Corporate Governance 2021

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LEXOLOGY
Getting The Deal Through

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Lexology Getting The Deal Through is delighted to publish the twentieth edition of *Corporate Governance*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Australia.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Holly J Gregory, for her continued assistance with this volume.

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SOURCES OF CORPORATE GOVERNANCE RULES AND PRACTICES

Primary sources of law, regulation and practice

1 What are the primary sources of law, regulation and practice relating to corporate governance? Is it mandatory for listed companies to comply with listing rules or do they apply on a 'comply or explain' basis?

The Law on Enterprises, which became effective on 1 January 2021, is the primary source of the corporate laws that encompass the establishment, governance, and operation of companies in Vietnam. For public companies (ie, a company that has a minimum amount of paid-up charter capital of 30 billion dong and in which at least 10 per cent of the number of voting shares is held by at least 100 investors that are not major shareholders, or a company that has made a successful initial public offer of shares through registration with the State Securities Commission in accordance with laws), the Law on Securities and the legal guiding documents thereof (including Decree 155/2020/ND-CP and Circular 116/2020/TT-BTC) provide further regulations on corporate governance as part of their public status.

Additionally, for companies that are joint ventures between foreign investors and Vietnamese partners engaging in the services committed to by Vietnam under the commitments on specific services in accession to the World Trade Organisation (also referred to as joint venture companies), Resolution No. 71/2006/NQ-QH11 still appears to function as another source of law relating to corporate governance of joint venture companies, despite the fact that certain laws under this Resolution have been amended, replaced, or are due to be replaced (eg, the Law on Enterprises and the Law on Promulgating Legal Normative Documents).

Listed companies shall comply with the relevant laws for matters that are not specifically regulated by listing rules, and are mandatorily required to comply with listing rules.

Responsible entities

2 What are the primary government agencies or other entities responsible for making such rules and enforcing them? Are there any well-known shareholder or business groups, or proxy advisory firms, whose views are often considered?

The Ministry of Planning and Investment mainly drafts bills for proposed laws and governmental decrees on corporate regulations and issues its own guidance and clarification whenever necessary. Likewise, the State Securities Commission of Vietnam and its direct parent agency, which is the Ministry of Finance, are in charge of the public companies sector, regardless of whether the company is unlisted or listed. Enforcement of the laws and regulations is carried out by various competent authorities, including the Ministry of Planning and Investment, the local people's committees, the local authorities for planning and investment, or the State Securities Commission itself for the securities sector.

There are no well-known shareholder activist groups or proxy advisory firms in Vietnam that would have a material influence on companies' policies or corporate governance-related issues.

THE RIGHTS AND EQUITABLE TREATMENT OF SHAREHOLDERS AND EMPLOYEES

Shareholder powers

3 What powers do shareholders have to appoint or remove directors or require the board to pursue a particular course of action? What shareholder vote is required to elect or remove directors?

A shareholder or a group of shareholders in a joint-stock company may nominate candidates for the board if they have held at least 10 per cent of the total ordinary shares unless a lower percentage is set forth in the company's charter (article 115.5 of the Law on Enterprises). Any share with a voting right can be counted in a vote at a shareholders' meeting, including a meeting for the election of directors. Cumulative voting is a compulsory measure for the election of directors, whereby the total number of votes of each shareholder shall be equal to the total number of the shareholder's shares multiplied by the total number of vacant positions (although shares with preferential votes will be entitled to a greater number of votes in accordance with the company's charter), and each shareholder may exercise all of his or her votes in favour of a single candidate or a number of candidates (article 148.3 of the Law on Enterprises). However, a different mechanism for the election of directors may be applied if so regulated under the company's charter (article 148.3 of the Law on Enterprises).

Successful candidates will be selected from those with the highest number of votes to those with the lowest number of votes, in descending order, until the total number of vacant positions has been filled. Where there are two or more candidates receiving the same number of votes for the last vacant position, another vote taken on such candidates will be held, or the director shall be selected in accordance with the criteria set forth in the voting rules or the company's charter (article 148.3 of the Law on Enterprises). The directors are elected at the shareholders' meeting (article 148.3 of the Law on Enterprises) and may only be removed by a resolution passed by the shareholders' meeting (article 138.2(c) of the Law on Enterprises). By default under the law, a resolution removing a director shall be passed if it is agreed by shareholders holding more than 50 per cent of the total number of voting slips of all attending shareholders. However, the law permits the charter of the company to provide for a higher specific percentage (article 148.1 and 148.2 of the Law on Enterprises).

The shareholders' meeting, which is comprised of shareholders holding voting rights, is the highest decision-making body in the

company. While the board should follow the resolution of the shareholders' meeting, a shareholder or a group of shareholders cannot, without resolution of the shareholders' meeting, impose obligations upon the board, except for the right to require the board to convene the general meeting of shareholders. Specifically, a shareholders' meeting may be convened by major shareholders (ie, a shareholder or a group of shareholders in a joint-stock company in which they have held at least 5 per cent of the total ordinary shares) if either the board of directors or supervisory board fails to convene the meeting in accordance with the laws or the company's charter (article 140.4 of the Law on Enterprises). However, a shareholder or a group of shareholders may request a court stop the implementation of or rescind any decision or resolution that has been passed by the board that is contrary to law, resolutions of a general meeting of shareholders, or the company's charter, and which has caused a loss for the company (article 153.4 of the Law on Enterprises).

Additionally, under certain circumstances, a shareholder or a group of shareholders holding at least 1 per cent of the total ordinary shares have the right to directly, or on behalf of the company, issue a claim that members of the board, directors or general directors are severally or jointly liable for losses to the company or others and must repay their benefits or compensation payments (article 166 of the Law on Enterprises).

Shareholder decisions

4 What decisions must be reserved to the shareholders? What matters are required to be subject to a non-binding shareholder vote?

The following decisions are subject to the authority of the shareholders' meeting:

- to adopt the company's development strategy (article 138.2(a) of the Law of Enterprises);
- to decide on the class and total amount of shares of each class that may be issued by the company, and the amount of dividend per share of each class on an annual basis (article 138.2(b) of the Law of Enterprises);
- to elect, remove, and dismiss directors of the board and members of the supervisory board (article 138.2(c) of the Law of Enterprises);
- to decide on investment or approve the sale of 35 per cent or more of the total value of assets recorded in the company's latest financial statement, unless a different percentage or value is provided for in the company's charter (article 138.2(d) of the Law of Enterprises);
- to approve contracts or transactions executed between the company and a related party, as defined under the laws, of 35 per cent or more of the total value of assets recorded in the company's latest financial statement unless a different percentage or value is provided for in the company's charter (article 167.3(a) of the Law of Enterprises);
- to approve contracts for and transactions of borrowing, lending or sale of assets valued at more than 10 per cent of the total value of assets of the company stated in the most recent financial statements between the company and shareholders owning 51 per cent or more of the total number of voting shares or their related persons (article 167.3(b) of the Law of Enterprises);
- to decide on amendment of or supplement to the company's charter (article 138.2(dd) of the Law of Enterprises);
- to approve annual financial statements (article 138.2(e) of the Law of Enterprises);
- to decide on redemption of more than 10 per cent of issued shares of each class (article 138.2(g) of the Law of Enterprises);
- to consider and decide on breaches committed by the members of the board of directors or the members of the supervisory board that cause damage to the company and the shareholders (article 138.2(h) of the Law of Enterprises);
- to decide on the restructuring or dissolution of the company (article 138.2(i) of the Law of Enterprises);
- to decide the budget or the total remuneration, bonuses and other benefits of the board of directors and of the supervisory board (article 138.2(k) of the Law of Enterprises);
- to approve the internal management rules, and the operational rules of the board of directors and of the supervisory board (article 138.2(l) of the Law of Enterprises);
- to approve the list of independent auditing companies, and to decide on an independent auditor to inspect activities of the company, and to remove the independent auditor when considered necessary (article 138.2(m) of the Law of Enterprises); and
- other rights and duties as provided for under the law and in the company's charter (article 138.2(n) of the Law of Enterprises).

Notwithstanding the foregoing, decisions that are subject to the authority of the shareholders' meeting of a foreign-invested company may be, subject to meeting statutory conditions (see Official Letter No. 771-BKH-TCT of the Ministry of Planning and Investment), regulated differently in the company's charter. Further, additional items that do not fall within the statutory authority of other statutory bodies of the company may be added to the charter subject to a resolution made via the shareholders' meeting.

Disproportionate voting rights

5 To what extent are disproportionate voting rights or limits on the exercise of voting rights allowed?

In principle, each ordinary share of a joint-stock company is granted only one vote (article 115.1(a) of the Law on Enterprises). However, a company is permitted to issue shares with preferential votes, which are granted a larger number of votes than those of ordinary shares, except that only founding shareholders or organisations as authorised by the government may hold shares with preferential votes. However, founding shareholders may only hold such shares for a period of three years after the company is established, and organisations authorised by the government may only hold them for a voting preference period provided under the company's charter (article 116 of the Law on Enterprises).

A company may also issue shares with preferential dividends or preferential redemption rights that have no voting rights (articles 117 and 118 of the Law on Enterprises) and issue other kinds of preferential shares in accordance with the company's charter and the Law on Securities (article 114.2(d) of the Law on Enterprises).

Shareholders' meetings and voting

6 Are there any special requirements for shareholders to participate in general meetings of shareholders or to vote? Can shareholders act by written consent without a meeting? Are virtual meetings of shareholders permitted?

Based on the company's register of shareholders at the time of making a decision on convening the shareholders' meeting (article 141.1 of the Law on Enterprises) or based on the cut-off date of the shareholders' list describing the shareholders entitled to attend the shareholders' meeting for a public company, any shareholder holding ordinary shares or shares with preferential votes may participate in the shareholders' meeting and exercise the voting rights associated with their respective shares, except for those shareholders holding preferential shares without voting rights (ie, preferential dividends or preferential redemption rights that have no voting rights (articles 117 and 118 of the Law on Enterprises)).

In cases of related-party transactions that require approval made via the shareholders' meeting, the shareholders who have interests relating to the parties to the contract or transactions may not vote on the approval (article 167.4 of the Law on Enterprises). In a similar manner, a founding shareholder may not vote on the approval of his or her transfer of the ordinary shares within three years from the issuance date of the enterprise registration certificate of the company (article 120.3 of the Law on Enterprises).

Besides physical meetings, the shareholders may adopt resolutions via a process of collecting written opinions (article 149 of the Law on Enterprises). In such cases, the minimum vote for adopting any resolution shall be more than 50 per cent of the total voting shares of all shareholders having the voting right (article 148.4 of the Law on Enterprises).

Virtual shareholders' meetings are permitted as long as the location of meetings, which is determined by the location of the chairperson, is within the territory of Vietnam (article 139.1 of the Law on Enterprises). Shareholders may attend and vote at meetings conducted via online conference (article 144.3(c) of the Law on Enterprises).

Shareholders and the board

7 | Are shareholders able to require meetings of shareholders to be convened, resolutions and director nominations to be put to a shareholder vote against the wishes of the board, or the board to circulate statements by dissident shareholders?

A shareholders' meeting may be convened by major shareholders (ie, a shareholder or a group of shareholders in a joint-stock company that they have held at least 5 per cent of the total ordinary shares) if either the board of directors or supervisory board fails to convene the meeting in accordance with the laws or the company's charter (article 140.4 of the Law on Enterprises). Regardless of who convenes the meeting, the major shareholders can always propose matters to the meeting agenda for discussion unless the procedures or contents or formality of such proposals are contrary to the law or the company's charter (article 142.2 of the Law on Enterprises). The meeting convenor is required to include the proposed matters in the draft programme and agenda for the meeting, except for those that fall under cases wherein the convenor may refuse the proposed matter. The draft programme and agenda are sent with the notice of invitation to all shareholders who are entitled to attend the meeting (articles 142.4 and 143.3 of the Law on Enterprises). The proposed matters are added officially to the programme and agenda if the shareholders' meeting so agrees (article 142.4 of the Law on Enterprises). There is no requirement under the law for the board of directors to circulate the statements or opinions of the dissident shareholders, other than the requirement that the minutes of the vote-counting result, resolutions and the minutes of the shareholders' meeting, which may contain a summary of the statements of the dissident shareholders, must be forwarded to the shareholders within a certain period of time (articles 149.6 and 150.5 of the Law on Enterprises).

Controlling shareholders' duties

8 | Do controlling shareholders owe duties to the company or to non-controlling shareholders? If so, can an enforcement action be brought against controlling shareholders for breach of these duties?

Controlling shareholders of a public company (shareholders directly or indirectly holding at least 5 per cent of the total shares with voting rights of the company) are required to not utilise their influence to cause any damage to the rights and other benefits of the company, and other shareholders (including non-controlling shareholders) (articles 4.18, 41.1(d) and 127 of the Law on Securities; article 31 of Circular 96/2020/TT-BTC). Transactions and contracts between the company and a shareholder holding more than 10 per cent of the total ordinary shares under the Law on Enterprises (or their related person) must be approved by the board of directors or the shareholders' meeting, depending on the value of such transactions, otherwise it shall be void and invalid (article 167.1(a) of the Law on Enterprises).

A corporate shareholder holding more than 50 per cent of the total ordinary shares, or capable of directly or indirectly appointing all or most of the board of directors, or otherwise capable of amending the company's charter shall be considered a 'parent company' (article 195.1 of the Law on Enterprises) and be subject to the duties of a parent company under the law, which include bearing liability for damages in cases of non-arm's-length transactions undertaken by the company as a result of the shareholder's intervention (article 196 of the Law on Enterprises).

Failure to perform the duties that controlling shareholders owe to the company will result in these controlling shareholders being subject to liability for any injunctions or damages incurred.

Shareholder responsibility

9 | Can shareholders ever be held responsible for the acts or omissions of the company?

If a 'parent company' shareholder, which is defined as a corporate shareholder holding more than 50 per cent of the total ordinary shares, or capable of directly or indirectly appointing all or most of the board of directors, or otherwise capable of amending the company's charter (article 195.1 of the Law on Enterprises), intervenes in the operation of the company beyond the normal authority of a shareholder and causes the company to undertake non-arm's-length transactions or otherwise non-profitable transactions without reasonable compensation, such shareholder shall be liable for any damages incurred by the company (article 196 of the Law on Enterprises).

Employees

10 | What role do employees have in corporate governance?

Employees are not generally involved in corporate governance unless otherwise regulated by the corporate documents of the company, such as the company's charter or policies. The labour laws, in particular, provide that employees are entitled to participate in management in accordance with the internal rules of the employer (article 5.1(c) of the Labour Code) and have the right to be consulted with respect to several employment policies, including the right to verify and inspect such policies (articles 44 and 46 of Decree 145/2020/ND-CP).

CORPORATE CONTROL

Anti-takeover devices

11 | Are anti-takeover devices permitted?

Anti-takeover devices are not expressly governed by Vietnamese laws. It is permissible to apply anti-takeover devices or customisation of the company's charter on the condition that no statutory rights of shareholders, the board, or otherwise are expressly violated. For example, an anti-takeover device in the form of a preferential share plan is permitted under the law as part of the rights of the company (article 114.2(d) of the Law on Enterprises). In contrast, a super-voting preferential share plan, which is offered to founding shareholders or offered to any entity that is not an organisation as authorised by the government after the period of three years from the date on which the company is issued with the enterprise registration certificate, may be held invalid as a breach of the legal provisions on shares with preferential voting power (article 116.1 of the Law on Enterprises).

Issuance of new shares

12 | May the board be permitted to issue new shares without shareholder approval? Do shareholders have pre-emptive rights to acquire newly issued shares?

Issuance of new shares or a new class of shares must be approved by the shareholders' meeting (article 138.2(b) of the Law on Enterprises), although the board of directors may decide on an offer of unsold shares within the authorised number of shares for each class as approved by the shareholders' meeting (article 153.2(c) of the Law on Enterprises). Existing shareholders are granted pre-emptive rights to acquire new shares in proportion to their shareholding ratio at the time of issuance (article 115.1(c) of the Law on Enterprises). However, it appears from the LOS and the legal guiding documents thereof that the shareholders' meeting of a public company may waive such pre-emptive rights of the shareholders by a valid resolution (article 6.5 of the model charter issued together with Circular 116/2020/TT-BTC), although there is the possibility that the legal validity of such a resolution would be challenged in the courts.

Restrictions on the transfer of fully paid shares

13 | Are restrictions on the transfer of fully paid shares permitted and, if so, what restrictions are commonly adopted?

Except for circumstances as provided by law, and certain restrictions on the transferability of shares that may be set forth under the company's charter and the validity of which is enforced by way of stipulating the same on the respective share certificates (article 127.1 of the Law on Enterprises), any shares are freely transferable (article 127.1 of the Law on Enterprises). Securities laws also allow the same restrictions to be placed on the transfer of shares in accordance with the Law on Enterprises (article 271 of Decree 155/2020/ND-CP).

A number of restrictions expressly provided by law include the case in which a founding shareholder transfers its shares to non-founding shareholders of the company within three years from the date of its establishment, the transfer of which will be subject to the approval of a shareholders' meeting (article 120.3 of the Law on Enterprises) and certain cases (eg, under the Law of Securities) the transfer of privately placed shares in a public company is limited to three years for strategic investors and one year for professional investors from the date of completion of a private placement; except for transfer between professional investors, transfer under an effective court judgment or decision or an arbitral decision, or a transfer due to inheritance as prescribed by law (article 31.1(c) of Law on Securities).

Compulsory repurchase rules

14 | Are compulsory share repurchases allowed? Can they be made mandatory in certain circumstances?

In relation to shareholders, acceptance of a share repurchase offer is not compulsory under the law (article 133.3 of the Law on Enterprises). The procedures and circumstances of a share repurchase are expressly provided for under the law, so it may be illegal to enforce repurchase of any shares without the consent of the relevant shareholders. On the other hand, in relation to a company, share repurchase may become compulsory in certain circumstances. Specifically, the company may have to make a share repurchase at the request of shareholders who object to a decision on the reorganisation of the company or a change in the shareholders' rights and obligations in the charter (article 132.1 of the Law on Enterprises).

Additionally, the company may make a share repurchase with respect to redemption preference shares whenever so requested by the shareholder holding such shares or pursuant to conditions stipulated in the respective share certificates of such shares (article 118 of the Law on Enterprises).

Dissenters' rights

15 | Do shareholders have appraisal rights?

Shareholders who do not agree to the restructuring of the company or changes to the company's charter with respect to the shareholders' rights and obligations may request that the company buy back their shares at a fair value or at a price regulated under the company's charter (articles 132.1 and 132.2 of the Law on Enterprises). In case the company fails to reach an agreement on such transfer price, the company shall put forth at least three appraisal firms to enable the shareholders to select one firm and the price appraised by such selected firm shall be final and binding upon the parties (article 132.2 of the Law on Enterprises). The current Law on Enterprises is silent on the possibility of the shareholders transferring such shares to other parties in this case.

RESPONSIBILITIES OF THE BOARD (SUPERVISORY)

Board structure

16 | Is the predominant board structure for listed companies best categorised as one-tier or two-tier?

The board structure for listed companies is categorised as two-tier, including the board of directors (which assumes management functions for the business operation of the company) and the supervisory board (which assumes supervisory functions as to the management and operation of the company by the board of directors and general director or chief executive). With regard to the structure of the board of directors of a public company, it needs to maintain a balance between executive directors and non-executive directors, so that at least one-third of the directors must be non-executives (article 276.2 of Decree 155/2020/ND-CP).

It should be noted that a company may choose not to establish a supervisory board even where it has 11 shareholders or more, or where the shareholders are organisations holding 50 per cent or more of the total shares, provided that in each such case at least 20 per cent of the directors are independent and there be an auditing committee under the board of directors whose organisational structure, functions and duties are regulated by the company's charter or operational rules issued by the board of directors (article 137.1(b) of the Law on Enterprises).

Where an unlisted public company chooses the one-tier option, at least one-fifth of the directors must be independent, or there must be at least one independent director if the board has less than five directors (articles 276.3 of Decree 155/2020/ND-CP). Where a listed company chooses the one-tier option, under article 276.4 of Decree 155/2020/ND-CP it must satisfy the statutory quantity of independent directors as follows:

- three to five directors: at least one independent director;
- six to eight directors: at least two independent directors; and
- nine or more directors: at least three independent directors.

Board's legal responsibilities

17 | What are the board's primary legal responsibilities?

The board of directors is primarily in charge of all company matters (article 153.2 of the Law on Enterprises), although certain day-to-day activities and lower-level decisions fall within the authority of the general director (article 162 of the Law on Enterprises).

The supervisory board is primarily in charge of supervising the general director and the board of directors' activities regarding the management and operation of the company (article 170.1 of the Law on Enterprises).

The following matters, among others, are reserved for the shareholders' meeting:

- the adoption of the development strategy of the company;
- decisions on the class and total amount of shares of each class that may be issued by the company;
- the amount of dividend per share of each class on an annual basis; and
- the election, removal, and dismissal of directors of the board and members of the supervisory board.

Board obligees

18 | Whom does the board represent and to whom do directors owe legal duties?

The board of directors acts on behalf of the company to decide and exercise the rights and duties of the company (article 153.1 of the Law on Enterprises) and owes legal duties to the company and the shareholders (article 165.1 of the Law on Enterprises; article 278.1 of Decree 155/2020/ND-CP). The board is required to act in the interests of the company and shareholders (article 165.1(c) of the Law on Enterprises). In addition, the board of directors of a public company must not only show impartial treatment to shareholders but also protect the interests of persons whose interests are related to the company (article 278.2 of Decree 155/2020/ND-CP).

With respect to the supervisory board, it is required to be loyal to the interests of the company and shareholders (article 173.3 of the Law on Enterprises).

Enforcement action against directors

19 | Can an enforcement action against directors be brought by, or on behalf of, those to whom duties are owed? Is there a business judgement rule?

Eligible shareholders may request a court to suspend implementation of or to rescind decisions that have been passed by the board of directors contrary to the laws or the company's charter and that cause loss to the company (article 153.4 of the Law on Enterprises). Such shareholders may directly make such a claim against the director without going through the supervisory board, regardless of the fact that the company has a supervisory board under the Law on Enterprises (article 166 of the Law on Enterprises). When the case is brought to the court, temporary injunctive relief or enforcement, or both, may be taken by the courts in accordance with the rules of civil procedure. If a director is found by the supervisory board to have breached his or her duties, the supervisory board shall immediately notify the board of directors in writing about such breach and request that the relevant director ceases the act constituting a breach and take proper measures to remedy the results of such breach (article 170.8 of the Law on Enterprises). In addition, a shareholder or a group of shareholders holding 5 per cent or more of the total shares or a lower percentage as provided for in the company's charter, may also convene a shareholders' meeting when a director allegedly prejudices the rights of shareholders, violates his or her managerial duties, or makes a decision exceeding his or her authority (article 115.3(a) of the Law on Enterprises), in order to dismiss such director or take other appropriate action within the authority of the shareholders' meeting.

On the other hand, where the supervisory board members find that another member of the supervisory board has breached his or her duties, they shall immediately notify the supervisory board in writing about such breach and request that the relevant member ceases the act constituting a breach as well as remedy the results of such breach (article 173.6 of the Law on Enterprises).

No business judgement rule has been issued under Vietnamese law.

Care and prudence

20 | Do the duties of directors include a care or prudence element?

Yes, both the directors and members of the supervisory board must carry out their assigned duties with honesty, care, and the best lawful interests of the company and the shareholders in mind (articles 165.1(b) and 173.2 of the Law on Enterprises).

Board member duties

21 | To what extent do the duties of individual members of the board differ?

All the directors on the board have the same duties under the law, and the members of the supervisory board are subject to the same duties, except for the chair of the board and head of the supervisory board, who are subject to further rights and duties.

The law requires that the directors must have professional expertise and experience in the business management of the company and not necessarily be company shareholders unless otherwise stipulated in the company charter (article 155.1(b) of the Law on Enterprises). The members of the supervisory must be trained in one of the following specialities: economics, finance, accounting, auditing, law, business management, or a specialised subject appropriate for the business activities of the company (article 169.1(b) of the Law on Enterprises). The head of the supervisory board must have a university or higher graduation degree in one of the following specialities: economics, finance, accounting, auditing, law, business management, or in a specialised subject relating to the business activities of the enterprise, except where the charter of the company provides for other higher standards (article 168.2 of the Law on Enterprises and article 286.3 of Decree 155/2020/ ND-CP).

Delegation of board responsibilities

22 | To what extent can the board delegate responsibilities to management, a board committee or board members, or other persons?

The board of directors cannot delegate a responsibility expressly and exclusively assigned to the board of directors to other internal bodies. Other than that, some of the duties or responsibilities of the board may be delegated to the general director in accordance with the company's charter and resolution of the board of directors (article 162.3(i) of the Law on Enterprises).

Non-executive and independent directors

23 | Is there a minimum number of 'non-executive' or 'independent' directors required by law, regulation or listing requirement? If so, what is the definition of 'non-executive' and 'independent' directors and how do their responsibilities differ from executive directors?

Under the law, at least one-third of the directors of a board of a public company must be non-executive directors (article 276.2 of Decree 155/2020/ND-CP) if the company utilises a two-tier management structure. A 'non-executive director' is defined as a person who is not the general director, deputy general director, chief accountant, or any other executive as specified in the company's charter (article 3.56 of Decree 155/2020/ND-CP).

If an unlisted public company utilises a one-tier management structure, at least one-fifth of the directors must be independent directors (there must be at least one independent director if the board has fewer than five directors) and an auditing committee under board of directors must be established. The auditing committee must have a chair who is an independent member of the board of directors and its other members must be non-executive members of the board of directors (article 161.1 of Law on Enterprises, articles 276.3 and 282.2 of Decree 155/2020/ ND-CP).

If a listed company uses the one-tier option, article 276.4 of Decree 155/2020/ND-CP requires it to satisfy the statutory quantity of independent directors, as follows:

- three to five directors: at least one independent director;
- six to eight directors: at least two independent directors; and
- nine or more directors: at least three independent directors.

A director is considered independent if he or she satisfies the following statutory conditions contained in article 155.2 of the Law on Enterprises:

- article 155.2(a):
  - he or she is not a current employee of the company, its parent company or its subsidiaries;
  - he or she has not worked for the company, its parent company or its subsidiaries in the previous three consecutive years;
- article 155.2(b):
  - he or she is not receiving a salary or wages from the company (except for the benefits to which members of the board of directors are entitled);
- article 155.2(c):
  - he or she does not have a spouse, natural parent, adoptive parent, natural child, adopted child or a sibling who is a major shareholder or a manager of the company or its subsidiaries;
- article 155.2(d):
  - he or she does not, directly or indirectly, hold at least 1 per cent of the company's voting shares; and
- article 155.2(dd):
  - he or she has not been a member of the company's board of directors or supervisory board for the previous five consecutive years (unless they were appointed for two consecutive terms).

There appears to be no difference in law between the responsibilities of non-executive, independent and other types of directors.

For non-public companies, under article 137.1(b) of the Law on Enterprises, the appointment of independent directors is required if the company does not have a supervisory board, provided that such independent directors account for at least 20 per cent of the directors and there is an auditing committee under the board of directors.

Board size and composition

24 How is the size of the board determined? Are there minimum and maximum numbers of seats on the board? Who is authorised to make appointments to fill vacancies on the board or newly created directorships? Are there criteria that individual directors or the board as a whole must fulfil? Are there any disclosure requirements relating to board composition?

The Law of Enterprises' criteria for board members are outlined below.

Criteria for board members

Board members do not have to be shareholders of the company unless this is prescribed by the company's charter (article 155.1(b), but:

- must have appropriate experience or professional knowledge in business administration or in the sectors or business lines of the company;
- must not be prohibited from establishing and managing companies in general (articles 17.2 and 155.1(a));
- must not have a familial relationship with the company's:
  - directors;
  - general director;
  - other managers; or
  - a manager or other person competent to designate the manager of the parent company; and
- must not hold the position of board member in more than five public companies (article 275.3 of Decree 155/2020/ND-CP).

Board members of enterprises in which the state holds 50 per cent or more of the charter capital or the total number of voting shares (except for those in which the state holds 100 per cent of charter capital) and the subsidiaries of state-owned enterprises (articles 88.1 and 155.1(d)), must not have a familial relationship with the company's director, general director or other managers and must be competent to designate the manager of the parent company (articles 88.1 and 155.1(d) of the Law on Enterprises).

Criteria for independent board members

Independent board members must not:

- be a current employee of the company, its parent company or a subsidiary;
- have worked for the company, its parent company or a subsidiary in the previous three consecutive years (article 155.2(a));
- receive a salary or wages from the company, other than benefits to which members of the board of directors are entitled (article 155.2(b));
- have a spouse, natural parent, adoptive parent, natural child, adopted child or a sibling who is a major shareholder or a manager of the company or a subsidiary (article 155.2(c));
- directly or indirectly hold 1 per cent or more of the company's voting shares (article 155.2(d)); and
- not have been a member of the board of directors or the supervisory board for at least the previous five consecutive years, except for the case of appointment for two consecutive terms (article 155.2(dd)).

Criteria for supervisory board members

Members of the supervisory board:

- must not be prohibited from establishing and managing a company (articles 169.1(a) and 17.2);
- must have been trained in one of the following specialities (article 169.1(b)):
  - economics;
  - finance;
  - accounting;
  - auditing;
  - law;
  - business management; or
  - a specialised subject appropriate for the business activities of the enterprise;
- must not have a familial relationship with a member of the board of directors, a director, the general director or any other managers (article 169.1(c));
- not be a manager of the company, but they may be a shareholder or employee of the company unless otherwise prescribed by the company's charter (article 169.1(d)); and
- satisfy other standards and conditions of the relevant regulations and law, and the company's charter (article 169.1(dd)).

The Law of Enterprises also requires that more than half of the members of the supervisory board permanently reside in Vietnam, and article

168.2 requires the head of the supervisory board to hold a university or higher graduation degree in one of the following specialities:

- economics;
- finance;
- accounting;
- auditing;
- law;
- business management; or
- a specialised subject appropriate for the business activities of the enterprise;

Similar to changes to the board of directors, a change in the supervisory board of a public company is subject to a public disclosure obligation in accordance with the law (article 11.1(l) of Circular 96/2020/TT-BTC).

Disclosure requirements

For public companies, any change of the board must be publicly disclosed in accordance with the securities legislation (article 11.1(l) of Circular 96/2020/TT-BTC).

A public company must disclose information on corporate governance at the annual general assembly of shareholders and in the company's annual report in compliance with the securities legislation on information disclosure (article 297.1 of Decree 155/2020/ND-CP).

Under the Law of Enterprises, certain information related to changes of the board must be publicly disclosed (eg, curricula vitae, qualifications, and directors' professional experience).

Minimum and maximum number of seats

The board of directors must comprise three to eleven directors. The specific number of directors is stipulated in a company's charter (article 154.1 of the Law of Enterprises; article 276.1 of Decree 155/2020/ND-CP).

The supervisory board must have three to five members (article 168.1 of the Law of Enterprises; article 286.1 of Decree 155/2020/ND-CP).

Vacancies

In the case of vacancy, by default vacant positions will be filled by an election during the shareholders' meeting (article 138.2(c) of the Law of Enterprises).

A vacant seat cannot be filled temporarily. In this event, the board continues to serve with the remaining directors until the next shareholders' meeting, where a new director may be elected. The board must convene an extraordinary shareholders' meeting to elect new directors if the number of directors falls below one-third of the required number stipulated in the charter, or the number of independent directors is less than the number required in law (article 160.4 of Law of Enterprises).

Board leadership

25 | Is there any law, regulation, listing requirement or practice that requires the separation of the functions of board chair and CEO? If flexibility on board leadership is allowed, what is generally recognised as best practice and what is the common practice?

The chair of the board of directors and the general director are separate positions with different powers under the law. It is common practice in non-public companies for a single person to act as both the chair and the general director at the same time. However, in public companies and companies in which the state holds more than 50 per cent of voting shares, a single person is not permitted to simultaneously hold these positions (article 275.2 of Decree 155/2020/ND-CP; article 156.2 of the Law on Enterprises).

Under the Law on Enterprises, a company may have one or more legal representatives (article 12.2 of the Law on Enterprises). If there is only one legal representative, the chair of the board of directors will be the legal representative of the company, unless the company's charter permits the general director or a director to be the legal representative. If there is more than one legal representative, both the chair of the board of directors and the general director or a director will be the legal representatives of the company (article 137.2 of the Law on Enterprises).

Board committees

26 | What board committees are mandatory? What board committees are allowed? Are there mandatory requirements for committee composition?

Non-public and public companies are not required to have any board committees or dedicated directors.

If a public company establishes board committees, the board of directors must report the activities of such committees in the annual report and to the shareholders' meeting (article 280.6 of Decree 155/2020/ND-CP and Appendix IV of Circular 96/2020/TT-BTC). The model charter of public companies suggests forming committees for development policy, human resources, remuneration and bonuses, internal audit, and risk management (article 31 of model charter issued with Circular 116/2020/TT-BTC).

However, under article 137.1(b) of the Law of Enterprises, if a company that has 11 or more shareholders, or shareholders that are organisations hold 50 per cent or more of its total shares, decides to not create a supervisory board, it must establish an auditing committee under the board of directors.

Board meetings

27 | Is a minimum or set number of board meetings per year required by law, regulation or listing requirement?

At least one regular board meeting must be held every quarter of a calendar year according to the law (article 157.3 of the Law of Enterprises), although the chair can convene a board meeting at any time.

With respect to the supervisory board, the law does not require a certain number of meetings for a non-public company, although such meetings must be held at least twice a year in a public company (article 289.1 of Decree 155/2020/ND-CP).

Board practices

28 | Is disclosure of board practices required by law, regulation or listing requirement?

Under the Law of Enterprises, the following information related to board practices is required to be disclosed:

- after the enterprise registration certificate of a new company is issued the company must make a public announcement of the business registration information through the National Business Registration Portal (article 32.1 of the Law of Enterprises);
- if this information changes, a public announcement on such changes must be made through the National Business Registration Portal (article 32.2 of the Law of Enterprises) and on the company's website (article 176.2 of the Law of Enterprises).

No regulations have been issued regarding requirements for non-public companies to disclose the practices of their boards of management.

The law requires listed companies to disclose details regarding the management of the company, including members of the board, the number of board meetings and adopted decisions, twice a year (articles 10.4 and 14 of Circular 96/2020/TT-BTC).

Unlisted public companies are required to disclose details regarding the management of the company once a year in their annual reports (articles 295 and 297 of Decree 155/2020/ND-CP).

Board and director evaluations

29 Is there any law, regulation, listing requirement or practice that requires evaluation of the board, its committees or individual directors? How regularly are such evaluations conducted and by whom? What do companies disclose in relation to such evaluations?

The board structure for listed companies includes a board of directors and a supervisory board.

Under article 137.1(b) of the Law of Enterprises, a company may choose not to establish a supervisory board even if it more than 11 shareholders, or where shareholders are organisations holding 50 per cent or more of total shares, provided that at least 20 per cent of directors are independent and an auditing committee is formed under the board of directors, the organisational structure, functions and duties of which are regulated in the company's charter or operational rules issued by the board of directors.

A company may choose to establish a supervisory board (article 137.1(a) of the Law of Enterprises) that supervises the management and operation of the company by the board of directors and general director or chief executive. The law does not prescribe how often such evaluations must be conducted; however, the supervisory board is required to submit evaluation reports during annual shareholders' meetings (article 170.3 of the Law of Enterprises). A supervisory board may use independent consultants or their company's internal audit department to perform any of its assigned duties (article 170.10 of the Law of Enterprises).

The board of directors, members of the board of directors, the director or general director, and other managers of the company are required to provide all information and documents relating to their management, administration, and business operations when the supervisory board demands (article 171.5 of the Law of Enterprises).

REMUNERATION

Remuneration of directors

30 How is remuneration of directors determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of directors, the length of directors' service contracts, loans to directors or other transactions or compensatory arrangements between the company and any director?

The remuneration of directors is determined in accordance with the basis and method as provided under their company's charter. If the charter is not specific, by default the directors shall be entitled to remuneration based on the total working days and pay rates per day, all of which shall be estimated by unanimous agreement of the board, on the condition that the total remuneration of the board does not exceed the amount as approved by the shareholders' meeting (article 28 of the model charter issued with Circular 116/2020/TT-BTC; article 163.2(a) of the Law on Enterprises). There is no specific regulation for service contracts between the directors and the company, but the law generally deems any transaction between the directors and the company as transactions with related parties, which must be approved by the board of directors or the shareholders' meeting, depending on the value of such transactions (article 167 of the Law on Enterprises).

For public companies, no loans may be granted to the directors by the company unless approved by a shareholders' meeting (article 293.4(a) of Decree 155/2020/ND-CP).

Under the Law on Enterprises, members of the supervisory board may also receive salaries in accordance with the decision of the shareholders' meeting, unless provided otherwise by the company's charter (article 172 of the Law on Enterprises). For public companies, no loans may be granted to members of the supervisory board by the company unless approved by the general meeting of shareholders (article 293.4(a) of Decree 155/2020/ND-CP).

A director may also be held liable for compensation with respect to damages or losses incurred by the company in certain cases of violation of the law in his or her role as a director (articles 140.4 and 167.5 of the Law on Enterprises). It is optional for the companies to have compensatory arrangements with directors. The model charter for public companies provides a standard clause that specifies that directors may be compensated or held harmless by the company against damages, losses and claims, among others, in certain cases in their role as director as well as covered by a director's liability insurance policy (article 48 of the model charter issued with Circular 116/2020/TT-BTC).

Remuneration of senior management

31 How is the remuneration of the most senior management determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of senior managers, loans to senior managers or other transactions or compensatory arrangements between the company and senior managers?

Aside from the board of directors and the supervisory board, the laws only govern remuneration and other benefits given to the general director and other managerial positions. Accordingly, the general director and other officers of the company are paid wages and bonuses as determined by the board of directors, unless the company's charter requires otherwise (articles 163.2(c) and 153.2(i) of the Law on Enterprises). Transactions between the company and the members of the board of directors including the general director must also be approved by the board of directors or shareholders' meeting in the same manner as in the directors' cases (article 167 of the Law on Enterprises; article 293 of Decree 155/2020/ ND-CP).

There is neither special nor separate regulation on compensatory arrangements with senior management.

Say-on-pay

32 Do shareholders have an advisory or other vote regarding remuneration of directors and senior management? How frequently may they vote?

The shareholders' meeting only votes on the total amount and calculation method of executive remuneration and bonuses, which will be binding and valid (articles 138.2(k), 163.2(a) and 172.1 of the Law on Enterprises). A board of directors shall then make specific decisions regarding remuneration and bonuses according to such resolutions. The exact power may be customised in the company's charter. In addition, there is no say-on-pay vote in Vietnamese law, although it is not explicitly prohibited.

DIRECTOR PROTECTIONS

D&O liability insurance

33 Is directors' and officers' liability insurance permitted or common practice? Can the company pay the premiums?

For public companies, directors' and officers' liability insurance is expressly regulated under the law, the premiums of which can be paid by the company itself if so determined by the shareholders' meeting,

on the condition that such policy does not cover liability arising from breaches of laws or the company's charter (article 28.6 of model charter issued with Circular 116/2020/TT-BTC). For non-public companies, directors' and officers' liability insurance is not regulated by the law and it is not a very common practice for directors' and officers' liability insurance to be purchased by the company for its directors.

Indemnification of directors and officers

34 | Are there any constraints on the company indemnifying directors and officers in respect of liabilities incurred in their professional capacity? If not, are such indemnities common?

No comprehensive or unified legislation exists with respect to indemnities made by the company for its directors and officers for such liabilities. However, under article 48 of the model charter regulated in Circular 116/2020/TT-BTC as issued by the Ministry of Finance for public companies, the directors and other officers of the company shall be indemnified by the company in such circumstances only if they have not committed any breach of law or the company's charter or their duties and obligations and there is no evidence proving that they are in breach of their duties.

Advancement of expenses to directors and officers

35 | To what extent may companies advance expenses to directors and officers in connection with litigation or other proceedings against them or in which they will be a witness?

No regulation has been issued with respect to advancing expenses to directors and officers in connection with litigation or other proceedings against them or in which they will be a witness.

Exculpation of directors and officers

36 | To what extent may companies or shareholders preclude or limit the liability of directors and officers?

By default, the law holds directors, general directors and members of the supervisory board liable for certain acts or omissions, such as failure to comply with the law, the company's charter or resolutions of a shareholders' meeting. However, to the extent that such liability is civil in nature, it would be possible for a shareholders' meeting, as the highest authority in the company, to preclude, limit or waive such liability in relation to the company, although the courts might interpret this issue differently.

The shareholders may, and cause the company to, provide for limitation of liability and compensatory arrangements in the company's charter and directors' liability insurance policy, such as the sample clause in the model charter for public companies (article 48 of the model charter issued with Circular 116/2020/TT-BTC).

DISCLOSURE AND TRANSPARENCY

Corporate charter and by-laws

37 | Are the corporate charter and by-laws of companies publicly available? If so, where?

A public company is required by law to establish an official website and to disclose its charter, internal management rules (if any), and prospectus (if any), among others, via its official website in the shareholder relations section (articles 7.2(a) and (c) of Circular 96/2020/TT-BTC). The Law on Enterprises also requires the non-public company's charter to be published on the company's website (article 176.2(a) of the Law on Enterprises).

Company information

38 | What information must companies publicly disclose? How often must disclosure be made?

The laws provide for two kinds of disclosure for public companies: regular and extraordinary disclosures.

Regular disclosures include the disclosure of audited annual financial statements, annual reports, contents of annual general meetings of shareholders, and corporate governance report.

Extraordinary disclosures include the disclosure of any important event (eg, dissolution of the company, decisions of share buyback, new share issuance, dividend distributions), or any change in executive officers among events.

In addition, public companies are required to disclose information about the offering, issuance, listing, registration of securities and report on uses of funds, its foreign ownership ratio, share redemptions, and the sale of treasury books.

In certain circumstances, such as an event that may have a material effect on the shareholders' benefits, public companies may be requested by the authorities to make disclosures (chapter II of Circular 96/2020/TT-BTC).

Under the Law on Enterprises, after the enterprise registration certificate of a new company is issued, the company must make a public announcement regarding its business lines and a list of founding shareholders and shareholders who are foreign investors through the National Business Registration Portal (article 32.1 of the Law on Enterprises). Additionally, where there are changes to the enterprise registration contents, the company shall also make a public announcement on such changes through the Portal (article 32.2 of the Law on Enterprises). Moreover, the company shall post the following information on its website (article 176.2 of the Law on Enterprises):

- the company's charter;
- curricula vitae, qualifications, and professional experience of members of the board of directors, members of the supervisory board, the general director or director of the company;
- annual financial statements ratified by the shareholders' meeting; and
- annual reports on the evaluation of operational results made by the board of directors and the supervisory board.

HOT TOPICS

Shareholder-nominated directors

39 | Do shareholders have the ability to nominate directors and have them included in shareholder meeting materials that are prepared and distributed at the company's expense?

A major shareholder (ie, one who holds at least 10 per cent of the total ordinary shares for a consecutive period of six months or more) or a group of shareholders in a company may nominate a person to be a member of the board of director unless a lower percentage is set forth in the company's charter (article 115.5 of the Law on Enterprises). Therefore, unless a shareholder holds a minimum ratio of shareholding that provides the power to nominate directors, such a shareholder must solicit proxy voting in order to exercise such a right.

The nomination of directors proposed by major shareholders shall be included in the agenda of the shareholders' meeting upon the written proposal of such major shareholders (article 142.2 of the Law on Enterprises). Such a proposal must be sent to the company no later than three working days prior to the opening date of the shareholders' meeting unless the company's charter provides for another time limit) (article 142.2 of the Law on Enterprises). The proposal must specify the names of the shareholders, the amount of each type of shares and the

issues proposed to be added to the agenda (eg, the nomination of directors with details of the candidates) (articles 140.5(dd) and 142.2 of the Law on Enterprises).

Shareholder engagement

40 Do companies engage with shareholders? If so, who typically participates in the company's engagement efforts and when does engagement typically occur?

Engagements or transactions between the company and its shareholders are allowed at any time on the condition that such engagements or transactions comply with relevant legal conditions, such as conditions for related-party transactions and disclosure procedures among others.

Typically, certain persons are designated as authorised representatives who may communicate with the company on behalf of the shareholders and concurrently participate in general meetings of shareholders (article 15 of the Law on Enterprises). Also, for corporate shareholders, their legal representatives, who have the right to enter into and perform civil transactions on behalf of and in the interests of the shareholders under the law, may also engage or transact with the company on behalf of the shareholders (article 141.2 of the Civil Code).

Public companies are obliged to appoint at least one person in charge of management, who mainly acts as the secretary of the board and the company's main contact in shareholder relations (article 281 of Decree 155/2020/ND-CP).

Sustainability disclosure

41 Are companies required to provide disclosure with respect to corporate social responsibility matters?

With respect to ordinary companies, the law does not explicitly require disclosures with respect to corporate social responsibility matters. However, for internal disclosures, a company is required to publish regulations on employment policies (article 43 of Decree 145/2020/ND-CP). Public companies are required to disclose corporate social responsibility matters if they, among other reasons:

- have a major impact on the production, business, or administration of the company (article 11.1(r) of Circular 96/2020/TT-BTC);
- have a serious effect on the lawful interests of the investors or on securities prices that need to be verified (article 12 of Circular 96/2020/TT-BTC); or
- potentially affect share prices and decisions of the shareholders and investors (article 295.1 of Decree 155/2020/ND-CP).

In addition, annual reports of public companies also include information related to the impact and responsibilities of the company on the environment, society, and community (eg, raw materials, energy consumption, water consumption, compliance with the law on environmental protection, community investments as well as other community development activities, and policies related to employees, among others (article 10.2 and annex 4 of Circular 96/2020/TT-BTC)).

CEO pay ratio disclosure

42 Are companies required to disclose the 'pay ratio' between the CEO's annual total compensation and the annual total compensation of other workers?

In general, the salary scale and salary table of all employees in the company must be published in the workplace before they are implemented.

In addition, the law requires the company to separately disclose information regarding the remuneration and salary of the director, the general director, members of the board of directors and other managers in the annual financial statement of the company (article 163.3 of the Law on Enterprises; article 298 of Decree 155/2020/ND-CP). Further, the remuneration, operational expenses, and other interests of the board of directors and each member thereof must be recorded in the operation report of the board of directors, which is required to be submitted during the annual shareholders' meeting (article 163.3 of the Law on Enterprises; article 280.1 of Decree 155/2020/ND-CP) and in the annual reports of public companies (corporate governance section under annex 4 of Circular 96/2020/TT-BTC).

Gender pay gap disclosure

43 Are companies required to disclose 'gender pay gap' information? If so, how is the gender pay gap measured?

There is no specific requirement for companies to disclose gender pay gap information. However, the law prohibits any discrimination based on gender, among other forms (article 8.1 of the Labour Code). Female employees who are pregnant or raising children under 12 months of age are entitled to certain favourable humanitarian conditions (eg, shortened working time with full pay, etc (article 137 of the Labour Code)).

UPDATE AND TRENDS

Recent developments

44 Identify any new developments in corporate governance over the past year. Identify any significant trends in the issues that have been the focus of shareholder interest or activism over the past year.

The new Law on Enterprises came into effect on 1 January 2021, creating new problems for the operation and management of joint-stock companies.

The Law on Enterprises no longer requests the registration of a corporate seal with competent authorities. This new provision provides a flexible management of the corporate seal. However, as a matter of practice, the seal still plays an important role while doing business in Vietnam (especially for executing any commercial contracts), and lifting such a requirement lead to some confusion as to when a party should check the authenticity of a corporate seal.

The definition of 'state-owned companies' has been expanded under the new Law on Enterprises compared to the Law on Enterprises 2014. In particular, a 'state-owned company' means a company in which more than 50 per cent of its charter capital or voting shares is held by the state (articles 4.11 and 88 of the Law on Enterprises). Under article 4.8 of the Law of Enterprises 2014, 'state-owned enterprise' referred to companies in which the state held 100 per cent of the charter capital. The new definition might result in major changes in the operation and activities of all companies that may fall under its scope, as state-owned companies are subject to stricter regulations and they are also regulated by laws other than the new Law on Enterprises.

Changes to many regulations on major shareholders, meetings, voting and the board of directors, among others, effectively require existing companies to consider revising their charters, internal corporate governance rules and organisations in order to achieve their desired goals in corporate governance.

As the revised Law on Enterprises is new until the state establishes new practices and guidance, companies may encounter more difficulties and confusion in corporate governance and operation.

Coronavirus

45 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

To prevent and reduce the effects of the coronavirus pandemic on the economic and social orders of Vietnam, the prime minister issued Direction No. 11/CT-TTg on 4 March 2020 (Direction 11) to direct the duties and emergency solutions of relevant state authorities to relieve difficulties on manufacturing and social welfare.

The key points of Direction 11 are:

- To direct the State Bank of Vietnam to issue directions, guidance to relieve any difficulties in accessing capital, credit, finance, tax, commerce and e-pay. As a result, the State Bank of Vietnam has issued policies on supporting credit, including reducing the operation interest rates (eg, deposit interest rates, loan interest rates and rediscount interest rates) three times in 2020.
- To direct relevant competent state authorities to review, reduce administrative procedures and costs for corporates, such as reducing the administrative procedures and logistic costs of the Ministry of Transportation, delay the periodic inspections of corporations by tax departments and customs departments without breaching the law.
- To create favourable conditions in manufacturing, enhancing import and export activities and to strictly supervise and inspect trading activities, especially with the trading of essential goods used for prevention of the epidemic, such as masks, hand sanitisers and medical supplies.
- To urgently recover and develop the industries of travel and aviation, to prepare and implement programmes stimulating domestic tourism.
- To accelerate the schedule of performance, disbursement of investment capital and improve the investment environment (eg, accelerate the construction and utilisation of large-scale and important infrastructure, maximising the volume of designs and social-economic efficiency).
- To handle obstacles on employment (eg, plans to support and foster employees, support employees that lost jobs due to the effects of the pandemic, and to manage and use foreign employees).

The National Assembly of Vietnam issued an important legal document (Resolution No. 116/2020/QH14) on 19 June 2020 on the reduction of corporate income tax payable in 2020 (Resolution 116). In accordance with Resolution 116, the corporate income tax payable by corporations with total incomes equal to or less than 200 billion dong in 2020 will be reduced by up to 30 per cent. As a result, around 700,000 companies (around 93% of the total number of companies operating in Vietnam) may be entitled to benefit from this incentive.

New legislation to assist companies and their employees overcome the difficulties during the pandemic, were also issued were effective as of 2020 (eg, Decree No. 41/2020/ND-CP on extending payment of tax and land rent, and Resolution No. 954/2020/UBTVQH14 on increasing the threshold of family deductions for personal income tax).

In addition, the state has proposed a 'Vaccine Passport' programme that would allow people to prove they have received a coronavirus vaccination before entering Vietnam. Such a programme will reduce the duration of the compulsory quarantine persons who enter Vietnam are subject to. The state is also pushing the relevant ministries (eg, the Ministry of Health and the Ministry of Transportation) to develop the programme. Once it is approved and becomes effective, it will be a significant advance in investments and operations returning to normal in Vietnam.

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As the effects of the pandemic have varied over time and by regions in Vietnam, the government introduced flexible policies and measures accordingly. Therefore, enterprises are advised to carefully follow updates regarding guidance and instructions by local authorities and the government.

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