

Viet Nam

Corporate Governance Institutions, Practices and Developments

1. Key Institutional Features of Corporate Governance and Company Profile in Viet Nam

1.1 Background

The legal framework that directly relates to corporate governance includes the Enterprise Law, the Securities Act, the regulations on corporate governance, and the Sample of Charter for listed companies.

The Enterprise law

In 1990, Viet Nam promulgated the Corporate Law, the first legal document regulating corporate governance, which then was amended in 1994 and replaced by the Enterprise Law in 1999. In 2005, the National Assembly approved a new Enterprise Law.

The 2005 Enterprise Law regulates the basic rights of shareholders and corporate governance mechanisms including the organization and operation of the general meetings of shareholders, the organization and operation of the Board of Directors, its setting up conditions, criteria and obligations, etc.

The Securities Act

The Securities Act was enacted by National Assembly in 2006 and took effect in 2007. It regulates activities related to stock offering for sale to the public, stocks listing, transactions, trading, investment, stocks services and stocks markets.

Conditions for a company to be listed on the stocks market include:

- (i) the amount of charter capital at the time of registering for listing must be more than VND10 billion;
- (ii) business activities in the year preceding the year of listing must be profitable, with no debts overdue by more than a year and with financial obligations to the State fulfilled;
- (iii) the voting shares of the company must be held by at least 100 shareholders;
- (iv) shareholders who are also managers or directors in the company must pledge to hold 100% of their shares for six months after being listed, and 50% of their shares during the subsequent six months.

1.2 Trends

Number of companies listed on the stock market and market capitalization as of 31 December for 2005-09.

| Year | 2005 | 2006 | 2007 | 2008 | 2009 |
|---------------------------------------|------|-------|--------|--------|--------|
| Number of listed companies | 41 | 193 | 250 | 338 | 453 |
| Market capitalization (US\$ million) | 349 | 6,066 | 18,834 | 18,797 | 28,658 |

The number of listed companies as well as market capitalization increased has risen continuously since 2005. Market capitalization decreased toward the end of 2007 and through 2008 due to the global financial crisis. However, the number of listed companies continued to increase. By July 2010, the number of listed companies has reached 550 with a market capitalization of VND700,000 billion (equivalent to US\$36.8 billion).

1.3 Key Corporate Governance Rules and Practices

See Key Corporate Governance Rules and Practices in Viet Nam, p. 241.

2. Development, Enforcement and Assessment of Implementation of Corporate Governance Rules

2.1 Development of Corporate Governance Rules⁹⁸

The Ministry of Planning and Investment is the leading agency in charge of drafting the Enterprises Law as well as issuing by-law documents guiding the Enterprise Law.

The Ministry of Finance led the preparation of guiding regulations on corporate governance for the state-owned enterprises as well as regulations on corporate governance for individuals and organizations representing the share of State capital invested in enterprises.

The State Securities Commission (SSC) under the Ministry of Finance is the agency in charge of drafting the Securities Act and is responsible for drafting rules and regulations on corporate governance for public companies and listed companies. SSC is also responsible for the supervision of the implementation of these legal documents.

The Stock Exchange issues listing regulations, among which the implementation of the principles for corporate governance is considered a requirement for listing.

2.2 Enforcement of Corporate Governance Rules

The SSC is mandated by the Minister of Finance to perform the function of state management of the stock market; the direct management and supervision of stock market activities; the management of public service activities in the field of stocks and the stock market in accordance with the law.

Since 2007, SSC inspectors have issued 308 sanctions decisions, among which 279 decisions were related to companies. SSC has received many complaints about violation of corporate governance provisions by shareholders of public companies. However, SSC has just found a small number of violations and imposed administrative sanction decisions. For the remaining

⁹⁸ "Rules" refers to requirements for corporate governance however they are designated; e.g., laws, regulations, stock exchange listing requirements, or principles in obligatory codes.

cases, the majority of investors, shareholders and companies tried to resolve disputes through negotiation and internal conciliation settlement.

3. Awareness and Advocacy for Good Corporate Governance

3.1 Company Directors

Viet Nam currently has no institutions or associations for company directors. The SSC is in the preparatory phase of establishing an Institute of Corporate Governance.

The SCC's Training Center has organized short training courses on corporate governance for the Company Directors of listed companies. To date, the number of Company Directors, members of Supervisor Boards and the managers of public companies who participated in these short training courses on Corporate Governance is around 1,240 persons.

3.2 Educational System

Corporate governance is included in upper-secondary school curriculum with the aim of providing students with the basic concepts of running a business, choosing a business activity and organizing and managing a business.

At the tertiary level, depending on the curriculum of the individual university, corporate governance is taught as a part of business management or may be a unit in degrees in economics or business administration.

Postgraduate degrees in economics and MBAs may also include corporate governance as a subject or a topic.

3.3 The Stock Exchange

The SSC conducts an annual conference on corporate governance as well as training workshops and seminars for public companies and listed companies. The Training Center of the SSC offers short-term training courses on corporate governance for the Board Members of listed companies.

The SSC is working with various partners to develop a comprehensive training program on corporate governance at the Training Center of the SSC.

4. Corporate Governance of State-Owned Enterprises

The state management organizations that supervise the public investment projects of State-owned enterprises at the local level are the Provincial People's Committees. (The Department of Planning and Investment, a body of the Provincial People's Committees, is mandated to assist state organizations to perform the task of monitoring public investment projects.)

The state management organizations that supervise the public investment projects of state-owned enterprises at the central level, are the relevant ministries and branches in charge of these enterprises.

5. The Role of Professional Service Providers in Corporate Governance

Providers of professional services in Viet Nam have so far played a minor role in relation to corporate governance. In Viet Nam, there are not yet any organizations that provide credit ratings. The role of law firms, commercial banks and consultants in this regard is unclear.

However, independent auditing companies and stock brokerages have been supporting customers in the provision of market information, helping to ensure compliance of legal requirements in relation to corporate governance.

6. Recent Developments in Corporate Governance

6.1 Corporate Governance Developments

Since the enactment of the 2005 Enterprise Law, there has not been any new major development in corporate governance in Viet Nam.

6.2 Enforcement of Corporate Governance Rules

Most violations and enforcement actions in Viet Nam have occurred in the stock market. However, no case has been brought to the courts. As mentioned earlier, the SSC has discovered a small number of violations and imposed administrative sanctions. For the remaining cases, the majority of investors, shareholders and companies try to resolve disputes through internal negotiation and conciliation procedures.

6.3 Current Issues and Challenges for Corporate Governance

6.3.1 Challenges

Viet Nam has faced many challenges in the process of promoting the understanding of, and compliance with, better standards and practices of corporate governance. The legal framework and regulations governing corporate governance are deficient and incomplete; corporate governance is regulated by laws and regulations which are sometimes inconsistent or even conflicting.

The enforcement capability of state management agencies and the court system require significant improvement. Managers do not have sufficient experience, education or understanding about corporate governance issues.

Moreover, the understanding of investors and shareholders is still limited; they are not fully aware of their rights, do not participate actively in the corporate governance of enterprises in which they invest and they are not fully aware of relevant procedures and measures when their rights have been violated.

According to the Enterprise Law, state-owned companies must be converted into limited liability companies or joint stock companies by 1 July 2010 at the latest. Currently, there are many state-owned companies that have yet to comply with this regulation.

6.3.2 Priorities for Reform

The priorities for reform include: (i) further improvement of the legal framework and regulations on corporate governance; (ii) strengthening the enforcement capacity of the state enterprise system and the court system; (iii) wider implementation of programs to raise awareness on corporate governance for enterprises and investors; and (iv) the establishment of a National Committee for Corporate Governance.

6.3.3 Financial Crisis

Most of proposals for reform emerged following the recent global financial crisis, when the implications for corporate governance as it relates to macroeconomic stability, especially in the financial sector, became better understood. Viet Nam needs to strengthen financial supervision and enhance risk management; separate the management functions and ownership representation function; and continue the equitization process of state-owned enterprises.

Key Corporate Governance Rules and Practices in Viet Nam

| Criteria | Yes | No | Source(s) of Rule | Comments |
|---|-----|----|-------------------|---|
| RIGHTS OF SHAREHOLDERS | | | | |
| 1. Do shareholders add items to the agenda for shareholders' meetings? | X | | CL | Shareholders or group of shareholders holding over 10% of ordinary shares within six consecutive months or a smaller ratio as stipulated in the Charter of the company are entitled to do so (Article 79, Article 99) |
| 2. Do shareholders ask questions for directors at shareholders' meetings and do they receive answers? | X | | CL | |
| 3. Must company transactions with its insiders be on a non-preferential basis? | X | | CL | Article 119 and 120 |
| 4. Is a super majority vote required for major company acts affecting shareholder rights? | X | | CL | Implementation of the provisions of the overwhelming votes reduces the imposition of major shareholders to small ones, enabling small shareholders to discuss and to have a say in the resolutions of the Shareholders' General meeting. |
| COMPOSITION AND ROLE OF BOARDS OF DIRECTORS | | | | |
| 5. Must boards have independent directors? What percentage? | X | | CGC | Compulsory rate is one-third. However, corporate governance regulations only apply to listed companies. Unlisted companies are not required to have independent board members. In 2009, some 60% of companies had one-third independent members on the Board of Directors. |
| 6. Do independent directors have significant influence over (a) internal and external audit and (b) executive compensation? | | X | | As independent Directors comprise of just one-third of the Board, they do not have significant influence. |
| 7. Do independent directors decide what information the board receives from management? | X | | CL | Members of Boards (whether are dependent or independent) have rights to information and managers are required to be responsible to supply timely, sufficient and correct information (Article 114). |
| 8. Are the chairman of the board and chief executive officer different persons in the majority of listed companies? | X | | CGC | The regulations on corporate governance require a separation between the two positions. If this is not the case, companies must get seek advice in the meetings of shareholders. In 2009, approximately 50% of companies listed with the Stock Exchange Bureau have a separation of chairman and chief executive officer. |
| 9. Are all board members elected annually? | | X | CL, CGC | Enterprise Law does not prescribe the elected term of Board members. It only regulates the full term of the Board (not exceeding five years). As a result, board members are re-elected only when Board of Directors finishes its term except in the case when the Board members are dismissed or voluntarily withdraw. |

| Criteria | Yes | No | Source(s) of Rule | Comments |
|---|--------|----|---|--|
| 10. Does the board oversee enforcement of a company code of conduct? | X | | CGC | |
| TRANSPARENCY AND DISCLOSURE OF INFORMATION | | | | |
| 11. Do financial statements comply with International Financial Reporting Standards (IFRS)? | Partly | | Accounting Law, Viet Nam Accounting Reporting Standards (VAS) | Financial statements of joint stock companies must comply with VAS. To date, Viet Nam has issued 26 Viet Nameese accounting standards. In essence, these standards are built on the basis of conformity with IFRS, but many of them have not been promulgated. Furthermore, a number of promulgated standards have conflict with IFRS. Viet Nam aims, by 2020, to have the VAS system completely in harmony with international accounting standards. |
| 12. Are the identities of the five largest shareholders disclosed? | X | | SL and other law-guiding regulations | |
| 13. Is compensation of company executive officers disclosed? | X | | SL, regulation on information disclosure | |
| 14. Are extraordinary corporate events disclosed? | X | | CGC, regulation on information disclosure | |
| 15. Are risk factors disclosed in securities offering materials? | X | | SL | |
| 16. Are transactions of a company with its insiders disclosed? | X | | CL, SL | These transactions must be approved by the Board of Directors or the General Meeting of Shareholders. |

Note: CL – company law; SL – securities law; CGC – corporate governance code; SLR – stock exchange listing requirement, GP – general practice but not obligatory