reported to the GMS at annual meetings and filed at the company's head office. Shareholders, authorized representatives of shareholders, BOD members, BOC members, the GD and other managers of the company have the right to review, make an extract and copy part or all of the contents declared.

Contracts and transactions between the company and related persons are required to obtain appropriate approvals from the GMS or the BOD (as the case may be). The BOD members or shareholders related to parties to contracts or transactions in question are not allowed to vote for approval.

For public companies, Decree 155 provides stricter regulations for preventing a conflict of interest and for protecting the best interests of the company, which mainly focus on:

- (a) Responsibilities of honesty and avoidance of conflicts of interest of the company's managers, i.e., BOD members, BOC members, the GD or other managers of the company, particularly:
 - (i) To disclose relevant interests in accordance with regulations of the Enterprise Law;
 - (ii) To notify in writing the BOD, the BOC of transactions between the company, its subsidiaries and companies in which the public company holds the control of more than fifty (50) percent of the charter capital with such members or related persons of such members. The public company must disclose information on resolutions of the GMS or the BOD approving such transactions;
 - (iii) To utilize the information obtained by virtue of their positions only for the benefit of the public company; and
-
- (c) An individual or organization, or a group of individuals or organizations with the ability to control activities of such enterprise via ownership or takeover of shares or capital contribution portions or via issuance of decisions of the company;
 - (d) A manager of the enterprise, the legal representative, and an inspector;
 - (e) Spouse, natural or adoptive parent, father-in-law, mother-in-law, child, adopted child, son-in-law, daughter-in-law, sibling, brother-in-law or sister-in-law of any manager of the company, of the legal representative, of any inspector, or of any member and shareholder holding a controlling portion of capital contribution or controlling shares;
 - (f) An individual who is the authorized representative of any company or organization stipulated in point (a), (b) and (c) above; and
 - (g) An enterprise in which any individual, company or organization stipulated in point (a), (b), (c), (d), (e) and (f) above owns shares at a level entitling it to control issuance of decisions of the company.

- (iv) Not to utilize or disclose internal information in order to implement relevant transactions.

- (b) The following transactions with the BOD members, the BOC members, the GD and other managers not being shareholders and other related organizations and individuals are only permitted to be entered into upon the approval of the GMS, including:
 - (i) Extension of loans or provision of guarantees; and
 - (ii) A transaction valued at thirty five (35) percent or more or a transaction resulting in the total value of transaction occurring within 12 months from the date of implementing the first transaction valued at thirty five (35) percent or more of the total asset value of the company as stated in the latest financial statement or a smaller percentage as specified in the company charter.

Shareholders

Rights & powers

Shareholders of JSCs exercise their rights via the GMS – the highest decision-making body of a JSC. The GMS has authority to make decisions on essential matters of the company, such as development strategy, classes and quantity of shares to be offered, the rate of annual dividends, the redemption of more than ten (10) percent of the total number of shares of each class already sold and making investments or sales of assets valued at thirty five (35) percent or more of the total asset value of the company.

Shareholders owning ordinary shares, so-called ordinary shareholders, have the right to participate in, express opinions and vote at meetings of the GMS in person or by proxy, or by other means as regulated in the company charter. Each ordinary share has one vote. A JSC may issue voting preference shares, which is an ordinary share with greater voting rights. However, these voting preference shares are issued only for founding shareholders and the organization authorized by the GOV in accordance with the Enterprise Law. Holders of other preference shares (e.g., dividend preference shares, redeemable preference shares, etc.) are not granted a vote, save in cases of attending and voting at meetings of the GMS on matters that adversely affect the rights and obligations attached to such preference shares.

The GMS must convene an annual meeting once per year and may convene extraordinary meetings. A meeting of the GMS shall be conducted if the number of attending shareholders represents more than fifty (50) percent of the total number of voting shares. If the meeting cannot be conducted for the first time because the number of attending shareholders is not sufficient as required, the second meeting shall be convened within 30 days from the date of the intended first meeting. At this time, the threshold required is more than thirty three (33) percent. The Enterprise Law allows JSCs to provide a specific ratio in their charter based on the minimum as stipulated by the law. In case of failure to conduct the second meeting, the third meeting can be conducted irrespective of the number of total votes represented by the attending shareholders.

The GMS may pass resolutions that fall within its powers by way of direct voting at meetings or collecting written opinions. The voting threshold for passing a resolution of the GMS is specified as follows:

- (a) For passing resolutions on basic matters, it is required to obtain approval of shareholders representing more than fifty (50) percent of the total number of votes of all attending shareholders;
- (b) For passing resolutions on critical issues, including but not limited to making decisions on classes and the total number of shares of each class, changes of the management structure, investment or sale of assets valued at thirty five (35) percent or more of the total assets value of the company, it is required to have the approval of shareholders representing at least sixty five (65) percent of the total number of votes of all attending shareholders;
- (c) For passing resolutions in cases of collecting written opinions, it is required to have the approval of shareholders owning more than fifty (50) percent of the total votes of all shareholders having the voting rights;
- (d) For passing resolutions on any matters resulting in the adverse change of rights and obligations of preference shareholders, it is required to have the approval of shareholders holding the same preference shares who, either attend the meeting or by way of collecting written opinions, present seventy five (75) percent or more of the total number of such preference shares.

In addition, a shareholder or a group of shareholders holding at least one (1) percent of the total number of ordinary shares has the authority, on its own behalf or on behalf of the company, to initiate legal action regarding personal liability or joint liability against the BOD members or the GD in order to claim benefits or damages to the company or another person in the following circumstances:

- (a) Commission of a breach of the responsibilities of managers of the company;
- (b) Failure to implement, failure to implement completely or promptly or implement their delegated rights and obligations in a manner contrary to the law, the company charter, resolutions or decisions of the BOD; and
- (c) Abuse of their positions and power and use information, know-how, business opportunities and other assets of the company for personal benefit or the benefit of other organizations and individuals.

The Enterprise Law allows the company to specify other cases where shareholders or a group of shareholders are entitled to pursue a suit against the BOD members or the GD, apart from the above-mentioned cases. Shareholders are not required to hold this one (1) percent threshold for six consecutive months prior to being able to initiate this legal action.

For public companies, the Securities Law and its guiding documents clearly state the rights of

shareholders to be treated equitably and to fully access periodic and extraordinary information as disclosed by the company. The CG Code recommends that the BOD of public companies should establish and disclose policies on the protection of shareholders' rights and supervise the implementation of such policies.

Duties & responsibilities

Generally, shareholders must comply with obligations as required by the Enterprise Law, including payment in full and on time for the shares undertaken to be subscribed, not to withdraw the capital contributed as ordinary shares from the company, to comply with the company charter and internal management regulations of the company, to implement resolutions and decisions of the GMS and the BOD, to keep information provided by the company confidential. The majority shareholders, in public companies, are prohibited from taking advantage of their situation to influence the rights and interests of the company and other shareholders in accordance with the law and the company charter. All shareholders of public companies must disclose certain information as required by law.

Shareholder activism

Following the changes of the legal framework on corporate governance, the laws of Vietnam have strengthened minority shareholders' tools for exercising shareholder rights and to protect their interests in companies. The Enterprise Law has removed regulations requiring a shareholder or group of shareholders to hold ordinary shares of a company for at least six consecutive months in order to be entitled to exercise several fundamental shareholder rights. In addition to general rights of ordinary shareholders, the Enterprise Law allows a shareholder or group of shareholders holding from five (5) percent or more of the company's ordinary shares to have the following rights:

- (a) To request the convening of an extraordinary meeting of the GMS in cases stipulated by the law;
- (b) To access important information, documents of the company such as the meeting minutes and resolutions or decisions of the BOD, mid-year and annual financial statements, contracts and transactions which must be passed by the BOD, the BOC's reports and other data except for data relating to commercial secrets or business secrets of the company;
- (c) To request the BOC to inspect each issue relating to the management and administration of the company's operation where it is considered necessary; and
- (d) Other rights in accordance with the Enterprise Law and the company's charter

In case of holding ten (10) percent or more of the company's ordinary shares, a shareholder or group of shareholders can nominate candidates for the BOD and the BOC of the company. Notably, the Enterprise Law allows the company's charter to regulate a smaller ratio of share ownership than the minimum five (5) percent or ten (10) percent required as mentioned above. This enables minority shareholders to expand their ability to exercise shareholder rights and involvement in corporate governance.

Disclosure and reporting

Non-public companies

Non-public companies must comply with requirements on disclosure and reporting in accordance with the Enterprise Law, namely:

- (a) To submit annual financial statements approved by the GMS to the competent state authority in accordance with the accounting laws and other relevant regulations.
- (b) To publish the following information on its website:
 - (i) Charter of the company;
 - (ii) Curricula vitae, educational qualifications and work experience of the BOD members, BOC members/inspectors, and the GD;
 - (iii) Annual financial statement approved by the GMS; and
 - (iv) Annual reports on the evaluation of operational results of the BOD and the BOC.
- (c) To notify the provincial business registration office where the company has its head office no later than three working days upon obtaining information or changes of the information in relation to its foreign shareholders (both individuals and organizations), changes of information in relation to the authorized representative of foreign shareholders being organizations. In past, JSCs are also required to notify the changes of their BOD members, BOC members or the GD, however, this requirement has been removed.

Public companies

Public companies are required to comply with stricter regulations on disclosure and reporting obligations in line with the Securities Law and its guiding regulations, i.e., Circular 96, in addition to requirements provided in the Enterprise Law as stated in Section *Non-public companies* above.

Public companies must report and disclose information periodically, irregularly or upon certain requests from competent state agencies or organizations, i.e., the SSC or the relevant stock exchanges. Disclosures must be made on a company's website and concurrently to the SSC and, for listed companies, also to the relevant stock exchange.

Periodic disclosure

Public companies must periodically disclose the following information:

- (a) Audited annual financial statements by the approved auditing organization, within 10 days as from the date on which the auditing organization signs the audit report but no later than 90 days from the end of a financial year. In case of being a parent company of other organizations, a public company is required to disclose both separate financial statements

and consolidated financial statements.

Listed companies and large-scale public companies² must disclose semi-annual financial statements reviewed by the approved auditing organization and quarterly financial statements.

- (b) Annual reports in accordance with the standard form provided in Circular 96, within 20 days from the date of disclosure of annual financial statements audited but no later than 110 days from the end of a financial year.
- (c) Information on annual meetings of the GMS at least 21 days prior to the commencement of such meetings on the website of the company, the SSC and, for listed companies, of the relevant stock exchanges. In which, information about the agenda, documents to be used in meetings and draft resolutions to be adopted, among others, must be disclosed.
- (d) Information about the status of corporate governance in accordance with the standard form provided in Circular 96 within 30 days from the end of the first six months and the end of the calendar year.

Irregular disclosure

Public companies are obliged to disclose, within 24 hours of the occurrence of certain events including temporarily ceasing operation, changes to enterprise registration contents, withdrawal of licenses, decisions on redemption of shares or dividend-related matters, changes to positions of internal persons, decisions on sale or purchase of assets or transactions with a value of more than fifteen (15) percent of the total assets of the company, information that may affect the share price of the company and other information affecting the business operation or corporate governance of the company.

Large-scale public companies and listed companies must disclose, within 24 hours of the occurrence of one of the following events: decisions on increase or decrease of the charter capital; decisions on the contribution of capital, receipt of loans, provision of loans, or other transactions with the value of ten (10) percent or more of the total assets value of the company; or decisions on the contribution of capital to other organization with the value of fifty (50) percent or more of the charter capital of such organization.

Disclosure upon request

Within 24 hours upon receipt of a request from the SSC or the relevant stock exchanges, public companies are required to disclose information about events that seriously affect the lawful interests of investors; or information relating to the company that significantly affects its share price and such

² Under Circular 96, a large-scale public company means a public company having the owners' capital contribution of VND120 billion or more that specified in the latest audited financial statement.

information requires verification and confirmation. The disclosure must specify the event which the SSC and/or the relevant stock exchange's request, causes of the event, and the evaluation of the company about the authenticity of such event as well as solutions for dealing with problems (if any).

Other information of public companies which is obliged to be disclosed includes information about offering, issuance, listing of shares, report on the use of capital; foreign ownership ratio; and redemption of shares and sale of treasury shares.

In addition to information disclosure obligations of public companies, Circular 96 also regulates responsibilities of information disclosure of other entities including (1) major shareholders, a group of related persons owning five (5) percent or more of the voting shares of a public company when there is a change to the number of shares held by such entities which exceed the margin of one (1) percent of the voting shares, (2) founding shareholders of a public company for transactions in shares during the transfer lock-up period, (3) internal persons when they conduct transactions with a certain value. These entities must notify such information to public companies, the SSC and, for listed companies, the relevant stock exchanges.

Environmental, Social and Governance Reporting

Circular 96 sets new requirements applicable to public companies to provide Environmental, Social and Governance (ESG) reporting in their annual report, including the main issues as follow:

- (a) Environmental impacts, including total direct and indirect greenhouse gas (GHG) emission and measures and initiatives to reduce GHG emission;
- (b) Management of raw materials, including the total amount of raw materials used for the manufacture and packaging of the products as well as services of the organization during the year, and the percentage of materials recycled to produce products and services of the organization;
- (c) Energy consumption, including direct and indirect energy consumption, and energy savings through initiatives of efficiently using energy;
- (d) Water consumption (water consumption of business activities in the year);
- (e) Compliance with the law on environmental protection;
- (f) Policies related to employees, including the number of employees, average wages, labor policies to ensure health, safety and welfare of employees; employees' training;
- (g) Report on responsibility for the local community, in particular, community investments and other community development activities, including financial assistance to community services; and

- (h) Report on green capital market activities under the guidance of the SSC.

The CG Code also recommends the BOD to ensure the disclosure of non-financial information, including environmental and social reporting. Both Circular 96 and the CG Code encourage the BOD to prepare such information in accordance with globally accepted standards, such as standards issued by the International Integrated Reporting Council, or the Global Reporting Initiative or the Sustainable Assurance Standards Board, and subject to independent verification.

Contact Us

For more information or assistance, please contact us:



Dang The Duc

Managing Partner

E duc.dang@indochinecounsel.com



Dang Hoan My

Senior Associate | Co-Head of
Projects & Infrastructure

E my.dang@indochinecounsel.com



Trinh Ngoc Ly

Associate

E ly.trinh@indochinecounsel.com

Ho Chi Minh City

Unit 305, 3rd Floor, Centec Tower
72-74 Nguyen Thi Minh Khai, District 3
Ho Chi Minh City, Vietnam

T +84 28 3823 9640

F +84 28 3823 9641

E info@indochinecounsel.com

Hanoi

Unit 705, 7th Floor, CMC Tower
Duy Tan Street, Cau Giay District
Hanoi, Vietnam

T +84 24 3795 5261

F +84 24 3795 5262

E hanoi@indochinecounsel.com

www.indochinecounsel.com

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

The content of this Corporate Governance guide is current as at May 2022.

© 2022 Indochine Counsel | All Rights Reserved.