



THE WORLD BANK

# Report on the Observance of Standards and Codes (ROSC)

Corporate Governance

## Corporate Governance Country Assessment

Vietnam

June 2006

# Overview of the Corporate Governance ROSC Program

## WHAT IS CORPORATE GOVERNANCE?

Corporate governance refers to the structures and processes for the direction and control of companies. Corporate governance concerns the relationships among the management, Board of Directors, controlling shareholders, minority shareholders and other stakeholders. Good corporate governance contributes to sustainable economic development by enhancing the performance of companies and increasing their access to outside capital.

The *OECD Principles of Corporate Governance* provide the framework for the work of the World Bank Group in this area, identifying the key practical issues: the rights and equitable treatment of shareholders and other financial stakeholders, the role of non-financial stakeholders, disclosure and transparency, and the responsibilities of the Board of Directors.

## WHY IS CORPORATE GOVERNANCE IMPORTANT?

For emerging market countries, improving corporate governance can serve a number of important public policy objectives. Good corporate governance reduces emerging market vulnerability to financial crises, reinforces property rights, reduces transaction costs and the cost of capital, and leads to capital market development. Weak corporate governance frameworks reduce investor confidence, and can discourage outside investment. Also, as pension funds continue to invest more in equity markets, good corporate governance is crucial for preserving retirement savings. Over the past several years, the importance of corporate governance has been highlighted by an increasing body of academic research.

Studies have shown that good corporate governance practices have led to significant increases in economic value added (EVA) of firms, higher productivity, and lower risk of systemic financial failures for countries.

## THE CORPORATE GOVERNANCE ROSC ASSESSMENTS

Corporate governance has been adopted as one of twelve core best-practice standards by the international financial community. The World Bank is the assessor for the application of the OECD Principles of Corporate Governance. Its assessments are part of the World Bank and International Monetary Fund (IMF) program on Reports on the Observance of Standards and Codes (ROSC).

The goal of the ROSC initiative is to identify weaknesses that may contribute to a country's economic and financial vulnerability. Each Corporate Governance ROSC assessment reviews the legal and regulatory framework, as well as practices and compliance of listed firms, and assesses the framework relative to an internationally accepted benchmark.

- Corporate governance frameworks are benchmarked against the OECD Principles of Corporate Governance.
- Country participation in the assessment process, and the publication of the final report, are voluntary.
- The assessments focus on the corporate governance of companies listed on stock exchanges. At the request of policymakers, the ROSCs can also include special policy focuses on specific sectors (for example, banks, other financial institutions, or state-owned enterprises).
- The assessments are standardized and systematic, and include policy recommendations. In response, many countries have initiated legal, regulatory and institutional corporate governance reforms.
- Assessments can be updated to measure progress over time.

By the end of June 2005, 48 assessments had been completed in 40 countries around the world.

# REPORT ON THE OBSERVANCE OF STANDARDS AND CODES (ROSC)

## Corporate governance country assessment

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### Executive Summary

This report provides an assessment of Vietnam's corporate governance framework – its laws and regulations, supervisory and enforcement mechanisms, and the market environment, with particular attention to the securities markets. The report highlights the key issues, a summary of observance of OECD Corporate Governance Principles, and recommendations for change.

**Key Issues:** The framework for corporate governance in Vietnam is in the early stages of development, with laws and regulations being established. A high degree of informality still exists in the corporate sector, with an unofficial securities market that is significantly larger than the formal market, and there remains a large presence of state ownership in enterprises. Institutions responsible for regulation, enforcement, and development of the capital market have limited capacity and resources. Among other key issues: investor protection is inadequate, related-party transactions are pervasive, compliance with accounting standards is insufficient, and disclosures of quality information are limited.

**Recommendations:** Going forward, Vietnam faces significant challenges in the development of its capital market and promotion of good corporate governance. The report identifies key measures that should be taken, including the following:

- Strengthening the role and capacity of the securities market regulator;
- Setting the framework and standards that apply to the informal securities market;
- Issuing guidelines for implementation of laws and regulations, including a code of corporate governance for listed firms;
- Bolstering enforcement of regulatory compliance;
- Building awareness and training of corporate directors in corporate governance issues; and
- Encouraging better quality, timeliness, and access to information.

## **Acknowledgements**

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The assessment reflects technical discussions with SSC and other stakeholders in May 2006.

The ROSC assessment for Vietnam was cleared for publication by the State Securities Commission in November 2006.

## Foreword

Good corporate governance is essential for promoting healthy economic growth. Corporate governance is the set of relationships among a company's management, its board of directors, its shareholders and its other stakeholders that shapes the company's direction and control. These relationships are determined in part by the laws and regulations, history, and culture of the country in which the company is located. Good corporate governance enhances the performance of companies, increasing their access to outside capital at lower costs. By adding value to companies and better managing risks, good corporate governance contributes to the promotion of sustainable investment and development.

This report provides a benchmark for Vietnam's observance of corporate governance practices against the OECD Principles of Corporate Governance. It describes current practice and provides policy recommendations in six areas: (i) corporate governance framework; (ii) rights of shareholders; (iii) equitable treatment of shareholders; (iv) role of stakeholders in corporate governance; (v) disclosure and transparency; and (vi) responsibilities of the Board.

The report shows that Vietnam has recently taken important steps to establish its corporate governance framework. There remain, however, some significant challenges moving forward. These include ensuring implementation of recent legislative changes, strengthening the capacity of the securities regulator, improving enforcement of regulatory compliance, setting the framework and standards for the informal securities market, promoting awareness and training of corporate directors on corporate governance, and encouraging better quality, timely, and accessible information.

The recent progress that has been made provides a strong foundation upon which these next steps in the reform agenda can be taken. We are pleased to note that work is already underway to address those areas in the continuing efforts to improve and develop a strong corporate governance culture and framework in Vietnam.

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## Country assessment: Vietnam

This ROSC assessment benchmarks Vietnam's corporate governance legal and regulatory framework and practices against the OECD Principles of Corporate Governance. It focuses on listed companies but is also relevant to non-listed companies.

### Market profile

#### *General statement on corporate governance*

The legal framework and institutional foundation for the capital markets in Vietnam are in the early stage of development. The legal framework for corporate governance has been introduced in the Law on Enterprises (LOE, 2005), the Model Charter 2002, and the Law on Securities 2006, approved by the National Assembly on June 23, 2006. However, Vietnam faces significant challenges in implementing these laws and strengthening those institutions responsible for regulation, enforcement, and development of its capital market and promotion of good corporate governance.

#### *Capital market overview*

The Vietnamese capital market has only started to develop in the last few years. The country's first security exchange was established in July 2000 in Ho Chi Minh City. As of mid-June 2006, 47 companies were listed in the Ho Chi Minh City Securities Trading Center (HOSTC) and in the Hanoi Securities Trading Center (HASTC). As of June 2006, shares of 47 listed companies were traded with a total market capitalization of US\$ 1.8 billions, amounting to approximately 3 percent of 2005 GDP. Listed companies are predominantly equitized<sup>1</sup> state-owned enterprises (SOEs), in which the State owns 26 percent, on average, and foreign institutional investors 17 percent, on average.<sup>2</sup> As of March 2006, there were more than 15 foreign and 5 domestic mutual funds operating in Vietnam. A large number of shares of about 5,000 joint stock companies (JSC) (4,000 in Ho Chi Minh [HCM] City and 1,000 in Hanoi) and 36 joint stock commercial banks (JSCBs) are traded on the unofficial market.<sup>3</sup>

#### *Corporate legal framework*

The legal and regulatory framework for the capital market is being established. LOE 2005 will only become effective on July 1, 2006. The Law on Securities approved by the National Assembly in June 2006 and will take effect on January 1, 2007. Effective July 01, 2006, all corporations regardless of the structure of their ownership (business enterprises, state-owned enterprises, foreign-owned enterprises [FIEs], limited liability companies [LLCs] and joint stock companies) will be governed by the single Law on Enterprises 2005. However, specific regulations relating to SOEs and FIEs still remain in force, as provided for by law and implementing policy. As of May 2006, the numbers of enterprises are estimated as follows: 3,200 state-owned enterprises, 5,000 foreign invested enterprises, 200,000 companies and sole proprietorships, 15,000 cooperatives, as well as 2.9 million household businesses operating in service and industry and 10 million farm households conducting business.

#### *Securities legal*

Until very recently, when the new Securities Law was passed (June 23, 2006), the

<sup>1</sup> Equitized SOEs means those SOEs that have been transferred to private shareholder owners.

<sup>2</sup> The number of retail investors who hold trading account is currently estimated to be 50,000.

<sup>3</sup> The size of the unofficial market is estimated to be four times the size of listed market.

*framework*

Governmental Decree 144/2003/ND-CP and its implementing regulations (circulars, decisions, standards, and other rules) formed the specific part of legislation governing the issuance and trading of securities and the stock exchange. The Law on Enterprises and the Law on Accounting and Auditing also have jurisdiction over listed companies. The issuance of government bonds, local administration bonds, securities of credit institutions, and shares of equitized SOEs and shares of FIEs that are in the process of transformation to JSCs do not fall within the scope of the old legislation. The issuance of bonds of SOEs is regulated under the Decree 52/2006/ND-CP dated May 19, 2006. However, public offering of credit institutions, shares of FIEs, and bonds of SOEs do fall under the new Securities Law 2006.

*Securities regulator*

The State Securities Commission (SSC) is the securities regulator. The Ho Chi Minh City Securities Trading Center and the Hanoi Securities Trading Center are responsible for providing the trading platform and monitoring trading in corporate securities. SSC was set up in 1996 initially as a government agency reporting directly to the Prime Minister. It was reorganized in 2004 into an agency under the authority of the Ministry of Finance (MOF). The Securities Trading Centers (STCs) in HCM City and Hanoi (HOSTC and HASTC) are organized as not-for-profit entities, under the oversight of SSC. There is no cross-listing of shares between HOSTC and HASTC. SSC, HOSTC, and HASTC all have monitoring functions over the trading of listed securities and their issuers. However, the scope of monitoring responsibilities among the entities is not currently clear. A Central Depository was established in May 2006. Joint Stock Commercial Banks (JSCBs) and credit organizations are regulated by the State Bank of Vietnam (SBV); insurance companies are under the oversight of the MOF.

## Key issues

The following section highlights key observations of the principle-by-principle assessment of Vietnam's compliance with the OECD Principles of Corporate Governance.

### Investor protection

*Basic shareholder rights are provided under the new law*

Basic shareholder rights are provided under the LOE 2005, to become effective on July 1, 2006. Ordinary shareholders have the right to attend general shareholder meetings (GSMs); there are, however, certain restrictions on their participation. Significant decisions require 65 percent shareholder approval. Ordinary shareholders have preemptive rights. A major sale of company assets requires approval at an extraordinary shareholder meeting.

*Transferability of shares*

The record in the shareholder registration book kept by the company is the prima facie proof of ownership for the shareholders. Shares are, in principle, freely transferable. In practice, the management of some companies, particularly non-listed companies, can make the transfer of shares difficult or block/hinder the registration of the new shareholders in the shareholder registration book. However, the transferability of shares in listed companies is ensured by under the law and the proceedings for registration in the shareholder registration book has been carried out by the Vietnam Securities Depository Center since May 2006 (previously, this function was performed by the trading centers, HOSTC and HASTC).

*There are certain*

Shareholders who own at least 10 percent of the company have the right to

*restrictions for the conduct of shareholder meetings*

propose an item for the agenda of the meeting. Notice of a shareholder meeting is given only 7 days in advance of the meeting.

*Limited takeover rules are provided, but rules on private offerings outside STCs are unclear*

Thus far, no hostile takeovers have been reported in Vietnam. A mandatory tender offer is triggered when the 25 percent threshold is crossed. The law is silent on legal requirements for private offerings. This is expected to be addressed through issuance of implementing guidelines of LOE 2005.

*Related-party transactions are common*

The LOE 2005 has introduced provisions on related party transactions and conflicts of interest. The implementing guidelines, however, have not yet been issued. Transactions valued at more than 50 percent of company assets require shareholders' approval. The current disclosure requirements on related-party transactions are not consistent with International Accounting Standards (IAS) 24.

*Enforcement of insider trading rules is weak*

The Securities Law 2006 and the LOE 2005 provide the basic rules prohibiting trades based on material information that would impact share prices. However, the enforcement of these rules has not yet started. There are no criminal provisions in the Penal Code 1999 related to insider trading. The SSC and STCs do not have the skills or resources to effectively monitor such transactions.

### **Disclosure**

*Vietnam is in the process of upgrading its accounting and auditing standards*

Vietnamese accounting standards are being developed and issued consistent with International Financial Reporting Standards (IFRS). These standards have the force of law, decrees, and circulars. Compliance with these standards, however, remains a major challenge. There are differences in the reporting requirements for various types of companies. Electronic reporting is not allowed. Disclosures are not adequate or timely.

*Public oversight of quality control of auditors is not sufficient*

The existing institutional arrangement for ensuring quality control of auditors is not adequate.

*Quality of disclosure*

Quality of disclosure in the annual reports of listed companies is not adequate and is not in compliance with OECD non-financial disclosure requirements. With respect to non-listed companies, only a small number of the companies fulfill the obligation to report to the business registrar. Enforcement in case of non-compliance is weak. The quality of disclosure is low.

*Disclosure of conflicts of interest by brokers is inadequate*

There are no regulations governing conflicts of interest or the relationship between investment companies, banks, brokers, and rating agencies.

### **Enforcement**

*An effective corporate governance framework is yet to be established*

Under the recently approved Law on Securities 2006, the SSC is not an independent securities regulator. It lacks the authority and required resources to act as an effective securities regulator. Enforcement actions by regulators have been rare, and have not gone beyond the issuance of notices. Currently, the STCs operate practically as departments within the SSC. The informal market is not regulated, and the quality of information for those companies trading in the informal market is poor.

*Shareholders redress is limited*

The new LOE 2005 introduced, in principle, the right of shareholders to request the economic court to overturn GSM decisions. However, shareholders can not sue directors in joint stock companies, based on the rule that the company shall bear the cost of the lawsuit. Shareholders cannot file suit against directors in the form of class action and derivative actions, which have not yet been introduced in Vietnam.

*SSC and the STCs have limited capacity for oversight of listed companies*

The regulatory agency does not have the resources to conduct effective monitoring and oversight; during the last few years, the SSC has concentrated on market development, not enforcement issues. The STCs are currently trading platforms and are governed as departments of the SSC. The STCs are not self regulatory organizations (SROs). Under the Securities Law 2006, to be effective in 2007, the STCs will become SROs and are expected to have the power to promulgate, organize, manage, and supervise regulations on securities listing, securities trading, information disclosure, and membership in a Securities Trading Center or Stock Exchange upon approval of the State Securities Commission.

*Independence and weaknesses of the judiciary*

The independence of the judiciary is limited, and political influence in court decisions remains persistent, particularly in equitized JSCs, in which the State still holds a significant percentage of shares. In these instances, it may be difficult for minority shareholders to protect their rights against abuse by the majority shareholder or executives/directors through the court system.

### **Company oversight and the board**

*Board oversight and internal monitoring mechanisms are weak*

The internal governance structure of a company in Vietnam consists of the GSM, and the board of directors (locally called board of management, or *hoi dong quan tri*); the latter appoints one person to act as general director, who may represent the company, if not otherwise stipulated by the company's charter. In a company with more than 11 shareholders or with one institutional shareholder holding more than 50 percent of total shares, a control committee is appointed by the GSM. The control committee should have no less than 3 and no more than 5 members, which are appointed by the GSM for a term no more than 5 years, if not otherwise stipulated by the company's charter. The basic function of the control committee is to monitor the activities of the board of directors and of the general director, to approve the annual and half-year financial report, to inspect the company books if requested by the shareholders, and to request the board of directors to call an extraordinary shareholder meeting if wrongdoings by the directors are detected.

In practice, however, the boards are often dominated by the majority shareholders, which are represented either by the Chairman or the CEO. Generally, control committees are not effective. Companies seldom have a code of ethics. Whistleblower protection is not provided under the law.

*The concept of non-executive directors is new*

While non-executive directors are required for listed companies, the law does not define clearly who is a non-executive director.

*Board committees are not required*

The role of non-executive directors is not clear. The role of the control committees falls well short of the responsibilities of audit committees. Although some listed companies have established remuneration, nomination, or strategic planning subcommittees, subordinated committees of the board are not common.

## Recommendations

### Legislative and Regulatory Changes

#### High priority

*Strengthen the role of SSC and clarify the roles of STCs*

The role of SSC as the securities regulator needs to be strengthened and its operations need to be reorganized in line with its expanded responsibilities under the new Law on Securities and LOE 2005. The SSC should have the legal status to act independently as a regulator, or at least be operationally independent, with clear powers, objectives, and accountabilities. This is reported to be under consideration under the next five year strategy.<sup>4</sup> Knowledge and skills of SSC staff need to be enhanced. Inconsistencies and conflicts in laws and regulations that impede the effectiveness of the SSC, such as Decree 161 on administrative sanctions, should be removed. The STCs need to be upgraded to stock exchanges (currently HOSTC does not even have the authority to approve new listings). The legal forms and roles of the STCs need to be clarified and upgraded to SROs.<sup>5</sup>

*Establish investor protections and the promotion of market integrity as the two primary goals of SSC*

SSC's mission statement should include the protection of investors in both official and unofficial markets, foster market integrity, and make the investment environment more transparent. The SSC should promote disclosure and transparency not only in listed companies but also in non-listed public companies, albeit, perhaps, at different levels as far as public companies are concerned.

*Set up an appropriate regulatory framework for the informal market*

At present, there is no regulation governing the informal market. While the informal market is important for growth, a suitable regulatory framework needs to be put in place to create incentives for the companies that are present in the informal market to come into the regulatory net (i.e., tax incentives, less stringent reporting requirements).

*Broaden the definition of public offerings to enhance protections for minority shareholders*

The definition of public companies, as provided for under the Law on Securities 2006, is narrow and does not cover the securities offered to the public by the SOEs in equitization process.<sup>6</sup> Therefore, the definition of public companies should be broadened to include all types of securities offered to the public at large, whether or not they are listed on a STC.

*Enhance the quality of information submitted by making the management /supervisory boards responsible*

Regulatory institutions (SSC, MOF, STCs in Hanoi and HCM City) should require that the information released by public companies, starting with the annual report, be reviewed and audited by an independent, competent, and qualified auditor. The Chairperson of the Board of Directors should sign off on all reports.

*Provide guidelines to improve quality of information by prescribing*

Comprehensive guidelines on the implementation of Vietnamese Accounting Standards (VAS) should be issued to avoid varying interpretations and differences in practices. This is imperative to ensure the consistent application of standards

<sup>4</sup> The strategy states that the Government will implement the IOSCO principles of securities regulation, which includes operational independence and clarity of powers, objectives and accountabilities of the regulatory agency (principles 1, 2, 3). Ministry of Finance Decision No. 898/QD-BTC of February 20, 2006, "On the Promulgation of 2006-2010 Vietnam Securities Market Development Plan."

<sup>5</sup> Under the Vietnam 2005-2010 capital market plan, the HSCT is planned to be converted to a Stock Exchange in 2007.

<sup>6</sup> Under Article 7 of the Law on Securities 2006, Public companies means an issuer that: i) carries out a securities public offering; or ii) has securities listed in the Stock Exchanges, Securities Trading Centers; or iii) has securities owned by over 100 investors (excluding professional securities investment institutions) and has the paid-in capital of at least VND 10 billion.

<i>consistency of interpretation</i>	and improve the quality of financial information.
<i>Improve compliance with VAS and its comparability with IFRS</i>	VAS should be continuously updated to be compatible with IFRS. While new accounting and auditing standards consistent with international standards have been issued, there is a wide gap between those standards and their implementation.
<i>Improve rules on conflicts of interest and related-party transactions</i>	Rules on disclosure regarding conflicts of interest need to be strengthened. For example, disclosure rules with respect to related-party transactions in Vietnam need to be tightened and made coherent across various rules and regulations. Also, the definition of related party is broader under IAS 24.9 than under § 4.14 LOE 2005. Also, management compensation is defined much more broadly under IAS 24.16 than under VAS. The rules concerning conflicts of interest for brokerage firms also need to be improved and strictly enforced.
<i>Promote independent directors on the board and strengthen the role of control committees</i>	The Code of Corporate Governance should clarify the duties and responsibilities of board members, introduce and define the concept of independent directors, mandate that listed companies should have a minimum number of such directors, and provide guidelines with regard to their qualifications and nomination procedures. Board members should not be allowed to serve on more than a limited number of company boards. Efforts should be expended to strengthen the role of control committees to include oversight of financial reporting process and internal control system. The members of control committee should all be independent directors with adequate qualifications.
<b>Medium priority</b>	
<i>Encourage shareholders' participation in GSM</i>	Voting by proxy should be encouraged, and shareholders should be allowed to elect proxies through electronic devices. The 7-day notice for GSM is too short and needs to be increased to one month.
<i>Lower the percentage of shares required to nominate a board member</i>	Consider lowering the minimum 10 percent ownership threshold to nominate a member of the board. <sup>7</sup>
<i>Strengthen reporting standards for non-listed companies</i>	The SSC should make compliance with disclosure standards a high priority. Establishment of an office of Chief Accountant would be a positive step in that direction.
<i>Make audits compulsory for a greater number of companies</i>	The Government should consider making statutory audit compulsory for all large companies. Audit should be compulsory when the company's net asset value or the number of shareholders exceeds a specific threshold. In the short term, all JSCs shares, which are quoted on the regulated or unregulated markets with a certain minimum number of shareholders should be required to be audited.
<i>Authorize electronic reporting to facilitate access to information by the public</i>	The Government should consider making electronic reporting an acceptable alternative, rather than prescribing paper reports. The publication of financial reports and GSM minutes on a company's website should be made compulsory for all companies. Filing of electronic data should be made compulsory so that

<sup>7</sup> Cumulative voting was introduced by §104 III.c. LOE 2005 to protect minority shareholders in JSCs.

the public can access the information at low cost.

*Introduce performance-enhancing mechanisms*

Performance-enhancing mechanisms should be allowed and promoted. Such mechanisms align the interests of senior executives and management of the company with those of their shareholders, and provide incentives for the former to perform. Such schemes should be approved by shareholders. No member of the board or the CEO should be involved in deciding on his/her own remuneration. A remuneration committee comprising non-executive members under the Board of Directors should be set up.

***Institutional Strengthening***

***High Priority***

*Improve enforcement*

While rules on corporate governance have been issued under the Model Charter 2002, no sanction has been imposed by SSC for the violation of such rules.<sup>8</sup> For example, no enforcement action was reported to be taken by SSC in 2005 against listed companies, as the emphasis was on market development. With the LOE 2005 becoming effective and the Securities Law being approved by the National Assembly on June 23, 2006, greater effort should be expended on enforcement.

*Coordinate the efforts of public sector institutions in promoting corporate governance reforms*

The SSC should assume a leading role in promoting corporate governance. The efforts of MOF, the SSC, SBV, the Ministry of Public Investment (MPI), Vietnam Chamber of Commerce and Industry (VCCI), State Capital Investment Corporation (SCIC), supervising Line Ministries of SOEs, and the National Steering Committee for Enterprise Reform and Development (NSCERD) need to be synchronized, avoiding duplications of responsibilities. It is recommended that a high-level committee consisting of relevant institutions be set up to promote corporate governance.

*Improve quality control of auditors*

An annual audit of public companies should be conducted by an independent, competent, and qualified auditor. The MOF should consider tightening the quality control standards of auditors of public companies.

*Code of corporate governance*

A code of good corporate governance for listed companies should be developed in consultation with the stakeholders. Compliance with such a code could be either mandatory or voluntary using comply or explain approach.

*Strengthen capacity and independence of SSC*

SSC's technical capacity and effectiveness need to be strengthened through training and provision of additional resources. Consistent with internal good practices, the Government should, in the medium term, aim to set up the SSC as an independent commission, consisting of independent commissioners and endowed with all the powers of a modern securities commission, with full operational autonomy coupled with clear accountabilities. As an independent commission, SSC should not be subordinated to the MOF, in order to avoid political intervention, particularly due to the fact that MOF is the authority in charge of supervising the financial status of large SOEs and other state-run conglomerates.<sup>9</sup> As mentioned previously, the independence of the SSC is under

<sup>8</sup> The role of enforcement on improving stock market development is an issue of debate. For example, some recent academic literature found little evidence that public enforcement benefits stock markets, but there are strong evidence that laws mandating disclosure and facilitating private enforcement through liability rules benefit stock markets. LaPorta, Rafael, and Florencio Lopez-de-Silanes, Andrei Shleifer, "What Works in Securities Laws?" NBER Working Paper No. 9882, August 2003, <http://www.nber.org/papers/w9882>.

<sup>9</sup> As was mentioned previously, the independence of the SSC is under consideration in the coming five-year strategy. However, at this early stage of market development, the Government feels it is appropriate to have the backing of the MOF for the SSC to bolster its

consideration in the coming five-year strategy. However, at this early stage of market development, the Government feels it is appropriate to have the backing of the MOF for the SSC to bolster its authority to promulgate and enforce regulations.

*Delegate adequate powers to the Securities Trading Centers*

At present, the STCs in HCM and Hanoi are under SSC and operate as administrative agencies. SSC should delegate the monitoring of trading activities and approval of new listings to the STCs. In order to develop the market, STCs should be allowed to be demutualized and operate as SROs. While activities of these exchanges should be regulated by SSC, they should also be granted a self-regulatory status with respect to certain operational activities. Additionally, these exchanges should be professionally managed.

*Establish a unified company registry*

Along with the ongoing effort to unify the three laws governing SOEs, FIEs, and domestic private enterprises under LOE 2005, it is important to establish a centralized system of company registries. This registry institution should have the duty to provide the public with financial and corporate governance information for all companies.

*Strengthen the Association of Practicing Auditors*

The capacity of the newly established Association of Practicing Auditors needs to be strengthened. Its first responsibility should be to monitor auditors' observance of standards and compliance with the code of ethics. The association should be equipped with appropriate authority and resources to conduct reviews of auditors' work and sanction them if and when appropriate.

*Shareholders associations should play a greater role in the monitoring of public companies*

Establishment of associations of investors to play a greater monitoring role in the governance of public companies should be encouraged.

### **Private Sector Initiatives**

#### **High priority**

*Priority should be given to providing training for corporate directors*

Private sector initiatives in the area of corporate governance, with the support of research institutions, universities, business associations, chambers of commerce, and the press are important. A priority should be to promote and expand the training program developed by the Academy of Finance for directors and managers of listed companies. Directors and managers of listed companies should be required to attend and complete the training course. Further efforts should be required to establish an Institute of Directors, and to develop and promote investor associations, shareholder activism, and associations of listed companies.

*Enhance auditors' independence from management's undue pressure*

The external auditor appointment process should be strengthened to ensure the independence of auditors. In line with international good practices, management should not be authorized to appoint auditors. Representatives from the Board of Directors and/or Supervisory Board, or the Control Committee, should be those who select the auditor and sign off the audit contract/engagement letter.

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authority to promulgate and enforce regulations.

## Summary of Observance of OECD Corporate Governance Principles

Principle	O	LO	PO	MO	NO	Comment
<b>I. ENSURING THE BASIS FOR AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK</b>						
IA Overall corporate governance framework				✓		• Rapidly evolving corporate governance framework
IB Legal framework enforceable/transparent				✓		• New Securities Law (2006), effective in 2007
IC Clear division of regulatory responsibilities			✓			• Clear division of responsibilities
ID Regulatory authority, integrity, resources				✓		• SSC and STCs have limited capacity
<b>II. THE RIGHTS OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS</b>						
IIA Basic shareholder rights			✓			• Basic rights in place
IIB Rights to participate in fundamental decisions			✓			• Fundamental decisions made w/ 65% majority
IIC Shareholders AGM rights			✓			• Advance notice period of 7 days
IID Disproportionate control disclosure			✓			• Ownership disclosure required
IIE Control arrangements allowed to function				✓		• Mandatory tender offer rule at 25%
IIF Exercise of ownership rights facilitated				✓		• No requirements in place
IIG Shareholders allowed to consult each other			✓			• No legal obstacles to consultation
<b>III. EQUITABLE TREATMENT OF SHAREHOLDERS</b>						
IIIA All shareholders should be treated equally				✓		• Limited protection of minority shareholders, limited redress
IIIB Prohibit insider trading				✓		• Weak insider trading rules, no enforcement
IIIC Board/managers disclose interests				✓		• Prevalent related-party transactions
<b>IV. ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE</b>						
IVA Legal rights of stakeholders respected			✓			• Limited awareness of corporate social responsibility
IVB Stakeholder redress			✓			• Access by stakeholders to legal process
IVC Performance-enhancing mechanisms			✓			• Practice becoming more common
IVD Stakeholder disclosure				✓		• Limited access by stakeholders, low compliance
IVE Whistleblower protection				✓		• Limited whistleblower protection
IVF Creditor rights law and enforcement				✓		• Weak legal rights, creditors rarely use their rights
<b>V. DISCLOSURE AND TRANSPARENCY</b>						
VA Disclosure standards				✓		• Weak disclosure requirements and enforcement
VB Standards of accounting and audit			✓			• Improving accounting standards and compliance
VC Independent audit annually			✓			• VSA compatible to ISA
VD External auditors should be accountable				✓		• Limited accountability, no lawsuits
VE Fair and timely dissemination			✓			• Few information channels available
VF Research conflicts of interests				✓		• No specific provisions
<b>VI. RESPONSIBILITIES OF THE BOARD</b>						
VIA Act with due diligence, care			✓			• Fiduciary duties provided in law
VIB Treat all shareholders fairly				✓		• Weak compliance
VIC Apply high ethical standards				✓		• Code of ethics not common
VID Fulfill certain key functions				✓		• Directors' training in early stage
VIE Exercise objective judgment				✓		• Directors' independence a new concept
VIF Provide access to information			✓			• Legal access available to board members



## Principle - By - Principle Review of Corporate Governance

This section assesses Vietnam's compliance with each of the OECD Principles of Corporate Governance. Policy recommendations may be offered if a Principle is less than fully observed. **Observed** means that all essential criteria are met without significant deficiencies. **Largely observed** means only minor shortcomings are observed, which do not raise questions about the authorities' ability and intent to achieve full observance in the short term. **Partially observed** means that while the legal and regulatory framework complies with the Principle, practices and enforcement diverge. **Materially not observed** means that, despite progress, shortcomings are sufficient to raise doubts about the authorities' ability to achieve observance. **Not observed** means no substantive progress toward observance has been achieved.

### SECTION I: ENSURING THE BASIS FOR AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK

The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law, and clearly articulate the division of responsibilities among different supervisory, regulatory, and enforcement authorities.

**Principle IA: The corporate governance framework should be developed with a view to its impact on overall economic performance, market integrity, and the incentives it creates for market participants and the promotion of transparent and efficient markets.**

**Assessment: Materially not observed**

**General statement on corporate governance.** As of May 2006, the legal, regulatory, and institutional frameworks for capital markets were still in the development stage. Corporate governance provisions have been introduced in the Law on Enterprises 2005 and the Model Charter 2002. The LOE 2005 is expected to go into effect on July 1, 2006. A Securities Law was approved by the National Assembly on June 23, 2006. Going forward, Vietnam faces significant challenges in implementing these laws and strengthening the institutions responsible for regulation, enforcement, and development of its capital market, and for promotion of good corporate governance.

Awareness of corporate governance issues among market participants is weak. The quality of financial reporting and level of disclosures for listed companies, and particularly non-listed JSCs, and SOEs is not adequate. Institutions responsible for promoting good corporate governance either do not exist or are weak. For example, professional institutions are just being established. A great deal of effort will be required to create a business culture that promotes accountable, responsible, fair, and transparent practices.

**Capital markets overview.** The domestic capital market began to develop a few years ago, when the country moved toward a more market-oriented economy. Currently, there are two trading centers operating in Vietnam. The first stock exchange, the Ho Chi Minh City Securities Trading Center (HOSTC), was established in July 2000. As of June 2006, the shares of 36 companies are traded on the HOSTC.<sup>10</sup> In June 2005, the Hanoi Securities Trading Center (HASTC) started trading securities. There are currently 11 companies traded in the Hanoi Securities Trading Center. As of June 2006, total market capitalization of HOSTC and HASTC was approximately VND 29.5 billion (US\$1.8 billion), or approximately 3 percent of 2005 GDP. The ten largest companies accounted for 87 percent of the total market, and about 79 percent of the total listing value in shares. Two new companies were listed in 2003, four in 2004, and five in 2005. From the beginning of 2006 up to June, five companies were listed. At least one joint stock bank and several companies are scheduled for new listing in 2006.

In addition, a large number of shares of about 5,000 joint stock companies and 36 joint stock commercial banks are traded on the country's unofficial market, which has an estimated value of more than US\$1 billion. The unofficial market is not regulated.

**Institutional investors.** Mutual funds and investment funds have started operating in Vietnam recently. As of May 2006, there were 15 active foreign and 5 domestic mutual funds in the country.<sup>11</sup> One mutual fund is listed at the HOSTC. Institutional shareholders are commercial banks, securities firms, and corporations, particularly state-owned enterprises. Typically, the State holds significant shares in "equitized" companies, either listed or non-listed. One mutual fund is listed at the HOSTC.

**Ownership framework.** Listed companies take the form of JSCs. Most listed companies are "equitized" SOEs, in which the State still holds a significant stake. In 2005, average state ownership in listed companies was approximately 26 percent.<sup>12</sup> Foreign investors, mostly institutional investors, owned, on average, approximately 17 percent. Foreign ownership in listed firms is capped by law at 49 percent. In some companies, foreign investors own as much as 30 percent. The remaining shares in listed companies are held by retail and institutional investors, but a key issue is that the ability of foreign firms to acquire and control a domestic Vietnamese firm is limited. This may be preventing some potential gains in improving the corporate governance and performance of listed firms through the importation of foreign management, technology, and business capacities.

**State-owned enterprises.** As of March 2006 the State held shares in 2,185 companies<sup>13</sup> Except for the 33 companies that have

<sup>10</sup> The new listing of Vinamilk, the first listing of a major state-owned enterprise, in January 2006, and Sacombank in May 2006, brought the number of listed companies at HOSTC to 36 as of June of 2006.

<sup>11</sup> www.vse.org.vn.

<sup>12</sup> www.vietstock.com.vn.

<sup>13</sup> NSCERD (the national committee on SOE reform).

gone public, the rest are JSCs. During the “equitization” process, a fixed portion (usually less than 50 percent) of the shares are sold to the public (this condition may soon be removed), the State keeps a portion, and the rest is sold at par to management and employees.

It is a common practice that a former top executive of the equitized SOE becomes Chairman of the Board. The State (represented by the line ministry or people’s committees that previously owned the firm) delegates the exercise of its ownership rights in the firm to the Chairman. Thus, the former top managers of the equitized SOE in practice become the major shareholders in the equitized company. It is also common practice that the Chairman interferes with the CEO’s operational decisions. Besides the Chairman and the CEO (who usually is also a Board member), the role of other directors and the control committee are usually not significant. Profitable equitized SOEs tend to pay high dividends as a form of additional salary to employees.

Part of the ongoing SOE reform program is to shift management of the State’s ownership function from line ministries and people’s committees and to a fund-like State capital management company. To this end, the State Capital Investment Corporation (SCIC) was established in 2006. It aims to be fully operational in 2007. This new entity, however, will not have authority over the conglomerates (i.e., VNPT, the post and telecom conglomerate).

**Corporate governance institutions.** While there are some private training centers for corporate directors (i.e., PAGE in HCM City), and there is also an association of listed companies operating in HCM City, other formal corporate governance institutions have not yet been established.

**Principle IB. The legal and regulatory requirements that affect corporate governance practices in a jurisdiction should be transparent, enforceable, and consistent with the rule of law.**

**Assessment: Materially not observed**

**Corporate legal framework.** Effective July 01, 2006 all corporations, regardless of the structure of their ownership (business enterprises, state-owned enterprises, foreign-owned enterprises, limited liability companies, or joint stock companies), will be governed by the unified LOE 2005. For a transitional period of two years, until June 30, 2008, FIEs, which are formally governed under the Law on Foreign Investment (FDI Law), may choose to continue to operate under the legal regime granted by their investment license, or shall have to re-register with the Business Registrar to transform into a partnership, an LLC, or a JSC, as per LOE 2005. The transitional period for SOEs formally governed under the Law on State-Owned Enterprises 2003 is four years (until June 30, 2010). Thereafter, SOEs will have to conform to the provisions of LOE 2005.

**Company types.** As of May 2006, there were approximately 3,200 SOEs; 5,000 foreign invested enterprises; 200,000 limited liability companies (LLC), joint stock companies, and sole proprietorships; 15,000 cooperatives; 2.9 million household businesses operating in service and industry; and 10 million farm households.<sup>14</sup> An LLC is a company that has no more than 50 shareholders. A JSC must have at least 3 shareholders. Only the JSC is authorized to issue shares to the public and its shares are freely transferable, unless otherwise stipulated by the company charter for preferred shares. The transferability of LLCs shares is subject to a right of first refusal of other companies’ members. Partnerships, introduced in the LOE 1999, are not common. Their scarcity is due to the fact that they do not provide any tax advantages to investors.

**Securities law framework.** As of May 2006, the legal and regulatory framework governing the issuance and trading of securities and stock exchanges was set out in Decree 144/2003/ND-CP. The Law on Securities has been approved by the National Assembly. The prevailing decree forms the legal basis for the SSC, whose role is to issue and enforce regulation governing the issuance and trading of securities by companies listed on the stock exchanges, and to monitor the activities of securities companies, investment funds, brokers and other institutions involved in the functioning of the securities market. The Law on Enterprises 2005 and the Law on Accounting 2003 have jurisdiction over listed companies.

**Listing rules.** Decree 144/2003/ND-CP sets out the requirements for the issuance of securities to the public, the continuous obligations of listed companies, the rules and regulations regarding the trading of securities, and the provision of securities market-related services in the territory of the Socialist Republic of Vietnam. The issuance of government bonds, local administration bonds, securities of credit institutions, shares of equitized SOEs, and shares of FIEs transformed into JSCs do not fall within the scope of this decree.<sup>15</sup> Under these circumstances, these companies are exempted from the reporting obligations and the duty of disclosure enforced by the SSC. On the unofficial market, which remains largely unregulated, the interest of minority shareholders are not protected effectively against abusive actions of the issuers or controlling shareholders.

Under §30 Decree 144/2003/ND-CP, the main listing requirements include:

- Being a JSC with a minimum paid-in capital of VND 5 billion;<sup>16</sup>
- Having a sound financial position, without any debt more than one year overdue;
- Having generated profits for the last two years with no losses carried forward;

<sup>14</sup> PMRC, ADB, GTZ, *Business Licensing: Current Status and the Ways Forward*, Hanoi, 2006.

<sup>15</sup> The issuance of share of equitized SOE is regulated under the Decree 187/2004/ND-CP; the issuance of bonds of SOEs is regulated under Decree 52/2006/ND-CP, and the issuance of shares of foreign-invested enterprises is regulated under Decree 38/2003/ND-CP.

<sup>16</sup> Approximately \$300,000.

- A commitment by the company's Board of Directors, Board of Management, and Supervisory Board to continue to hold at least 50 percent of their shares in the company for 3 years from the date of listing, excluding the State shareholdings for which they may be acting as proxy;
- Having at least 20 percent of its equity held by more than 50 outside investors. For issuers that have a share capital worth VND 100 billion or more, the minimum percentage is 15 percent.

**Banking Law.** The Law on the State Bank of Vietnam and the Law on Credit Institutions were adopted in December 1997, and amended in June 2003 and June 2004, respectively.<sup>17</sup> The laws, and their accompanying regulations, regulate certain aspects of corporate governance of banks. Banks are subject to stricter requirements as compared other companies; e.g., the maximum ownership of a financial institution by foreign investors is 30 percent (versus 49 percent applied to companies), and ownership by an individual foreign investor may not exceed 10 percent (there is no such limit applied to companies).

**Codes.** Several government agencies, including SSC, NSCERD, MOF, SBV, Academy of Finance (AOF), and Central Institute of Economic Management (CIEM) are promoting good corporate governance. In 2002, three separate model charters containing corporate governance provisions were issued for listed companies, joint stock banks, and equitized SOEs, respectively.<sup>18</sup>

**Principle IC. The division of responsibilities among different authorities in a jurisdiction should be clearly articulated and ensure that the public interest is served.**

**Assessment: Partially observed**

**Securities regulator.** The central institutions that monitor listed companies in Vietnam include the SSC and the STCs. The SSC was set up in 1996 as a governmental agency reporting directly to the Prime Minister. In 2004, it was reorganized and is now an agency under the authority of the Minister of Finance. The SSC's mission statement is set out in Decree 144/2003/ND-CP. It includes the responsibilities of organizing, regulating, supervising, and enforcing all securities market operations. Under the Securities Law 2006, to be effective in 2007, the STCs will become SROs.<sup>19</sup>

**Stock exchange.** Currently, the Ho Chi Minh Securities Trading Center and Hanoi Trading Center are organized as non-for-profit entities under the SSC. The securities trading center in Hanoi began operations in March 8, 2005. Based on Decision 1788/QĐ-BTC dated May 30, 2005 of the Minister of Finance, in addition to the authority as provided by the governmental decrees, the Hanoi STC is responsible for organizing the offering of shares of SOEs in the equitization program and organizing the over-the-counter (OTC) market for non-listed companies.<sup>20</sup> Both SSC and HOSTC have monitoring functions over listed companies; however, their respective authority has not been clearly delineated by law.

**Central depository.** The Vietnam Securities Depository (VSD) is the country's central depository of securities. It started operations in May 2006. It is 100 percent owned by the State. Previously, securities registration, depository, clearing, and settlement services were provided separately by the two Securities Trading Centers. The establishment of VSD corresponded with the approval of the Securities Law approved in June 2006. A key provision of the securities law is that the securities of public companies should be centrally registered and deposited at VSD.

Until the Securities Law becomes effective, VSD will only manage securities accounts opened by its members. The latter will, in turn, manage the depository accounts of their clients.

**Banking, credit, and insurance regulators.** Joint stock banks and credit organizations are regulated by the SBV, and insurance companies are regulated by the MOF.<sup>21</sup> The State Bank of Vietnam (SBV) is the banking regulator. Banks are allowed to invest in the shares of other banks and companies, subject to a certain limit set by the SBV. The SBV requires banks to comply with Vietnamese standards of accounting and auditing.

**Company registrar.** Enterprises must submit their business registration documents to the Provincial Business Registration Offices and/or the District Business Registration Offices in large provinces and cities. Such documents include the charter and periodic reports on their business status. Information sharing among the 64 provincial business registrars, 700 registrars at the district level, and other institutions authorized to register specific business (the State Bank of Vietnam, the Ministry of Public Investment) is weak. Compliance with reporting obligations is less than fully satisfactory, as are the quality standards of financial

<sup>17</sup> Amendments to the Law on Credit Institutions were made to ensure compliance with international agreements, such as the US-Vietnam Bilateral Trade Agreement

<sup>18</sup> Decision 07/2002/QĐ-VPCP by the Chairman of the Office of the Government on the issuance of the Model charter for listed companies, Official Letter 81/2002/DMDN of the National Steering Committee for Enterprises Reform and Development on the issuance of the Guided Model charter for equitized companies, and the Decision 383/2002/SBV by the Governor of the State Bank of Vietnam on the issuance Model charter for joint-stock commercial banks. These Model charters were the results of a TA funded by ADB. As of November 2004, all but one of 25 listed companies and all operating joint stock banks have adopted the model charters.

<sup>19</sup> §§ 33-38 Securities Law 2006.

<sup>20</sup> Hanoi Securities Trading Center traded stocks issued by companies who register to have their shares traded but do not meet listing requirements. Securities registration criterion at the Hanoi STC are: minimum registered capital of VND 5 billion, sound financial status with profits recorded in the previous year, and minimum of 50 shareholders.

<sup>21</sup> This review was designed to focus more on listed companies and JSCs under the LOEs rather than banks and financial organizations.

statements.

**Court and other institutions.** Vietnam is in the process of establishing an independent judiciary, private business associations, and independent media reporting. The courts lack jurisprudence expertise in securities market disputes and experienced magistrates. Judges are appointed for a term of 5 years. They are often perceived to be susceptible to government pressure. There is no procedure for business associations, such as the Vietnam Chamber of Commerce, to appoint former business managers to participate as lay judges in economic courts. Private auditing firms have been operating since 1994; professional associations of auditors and brokers have recently been established.

**Principle ID. Supervisory, regulatory, and enforcement authorities should have the authority, integrity, and resources to fulfill their duties in a professional and objective manner. Moreover, their rulings should be timely, transparent, and fully explained.**

**Assessment: Materially not observed**

**Authority, integrity, and resources of regulators.** The SSC is a government organization under the authority of the MOF. Its function is to regulate, supervise, and enforce the functioning of the securities market, including the provision of services related to the trading of securities and the operations of the securities market. SSC also plays an important role in fostering the development of the market. In 2005, SSC's annual budget was approximately VND 24 billion (US\$1.5M). As of May 2006, SSC had 340 employees, including about 160 staff at the two trading centers in HCMC and Hanoi. SSC's pay scale follows the guidelines of the civil service; the salaries of its employees are similar to those of the MOF and SBV, and lower than the private sector. Several SSC staff has received training on corporate governance.

SSC has the power to inspect institutions and subpoena individuals participating in the securities market, including listed companies, STCs, the Securities Depository Center, and securities trading companies. SSC is also empowered to investigate trading transactions conducted through STCs, and monitor disclosure of listing companies, managers, shareholders, and other participants, which are obliged to provide information and to report to STC in the trading operations of STCs. SSC can suspend or revoke certificates of registration of securities issuance, trading, and listing, as well as of businesses providing services to the securities market. It can halt or revoke securities transactions. As of May 2006, SSC has conducted inspections of five listed companies and five securities companies. It has also suspended trading on one company CAN for six sessions (2002), controlled securities trading on HAP for three sessions (2001), issued warnings to SGH (2001) and REE (2002), and fined two companies, CAN (2003) and BBC (2003). No sanctions were imposed by the SSC on listed companies in 2005.

Responsibilities for market surveillance are divided between SSC and STCs. STCs are responsible for monitoring compliance with the rules and regulations governing market participants and reporting suspected violations to SSC. SSC is in charge of investigating suspected trading violations, and imposing sanctions if and when appropriate.

Within HOSTC, the Trading Surveillance Department is responsible for the surveillance of trading activities, including violations of insider trading rules and market manipulations. The Surveillance Department is also responsible for monitoring compliance with the disclosure standards set out by SSC. Surveillance is conducted manually by 10 staff. In 2003 and 2004, 673 and 980 violations, respectively, were spotted by HOSTC. In 2005, no fines were imposed by the HOSTC, but five notices (warnings) were issued. Maximum penalties of up to VND 20 million can be imposed on individual issuers for late reporting of quarterly reports or non-reporting of material disclosures.

**Courts.** Lack of specialized courts and judges experienced in securities law are considered to be a constraint in the development of private and financial sectors. Courts are generally considered (though not specifically reviewed for this assessment) less efficient in comparison to international benchmarks. One indirect way to examine court efficiency is to compare the procedures and time required to enforce a standard contract. Vietnam's procedures are more numerous than regional (East Asia) and OECD benchmarks. In Vietnam, contract enforcement is a costly and time-consuming process. It is estimated that contract enforcement will take no fewer than 400 working days, involve 37 procedural steps, and cost 30 percent of the value of the dispute. See *Doing Business 2005 at rru.worldbank.org*.

Indicator	Vietnam	Regional Average (*)	OECD Average
Number of procedures	37	29.8	19
Time (days)	404	406.8	229
Cost (% of debt)	30.1	61.7	10.8

**Shareholder rights groups.** At present, no shareholder rights groups exist.<sup>22</sup> There is, however, the Vietnam Association of Financial Investors (VAFI), which was established under the Decision No.74/2003/QD-BNV of the Ministry of Home Affairs dated

<sup>22</sup> Civil organizations must be registered with Ministry of Home Affairs, MOHA. There are approximately 300 associations registered, none of which are shareholder rights associations.

November 5, 2003, and began operations in January 2004. As of 2005, VAFI had admitted nearly 200 members, of which 28 were organizations with the goal of creating a bridge between businesses, stock companies, investors, and management agencies. One of VAFI's objectives is to "protect the rights of investors, helping them to have thorough knowledge of laws and feel secure investing in businesses," but VAFI is funded in part by the Ministry of Finance and has very close links with the Government. This, in combination with the lack of detail as to what investors are actually represented by VAFI, creates doubt as to whether VAFI is a truly effective representative of shareholder rights.

## SECTION II: THE RIGHTS OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS

The corporate governance framework should protect and facilitate the exercise of shareholders' rights.

**Principle IIA: The corporate governance framework should protect shareholders' rights. Basic shareholder rights include the right to:**

**Assessment: Partially observed**

(1) Secure methods of ownership registration	<p>Under the LOE 2005, limited liability companies and joint stock companies (wholly or partly owned by private persons, by the State or by foreign investors) are registered at the Department of Planning and Investment in Provincial People's Committees. The Business Registrar is also responsible for registering shares of shareholders holding more than 5 percent of the total shares of the company (provincial business registrars register shares owned by the State in SOEs, and register shares held by shareholders with 5 percent or more of the total shares).</p> <p>In contrast to LLCs, JSCs may keep their shareholders list at their head office, at the securities trading centers (HOSTC, HASTC), or at Vietnam Securities Depository. Legal proof of ownership is defined as registration in the shareholder register. Instances have been reported where inscription in the shareholder register was delayed, incorrectly recorded intentionally, or even refused without cause.</p> <p>Nominee ownership is allowed. In addition, Vietnamese commercial banks, branches of foreign banks, and other financial institutions can apply to SSC to act as custodians.</p>
(2) Convey or transfer shares	<p>Generally, shares of listed companies are freely transferable. The LOE 2005 ensures that shares are freely transferable.<sup>23</sup> Exemptions can be made only in two cases: (i) voting preferred shares [see "participate and vote" below] is not transferable in the first three years from the date the company is registered; and (ii) transfer of ordinary shares held by the founding shareholders within the first three years is restricted unless approved by the shareholder meeting. This restriction applies only to founding shareholders of new JSCs within the first three years from the date of company's formation.</p> <p>Delivery and payment for listed shares takes place on DVP at T+3, and settlement for bonds is on T+1.</p> <p>Shareholders of LLCs and foreign-owned companies have a right of first refusal.<sup>24</sup></p>
(3) Obtain relevant and material company information on a timely and regular basis	<p>Listed companies have the obligation to disclose and report to SSC, STCs, and the public all relevant information which shareholders may reasonably require to formulate an investment decision.<sup>25</sup> The information made available to shareholders in a non-listed company is not of the same quality as listed companies. In addition, only shareholder(s) holding at least 10 percent of the total share capital have the right to view and to receive a copy of the list of shareholders who are entitled to attend the general meeting.</p> <p>While disclosure standards for publicly listed companies are discussed in detail in the legislation, there is only a loose provision in the law regarding the obligation of non-listed companies to issue annual financial reports. The items to be disclosed in annual financial statements are not clearly provided by the law.</p>
(4) Participate and vote in general shareholder meetings	<p>Ordinary shareholders have the right to attend shareholders' meetings. However, for the unlisted companies, the board may decide to tighten the conditions under which a shareholder can attend the meetings by setting a minimum threshold of share ownership. No ceiling for this threshold has been set to protect minority shareholders. Owners of dividend preferred shares and redeemable preferred shares do not have the right to attend and vote at shareholder</p>

<sup>23</sup> LOE, Article 87 V, and the Securities Law, Article 33.

<sup>24</sup> § 44 LOE 2005.

<sup>25</sup> § 129 LOE 2005, § 51-58 Decree 144/2003/ND-CP.

<sup>26</sup> § 103 V LOE 2005, § 17 VII Model Charter 2002.

	<p>meetings.</p> <p><b>Method of voting.</b> The LOE 2005 and the Model Charter 2002 require listed and non-listed companies to adopt the polling method, in which each voting shareholder receives a card indicating her name, her registration number, and the number of votes that she controls. For each resolution submitted for shareholders' approval at the GSM, the cards in favor of the resolution shall be collected first; the cards opposing later.<sup>26</sup></p>
(5) Elect and remove board members	<p><b>Process.</b> Shareholders representing at least 10 percent of the voting rights, or a lower percentage as provided by the company's charter, have the right to nominate a member of the board. For listed companies, at least one-third (1/3) of the board members must be non-executive. Non-executive board members are not clearly defined by law. For example, the powers to approve reports submitted by the CEO, to nominate new candidates for the board, and to oversee the remuneration of company managers, are not clearly spelled out by the term "non-executive directors."</p> <p>In practice, the majority shareholders often control the election and removal of board members. In some companies, the majority shareholder(s) have the right to nominate more than one candidate.</p> <p><b>Cumulative voting/proportional representation.</b> The concept of cumulative voting<sup>27</sup> was recently introduced in Vietnam under the LOE 2005.<sup>28</sup></p>
(6) Share in profits of the corporation	<p>According to the LOE 2005, the board makes a proposal on the pay-out ratio for each class of shares and submits it to the GSM for approval. The final decision is exclusively vested with the GSM. However, the board may decide on the timing of dividend payment and how dividends shall be paid to shareholders.<sup>29</sup></p> <p>Conflicting rules may still be seen in §§ 13 and 20 of the Model Charter 2002, which allow the board to decide on dividends while at the same time enabling the GSM to do so. In implementing the LOE 2005, these conflicting rules need to be addressed.</p>
<p><b>Principle IIB. Shareholders should have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes, such as:</b></p>	
<p><b>Assessment: Partially observed</b></p>	
(1) Amendments to statutes, or articles of incorporation or similar governing company documents	<p>Shareholders have the right to vote on amendments of the company's charter, on appointment and removal of members of the board of directors, on changes to the company's purpose and objectives, on major transactions valued at 50 percent or more of the company's total assets, and on transactions with related parties when the value of the transaction exceeds 20 percent of the company's book value.</p> <p>Unless otherwise provided by the company's charter, the LOE 2005 requires that quorum is reached only if shareholders representing at least 65 percent of the voting rights attend the meeting and approve the resolution by a simple majority. For approval of major transactions valued at 50 percent or more of the company's total assets, the quorum needed is increased to 75 percent.<sup>30</sup></p>
(2) Authorization of additional shares	<p><b>Issuing share capital.</b> The approval of the shareholders for the issuance of additional shares is needed only in listed companies. In non-listed companies, unless otherwise provided in the charter, the power to issue new shares rests with the board. The current law is silent on the time and other limits imposed on the board in this case.</p> <p><b>Pre-emptive rights.</b> Ordinary shareholders have a pre-emptive right<sup>31</sup> to purchase new shares in proportion to their holdings.<sup>32</sup></p>

<sup>27</sup> Cumulative voting allows minority shareholders to cast all their votes for one candidate, thereby allowing his/her chosen candidate to win a seat.

<sup>28</sup> § 104 111c. LOE 2005.

<sup>29</sup> § 96 I b, § 108 II n LOE 2005.

<sup>30</sup> § 102 I, § 104 III a LOE 2005.

<sup>31</sup> Preemptive rights give a company's existing common shareholders the first chance to purchase shares in a company's future stock issuance. This allows current shareholders to maintain their fractional ownership in the company and avoid dilution by buying a proportional number of shares in any future issue of common stock.

<sup>32</sup> § 79 I c LOE 2005.

(3) Extraordinary transactions, including sales of major corporate assets	<b>Sales of major corporate assets.</b> Transactions valued at 50 percent or more of the company's total assets must be approved by the extraordinary shareholder meetings. <sup>33</sup> For listed companies, transactions representing more than 10 percent of the share capital need to be disclosed within 24 hours. <sup>34</sup> Related-party transactions representing 20 percent or more of the company's book value must be approved by the GSM. In other cases, the board is entitled to decide. This is provided under the Model Charter 2002 for listed companies. <sup>35</sup> For non-listed companies, the board is entitled to decide on major transactions valued at less than 50 percent of the company's total assets. Related parties cannot participate in the vote. <sup>36</sup>
<b>Principle IIC: Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings, and should be informed of the rules, including voting procedures, that govern general shareholder meetings:</b>	
<b>Assessment: Partially observed</b>	
(1) Sufficient and timely information on date, location, agenda, and issues to be decided at the general meeting	<b>Meeting deadline.</b> Annual meetings shall be conveyed no later than 4 months after the end of the financial year. At the request of the board of management of the JSC, the Registration Office may extend the meeting deadline for a further period, but in any case no longer than 6 months after the end of the financial year. <sup>37</sup> <b>Meeting notice.</b> Notice of shareholder meetings shall be made 7 days in advance. This does not provide adequate time for shareholders, particularly foreign shareholders, to participate. <b>Available information.</b> Included in the invitation are the agenda and documentation supporting the resolutions to be decided at the GSM. However, the law does not specify the kind of information which must be distributed to shareholders. In most cases, the invitation merely includes instructions on where and when shareholders may require documentations for the meeting. In some companies, copies of documentations and handouts are provided at the meetings. <b>Quorum rules.</b> The quorum for the first meeting is 65 percent of total voting rights present at the GSM. The quorum for the second meeting is 51 percent. <sup>38</sup>
(2) Opportunity to ask the board questions at the general meeting	<b>Forcing items onto the agenda.</b> Shareholders representing at least 10 percent of the company shares in six consecutive months have the right to make suggestions for the meeting agenda, but no later than 3 days before the meeting. The board may refuse to include the suggested items in the agenda if the items are not deemed timely or are outside the realm of competence of the GSM. <sup>39</sup> <b>Questions.</b> In practice, shareholders can put forth motions during the GSM.
(3) Effective shareholder participation in key governance decisions, including board and key executive remuneration policy	Ordinary (annual) shareholders meetings vote on the total package of remuneration for the board, for both listed and non-listed companies. <sup>40</sup> The board decides on the remuneration of individual board members. Minority shareholders seldom participate in shareholders meeting unless they are employees. For listed companies, the law does provide that the ordinary meeting shall vote on the appointment of independent auditors. <sup>41</sup>
(4) Ability to vote both in person or in absentia	<b>Proxy regulations.</b> Shareholders may authorize other persons to act on their behalf in attending the meeting. Letters of proxy shall be in writing in the form as prescribed by the company and need not be notarized. <sup>42</sup> <b>Postal and electronic voting.</b> Voting by mail/post is permitted when the resolution is simple. Voting by mail/post does occur in practice.
<b>Principle IID: Capital structures and arrangements that enable certain shareholders to obtain a degree of control</b>	

<sup>33</sup> § 97 III, 120 III, LOE 2005.

<sup>34</sup> § 53 I dd does not clarify to whom the company shall disclose the transactions. However, based on Decision 1178 dated May 30, 2005 and Decision QD161/2004/QD-TTg the securities trading centers, HOSTC and HASTC in HCM City and Hanoi have the competence to organize and monitor information disclosure of listing companies.

<sup>35</sup> § 29 IV b Model Charter 2002.

<sup>36</sup> § 120 II and III LOE 2005.

<sup>37</sup> § 97 II LOE 2005.

<sup>38</sup> § 102 I, LOE 2005.

<sup>39</sup> § 99, LOE 2005.

<sup>40</sup> § 117 II a LOE 2005.

<sup>41</sup> § 41 I Model Charter 2002.

<sup>42</sup> § 101 II LOE 2005.

**disproportionate to their equity ownership should be disclosed.**

**Assessment: Partially observed**

**Classes of shares.** There are two classes of shares, ordinary shares and preferred shares. Preferred shares can be voting, and may entitle their holder to multiple voting rights. Only companies authorized by the government and founders of the company have the right to hold voting preferred shares, which only have effect for three years from the date of registration of the company. After that period, voting preferred shares held by founders are automatically converted into ordinary shares. Voting preferred shares are not transferable. Non-voting shares are possible in the form of dividend preferred shares and redeemable preferred shares. In both of these classes of shares, shareholders do not have the right to attend and to vote at shareholder meetings

Under the LOE 2005, unanimous voting is required when evaluating the capital contribution of LLC members or JSC shareholders, at the time of incorporation.<sup>43</sup>

The 1995 SOE Law granted State authorities some veto rights in the business decisions of equitized companies. This rule was abolished by the new 2003 SOE Law.

For listed companies, the current law provides that members of the board or the supervisory board, and senior executives, must continue to hold at least 50 percent of their shares in the company for the first three years after its listing.

**Ownership disclosure by companies.** Companies are required to provide shareholders the list of shareholders and their respective voting rights at least 30 days prior to the GMS. The list shall contain the names, residential addresses, and ID numbers of individual shareholders and registration certificates of institutional shareholders, and their respective shares.<sup>44</sup> Any shareholder of the company may have access to this list.

**Ownership disclosure by shareholders.** Shareholders holding five percent or more of the shares of listed companies must disclose in writing within 3 working days to the SSC, HOSTC, and the company any transaction relating to their shareholding.

They must also register their holding within 7 working days at the Business Registration Office according to the new provision of § 86 IV LOE 2005. This rule also applies to shareholders acting in concert when they together hold 15 percent of shares (for institutional shareholders) or 20 percent of shares (for individual shareholders). This effectively implies a 20 percent threshold, which is considered to be high by international standards.

**Disclosure of shareholder agreements.** Not specifically expressed under the law.

**Principle IIE: Markets for corporate control should be allowed to function in an efficient and transparent manner.**

**Assessment: Materially not observed**

(1) Transparent and fair rules and procedures governing acquisition of corporate control

**Basic description of market for corporate control.** Thus far, no hostile takeover has been recorded in Vietnam, but limited rules and procedures governing the market for corporate control have been established. Under the LOE 2005, a shareholder holding 5 percent or more of the total share capital of a company must register with the Business Registrar within 7 working days from the day he/she reaches this threshold.<sup>45</sup> Likewise, shareholders representing 5 percent, 10 percent, 15 percent, and 20 percent of the voting rights of a listed company must inform the SSC and STC when reaching these levels. Takeover bids in listed companies need to be reported to the SSC.<sup>46</sup> Takeovers leading to market dominance must also be reported to and approved by the Competition Department, Ministry of Trade, according to the Competition Law 2004.

**Tender rules/mandatory bid rules.** A mandatory tender offer is required by law when an acquirer attempts to acquire 25 percent or more of the share capital of a company. The offer must be announced three times in a national or local newspaper. The acquirer has no right to refuse to discriminate among sellers. At the same time, the acquirer is not authorized to sell the shares he/she has purchased in the last 6 months from the date of the tender offer. There are no rules requiring the board of the acquiree company to express an opinion on the terms of the offer.

**Delisting/going private.** There are no formal voluntary de-listing procedures. Private offerings are not clearly regulated by law. The provisions of Decree 144/2003/ND-CP and the Securities Law apply only to public offerings. The LOE 2005 is silent on legal requirements for private offerings.

**Squeeze-out provisions.** A provision for a squeeze-out right, by which a bidder who obtains sufficient shares of a target can compel the remaining minority shareholders to sell their shares,

<sup>43</sup> § 30 II LOE 2005.

<sup>44</sup> § 98 II LOE 2005.

<sup>45</sup> § 86 IV, LOE 2005.

<sup>46</sup> § 36 Decree 144/2003/ ND-CP.

	<p>is stipulated under § 36 III of Decree 144/2003/ND-CP. The threshold at which the minority can be squeezed out is 80 percent. (The same provision is included under § 31 IX Law on Securities.) The 80 percent is a very low squeeze-out threshold. No information is available on how it is practiced.</p> <p><b>Buy-backs/treasury shares.</b> Ambiguous rules concerning treasury shares are set out in Decree 144/2003/ND-CP.<sup>47</sup> The Law on Securities authorizes the MOF to issue ministerial regulations and guidelines in cases where listed companies buy back their shares.<sup>48</sup> In these cases, companies are required to disclose to the STCs the information relating to the buy-back plan at least 7 days prior to the day of transactions.</p>
(2) Anti-take-over devices	<p>Multiple voting shares are anti-taker over devices.</p> <p>State authorities that own shares often use their statutory powers in various ways to intervene in the business of the companies.</p>
<p><b>Principle IIF: The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated.</b></p>	
<p><b>Assessment: Materially not observed</b></p>	
(1) Disclosure of corporate governance and voting policies by institutional investors	<p><b>General obligations to vote/disclosure of voting policy.</b> As of mid-2006, there were no institutional investors acting in a fiduciary capacity.</p> <p><b>Special Rules for Institutional Investors / Pension Funds.</b> N/A</p> <p><b>Blocked shares/record date.</b> There is no requirement to block shares before the annual meeting.</p>
(2) Disclosure of management of material conflicts of interest by institutional investors	<p>There is no clear requirement for disclosure of management of material conflicts of interest by institutional investors.</p>
<p><b>Principle IIG: Shareholders, including institutional shareholders, should be allowed to consult with each other on issues concerning their basic shareholder rights as defined in the Principles, subject to exceptions to prevent abuse.</b></p>	
<p><b>Assessment: Partially observed</b></p>	
<p><b>Rules on shareholder cooperation in board nomination/election.</b> Shareholders owning jointly or severally 10 percent of the share capital of a listed company can nominate a person to the board of directors.</p> <p><b>Rules on communication among minority shareholders.</b> There are no rules specified in the law.</p> <p><b>Proxy solicitation or other formalities required.</b> There are no rules specified in the law.</p> <p><b>Rules on communication among institutional investors.</b> There are no rules specified in the law.</p>	
<p><b>SECTION III: THE EQUITABLE TREATMENT OF SHAREHOLDERS</b></p>	
<p><b>The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.</b></p>	
<p><b>Principle IIIA: All shareholders of the same series of a class should be treated equally.</b></p>	
<p><b>Assessment: Materially not observed</b></p>	
(1) Equality, fairness, and disclosure of rights within and between share classes	<p><b>Availability of share class information.</b> Shareholders of the listed companies can obtain information about share classes from the company charter, the prospectus, and the annual and quarterly reports, which are publicly available from SSC/HOSTC. The JSCs are also required to submit the approved annual reports to the business registrar. Every individual and organization has the right to see and make copies of the annual report as kept by the business registrar. For unlisted companies, only shareholders holding 10 percent or more of shares have the right to</p>

<sup>47</sup> § 36 Decree 144/2003/ND-CP.

<sup>48</sup> § 29 III Law on Securities.

	<p>obtain information from half-yearly financial reports (half-yearly reports are not approved by GSM and are not audited, and the quality of these reports is not considered to be high).<sup>49</sup></p> <p>When offering securities to the public, a company must make a public announcement that includes information on the composition of its share capital, including classes of shares. Shares must be registered; the registration contains information relating to the class of the shares, which is available to shareholders.<sup>50</sup></p> <p><b>Equal rights within classes.</b> The Model Charter for listed companies requires approval of the shareholders within a class for decisions relating to the class. The law is not specific on non-listed companies. (The model charter applies only to listed JSC, and does not apply to non-listed companies.)</p> <p><b>Approval by the negatively impacted classes of changes in voting rights.</b> There is no clear provision under the LOE 2005 and the Model Charter 2002. This is a serious violation of the principle.</p>
(2) Minority protection from controlling shareholder abuse; minority redress	<p><b>Ability to call meeting.</b> The law provides a threshold of 10 percent ownership for a group of shareholders to call a shareholders meeting.</p> <p><b>Ability to inspect books.</b> The right to have access to and make copies of information relating to the list of shareholders with voting rights, the company's charter, and the records of the shareholder meeting and the resolutions passed by the meeting, is provided under LOE 2005.<sup>51</sup></p> <p>The LOE 2005 does not mention that GSM shall have a right to approve a special audit, unless otherwise provided for by the company charter. However, for listed companies, the Model Charter provides that the extraordinary shareholders meeting may pass a resolution on how to select the auditing firm to audit the company reports.<sup>52</sup></p> <p><b>Withdrawal rights.</b> In cases of merger, reorganization, large transactions, and changes in the company's charter, shareholders that voted against or did not participate in the GSM have the right to sell their shares back to the company at market price.<sup>53</sup></p> <p><b>Ability to sue to overturn meeting decisions.</b> Under LOE 2005, minority shareholders shall have the right to request the court to void any resolution or decision that violates the company's charter.<sup>54</sup> According to the Civil Code 2004, shareholders may petition an economic court to overturn a meeting decision.</p> <p><b>Ability to challenge shareholders resolutions.</b> Shareholders can challenge shareholders resolutions.<sup>55</sup></p> <p><b>Power to postpone an Annual General Meeting.</b> This is not clearly provided for under the LOE 2005.</p> <p><b>Court redress.</b> Under the LOE 2005, if the list of shareholders with voting rights is incorrect, shareholders have the right to request the company to correct the mistake.<sup>56</sup> They may request the economic court or an arbitration court to consider and overturn invalid resolutions passed by the GSM.<sup>57</sup></p> <p><b>Regulator redress.</b> The SSC is empowered to monitor the compliance by market participants with the Securities Law and regulations, particularly as it relates to settlement of claims and petitions relating to listed companies.<sup>58</sup> The legal consequences for not observing disclosure and reporting rules may include fines or delisting.<sup>59</sup> Accordingly, the SSC may impose administrative fines, suspension of trading, administrative warnings, and delisting.</p> <p><b>Ability to sue directors.</b> The right to sue the directors of the company for misrepresentation is</p>

<sup>49</sup> § 79 II b LOE 2005.

<sup>50</sup> § 79 I dd, e LOE 2005.

<sup>51</sup> § 79 I dd, e LOE 2005.

<sup>52</sup> 13 II d., Model Charter 2002.

<sup>53</sup> 90.1, § 90. 2 LOE 2005.

<sup>54</sup> § 107 LOE 2005.

<sup>55</sup> § 107 LOE 2005.

<sup>56</sup> § 79 dd I LOE 2005.

<sup>57</sup> § 107 I LOE 2005.

<sup>58</sup> § 122 Decree 144/2003/NC-DP.

<sup>59</sup> § 118-129 Law on Securities.

	provided for by the Law on LLCs in a general manner, but not for JSCs explicitly. Derivative and class actions are unknown in Vietnam. <sup>60</sup>
(3) Custodian voting by instruction from beneficial owners	Issuers and custodians determine the list of shareholders with voting rights. Custodians are required to inform beneficiary shareholders of their rights and send them the information prepared by issuers for the GSM. <sup>61</sup> Beneficiary owners can choose to vote by themselves or delegate voting rights to custodians. The timing issue is, however, still unclear. <sup>62</sup>
(4) Obstacles to cross-border voting should be eliminated	Since the notice of GSMs is only 7 days under the LOE 2005, foreign investors are severely constrained in the exercise of their voting rights. The Model Charter 2002, however, requires listed companies to send the notice of GSM at least 15 days prior to it being convened.
(5) Equitable treatment of all shareholders at GSMs	All shareholders within the same class are somewhat treated <i>pari passu</i> . However, the level of detail of documents provided to shareholders in advance of GSM is subject to the decision of the board. In addition, the procedure to count the ballots is not clear.

**Principle IIIB: Insider trading and abusive self-dealing should be prohibited.**

**Assessment: Materially not observed**

**Basic insider trading rules.** The Law on Securities 2006 does not contain a general provision prohibiting trades based on material non-public information.

**Insider trading disclosure.** Transactions by insiders are allowed provided they are reported to SSC, STC, and the listed company. Insiders must report to the SSC at least 10 working days prior to the date of transaction, and must inform the HOSTC and the company within 3 working days from the date the transaction has been conducted.<sup>63</sup>

**Criminal/civil/administrative penalties.** Violation of this rule may lead to penalties.<sup>64</sup> There is no criminal provision in the Panel Code related to insider trading, but provisions related to general offences may apply.<sup>65</sup>

**Principle IIIC: Members of the board and key executives should be required to disclose to the board whether they directly, indirectly, or on behalf of third parties, have a material interest in any transaction or matter directly affecting the corporation.**

**Assessment: Materially not observed**

**Disclosure rules for related-party transactions.** Under new provisions of the LOE 2005, board members, members of the control commission, the general director (manager), and other corporate officers shall disclose to the company within 7 days any interest that may place them in a conflict of interest with the company.<sup>66</sup> The information to be disclosed includes: name, address, registration certificate, business lines of companies, and the percentage of shareholding in which the company officer or his/her related persons own shares.<sup>67</sup>

**Related-party transaction approval rules/rules for approval of board/GMS.** The law requires related-party transactions to be approved by shareholders attending the GSM when their value exceeds 50 percent of the company's total assets for non-listed companies, and 20 percent for listed companies.<sup>68</sup> There is no specific provision governing loans to senior executives in non-listed companies, but the Model Charter 2002 prohibits such loans, unless approved by the GSM.<sup>69</sup>

**Conflict of interest rules and use of business opportunities.** Conflicts of interest should be disclosed to the company and reported to the annual GSM and recorded in the company's book. Shareholders, board members, members of the control commission, and the general director (manager) shall have the right to consider the contents of information disclosed. Company officers are prohibited from using the business opportunities of the company for their own interests.<sup>70</sup>

<sup>60</sup> A legal action brought by a shareholder on behalf of a company, when the company cannot itself decide to sue. A company will usually sue in its own name, but if those against whom it has a cause of action are in control of the company (e.g., directors or majority shareholders), a shareholder may bring a derivative action.

<sup>61</sup> Decision 60/2004/QD-BTC dated July 15, 2004 as amended by Decision 75/2005/QD-BTC dated Oct 21, 2005 by the MOF.

<sup>62</sup> Decision 60/2004/QD-BTC dated July 15, 2004 as amended by Decision 75/2005/QD-BTC dated Oct 21, 2005 by the MOF.

<sup>63</sup> § 34 Decree 144/2003/ND-CP.

<sup>64</sup> Decree 161/2004/ND-CP.

<sup>65</sup> Law 15/1999/QH1 §§ 165 and 167.

<sup>66</sup> § 118 I, II LOE 2005.

<sup>67</sup> § 118 I ab LOE 2005.

<sup>68</sup> § 120 III LOE 2005 and § 29 Model Charter 2002.

<sup>69</sup> § 29 III Model Charter 2002.

<sup>70</sup> § 119 I c LOE 2005.

Compliance with provisions of LOE 2005 is currently poor (since LOE 2005 will become effective only after July 1, 2006).
<b>SECTION IV: THE ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE</b>
<b>The corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements, and encourage active cooperation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.</b>
<b>Principle IVA: The rights of stakeholders that are established by law or through mutual agreements are to be respected.</b>
<b>Assessment: Partially observed</b>
Under the LOE 2005 and the Model Charter 2002, stakeholders, including employees, labor unions, suppliers, or creditors, do not participate in the internal corporate decision making process. Stakeholders in Vietnam are deemed to include party organizations, women's unions, former line ministries, and people's committees. These entities have influence over the decisions of corporations. <b>List of relevant codes for stakeholders.</b> No specific codes of practice or recommendations for the treatment of stakeholders have been developed. At present, the level of awareness of corporate social responsibility is low. Labor relations fall under the Labor Code. Trade unions have significant influence in SOEs and former SOEs.
<b>Principle IVB: Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.</b>
<b>Assessment: Partially observed</b>
<b>Redress mechanisms available to stakeholders.</b> Employees and creditors can seek redress through the courts. Employees are protected by the Labor Code, collective labor agreement (if any), and the Law on Bankruptcy. Creditors are protected through the Civil Procedure Code and through the Law on Bankruptcy. In practice, however, there have been few cases to support effectiveness of current mechanisms (See Principle IVF).
<b>Principle IVC. Performance-enhancing mechanisms for employee participation should be permitted to develop.</b>
<b>Assessment: Partially observed</b>
<b>Rules on employee stock option plans.</b> There are no formal rules. In practice, a few listed companies have obtained shareholders' approval to issue convertible preferred stock as a performance bonus for its management or employee stock options. This practice has become more common in the last two years. <sup>71</sup>
<b>Principle IVD: Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient, and reliable information on a timely and regular basis.</b>
<b>Assessment: Materially not observed</b>
The stakeholders' special access to information is not regulated by law. Stakeholders are not allowed to access corporate information beyond what is available publicly. Creditors may have special access to information under the loan covenants. <b>Annual report discloses economic and financial prospects.</b> Annual reports disclose economic and financial prospects. <b>Annual report discloses significant facts on employees.</b> The number of employees is disclosed in the annual reports. <b>Timeliness and regularity of Information.</b> Compliance with periodic disclosure requirements by listed companies is low.
<b>Principle IVE: Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board, and their rights should not be compromised for doing so.</b>
<b>Assessment: Materially not observed</b>
<b>Whistleblower rules.</b> Whistleblowers are required to provide concrete evidence, rather than just voice their concerns before authorities can accept their concerns as a valid case for further processing. A "Whistleblower Rule" similar to the one stipulated by the Sarbanes Oxley Act in the US, is unknown in Vietnam. Stakeholders, particularly employees, may articulate their concerns to the control committee and ask them to act in the company's interests. In practice, whistleblowing outside of official channels does not exist.
<b>Principle IVF: The corporate governance framework should be complemented by an effective, efficient insolvency</b>

<sup>71</sup> The last case reported in May 2006 is VTC, which has issued employee stock options (see [www.vietstock.com.vn](http://www.vietstock.com.vn) for further information).

## framework and by effective enforcement of creditor rights.

**Assessment: Materially not observed**

Creditors rarely use the Bankruptcy Law to enforce their rights. Nationwide, there were only 46 insolvency requests submitted by the creditors to the courts during the last ten years (1993-2003). The number of cases brought to the specialized economic courts also decreased significantly, from 11,000 cases in 1994 to 600 cases in 2003. The Insolvency Law was adopted for the first time in 1993 and replaced by the new Bankruptcy Law in 2004. The new law attempts to improve the debtor's position.

**Effectiveness of bankruptcy, security/collateral, and debt collection/enforcement codes.** Creditors' rights (though not specifically reviewed for this assessment) are considered to be low compared to regional and international benchmarks. A variety of standard measures developed by the World Bank for 130 countries compare Vietnam to its regional neighbors and OECD averages. In these comparisons, legal rights are weaker than in other countries. Access to credit information and the coverage of credit registries are also considerably weaker. See *Doing Business 2005 at rru.worldbank.org*.

Creditor Rights Indicator	Vietnam	Regional Average	OECD Average
Cost to create collateral (% of income per capita)	2.0	3	5.2
Legal Rights Index (out of a possible 10)	3	5.2	6.3
Credit Information Index	3	1.8	5.0
Public credit registry coverage (borrowers per 1000 adults)	8	17	76.2
Private bureau coverage (borrowers per 1000 adults)	0	96	577.2

**SECTION V: DISCLOSURE AND TRANSPARENCY**

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.

**Principle VA: Disclosure should include, but not be limited to, material information on:**

**Assessment: Materially not observed**

(1) Financial and operating results of the company

**Annual report.** Listed companies must file with SSC and HOSTC their audited financial statements within 90 days after the end of the fiscal year.<sup>72</sup> Mandatory financial disclosure includes the balance sheet, income statement, cash flow statement, and the notes to the financial statements. The auditor's letter is attached to the audited financial statements.

The annual report must be filed at the same time as the financial statements.<sup>73</sup> The format of the annual report is prescribed by law.<sup>74</sup> It includes a statement from the board of directors, management's discussion and analysis, the financial statements, and the auditors' report. Annual reports and financial statements are to be published on the issuers' media and retained for at least 2 years for investors' reference.

Summary financial statements must be published in a public newspaper, or through the HOSTC's website and media.

**Semi-annual and quarterly reports.** Listed companies must file quarterly reports to the HOSTC within 20 days from the end of the period.<sup>75</sup> Semi-annual reports are to be filed in replacement for the 2<sup>nd</sup> quarterly report. No audit is required for these reports. The content of these reports consists of a balance sheet and an income statement.

**Continuous disclosures.** For listed companies, material information is to be disclosed within 24 hours from the time of the event. When market rumors circulate on the company the SSC and HOSTC may require the company to make a public announcement on the matter if the rumor is deemed to have an impact on share price.

The reporting burden of listed companies compared to non-listed companies is more stringent. Non-listed joint stock companies are required to file annual financial statements to government authorities, such as the local registration office and taxation authorities, but are not required to publish these financial statements. Furthermore, there is no effective mechanism to monitor

<sup>72</sup> Circular 57/2004/TT-BTC, June 2004, § 11.1.

<sup>73</sup> Decree 144/2003/ND-CP.

<sup>74</sup> Circular 57/2004/TT-BTC, 17 June 2004.

<sup>75</sup> Circular 57/2004/TT-BTC, June 2004, § 11.1.

	<p>the compliance of non-listed joint stock companies.</p> <p>As a result, financial information of a majority of companies is not available for public access, with the exception of information from the 36 companies listed on the HOSTC. The SSC and HOSTC are in charge of monitoring compliance. Enforcement of compliance with deadlines, however, has been lax. The exchange requires issuers' explanation of surprise movements of the market and rumors. The LOE 2005 contains provisions to improve the reporting requirements of JSCs, but implementation and enforcement remain poor.</p> <p>The HOSTC can only issue reminders and warnings. The SSC may impose monetary administrative fines, suspension of trading, and administrative warnings.</p> <p>The market regulator has been reluctant to tighten the rule too strictly in fear of deterring new listings.</p> <p>In the past, listed firms have take up to one year to familiarize themselves with the listing requirements.</p>
(2) Company objectives	<p>Annual reports of listed companies, includes a discussion by the board of directors of the company's future plans and prospects.</p> <p>Non-listed companies are not bound by this requirement.</p>
(3) Major share ownership and voting rights	<p>The annual report includes information on ownership structure (by types of shareholders), number of non-founding investors and their shares, total number of shares categorized by classes of shares, outstanding shares, shares reserve, and treasury share.</p> <p>There is no requirement to disclose indirect ownership and/or ultimate beneficiaries.</p>
(4) Remuneration policy for board and key executives, and information about directors	<p>Remuneration and other information on the board and management are to be disclosed in the annual report.</p> <p>In practice, remuneration is available in aggregate form only.</p>
(5) Related-party transactions	<p>Disclosure of related-party transactions is required on financial reports in accordance with Vietnamese Accounting Standards. Related-party transactions are currently common, particularly among state-owned enterprises. The current disclosure requirements are not consistent with IAS 24, and need to be improved by broadening the definition of related party. Under IAS 24.9, the definition of related party is broader than in LOE 2005.<sup>76</sup> Also, management compensation is defined more broadly under IAS 24.16 than the VAS.</p>
(6) Foreseeable risk factors	<p>Risk factors are not required to be reported or disclosed. However, in practice, joint stock banks do provide discussion on risk factors in their annual reports.</p>
(7) Issues regarding employees and other stakeholders	<p>The number of employees, as well as environmental issues, is discussed in the annual reports.</p>
(8) Governance structures and policies	<p>The governance structure is included in the company charter, but the documents are not easily accessible to the public.</p>
<p><b>Principle VB: Information should be prepared and disclosed in accordance with high-quality standards of accounting and financial and non-financial disclosure.</b></p>	
<p><b>Assessment: Partially observed</b></p>	
<p><b>Compliance with IFRS.</b> Companies in Vietnam are required to comply with prevailing regulations on accounting. The set of regulations includes the Vietnamese Accounting Standards, which have the force of law, and various circulars issued by the Ministry of Finance.</p> <p>Vass are continually issued by the MOF. The first standards were issued in 2002 based on the then-prevailing IFRS. Not all IFRS have a comparable VAS counterpart. For a typical manufacturing company, no major differences exist between IFRS and VAS. There are, however, significant gaps between VAS and IFRS as far as financial services are concerned.</p> <p>Currently, VAS significantly differs from IFRS in one important aspect: the records and measurements of assets and liabilities according to fair value. The predominant recognized method in VAS is historical cost, while IFRS increasingly recognizes fair value measurements. Other than that, VAS generally attempts to adhere to IFRS except where the practice does not exist, or is</p>	

<sup>76</sup> § 4.17 LOE 2005.

not commonly used in Vietnam such as standards on Financial Instruments Presentation (IAS32) and Financial Instrument Recognition and Presentation (IAS 39), or insurance. At present, the major areas where there are no equivalent Vietnamese standards to IFRS are Earning Per Share (IAS 33) and Impairment of Assets (IAS 36).

VAS allows the revision of depreciation rates (changes in accounting estimates). Such changes may present opportunities for massaging accounting profits. Nevertheless, such changes in accounting estimates, and their impacts, must be disclosed.

**Review/enforcement of compliance.** In practice, there is not enough assurance that information prepared and disclosed by enterprises adheres to VAS/IFRS, because of the lack of an effective mechanism to monitor the quality of information, or more fundamentally, to monitor that information is prepared and disclosed at all. Because only a limited number of companies are required to be audited, independent checks and reviews are not available to improve compliance.

**Principle VC: An annual audit should be conducted by an independent, competent, and qualified auditor in order to provide external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects.**

**Assessment: Partially observed**

**Compliance with ISA.** Vietnamese Standards on Auditing (VSA) is a direct translation of applicable ISA. The ISA standard that has not been adopted in Vietnam is the Code of Ethics issued by IFAC. In fact, the IFAC Code of Ethics was translated and circulated to the auditing firms for comment in June 2006. At present, however, ISA 260, "Communication of audit matters with those charged with governance," has no Vietnamese equivalent.

**Who must be audited.** Annual financial statements of listed companies, financial institutions, foreign direct-invested enterprises, and state-owned enterprises must be audited. Non-listed joint stock companies do not require audited statements.

**Auditor independence.** In 2004, a new decree was issued that imposes a higher requirement on auditors' independence, including periodic rotation, the engagement of other services in current and prior years, and the relationship with audited companies, including ownership of shares and relatives of executives.<sup>77</sup>

**Audit committee.** There is no requirement to set up an audit committee of the board of directors.

**Requirements for oversight of audit.** With the exception of the first-time audit, the GSM approves the appointment of the auditor. In practice, either the approval is pro forma, or the annual general meeting approves the guiding principles or policies/priorities for the selection of the auditor (foreign or local auditors, state-owned or private auditors). Management is charged with audit contract negotiation, conclusion, and signing. In practice, external auditors are often under pressure from the company's management. They are required to send their audit reports to the board of directors. The audit profession is regulated by the Ministry of Finance. The Vietnam Association of Certified Public Accountants (VACPA) has been operating since April 2004, and along with MOF, monitors auditors operating in Vietnam. It also carries out, jointly with the MOF, quality reviews of audit firms, usually using staff from other audit firms, since they currently do not have enough staff. It is expected that this body will eventually take over the monitoring of audit profession.

**Audit enforcement competent/qualified.** The Ministry of Finance is in charge of monitoring audit quality and the compliance of auditors. In practice, this function is underdeveloped and audit firms follow their own quality standards or those of their parent company (if it is a foreign direct-invested firm). Peer review and quality checks from member firms are common for top-tier audit firms.

**Auditor qualifications.** An auditor is certified/licensed by the Ministry of Finance, after passing a series of examinations. Auditors must also fulfill minimum working experience conditions. Auditors cannot act individually, but only within an audit firm. Relatively stringent requirements are imposed on auditors of listed firms. Currently, Vietnamese state-owned auditing companies (considered second-tier auditors) dominate the market. Foreign firms (considered top tier) audit only one listed firm. Registration with MOF (annually) is needed to be eligible as practicing audit firms.

There are currently 78 auditing firms in Vietnam, including the Big Four foreign auditing firms, but a recent assessment in 2005<sup>78</sup> indicated a rather significant gap in quality control, as well as training quality, between local firms and the Big Four. This is evidenced by the fact that out of 78, only 8 companies were qualified by the SSC to conduct audits of listed companies for the period 2005 to 2006, including the Big Four. Local firms normally do not have their own internal audit guidelines, such as field work and reporting manuals, and they generally face a lack of financial and technical resources, all of which prevent them from fully following VAS. Thus, the audit market in Vietnam is dominated by the international auditing firms, with the Big Four alone (excluding Deloitte Touche Tohmatsu, represented by the Vietnam Auditing Company Ltd.) taking nearly 50 percent of the market in terms of revenue.

**Statutory auditors or similar company organs.** The control committee has a mandate to ensure company compliance with the law. The control committee consists of three to five members, with at least one member having accounting expertise. One of its

<sup>77</sup> Decree 105/2004/ND-CP, March 2004 (as amended by Decree 133/2005/ND-CP, October 2005) and Circular 64/2004/TT-BTC, June 2004.

<sup>78</sup> Kim, Il-Sup, "Report on Review of Listing Rules, Financial Statements of Listed Companies and Auditing Standards and Practices in Vietnam," Draft Discussion Paper, World Bank, October 2005.

tasks is to examine financial statements. The control committee has access to all company documents. It prepares its own report to the GSM, separate from that of the board of directors and CEO. The control committee is elected by the GSM, and in practice comprises employees that protect management's interests.

**Principle VD: External auditors should be accountable to the shareholders and owe a duty to the company to exercise due professional care in the conduct of the audit.**

**Assessment: Materially not observed**

**Auditor accountability.** The supervisory board is required by law to oversee the audit functions. However, in practice, the external auditors often work almost exclusively with management. By law, the auditor's report is addressed to the board of directors.<sup>79</sup> However, in practice both the board and management receive audit reports. Furthermore, shareholders often delegate the appointment of and negotiations with auditors to the board or management.

**Auditor liability.** The auditor is liable for breach of the regulations on auditing, and can be sued for violations of the professional code and the result of the audit.<sup>80</sup> While the liability is personal, audit firms bear the cost of compensating the client. As of mid-2006, no case has been brought to the courts.

At present, most audit firms are limited liability firms. This legal form provides an effective mechanism to escape liabilities in cases of negligence or wrongdoing. However, since 2004, audit companies have to be registered as unlimited partnerships, and limited liabilities have to be converted to partnerships in three years. Thus far, only four companies have been registered as unlimited liability firms.

**Auditor insurance.** By law, auditors are required to purchase professional liability insurance.<sup>81</sup> However, except for foreign audit firms that purchase insurance coverage as part of their global operations, this is not common among Vietnamese audit firms because such insurance policy has not been available.

**Principle VE: Channels for disseminating information should provide for equal, timely, and cost-efficient access to relevant information by users.**

**Assessment: Partially observed**

**Material facts.** For listed companies, material information must be disclosed within 24 hours from the time of the event. The information is to be published at the same time filing is made to SSC or HOSTC. Means of communication is mass media or HOSTC's ( and Hanoi STC) bulletin. Material information is defined as essential change of the core business and production lines; loss in excess of 10 percent of paid-in capital; investments of more than 10 percent of paid-in capital; insolvency; commitment of an offence or accusation of such by a prosecutor of members of the board of management, the director general, or chief accountant; receipt of a loan or issuance of a bond for more than 30 percent of paid-in capital; any change of the chairman of the board of management or change of more than one-third of the members of the board; and any resolution passed by the GSM.<sup>82</sup> The new Securities Law 2006 defines this material information in narrower terms, including only any loss valued at more than 10 percent of the equity.<sup>83</sup> However, the trading centers have the right to request disclosure of material facts by their own regulations.

**Published information (papers, web).** Public disclosure is mandatory for listed companies through the company's website, mass media, and HOSTC's bulletin. The standard information available to investors is the prospectus, and the annual, quarterly, and half-yearly reports.

Shareholders or groups of shareholders cannot request additional information beyond what is publicly available. For non-listed companies, information dissemination is poor and information is often not publicly available.

**Principle VF: The corporate governance framework should be complemented by an effective approach that addresses and promotes the provision of analysis or advice by analysts, brokers, rating agencies, and others, that is relevant to decisions by investors, free from material conflicts of interest that might compromise the integrity of their analysis or advice.**

**Assessment: Materially not observed**

**Disclosure of conflicts of interest by analysts, brokers, rating agencies, etc.** There are no regulations governing conflicts of interest or the relationship among investment companies, banks, brokers, and rating agencies. Brokerage researches are few. A code of conduct has been issued by the Brokerage Association. The focus of analysts, brokers does not extend beyond the listed companies.

<sup>79</sup> Decision 07/2002/QD-VPCP-Model Charter, § 41.

<sup>80</sup> Decree 105/2004/ND-CP§4.

<sup>81</sup> Article 25, Decree 105/2004/ND-CP, March 2004.

<sup>82</sup> § 53 I Decree 144/2003/ND-CP.

<sup>83</sup> §102 Law on Securities 2006.

## SECTION VI: THE RESPONSIBILITIES OF THE BOARD

The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.

**Principle VIA: Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.**

**Assessment: Partially observed**

**Basic description of board. Adequacy of duties of loyalty and care.** Vietnam basically follows the French model of company law, including the Board of Directors (BOD, Hoi dong quan tri), the Director General and a subordinated team of management with a control committee (Supervisory Board, Ban kiem soat), with certain internal control function. This committee is not required for all companies, and is subordinated not to the board, but to the GSM.<sup>84</sup> The corporate management in listed companies in Vietnam follows a two-tier structure. The board of directors consists of no less than 3 and no more than 11 members, including the chairman of the board, possibly the director general, and the chief of control committee. Under LOE 2005, directors have the duties of care, loyalty, and diligence to the company and shareholders.

The board of directors appoints one person among the members or hires an outsider to act as general director. The general director represents the company legally, if not otherwise provided for by the company charter. Subordinated to the general directors are the vice directors and heads of departments. These officers form the management team. The control committee with internal auditing function is only compulsory for JSCs with more than 11 individual shareholders or in which one shareholder owns more than 50 percent of the total shares.

**Size requirements and typical size.** The board of directors shall have no less than 3 and no more than 11 members.<sup>85</sup>

**Nomination and election.** Members are elected by the shareholders gathered at the GSM for a term of three years. The board of directors appoints the director general (CEO). The control committee is also elected by the shareholder meeting for a term of three years. The control committee performs certain oversight roles, limited largely to accounting and internal control issues.

**Eligibility requirements.** The qualification requirements of the boards are provided by law. Board members shall have knowledge and skills in business administration and shall fulfill other requirements as provided by the company charter and LOE 2005.<sup>86</sup> The requirements for private companies are provided in the company charter.

**Principle VIB: Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly.**

**Assessment: Materially not observed**

According to the LOE 2005, company executives have to perform their work honestly and diligently for the benefit of the company and shareholders.<sup>87</sup> They are not allowed to abuse their position and power or use the company's property to their own benefit. They are not allowed to disclose confidential information on the company. For listed companies, the Model Charter requires that company executives act with care and in the manner in which every business person would act under similar circumstances.

**Principle VIC: The board should apply high ethical standards. It should take into account the interests of stakeholders.**

**Assessment: Materially not observed**

**Adequacy of duties of loyalty and care.** Under LOE 2005, directors have the duties of care, loyalty, and diligence to the company and shareholders.<sup>88</sup>

**Insurance for directors.** At the present, there is no insurance available for directors.

**Board accountability/business judgment rule.** There is no explicit reference to the business judgment rule under the present legal system. However, the case books issued by the People's Supreme Court provide some precedent.

There are no provisions in the law with respect to unethical practices. Companies seldom have a code of ethics. As a legal entity, a company cannot be held liable for crimes, such as bribery or other offenses.

**Principle VID: The board should fulfill certain key functions, including:**

**Assessment: Materially not observed**

<sup>84</sup> §§121-128 LOE 2005.

<sup>85</sup> §109 I LOE 2005

<sup>86</sup> §109 IV and 110 I, LOE 2005.

<sup>87</sup> § 119, LOE 2005.

<sup>88</sup> § 119 1 b, LOE 2005.

(1) Board oversight of general corporate strategy and major decisions	<p><b>Board functionality by law, in practice.</b> The real functions of the board of directors in Vietnam differ among enterprises in various economic sectors. While the boards of SOEs have relatively limited power, the boards of foreign-owned enterprises represent the will of the investors and decide on almost every business transaction. The presence of non-executive board members is only required for listed companies.</p> <p><b>Director training, Institute of Directors.</b> A director training program is currently being offered by the Academy of Finance on a pilot basis.<sup>89</sup></p>
(2) Monitoring effectiveness of company governance practices	The board has the responsibility of monitoring the performance of the corporate managers, including the general directors and other managers, leading them and providing them with guidelines for fulfilling the operating work of the company. <sup>90</sup>
(3) Selecting / compensating / monitoring / replacing key executives	In SOEs, the board has little power over the selection and compensation of key executives. In JSCs, the shareholders gathered at the GSM approve the boards' remuneration package. The LOE 2005 requires that remuneration of the board of directors be approved by the GSM or determined in the charter. The board can appoint or remove key executives, including the CEO and the chief accountant; it also decides on remuneration policy for these officers.
(4) Aligning executive and board pay with long-term company and shareholder interests	Board compensation is generally insufficient to ensure board and management effectiveness, especially in SOEs. However, a number of JSCs have adopted performance-based compensation. Under the LOE 2005, payment for managers may consist of three parts: (i) compensation, calculated based on working day rate, (ii) bonus, and (iii) other private benefits. Payments in the form of stock option bonuses also are becoming common in listed companies. <sup>91</sup>
(5) Transparent board nomination / election process	Board members in JSCs are nominated by majority shareholders at the GSM. Besides providing detailed CVs, the candidates have to provide personal records of previous employers. In SOEs, the procedure is reported to be somewhat complicated and not transparent. In practice, however, the process of board nomination and election is dominated by the majority shareholder.
(6) Oversight of insider conflicts of interest, including misuse of company assets and abuse in related-party transactions	There is no explicit provisions or regulations requiring RPTs be approved by the board or the control committee. Disclosure of related party transaction is required. <sup>92</sup> The shareholder meetings or the board of directors should approve contracts and transactions between the company and shareholders or their authorized representatives who own more than 35 percent of total ordinary shares of the company as well as their related persons. <sup>93</sup> The 35 percent threshold holding for disclosure of related party transactions is inappropriate and allows an easy way to avoid disclosure.
(7) Oversight of accounting and financial reporting systems, including independent audit and control systems	Under current law, the CEO is responsible for preparation of the annual financial report and its submission to the board. In SOEs, the board has the right to approve the report. In JSCs, the board submits the report for the approval of the shareholders gathered at the GSM. In addition, the control committee has a yearly report and presents its opinion to the shareholders meeting.
(8) Overseeing disclosure and communications processes	In addition to the obligation to monitor, the CEO prepares and submits the company's audited financial reports to the competent authorities. The board has no obligation to oversee the communication process.
<b>Principle VI: The board should be able to exercise objective independent judgment on corporate affairs.</b>	
<b>Assessment: Materially not observed</b>	
(1) Director independence	<p><b>Director independence in law and in code.</b> The Model Charter for listed JSCs requires that one third of the members of the board be non-executive directors. However, non-executive board members exist only in some of the 47 listed companies in Vietnam. There is only a small pool of director candidates in Vietnam. Boards often rely on assistants to the director general,</p>

<sup>89</sup> Thus far, 140 directors and executives of enterprises have completed the 5-day course on modern corporate governance.

<sup>90</sup> § 108 II i. LOE 2005.

<sup>91</sup> § 117 II LOE 2005.

<sup>92</sup> § 118 LOE 2005.

<sup>93</sup> § 120 LOE 2005.

	<p>or companies may set up a pool of secretaries to support the work of the board.</p> <p><b>Director independence in practice.</b> The concept of a non-executive director of the board is new in Vietnam and is not well understood and practiced yet.</p>
(2) Clear and transparent rules on board committees	<p>There is no legislative requirement for setting up committees of the board in unlisted companies. According to §23 XVI Model Charter 2002, the board of listed companies can set up subcommittees. In practice, there are few listed companies that have set up committees such as audit, nomination, or remuneration committees.</p>
(3) Board commitment to responsibilities	<p><b>Restrictions on the number of board seats.</b> There are no restrictions on the number of companies for which a board member can serve for JSCs. CEO or director general of a JSC is not allowed to act as director in another company.<sup>94</sup> However, board members in SOEs are only allowed to hold board positions in other companies if approved by the line ministries or other state authority in charge.</p> <p><b>Board meeting requirements.</b> The law requires boards to meet at least quarterly.</p> <p><b>Public availability of board attendance.</b> Board meetings attendance is not disclosed.</p>
<p><b>Principle VIF: In order to fulfill their responsibilities, board members should have access to accurate, relevant, and timely information.</b></p>	
<p><b>Assessment: Partially observed</b></p>	
<p>Under the LOE 2005, the board members have the right to request key executives to provide access to financial and other information concerning the company. The implementation of this right may differ from state-owned sectors to companies in the private sector. The position of the general directors in SOEs is very strong in comparison to the position of the board; they are appointed by the same state authority (line ministry), with internal approval by the party organization.</p> <p>In the case of JSCs and LLCs, key executives are appointed and may be removed by the board of directors; the board assigns them executive tasks and can intervene in any business decision which seems important to the company. As a result, executive managers in LLCs and JSCs are under direct control of the board, and their position is less powerful in comparison to their counterparts in SOEs.</p>	

<sup>94</sup> §116.2 LOE 2005.

## Annex A: Summary of the State Capital Investment Corporation

The Government created the State Capital Investment Corporation (SCIC) to improve the quality of the management of equitized or partially privatized, state-owned enterprises (SOEs).<sup>95</sup> The underlying rationale behind the creation of the SCIC was to reform the SOE sector, primarily through the consolidation of the shareholding in most SOEs into one institution and to accelerate the divestment of state ownership in the enterprise sector. As the sole decision maker on behalf of the Government, the SCIC has the potential to reduce the current owner-regulator conflicts by transferring the State ownership rights in equitized SOEs from line ministries, provincial governments, and other state or quasi-state entities to the SCIC. The SCIC is also authorized to make state-directed investments and offshore investments, enter into joint ventures, and mobilize funds to expand investments. It is also allowed to mobilize domestic and foreign capital sources through capital borrowing, issuance of corporate bonds or project bonds, or setting up of investment trust funds. The Managing Board is not independent and is appointed by the Prime Minister (PM), who has the authority to decide on all aspects of the SCIC, including its objectives, strategy, and orientation, as well as some investments. The Ministry of Finance (MOF), other ministries, and provincial authorities all can "perform state management over the corporation," and the MOF is also to be the supervisory institution over the SCIC. The actual staffing and operations of the SCIC had not yet begun as of June 2006. The SCIC will start with a charter capital base of about VND 5 trillion (US\$315 million).

The Government is said to have modeled the SCIC after Temasek Holdings of Singapore, which is the Singaporean Government's investment management company. However, there are substantial differences between Temasek and the SCIC in terms of organization, operation, and environment, which have allowed Temasek to achieve a credit rating of AAA (the highest possible) and relatively strong financial performance. The key differences are that country conditions are different and that Temasek operates as a private limited liability company under the Companies Act, has clear objectives, and has professional staff with sophisticated investment decision-making and performance monitoring processes. The SCIC is now actively considering other models for the management of state shareholdings, from within the region such as in Malaysia and China, and in developed countries, such as Sweden, France, and New Zealand.

Going forward, there are a number of issues regarding the SCIC that need to be addressed. While the SCIC raises hopes for acceleration of the SOE reform agenda, it also raises the possibility of increased state intervention in the economy. The chief concern relates to its objectives, as there is no real clarity in terms of the State divesting its holdings to the private sector, its long-term strategy vis-à-vis its holdings, and exactly how "State capital" will be defined. Second, the SCIC appears to have a confused corporate governance structure that allows significant interference in its operations by various governmental parties. In addition, the MOF plays a role in both managing and supervising the SCIC, and it is not clear that the SCIC will have to comply with the reporting and accounting regulations that apply to other corporations. Finally, the actual staffing and incentive structure for the SCIC has not been determined yet, and the SCIC will need to have professional investment management staff if it is to succeed in maximizing value for the Government's shareholdings.

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<sup>95</sup> The Prime Minister Decision No. 151/2005/QĐ-TTg on June, 20, 2005 on the Establishment of the SCIC, and Prime Minister Decision No. 152/2005/QĐ-TTg on June 20, 2005, ratifying the organization and operational charter of the SCIC.

## Annex B: Overview of the Informal Stock Market in Vietnam<sup>96</sup>

The informal stock market spontaneously started in a regulatory vacuum a few years before the HOSTC began to operate in 2000. The main sources of shares traded in the unregulated market are former SOEs that were equitized (i.e., partially privatized) and became joint-stock companies (JSCs); and JSCs that were established by private entrepreneurs and investors. Of about 6,700 JSCs, only 36 companies have been listed on the HOSTC as of June 2006, and the rest remain unlisted and traded in the informal market. The stock trading volume of the unregulated market is estimated to range from three to six times as much as that of the HOSTC, with the average daily stock trading value approximately three times larger. It is estimated that roughly 60 to 100 trades of VND 15 to 25 million (US\$10 to 16 thousand) in value are taking place daily in the unregulated stock market.

The unregulated stock market is an informal network of unlicensed and licensed brokers who intermediate the transactions of Vietnamese stocks that are not listed on the HOSTC. Two kinds of stockbrokers are operating in the unregulated market. The first are independent unlicensed brokers, presumably totaling to 60 to 80 persons in Ho Chi Minh City, who are mainly doing securities trading as a side-job. The majority of them work for financial institutions, including licensed brokerage firms. The second are licensed brokers who are illegally engaged in brokering or trading unlisted stocks – they are only licensed to intermediate stocks listed on regulated markets. A trade usually settles in physical certificates and in cash within a few days of its trade date, and a messenger of the unlicensed broker carries stock certificates or cash between the investor and the broker.

The settlement of unregulated trades enjoys no regulatory or institutional protection, being solely dependent on unlicensed brokers' personal reputation. In addition, the informal stock market has none of the investor protection or orderly, fair, and efficient market mechanisms or transparency of the STCs. The securities market regulations do not apply outside the organized securities trading centers, and, thus, the SSC has no power to regulate the unregulated stock market.<sup>97</sup> Without a transparent trade information reporting and dissemination system, pricing remains opaque. The intermediaries' financial, professional, and operational capacities are neither attested to nor monitored, and the issuers' disclosure is not verified. Thus, transactions are relatively inefficient and minimal. But they constitute the majority of transactions in the country.

It has been argued that the disclosure requirements for listing on the STCs act as a deterrent for many companies that prefer to maintain opaque financial accounts, predominantly for tax reasons. A strong incentive for companies to participate in the official stock market will not exist as long as corporate transparency standards remain weak. It could also be argued that even more demanding listing requirements are needed to attract investors to the official stock market, although unlicensed brokers in the informal market claim that the lack of disclosure standards has not reduced investor demands. The solution now being contemplated is to raise the corporate transparency standards for all public companies (as opposed to only listed companies), to level the playing field among both the listed and unlisted firms. The idea is that this would improve the attractiveness of listing on the STCs, as listing would not be substantially more burdensome for enterprises. Furthermore, the new Securities Law 2006 provides for SSC regulation of all public companies. Finally, the introduction of a centralized registry system, an integrated securities depository system, and an individual securities broker/dealer registration system would also be effective tools in regulating securities trading outside of the STCs.

<sup>96</sup> Primarily from "Overview of the Capital Markets and Directions for Development," World Bank, Final Draft Policy Note, May 2006.

<sup>97</sup> Article 110-3 of Decree 144. The decree has not necessarily been enforced even with regard to securities activities in the organized securities trading market.



## Vietnam Terms/Acronyms

<b>ADB</b>	Asian Development Bank
<b>AOF</b>	Academy of Finance
<b>AGM</b>	Annual General Shareholders Meeting
<b>ASEM Fund</b>	Asian-European Meeting Fund
<b>BBC</b>	Bien Hoa Confectionary Corporation
<b>CAN</b>	Halong Canned Food Stock Corporation
<b>CIEM</b>	Central Institute for Economic Management
<b>LOI 2005</b>	Law on Investment No. 59/2005/QH11
<b>FIEs</b>	Foreign Investment Enterprises
<b>GSM</b>	General Shareholder Meeting
<b>HAP</b>	Hai Phong Paper Joint Stock Company
<b>HASTC</b>	Hanoi Securities Trading Center
<b>HOSTC</b>	Ho Chi Minh City Securities Trading Center
<b>IAS – IFRS</b>	International Accounting Standards – International Financial Reporting Standards
<b>IASB</b>	International Accounting Standards Board
<b>ISA</b>	International Standards on Auditing
<b>JSC</b>	Joint Stock Company (under the Law on Enterprises)
<b>JSCB</b>	Joint Stock Commercial Banks
<b>JVC</b>	Joint Venture Company (under the Law on Foreign Direct Investment)
<b>LLC</b>	Limited Liability Company (under the Law on Enterprises)
<b>LOE 2005</b>	Law on Enterprise No. 60/2005/QH11
<b>MOF</b>	Ministry of Finance
<b>MPI</b>	Ministry of Public Investment
<b>NSCERD</b>	National Steering Committee for Enterprise Reform and Development
<b>REE</b>	Refrigeration Electronic Engineering Corporation
<b>SBV</b>	State Bank of Vietnam
<b>SCIC</b>	State Capital Investment Corporation
<b>SGH</b>	Sai Gon Hotel
<b>SOE Law</b>	Law on State-owned Enterprises No. 14/2003/QH1
<b>SOEs</b>	State-owned Enterprises (under the Law on State-owned Enterprises)
<b>SROs</b>	Self Regulatory Organizations
<b>SCIC</b>	State Capital Investment Corporation
<b>SSC</b>	State Securities Commission
<b>STC</b>	Securities Trading Center
<b>TA</b>	Technical Assistance
<b>VAS</b>	Vietnamese Accounting Standards
<b>VAFI</b>	Vietnam Association of Financial Investors
<b>VSA</b>	Vietnamese Standards on Auditing
<b>VCCI</b>	Vietnam Chamber of Commerce and Industry
<b>VTC</b>	VTC Telecommunications Joint Stock Company
<b>VSD</b>	Vietnam Securities Depository
<b>WB</b>	World Bank

This report is one in a series of corporate governance country assessments carried out under the Reports on the Observance of Standards and Codes (ROSC) program. The corporate governance ROSC assessments examine the legal and regulatory framework, enforcement activities, and private sector business practices and compliance, and benchmark the practices and compliance of listed firms against the OECD Principles of Corporate Governance.

The assessments:

- use a consistent methodology for assessing national corporate governance practices
- provide a benchmark by which countries can evaluate themselves and gauge progress in corporate governance reforms
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