Vietnam

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Sources of corporate governance rules and practices

1 Primary sources of law, regulation and practice

What are the primary sources of law, regulation and practice relating to corporate governance?

The Law on Enterprises (LOE) is the primary source of corporate laws that encompass the establishment, governance and operation of companies in Vietnam. For public companies, which are those made public by the offer of shares, having shares listed on the stock exchange or a securities trading centre or having shares owned by at least 100 investors excluding professional securities investors and having paid-up charter capital of 10 billion dong or more, the Law on Securities (LOS) and the legal guiding documents thereof including Circular 121/2012/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 as committed by Vietnam under the commitments on specific services in accession to the WTO (joint venture companies), Resolution No. 71-2006-QH11 is a source of law relating to corporate governance of joint venture companies.

2 Responsible entities

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

The Ministry of Planning and Investment mainly drafts bills for 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 sector of public companies, whether 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

3 Shareholder powers

What powers do shareholders have to appoint or remove directors or require the board to pursue a particular course of action?

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 total issued shares for a consecutive period of six months or more (major shareholders) unless a lower percentage is set forth in the company's charter (articles 79.2 and 79.4 of LOE). The directors are elected at the shareholders' meeting (article 104.3 (c) of LOE) and may only be removed by a resolution passed by shareholders' meeting (article 96.2 (c) of LOE).

The shareholders' meeting, comprising shareholders with 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 (see question 7). However, a shareholder or a group of shareholders holding shares of the company for at least one year may require the board to stop the implementation of any decision or resolution that has been passed by the board contrary to the laws or the charter of the company (article 108.4 of LOE). Additionally, a shareholder or a group of shareholders holding at least 1 per cent of the total ordinary shares in six consecutive months may have the right to request the supervisory board to claim a director for his or her civil liabilities or directly make such a claim against the director when the supervisory board is not established in the company in certain circumstances (article 25 of Decree 102/2010/ND-CP).

4 Shareholder decisions

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 development strategy of the company (article 96.2.a of the LOE);
- 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, unless otherwise provided for in the company's charter (article 96.2.b of the LOE);
- to elect, remove and dismiss directors of the board and members of the supervisory board (article 96.2.c of the LOE);
- to decide on investment or approve the sale of 50 per cent or more of the total value of assets recorded in the company's latest financial statement unless a different percentage is provided for in the company's charter (article 96.2.d of the LOE);
- to approve contracts or transactions, executed between the company and a related party, as defined under the laws, of 50 per cent or more of the total value of assets recorded in the company's latest financial statement unless a different percentage is provided for in the company's charter (article 120 of LOE);
- to decide on amendment of or supplement to the company's charter, except for changes in the charter capital as a result of additional sale of new shares within the total share capital of the company authorised for sale under the company's charter (article 96.2.dd of the LOE);
- to approve annual financial statements (article 96.2.e of the LOE);

- to decide on redemption of 10 per cent or more of issued shares of each class (article 96.2.g of the LOE);
- to consider and decide on breaches committed by the board of directors or the supervisory board that cause damage to the company and the shareholders (article 96.2.h of the LOE);
- to decide on the restructure or dissolution of the company (article 96.2.i of the LOE); and
- other rights and duties as provided for in the laws and the company's charter (article 96.2.k of the LOE).

Notwithstanding the foregoing, decisions that are subject to the authority of the shareholders' meeting of a joint venture company (defined in question 1) may be regulated differently in the company's charter. Further, additional items that do not fall into the statutory authority of other statutory bodies of the company may be added to the charter to be subject to the resolution of the shareholders' meeting.

5 Disproportionate voting rights

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 79.1.a of LOE). However, the company is permitted to issue shares with preferential votes, which are granted higher votes than that of ordinary shares, provided, however, that only founding shareholders or organisations as authorised by the government may hold shares with preferential votes and, even in such cases, only for a period of three years after the company is established (articles 78.3 and 81 of LOE). Additionally, the company may issue shares with preferential dividends or preferential redemption rights that have no voting right (articles 82 and 83 of LOE). The company may decide on issues of other kinds of preferential shares in accordance with the company's charter (article 78.1.d of LOE).

6 Shareholders' meetings and voting

Are there any special requirements for shareholders to participate in general meetings of shareholders or to vote?

In principle, the company shall not restrict its eligible shareholders from attending the shareholders' meeting (article 6.2 of Circular 121/2012/TT-BTC). Based on the company's register of shareholders at the time of having a decision on convening the shareholders' meeting (article 98.1 of LOE) or based on the cut-off date of the shareholders' list describing the shareholders entitled to attend the shareholders' meeting that is applied to 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 a voting right (as outlined in answers to question 5). Purchasers of shares may participate in the meeting as legitimate shareholders of such shares even if the shares are transferred during the period from the date of completion on forming the shareholders' list to the commencement date of the shareholders' meeting (article 101.5 of LOE).

In cases of related-party transactions that require approval of the shareholders' meeting, the shareholders who have interests in such transactions may not vote on the approval (article 120.3 of LOE). In a similar manner, a founding shareholder may not vote on the approval of his or her transfer of the shares within three years from the issuance date of the investment certificate or enterprise registration certificate of the company (article 84.5 of LOE).

7 Shareholders and the board

Are shareholders able to require meetings of shareholders to be convened, resolutions to be put to shareholders against the wishes of the board or the board to circulate statements by dissident shareholders?

A shareholders' meeting may be convened by major shareholders (as defined in question 3) if the board of directors fails to convene the meeting in accordance with the laws or the company's charter (article 97.5 of LOE). Regardless of who convenes the meeting, the major shareholders may always propose matters to the meeting agenda for discussion unless the procedures or contents of such proposals are contrary to the laws or the company's charter (article 99.2 of LOE). There is no requirement by the laws 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 or 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 certain period of time (articles 105.6 and 106.3 of the LOE).

8 Controlling shareholders' duties

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

Controlling shareholders of a public company are required not to take advantage of damage rights and other benefits of the company and other shareholders (including non-controlling shareholders) (article 29 of LOS and article 4 of Circular 121/2012/TT-BTC). Regardless of the type of company, controlling shareholders are subject to registration with the registration authority (article 86.4 of LOE). A shareholder holding more than 35 per cent of total issued shares will be considered as a 'related party' whose transactions with the company must be approved by the board of directors or general meeting of shareholders, depending on the value of such transactions, which otherwise shall be void and invalid (article 120.1 a of LOE). A corporate shareholder holding more than 50 per cent of total issued 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 as a 'parent company' (article 4.15 of LOE) and be subject to the duties of a parent company under the laws, which include the liability for damages in cases of non-arm's-length transactions undertaken by the company as a result of the shareholder's intervention (article 147 of LOE).

Failure to perform the duties that controlling shareholders owe to the company, will result in such controlling shareholders being subject to administrative penalties, liabilities for occurred damages and further injunctions.

9 Shareholder responsibility

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

Shareholders shall be liable for debts and other property obligations of the company within the capital contributed to the company (article 80.1 of LOE). If a parent company shareholder (as defined in question 8) 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 compensation, such a shareholder shall be liable for damage incurred by the company (article 147 of LOE). In addition, if a shareholder acts in the name of the company to violate the laws or aim for personal gains or third party benefits or make premature repayments of debts when the company is exposed to financial risks, such a shareholder shall be personally held liable even whenacting in the name of the company (article 80.5 of LOE).

Corporate control

10 Anti-takeover devices

Are anti-takeover devices permitted?

Anti-takeover devices are not expressly governed by Vietnamese laws. As a rule of thumb, it is permissible to apply anti-takeover devices or customisation of the company's charter, provided that no statutory rights of shareholders or the board or otherwise are expressly violated. For example, an anti-takeover device in form of preferential share plan is permitted under the laws as part of the right of the company (article 78.2 (d) of LOE), but a super-voting preferential share plan, which is offered to shareholders other than founding shareholders or organisations or offers to anyone after the period of three years from the date on which the company is issued with the investment certificate or enterprise registration certificate, may be held invalid as a breach of laws on shares with preferential voting power (article 78.3 of LOE).

11 Issuance of new shares

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 class of shares must be approved by the shareholders' meeting (article 96.2 (b) of LOE) although the board of directors may decide on an offer of new shares within the authorised number of shares for each class as approved by the shareholders' meeting (article 108.2 (c) of LOE). Existing shareholders are granted pre-emptive rights to acquire newly issued shares in proportion to the shareholding ratio at the time of issuance (article 79.1(c) of LOE). Notwithstanding, 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 its valid resolution (article 5.6 of the Model Charter issued together with Circular 121/2012/TT-BTC), though there is the possibility that the legal validity of such resolution may be practically challenged by the court.

12 Restrictions on the transfer of fully paid shares

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

Except for circumstances as provided for by law, any shares are freely transferable (article 87.5 of LOE), however, the laws do not expressly prohibit the restriction on the transferability of shares. Accordingly, the shareholders of a non-public company or joint venture company may enter a shareholders' agreement to agree on certain restrictions on share transfer, of which validity is still unclear under the laws. On the contrary, the securities laws somewhat regulate that transfer of shares in a public company may be restricted in the company's charter or by a resolution of the shareholders' meeting (article 3.1(a) of Circular 121/2012/TT-BTC).

A number of restrictions expressly described by law include where a founding shareholder transfers its shares to non-existing shareholders of the company, which shall be subject to approval of the general meeting of shareholders within the period of three years from the date of establishment (article 84.5 of LOE) or where shareholders hold shares in a public company that were issued through a private placement where such shares shall be restricted to transfer within the period of at least one year from the date of completion of the private placement (article 10a.2.b of the amended LOS).

13 Compulsory repurchase rules

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

In relation to shareholders, acceptance of share repurchase offer is not compulsory under the laws (article 91.3 of LOE). The procedures and circumstances of share repurchase are expressly provided for in the laws, so it may be illegal to enforce repurchase of any shares without consent of the relevant shareholders. On the contrary, 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 90 of LOE). Additionally, the company may make a share repurchase in respect of 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 83 of LOE).

14 Dissenters' rights

Do shareholders have appraisal rights?

Shareholders who object to the restructuring or changes of the company's charter in respect of the shareholders' rights and obligations may request the company to buy back their shares at a fair value or a price regulated under the company's charter. If the company fails to reach an agreement on the transfer price with such shareholders, the shareholders may transfer such shares to other parties or the company shall introduce at least three professional appraisal firms to enable the shareholders to select one firm and the price appraised by such selected firm should be final and binding upon the parties (article 90 of LOE).

The responsibilities of the board (supervisory)

15 Board structure

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 as to 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 CEO)) separately. With regard to the structure of the board of directors, it needs to balance between executive directors and non-executive directors of which a third of the directors must be non-executive directors (article 11.2 of Circular 121/2012/TT-BTC). Additionally, the board of directors needs to be supplemented with specialist committees (article 32 of Circular 121/2012/TT-BTC). If the company prefers not to establish such committees, independent directors must be assigned such special duties instead (article 32.4 of Circular 121/2012/TT-BTC).

16 Board's legal responsibilities

What are the board's primary legal responsibilities?

Except for the matters reserved for the general meeting of shareholders as mentioned in question 4, the board of directors is primarily in charge of all other matters of the company (article 108.1 of LOE), although certain day-to-day activities and lower level decisions are within the authority of the general director of the company (article 116 of LOE). Meanwhile, the supervisory board is primarily in charge of supervising activities of the board of directors as well as the CEO in management and operation of the company (article 123.1 of LOE).

17 Board obligees

Whom does the board represent and to whom does it 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 108.1 of LOE) and owes legal duties to the company and the shareholders (article 119.1 of LOE and article 14.2 of Circular 121). The board is required to be loyal to the benefits of the company and shareholders, provided that it must, however, show impartial treatment to the shareholders (article 14.3 of Circular 121/2012/TT-BTC).

In respect of the supervisory board, it also owes legal duties to the shareholders' meeting in exercise of the assigned matters (article 123.1 of LOE). Additionally, the supervisory board is required to be loyal to the benefits of the company and shareholders (article 126.3 of LOE).

18 Enforcement action against directors

Can an enforcement action against directors be brought by, or on behalf of, those to whom duties are owed?

Eligible shareholders may request suspension of decisions that have been passed by the board of directors contrary to the laws or the company's charter (article 108.4 of LOE) and even request the supervisory board to, or personally, take legal action against the board of directors for failure of compliance or abuse of power, among other cases (article 25.1 of Decree 102/2010/ND-CP). When the case is brought to the court, temporary injunctive relief or enforcement, or both, may be taken by the courts in accordance with civil procedures. If a director is found to breach his or her duties by the supervisory board, the supervisory board shall immediately notify such a breach in writing to the board of directors and request such a director to cease the act of breach and take proper measures to remedy the consequences (article 123.7 of LOE).

Similarly, where a member of the supervisory board is found to breach the law by the board of directors, the board of directors shall immediately notify such a breach in writing to the supervisory board and request such a member to cease the act of breach as well as take proper measures to remedy the consequences (article 126.6 of LOE). Additionally, in cases where the supervisory board is found to seriously breach its duties that may threaten to cause damages to the company, the shareholders' meeting shall be convened by the board of directors so as to consider removal of the current supervisory board and the election of a new supervisory board as a replacement (article 127.3 of LOE).

19 Care and prudence

Do the board's duties 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 119.1 (b) and 126.2 of LOE).

20 Board member duties

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

The directors of the board and members of the supervisory board have the same duties under the laws, except for the chairman of the board and head of the supervisory board, who are subject to further rights and duties. In addition, if the company is a listed company or a large scale public company, which means a company having at least 120 billion dong of charter capital and 300 shareholders (article 2.2 of Circular 52/2012/TT-BTC), certain directors may be assigned specialist duties according to the resolution of the shareholders' meeting (article 32.1 of Circular 121).

21 Delegation of board responsibilities

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, a part of the duties or responsibilities of the board may be delegated to the general director in accordance with the company's charter (article 116.3 (i) of LOE) and the board committee or dedicated director may be in charge of specific matters such as human resources (see question 25). However, the board of directors is still held liable for such duties assigned to other internal bodies.

22 Non-executive and independent directors

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?

Non-public companies are not required to have non-executive or independent directors under law, whereas at least one-third of the total directors of the board of a public company must be non-executive directors (article 11.2 of Circular 121/2012/TT-BTC). A non-executive director is defined as person who is not the general director, deputy general director, chief accountant or any other executive person as appointed by the company (article 2.2 of Circular 121/2012/TT-BTC).

At least one-third of the total directors of the board of a large public company or listed company as mentioned in question 15, however, must be independent directors (article 30.2 of Circular 121/2012/TT-BTC). A director is considered independent if:

- he or she is a non-executive director and not a related party of the general director, deputy general director, chief accountant or other executive persons as appointed by the company;
- he or she does not hold the position of director of the board, general director or deputy general director of any subsidiary, affiliate or company controlled by such a company;
- he or she is not a major shareholder or a representative of a major shareholder or his or her related party;
- he or she has not previously worked at a legal or auditing firm providing services to the company for the last two years; and
- he or she is not a partner or his or her related party with whom the company has an annual transaction value accounting for 30 per cent of the total revenue or total buying product or service value of the company for the previous two years (article 2.3 of Circular 121/2012/TT-BTC).

There appears to be no statutory difference between non-executive or independent directors and other directors in respect of responsibilities according to the laws except that if the board committee is not established within the board of directors of a large scale public company or listed company, the board of directors shall appoint independent directors to be in charge certain matters individually (article 32.4 of Circular 121/2012/TT-BTC.

23 Board composition

Are there criteria that individual directors or the board as a whole must fulfil? Are there any disclosure requirements relating to board composition?

The following main criteria are required for all the directors of the board:

- to have full civil capacity and are not prohibited from management of companies in general;
- to be a shareholder holding 5 per cent or more shares in the company or to be a non-shareholder who has appropriate experience

or professional knowledge unless otherwise provided for in the company's charter; and
- to be trained in corporate governance at competent institutions for a large scale public company or listed company only as mentioned in question 15 (article 110 of LOE and article 15.3 of Decree 102/2010/ND-CP).

For public companies, any change of the board must be publicly disclosed in accordance with the securities laws (article 8.1.7 of Circular 52/2012/TT-BTC).

In respect of the supervisory board, more than half the members must permanently reside in Vietnam and at least one member must be an accountant or auditor. Members of the supervisory board must be 21 years old or more; have full civil capacity, not be prohibited from the management of companies and not be a related person of directors, the CEO or other managerial persons. In particular, members of the supervisory board must not hold any managerial positions in the company (articles 121.2 and 122 of LOE). Members of the supervisory board of a public company have additional criteria imposed and must have qualifications such as speciality knowledge and expertise or possess accounting knowledge applicable to the head of the supervisory board (articles 18 and 19 of Circular 121/2012/TT-BTC). Like the change of the board of directors, the change in the supervisory board of a public company is subject to a public disclosure obligation in accordance with law.

24 Board leadership

Do law, regulation, listing rules or practice require separation of the functions of board chairman and CEO? If flexibility on board leadership is allowed, what is generally recognised as best practice and what is the common practice?

The chairman of the board of directors and the general director (or CEO) are two separate positions with different powers under the laws, although a single person can simultaneously hold the two positions (article 111.1 of LOE and article 10.3 of Circular 121/2012/TT-BTC). While the chairman of the board is in charge of leading the board of directors, its meetings and decision-making process, the general director is mainly in charge of the day-to-day management of the company and implementation of the board's decisions. The company may select either the board chairman or the general director to act as the legal representative of the company, that is, as responsible for signing and acting for the company in transactions (article 116.1 of LOE). It is common practice in non-public companies for a single person to act as both the chairman and the general director at the same time, whereas, for public companies, the chairman is often a separate person who leads the board and who is different from the general director.

25 Board committees

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

Normal public companies are not required to have any board committee or dedicated director. For a large-scale public company or a listed company, as mentioned in question 15, board committees are only optional. These companies may choose not to form board committees, provided they have dedicated directors for specific matters instead. Default committees available under the laws include committees of development policy, human resources, remuneration and bonuses. Additional committees can be stipulated under the resolution of the shareholders' meeting. The heads of the committee of human resources and committee of remuneration and bonuses, or the two dedicated directors for these matters if no committee is formed, must be independent directors (articles 32 of Circular 121/2012/TT-BTC).

26 Board meetings

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 under the laws (article 112.3 of LOE) although the chairman can convene a board meeting at any time.

In respect of the supervisory board, the law fails to regulate the number of required meetings in a non-public company while such meetings are at least twice per year in a public company (article 21.2 of Circular 121).

27 Board practices

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

Non-public companies are not required for any disclosure of board practices. However, the laws require public companies, regardless of whether they are listed or not, to make a disclosure of the company management, including members of the board, number of meetings, adopted decisions, etc, twice a year (article 7.3.2 of Circular 52/2012/TT-BTC).

28 Remuneration of directors

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 between the company and any director?

Remuneration for directors is determined in accordance with the basis and method as provided for under the company's charter. If the charter does not specify, the directors by default 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, provided that the total remuneration of the board does not exceed the amount as approved by the shareholders' meeting (article 117.2(a) of LOE and article 16 of Circular 121/2012/TT-BTC). There is no specific regulation for service contracts between the directors and the company, but the laws generally deem 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 120 of LOE). For public companies, no loans may be granted to the directors by the company unless approved by the shareholders' meeting (article 23.4 of Circular 121/2012/TT-BTC).

Like the remunerations and benefits given to directors, remunerations and benefits given to members of the supervisory board shall, in principle, be determined based on the company's charter. Otherwise, they shall be decided by the shareholders' meeting (article 125 of LOE and article 22 of Circular 121/2012/TT-BTC). 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 23.4 of Circular 121/2012/TT-BTC).

29 Remuneration of senior management

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 between the company and senior managers?

Aside from the board of directors and the supervisory board, the laws only govern remunerations and other benefits given to the general director and other managerial positions. Accordingly, the

Update and trends

During 2012, in addition to the amendment to the Law on Securities, two important circulars, namely, Circular 52/2012/TT-BTC and Circular 121/2012/TT-BTC, have been issued to provide internal governance regulations and disclosure regulations for public companies. The general regulations of corporate governance for non-public companies have not, however, developed significantly.

The current financial crisis in Vietnam, which has been negatively influencing both the business situation of companies and the Vietnamese economy, has attracted much attention from law-markers, other state authorities and the public. There are many proposals, scenarios, countermeasures and specific actions that have been suggested to mitigate the influence of this financial crisis, however, there appears to have been no definitive or concrete proposal with regard to the issuance of additional governance regulation in the coming period.

In recent observation of a number of shareholders' meetings, it appears that shareholders have become more impatient with the result of their equity investment in companies. Contrasted with the past year, shareholders have been more aggressive in requesting for cash dividend payments rather than in-kind dividend payments from companies. Nevertheless, to help companies survive the financial crisis, as well as protecting shareholders' interests, many shareholders have proposed reducing or giving no remunerations and other monetary benefits to directors of the company during this difficult period.

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 117.2(c) and 108.2 (h) of LOE). Transactions between the company and 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 120 of LOE and article 23.4 of Circular 121/2012/TT-BTC).

30 D&O liability insurance

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

For public companies, D&O liability insurance is expressly regulated under the laws, premiums of which can be paid by the company itself if so determined by the shareholders' meeting, provided that such a policy does not cover liability arising from breaches of laws or the company's charter (article 13.6 of Circular 121/2012/TT-BTC). For non-public companies, D&O liability insurance is not regulated by the laws and it is not a very common practice that D&O liability insurance is purchased by the company for its directors.

31 Indemnification of directors and officers

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 and unified legislation is made in respect of indemnities made by the company for the directors and officers for such liabilities. However, under the model charter 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, provided that they have not committed any breach of law or company's charter or in their other duties and obligations. Additionally, it appears to be possible that the charter of a non-public company may include provisions on the said indemnities considering a general rule of Vietnamese law in tortious cases where the company is required to compensate for any damage caused by the company's person (including where such a person is a director or officer) during the performance of duties assigned by it to such a person (article 618 of the Civil Code).

32 Exculpation of directors and officers

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

The laws by default hold the directors, general director and supervisory board liable for certain acts or omissions, such as failure to comply with the law, charter or the resolutions of the shareholders' meeting. However, to the extent that it is a civil liability in nature, it may be possible for the shareholders' meeting, as the highest authority in the company, to preclude, limit or waive such liability in relation to the company, although the courts may practically hold a different viewpoint. For criminal liabilities, however, it cannot be limited or waived by private subjects such as the companies or shareholders.

33 Employees

What role do employees play in corporate governance?

The 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.

Disclosure and transparency

34 Corporate charter and by-laws

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

A public company is required by law, within six months from becoming public, to have its charter, internal management rules, prospectus, among others, disclosed on its official website in the shareholders section (article 4.3 of Circular 52/2012/TT-BTC). Non-public companies are not required to make such a disclosure, though filing the information to the competent state authority is required.

35 Company information

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

The laws provide for two kinds of disclosure for public companies, namely, regular and extraordinary disclosures. Regular disclosure includes the disclosure of audited financial statements, annual reports, six-monthly internal management reports and general meetings of shareholders. Extraordinary disclosure includes the disclosure of any important event, including close-down of the company, decisions of share buyback, decisions of new share issuance, decisions of dividend distributions, any change in the senior management, among others. In certain circumstances, such as any event that may have material effects on the shareholders' benefits, public companies may be requested by the authorities to make disclosures. (chapter II of Circular 52/2012/TT-BTC)

For non-public companies, Vietnamese laws also require certain public disclosure on enterprise registration information in relation to establishment, registration for change in the enterprise registration or dissolution (article 1.2 of Decree 05/2013/ND-CP and article 28 of the LOE).

Hot topics

36 Say-on-pay

Do shareholders have an advisory or other vote regarding executive remuneration? 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 117.2.a and 125.1 of LOE). The board of directors shall then make specific decisions of remuneration and bonuses according to such resolutions. The exact power may be customised in the company's charter. There is no say-on-pay vote in Vietnamese laws although it is not explicitly prohibited.

37 Proxy solicitation

Do shareholders have the ability to nominate directors without incurring the expense of proxy solicitation?

A shareholder or a group of shareholders in a joint-stock company may nominate directors for the board if they have held at least 10 per cent of total issued shares for a consecutive period of six months or more unless a lower percentage is set forth in the company's charter (articles 79.2 and 79.4 of LOE). Therefore, unless a shareholder holds a minimum ratio of shareholding giving the power to nominate directors, such a shareholder must solicit proxy voting in order to exercise such a right.

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