

Corporate Governance Frameworks in Cambodia, Lao PDR, Myanmar and Viet Nam



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Foreword

This report takes stock of corporate governance frameworks in four countries: Cambodia, Lao PDR, Myanmar and Viet Nam as part of the OECD-Southeast Asia Corporate Governance Initiative. Launched in 2014, the Initiative supports the regional development of vibrant and healthy capital markets through the advancement of corporate governance standards and practices. Recognising the specific reform needs of Cambodia, Lao PDR, Myanmar and Viet Nam arising from their stage in economic development, the Initiative focuses on these countries to compile information on corporate governance frameworks, identify common challenges and propose areas for reform.

The chapters on Cambodia, Lao PDR and Viet Nam were developed by Dr. Le Duy Binh (Chief Economist, Economica Viet Nam). The report was made possible thanks to the valuable input and support of leaders, officials and staff members at the Securities and Exchange Commission (SEC) of Cambodia, Laos Securities Commission (LSC), Lao Ministry of Finance, Securities and Exchange Commission of Myanmar (SECM), Directorate of Investment and Company Administration (DICA) of Myanmar, Ministry of Finance in Viet Nam, the State Securities Commission (SSC) of Viet Nam, the Central Institute of Economic Management (CIEM) and the Viet Nam Chamber of Commerce and Industry (VCCI). A special thank you to staff members of Economica Viet Nam for their support and contribution to the literature review, data compilation, and interviews with experts.

The chapter on Myanmar was prepared by Akito Konagaya¹ and Yuya Yamada from the OECD Secretariat. Counterparts in the Securities and Exchange Commission of Myanmar and DICA provided valuable support. The authors are grateful, in particular to staff members of WinCom Solutions Co., Ltd and Trust Venture Partners Co., Ltd who carried out interviews with companies in Myanmar.

This publication was developed under the guidance of Ms. Fianna Jurdant with input from Mr. Serdar Celik, Ms. Catriona Marshall and Mr. Kenta Fukami, all of the OECD Corporate Governance and Corporate Finance Division. Logistical and publishing support was provided by Ms. Katrina Baker and Ms. Ana González from the same division. The early drafts of each country stocktaking report, which form the basis of this publication, were presented at the 5th meeting of the OECD-Southeast Asia Corporate Governance Initiative in Yangon, Myanmar, in March 2018. These reports were prepared by: the SEC of Cambodia; Myanmar's DICA and Ministry of National Planning and Finance; Lao's LSCO; and, the SSC of Viet Nam. This publication has also benefited from the inputs, information, and presentations at this meeting.

The OECD-Southeast Asia Corporate Governance Initiative and the OECD Myanmar Reform Project are thankful for financial support from the Government of Japan.

¹ Akito Konagaya left the OECD on 30 June 2018 and has returned to the Financial Services Agency of the Government of Japan.

Table of contents

Foreword	3
Abbreviations	7
1. Introduction	9
The economic and corporate landscape	9
Measuring up to international standards	11
Further improving corporate governance in ASEAN	13
2. Country stocktaking report: Corporate governance in Cambodia	15
Introduction and context of reforms	15
Overview of policy developments and progress made at the national level in the field of corporate governance.....	18
The outlook for future developments in the field of corporate governance.....	34
References.....	36
Annex 2.A. Key laws and regulations on company incorporation, securities, listing and corporate governance in Cambodia.....	37
3. Country stocktaking report: Corporate governance in Lao PDR	39
Introduction and context of reforms	39
Overview of policy developments and progress made at the national level in the field of corporate governance.....	41
Challenges and opportunities in the implementation of an effective national framework for corporate governance.....	50
The outlook for future developments in the field of corporate governance.....	53
References.....	54
Annex 3.A. Regulations related to the securities market in Lao PDR.....	55
4. Country stocktaking report: Corporate governance in Viet Nam	57
Introduction and context of reforms	57
Overview of policy developments and progress made at the national level in the field of corporate governance.....	62
Challenges and opportunities in the implementation of an effective national framework for corporate governance.....	80
The outlook for future developments in the field of corporate governance.....	83
References.....	85
Annex 4.A. Key laws and regulations on company incorporation, securities, listing and corporate governance in Viet Nam	87
5. Country stocktaking Report: Corporate Governance in Myanmar	89
Introduction.....	89
Survey results.....	91
Analysis of questionnaire responses by companies	92

Recommendations.....	108
References.....	109
Annex 5.A. Significant changes introduced under the new Companies Law.....	110
Annex 5.B. Challenges and Opportunities Identified by Myanmar Authorities.....	113
Main challenges.....	113
Annex 5.C. Summary of Companies' Answers to the Questionnaire.....	114

Tables

Table 2.1. Protecting Minority Investors in Cambodia – Measure of Quality	17
Table 2.2. Listed firms on the Cambodia Securities Exchange (CSX)	31
Table 3.1. Protecting Minority Investors in Laos – Measure of Quality.....	41
Table 3.2. Main laws and regulations relating to corporate governance in Lao PDR.....	43
Table 3.3. Listed firms on the Lao Securities Exchange by the end December of 2017 and end of April 2018.....	51
Table 4.1: Protecting minority investors in Viet Nam – Measure of quality.....	59
Table 4.2. SOEs in Viet Nam – Key indicators.....	77
Table 5.1. Basic statistics of surveyed companies.....	91
Table 5.2. Timing of notification	92
Table 5.3. Example of RPT procedures in listed companies.....	98
Table 5.4. Private companies' answers to the question on the responsibilities of board.....	106
Table 5.5. Number and ratio of independent directors in public companies	107
Table 5.6. Number and ratio of independent directors in private companies.....	108

Figures

Figure 1.1. Domestic credit provided to the private sector in ASEAN (% of GDP).....	10
Figure 1.2 Market Capitalisation in Cambodia, Laos, Myanmar and Viet Nam as of end-April 2018 in USD billion	11
Figure 1.3 Number of listed companies as of end-April 2018	11
Figure 1.4 Market Capitalisation in ASEAN as of end-April 2018 in USD billion.....	11
Figure 1.5 Average market capitalisation per listed company in USD million.....	11
Figure 1.6. Ranking in Protecting Minority Investors Index.....	12
Figure 1.7. Score in Protecting Minority Investors Index	12
Figure 1.8 Protecting Minority Investors in ASEAN.....	13
Figure 2.1. Number of enterprises in Cambodia by size in 2015	15
Figure 2.2. Protecting Minority Investors in Cambodia and Comparable Economies	17
Figure 3.1. GDP per capita of Lao PDR (USD)	39
Figure 3.2. Protecting Minority Investors in Lao PDR and Comparable Economies	40
Figure 3.3. Key building blocks within the Lao PDR financial sector regulatory framework	42
Figure 3.4. LSX market capitalisation.....	51
Figure 4.1. Protecting Minority Investors in Viet Nam and Comparable Economies.....	59
Figure 4.2. Market capitalisation of Viet Nam stock markets.....	60

Boxes

Box 4.1. Rights and obligations of the Board of Directors in Viet Nam.....	74
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Abbreviations

ADO	ADB's Asian Development Outlook
AEC	ASEAN Economic Community
ASEAN	Association of Southeast Asian Nations
BCEL	Banque Pour Le Commerce Extérieur Lao Public
BoD	Board of Directors
CG	Corporate Governance
CGD	Corporate Governance Division
CIEM	Central Institute for Central Economic Management
CIFRS	Cambodian International Financial Reporting Standards
CSX	Cambodia Stock Exchange
DPIs	Departments of Planning and Investment
EDL-Gen	Électricité du Laos (Electricity Generation Public Company)
GMS	General Meeting of Shareholders
GSO	General Statistics Office of Viet Nam
GTI	Grand Twins International (Cambodia) Plc
HNX	Hanoi Stock Exchange
HOSE	Ho Chi Minh Stock Exchange
IFRS	International Financial Reporting Standards
IMF	International Monetary Fund
IPO	Initial Public Offering
Lao PDR	Lao People's Democratic Republic
LCE	The Law on Commercial Enterprises
LoE	Law on Enterprises
LSC	Lao Securities Commission
LSX	Lao Stock Exchange
LWPC	Lao World Public Company
MEF	Ministry of Economy and Finance
MOF	Ministry of Finance
MPI	Ministry of Planning and Investment
NAC	National Accounting Council

NGOs	Non-governmental organisations
OECD	Organisation for Economic Co-operation and Development
PAS	Sihanoukville Autonomous Port
PCD	Phousy Construction and Development Public Company
PIE	Public Interest Entities
PLCs	Public Limited Companies
PPAP	Phnom Penh Autonomous Port
PPSP	Phnom Penh SEZ Plc
PSD	Private sector development
PTL	Petroleum Trading Lao Public Company
PWSA	Phnom Penh Water Supply Authority
SBV	State Bank of Viet Nam
SCIC	State Capital Investment Corporation
SECC	Securities and Exchange Commission of Cambodia
SMEs	Small and medium-sized enterprises
SOEs	State-owned enterprises
SSC	State Securities Commission of Viet Nam
SVN	Souvanny Home Center Public Company
UPCoM	Unlisted Public Company
VAFI	Viet Nam Financial Investors' Association
VAS	Vietnamese Accounting Standards
VASB	Viet Nam Association of Securities Business
VCCI	Viet Nam Chamber of Commerce and Industry
VIOD	Viet Nam Institute of Directors
VSD	Viet Nam Securities Depository
WB	World Bank

Exchange rate used for reference purposes:

USD 1 = KHR 4,050.2 (June 2018)

USD 1 = LAK 8,334.0 (June 2018)

USD 1 = VND 23,220.2 (June 2018)

1. Introduction

The economic and corporate landscape

Southeast Asia is a dynamic and economically vibrant region. With a combined population of 643 million in 2018, the region has become one of the fastest growing economies in the world. The combined Gross Domestic Product (GDP in current prices) of the Association of Southeast Asian Nation (ASEAN) countries doubled from USD 1.4 trillion in 2007 to USD 2.8 trillion in 2017, which placed it as the 5th largest in the world. ASEAN has also become one of the main drivers of the world economy, accounting for an increasing share of economic growth and 3.5% of the world's GDP in 2017. GDP growth for the region is projected at 5.1% on average for 2017-202, compared to 3.5% globally (OECD, 2017).

ASEAN countries are among the largest recipients of Foreign Direct Investment (FDI) flows in the world and have become integrated in global supply chains. The region attracted USD 114.5 billion in FDI in 2017. As for trade, ASEAN's total trade with the world soared 61% to USD 2.6 trillion in 2017 from USD 1.6 trillion in 2007. Intra-ASEAN trade increased to USD 543 billion in 2017 (accounting for 20.9% of total trade).

Cambodia, Lao PDR, Myanmar and Viet Nam (CLMV countries) have also shown high rates of economic growth. In the last decades, the four countries have experienced the fastest rates of economic growth in Southeast Asia. Today, the combined GDP in CLMV is USD 309 billion (12.15% of ASEAN GDP) and a total population of 170 million (26.7% of ASEAN's) (ADB, WB and ASEAN Secretariat, 2017). The Asian Development Bank forecasts estimate that the growth rate in CLMV countries will remain high, ranging from 6.8% to 7.1% between 2018 and 2021. The strong growth in the four countries is also backed by fast and steady trade and capital flow liberalisation as well as an increasingly dynamic business sector.

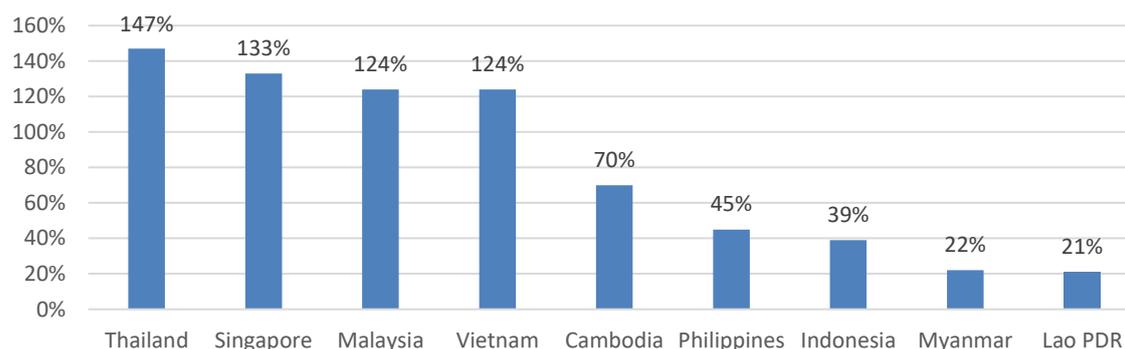
Despite strong growth, the development gap between CLMV and more developed ASEAN member countries remains sizeable. The need for physical infrastructure; including roads, railways, ports, airports and energy lines is high in CLMV countries, and capital markets remain at an early stage of development. In order to reach the targets outlined in the ASEAN Economic Community (AEC) Blueprint², CLMV countries need to create a more conducive business environment, including by: i) ensuring effective implementation of commitments in trade facilitation and non-tariff measures, ii) providing mutual recognition of qualifications for professional services, and iii) establishing a transparent and non-discriminatory investment regime.

Despite the rigorous economic growth and continuous reforms, businesses in CLMV face a number of challenges. Access to finance is one of the biggest issues. Capital investment

² The ASEAN Economic Community Blueprint 2025 aims to facilitate the seamless movement of goods, services, investment, capital, and skilled labour within ASEAN in order to enhance ASEAN's trade and production networks, as well as to establish a more unified market for its firms and consumers.

for private enterprises in CLMV is low and is one of the biggest business constraints. Another important source of capital for companies is domestic financial institutions (banks and other financial institutions), in the form of loans, purchases of non-equity securities, and trade credit. This is limited in CLMV countries. In Myanmar and Laos, the percentage of domestic credit provided to the private sector as a share of GDP is 22% and 21% respectively. Albeit slightly higher, the figure is only 70% in Cambodia (see Figure 1.1).

Figure 1.1. Domestic credit provided to the private sector in ASEAN (% of GDP)



Source: World Development Indicators, (World Bank, 2018).

The gap between the level of capital market development in CLMV countries and the rest of ASEAN is also high. Stock markets in CLMV are the youngest in the region, opening in the last two decades. Cambodia's capital market (Cambodia Stock Exchange) remains small compared to regional peers (see Figure 1.2), with a market capitalisation of approximately USD 300 million as of April 2018. In Lao PDR, the Lao Securities Exchange (LSX), which contains seven listed companies and a market capitalisation of USD 1.28 billion as of April 2018, has faced similar challenges in attracting companies to list. Myanmar's YSX was opened at the end of 2015, has five listed companies and a market capitalisation of USD 0.45 billion as of April 2018. Among the four CLMV countries, Viet Nam has the most developed capital market, with a combined market capitalisation of approximately USD 137.69 billion and over 700 listed companies on the Hanoi Stock Exchange and Ho Chi Minh Stock Exchange (as of April 2018).

Cambodia and Myanmar have five listed companies, while Laos has seven which is the smallest number of listed companies in ASEAN. In terms of average market capitalisation per listed company, listed companies in CLMV are also much smaller than their ASEAN peers. Average market capitalisation per public listed company is USD 60 million in Cambodia, USD 183 million in Lao PDR, USD 90 million in Myanmar and USD 186 million in Viet Nam, compared to an average of USD 890 million in the rest of ASEAN (see Figure 1.8).

Figure 1.2 Market Capitalisation in Cambodia, Laos, Myanmar and Viet Nam as of end-April 2018 in USD billion

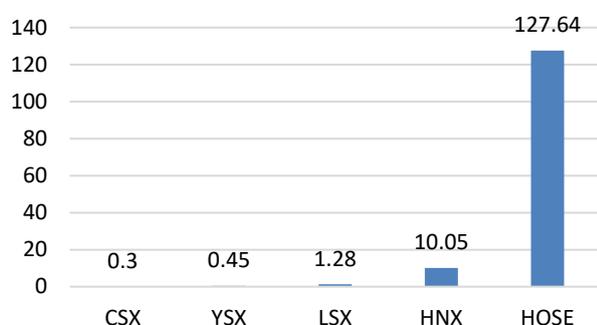


Figure 1.4 Market Capitalisation in ASEAN as of end-April 2018 in USD billion

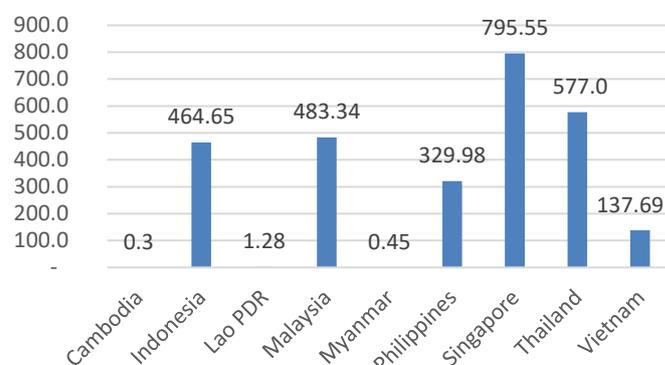


Figure 1.3 Number of listed companies as of end-April 2018

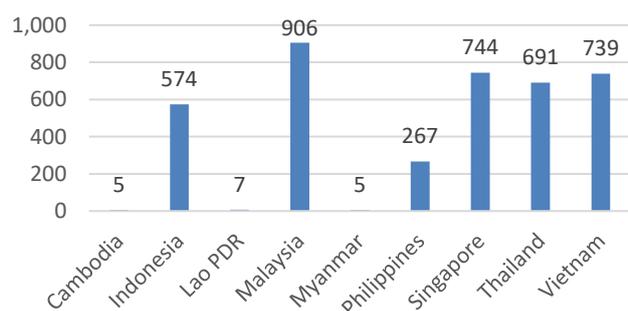
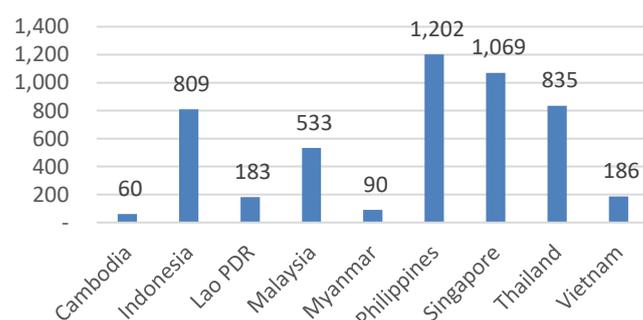


Figure 1.5 Average market capitalisation per listed company in USD million



Source: Local Stock Market Exchanges in ASEAN countries (2018)

Measuring up to international standards

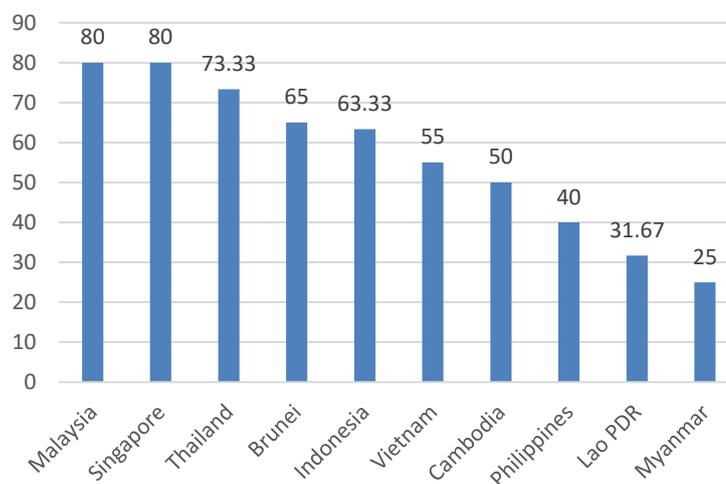
Governments in CLMV countries have prioritised capital market development. Multiple business environment reforms have taken place in Cambodia, Laos, Myanmar and Viet Nam, and SOE reforms are ongoing; however, CLMV countries still face challenges to align their corporate governance frameworks with international standards. The World Bank's Doing Business Report³ uses *protecting minority investors* as a proxy index to measure the quality of corporate governance in different economies.

³ The World Bank Doing Business Index measures the protection of minority investors from conflicts of interest through one set of indicators, and shareholders' rights in corporate governance through another, for example: extent of disclosure, extent of shareholder rights, extent of director liability, extent of ownership and control, ease of shareholder suit, extent of corporate transparency, extent of conflict of interest regulation, extent of shareholder governance, and strength of minority investor protection.

Figure 1.6. Ranking in Protecting Minority Investors Index

Country	Ranking
Malaysia	4
Singapore	4
Thailand	16
Brunei	40
Indonesia	43
Viet Nam	81
Cambodia	108
Philippines	146
Lao PDR	172
Myanmar	183

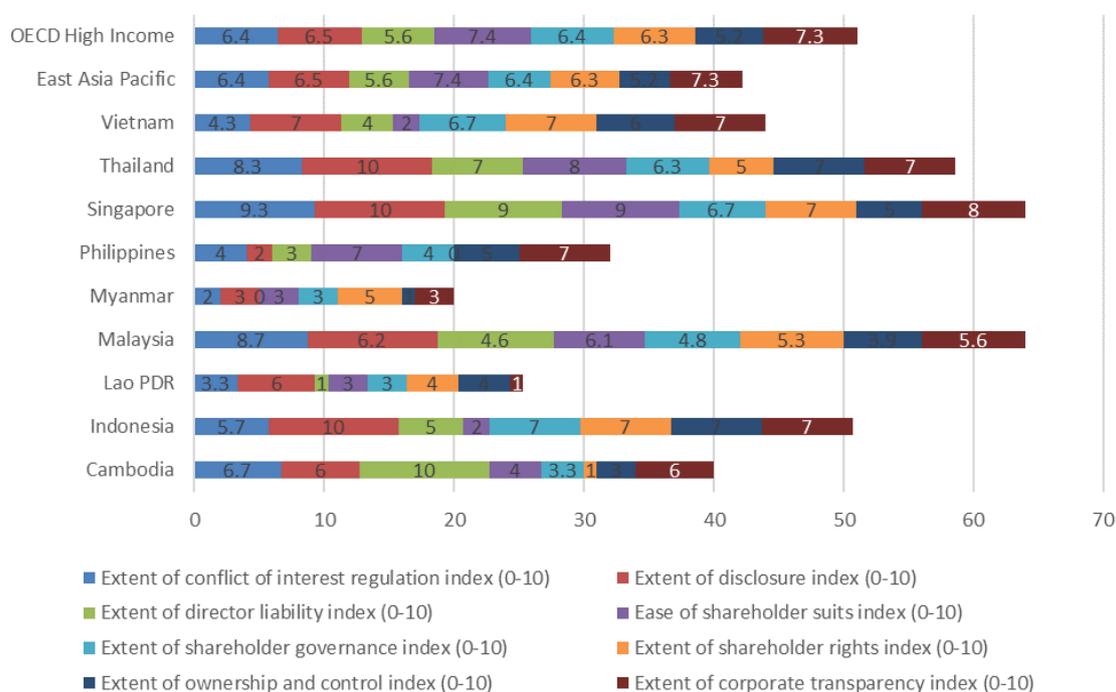
Source: Doing Business 2018 (the World Bank, 2018).

Figure 1.7. Score in Protecting Minority Investors Index

In the 2018 Doing Business report, CLMV countries are ranked among the low performers in Protecting Minority Investors (see Figure 1.2 and 1.7) (World Bank Doing Business, 2018). CLMV countries are yet to introduce significant reforms in the area of protecting minority investors (Bank Doing Business 2018). On the other hand, Indonesia, Malaysia and Thailand all introduced reforms to improve the protection of minority investors in 2017. This shows that in ASEAN, better performing countries in corporate governance appear to implement a greater number of corporate governance reforms than countries that are lowly ranked.

Taking a closer look into the sub-indices of the Doing Business Report, each CLMV country has a clear area for improvement. Cambodia is the lowest performer in the Shareholder Right Index; Laos hovers around the middle on the Corporate Transparency Index; Myanmar performs unsatisfactorily on the Director Liability Index, and; Viet Nam performs poorly on the Ease of Shareholder Suit Index. In addition to these weaker points, there are other sub-indices in which CLVM countries are not performing well (see Figure 1.8).

Figure 1.8 Protecting Minority Investors in ASEAN



Source: Doing Business 2018 (the World Bank, 2018)

CLMV country performance on the World Bank Enterprise Survey 2016 also illustrates that access to finance is among the top ten business environment constraints. Improving access to finance is a high priority for CLMV Governments. Strengthening corporate governance is an important element to help businesses improve their access to finance, both from commercial banks and in capital markets. As described in the country stocktaking chapters of this report, CLMV Governments are proactively taking regulatory and market reforms to promote the adoption of good corporate governance practices by companies. Regulators in CLMV countries are also increasingly using the *G20/OECD Principles of Corporate Governance* and the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* as the reference for improving the regulatory framework for corporate governance. This report compile information on how these countries measure up to the recommendations of the Principles as agreed upon by the members of the OECD Corporate Governance Committee (which includes OECD, G20, and FSB jurisdictions). Relentless efforts have been made to improve the dynamism of the capital markets in CLMV countries and to boost investor confidence. In this regard, important progress has been observed, but important challenges remain.

Further improving corporate governance in ASEAN

The establishment of the ASEAN Economic Community (AEC) on 31 December 2015 was a significant milestone in ASEAN's regional economic integration agenda. ASEAN member countries have taken important steps towards developing a region with the free movement of goods, services, investment and skilled labour in addition to freer flows of capital, as outlined in the AEC Blueprint. One instrument supporting capital market

integration is the ASEAN Corporate Governance Scorecard, which is developed by the Asian Development Bank (ADB) and the ASEAN Capital Market Forum (ACMF) to assess the corporate governance of publicly listed companies in six Southeast Asian countries using a methodology benchmarked against the *G20/OECD Principles of Corporate Governance*. Promoting good corporate governance practices and capital market development will help CLMV to capitalise on the benefits of the AEC and regional and international reforms.

The ASEAN Corporate Governance Initiative, composed of the ASEAN Corporate Governance Scorecard and assessment and ranking of ASEAN publicly listed companies (PLCs), is among several regional initiatives of the ASEAN Capital Markets Forum (ACMF). This initiative has been a collaborative effort of ACMF and the Asian Development Bank since 2011. The Scorecard covers the following five areas as identified in the OECD Principles:

- (i) Part A: rights of shareholders;
- (ii) Part B: equitable treatment of shareholders;
- (iii) Part C: role of stakeholders;
- (iv) Part D: disclosure and transparency; and
- (v) Part E: responsibilities of the board.

Between 2011 and 2016, a number of ASEAN countries including Thailand, the Philippines, Singapore, Indonesia, Malaysia, and Viet Nam have participated in the Scorecard. In 2017 the ASEAN Corporate Governance Scorecard was thoroughly reviewed and changes were made to improve the methodology, basing on the *G20/OECD Principles of Corporate Governance*. The next phase of the Scorecard will be carried out in 2018. The support and involvement of the regional authorities, businesses, investors and stakeholders is critical to ensuring that it is practical and effective in enhancing corporate governance standards and practises. In line with this, the Scorecard recognises the efforts of listed companies in improving corporate governance practises. Proactively engaging in initiatives such as the Scorecard and other regional corporate governance projects can contribute to improving corporate governance in CLMV countries.

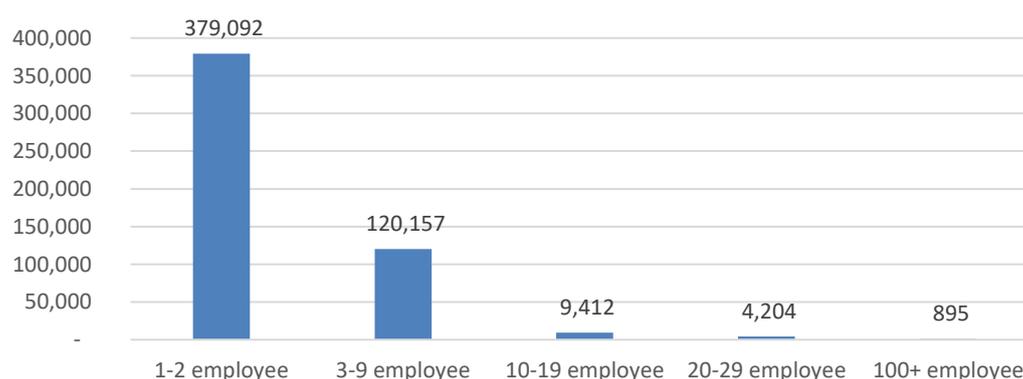
2. Country stocktaking report: Corporate governance in Cambodia

Introduction and context of reforms

Since its return to a market-oriented economy in 1989, Cambodia has introduced policies and reforms to develop its private sector and business environment, with the objective of boosting economic growth through investment and trade. Cambodia has a relatively open investment regulatory environment, which allows 100% foreign ownership in all sectors (with few exceptions). According to the Cambodian National Institute of Statistics (NIS), Cambodia sustained an average growth rate of 7.6% between 1994 and 2017 and the size of the economy grew to USD 21 billion in 2017. Following more than two decades of strong economic growth, the per capital gross national income (GNI) of Cambodia stood at USD 1 070 in 2015, enabling the country to attain the lower middle-income status. Economic growth is expected to remain strong over the next two years forecasted to be 7% throughout 2018 and 2019 (ADB, 2018)⁴. A recovering tourism sector, coupled with fiscal expansion is expected to counter reduced garment exports and construction growth.

The Cambodian economy is powered by private sector businesses. In 2015, there were 513 760 corporations in Cambodia. There are fewer state-owned enterprises in Cambodia than in many neighbouring countries. The majority of businesses in Cambodia are small (74% employ only one or two people). In addition, most are in the informal sphere (98.8% of businesses with less than 10 employees are not registered). Therefore, the wide scale adoption of good corporate governance is a challenge given the small size and the informality of businesses in Cambodia.

Figure 2.1. Number of enterprises in Cambodia by size in 2015



Source: Inter-Census Economic Survey (NIS, 2015)

⁴ Asian Development Outlook 2018 (ADB, 2108).

Access to credit for private sector businesses in Cambodia remains low. In 2016, the ratio of domestic credit to the private sector (% of GDP) in Cambodia was 69.7%; whereas 147.3% in Thailand, 132.9% in Singapore and 123.8% in Viet Nam (World Bank, 2017)⁵. Therefore, in Cambodia, businesses often resort to more costly conventional financing options offered by commercial banks.

Meanwhile, activity in the Cambodian debt market is low. The government is still working on legislation to regulate the establishment of a corporate bond market that would give local companies access to debt instruments in order to raise capital for operations and expansion.

The “Rectangular Strategy” for Growth, Employment, Equity and Efficiency Phase III is the government’s main national strategic document. The Strategy was issued in 2013 and sets out broad priorities for socioeconomic development. One of its four main strategic pillars (“rectangles”) is Private Sector Development. According to the Strategy, the Royal Government views the “private sector as the locomotive of economic growth”, and “strengthening the private sector and promoting investment and business development” is among the strategic objectives of the Royal Government. The Government also attached high emphasis on improving the business environment and the Ease of Doing Business in Cambodia, given the modest ranking of the country in the World Bank’s Doing Business. Despite some improvements in recent years, Cambodia is ranked 135 out of 189 economies in the World Bank Doing Business Index in 2018. Its legal and regulatory corporate governance framework needs to be improved.

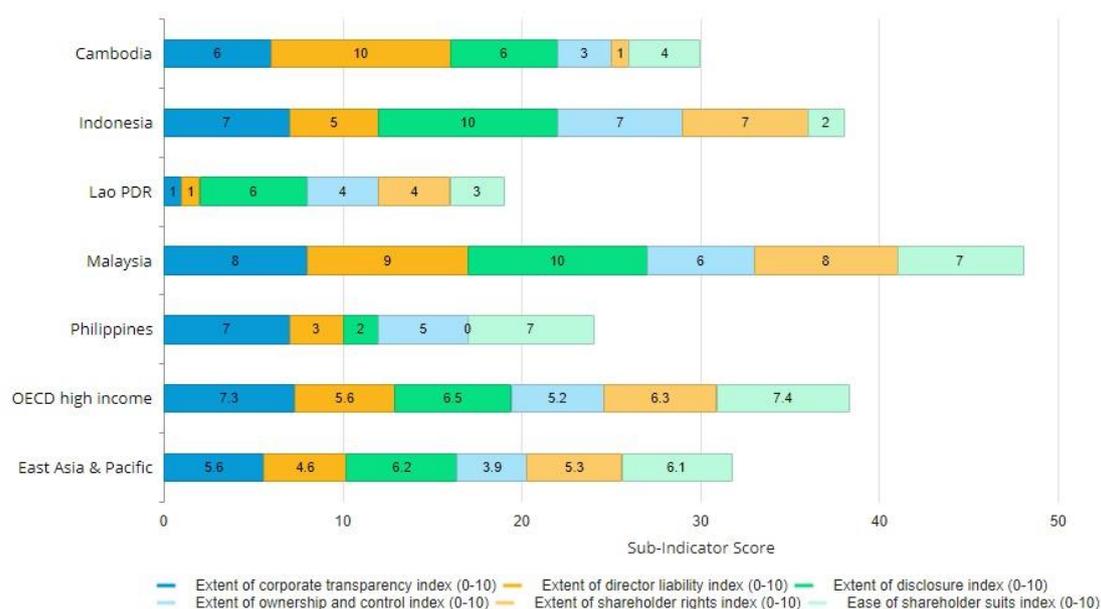
Many Cambodian businesses cite access to finance as a major constraint to development. Access to finance is ranked among the top ten business environment constraints according to the World Bank Enterprise Survey 2016. This limited access to finance has stunted private sector growth. In an effort to improve companies’ access to finance, the Cambodian Stock Exchange (CSX) was founded in July 2011 and started operations in 2012. Shares began trading on the CSX in 2012. The two shareholders of CSX are the Royal Government of Cambodia (55%) and Korea Exchange (45%). The stock market operates on half-day schedules.

There are currently five listed companies on CSX, with a combined market capitalisation of USD 300 million as of end of April 2018. Listed companies include the Sihanoukville Autonomous Port (PAS), Phnom Penh SEZ Plc (PPSP), Phnom Penh Autonomous Port (PPAP), Grand Twins International (Cambodia) Plc (GTI) and Phnom Penh Water Supply Authority (PWSA).⁶ In Cambodia, there are approximately 10 other large private companies or business groups involved in different sectors, including garment, construction, tourism and agribusiness.

Minority shareholder rights is an important issue in Cambodia, as there is a high level of concentrated ownership among listed companies. For example, in PPSP the four largest shareholders hold 80% of ownership. In GTI, the two largest shareholders hold 50.6% of the company’s ownership. One single shareholder owns 85% of equity in PWSA and 80% in PPAP. Similarly, one single shareholder holds a 54% ownership stake in PAS.

⁵ See more at: <https://data.worldbank.org/indicator/FS.AST.PRVT.GD.ZS>

⁶ See more at CSX website at <http://csx.com.kh/main.do>

Figure 2.2. Protecting Minority Investors in Cambodia and Comparable Economies

Source: Doing Business 2018, World Bank (2018).

According to World Bank Doing Business 2018, Cambodia ranks 131 out of 189 economies on the *Protecting Minority Investors Index*. Doing Business measures a number of important corporate governance elements, including: the protection of minority shareholders; shareholder's rights; level of disclosure; level of director liability; level of ownership and control; ease of creating a shareholder suit; level of corporate transparency; level of conflict of interest regulation; and level of shareholder governance.

Table 2.1. shows that although Cambodia receives a high score in the Director Liability Index, it faces major challenges in protecting shareholder rights, information disclosure and the ease of initiating shareholder suits. Cambodia has no real system for protecting minority shareholders from self-dealing as well as very weak disclosure requirements and limited shareholder rights. For example, Cambodia ranks much lower than Indonesia and Malaysia in terms of regulation on corporate governance.

Table 2.1. Protecting Minority Investors in Cambodia – Measure of Quality

Index	Score
Extent of conflict of interest regulation index (0-10)	6.7
Extent of disclosure index (0-10)	6
Extent of director liability index (0-10)	10
Ease of shareholder suits index (0-10)	4
Extent of shareholder governance index (0-10)	3.3
Extent of shareholder rights index (0-10)	1
Extent of ownership and control index (0-10)	3
Extent of corporate transparency index (0-10)	6

Source: Doing Business 2018 (the World Bank, 2018).

Improving corporate governance is one of the priorities of the Government of Cambodia, both for the objective set forth in the “Rectangular Strategy” and for promoting access to finance for private companies in the country. It will help improve the dynamism of the capital market in the country and boost investor confidence. The Royal Government adopted the National Strategic Development Plan 2014-2018, which affirms its intention to “promote the use of international good practices in accounting and corporate governance”. In addition, the Financial Sector Development Strategy for 2016-2025 of the Royal Government of Cambodia sets out specific targets for 2025. The strategy articulates development policy areas such as: capital market development, improving the performance of SOEs and the sale of equity securities, making SME listing easier and promoting financial institutional listing, document and information disclosure⁷.

Overview of policy developments and progress made at the national level in the field of corporate governance

The Securities and Exchange Commission of Cambodia (SECC), established in 2007, plays an important role in promoting corporate governance in Cambodia. The chairman of the board of the SECC is the Minister of Economy and Finance (MEF) and the board includes eight other members. Five board members are senior government officials from the Ministry of Economy and Finance, National Bank of Cambodia, Ministry of Commerce and Ministry of Justice. One additional member is from the Council of Ministers. The board also includes two capital market experts. Board members are appointed for a five-year, renewable term. The day-to-day operations of the SECC are managed by the Director General.

To implement the Government's Rectangular Strategy and the National Strategic Development Plan, a steering committee was established to lead the private sector development (PSD) reform agenda. In recognition of the crucial role of corporate governance, the Royal Government of Cambodia issued a resolution to set up a sub-steering committee on corporate governance (under the main steering committee) to promote sound performance of the private sectors. The Sub-Steering Committee covers the following functions:

- a) Put in place the policies and strategies to improve corporate governance for securities and other related business sectors;
- b) Promote, monitor and assess the corporate governance practice of the private sectors;
- c) Set out the regulations and guidelines related to corporate governance; and
- d) Seek funds to support the promotion of corporate governance etc.

The Sub-Steering Committee appointed the Corporate Governance Division (CGD) of the SECC as its Secretariat. The CGD has a dual-function: one as the secretary to the Sub-Steering Committee on Corporate Governance and the other as the securities regulator under the SECC. Under SECC, the Corporate Disclosure Supervision Division also plays an important role in promoting corporate governance.

In recent years, the Cambodian government has made important steps towards establishing a legal and regulatory framework for corporate governance. Progress in terms of regulation

⁷ “Financial Sector Development Strategy 2016-2025”, (Royal Government of Cambodia, 2016).

has been notable, for example, by Cambodia's improved score in the Protecting Minority Investors Index in the World Bank Doing Business report. However, many regulatory challenges still remain and need to be addressed before Cambodia can further improve the policy and regulatory framework for sound corporate governance. The following sections take a deeper look into the various aspects of corporate governance regulation in Cambodia.

Ensuring an effective corporate governance framework

Company Law

Company incorporation and registration in Cambodia are governed by *the Law on Commercial Enterprises (LCE)*. The law is applicable to “partnerships”, which fall into the category of general partnerships or a limited partnership “limited company,” which is either a private limited company or a public limited company; including “foreign businesses”. The “Law on Commercial Enterprises” allows the formation of a “limited company”, either in the form of “private limited company” or “public limited company” to carry on business in Cambodia (Article 85). Currently, the majority of enterprises in Cambodia incorporate as private limited companies. The Law on Commercial Enterprises (LCE) provides for an extensive chapter within this form including its incorporation, operations, and governance and winding up procedures. The same law provides for the Public Limited Company corporate form. This form is applicable to companies wishing to sell shares to the public (Article 87).

Corporate governance requirements are the same for the two forms of corporations with a few exceptions: namely the number of directors (Article 118), number of shareholders (Article 86) and access to corporate information policy (Article 110).

According to the law, the company shall issue a minimum of 1 000 shares with a value of not less than 4 000 Riels (approximately 1 US dollar) per share and in only one class of shares. The right of the holders of shares is equal, unless otherwise provided for in the Articles (Article 144). The shareholder's liability to the company is limited to the price of the shareholder's subscription (Article 147). When there is a unanimous shareholder agreement, the existence of such agreements must be written on the share certificate (Article 223).

The Law on Commercial Enterprises also stipulates requirements for directors and for the election of both the chairman and directors. The law stipulates that a private limited company shall have one or more directors, while a public limited company shall have at least three directors. Shareholders elect directors by ordinary resolution (Article 118) and the board of directors elects a chairman from among its members by a majority vote of the directors (Article 127). Each director is elected for a term of two years and may be re-elected (Article 121.) Any legally competent natural person over 18 years old may serve as a director (Article 120). Liabilities and rights of directors are stipulated in the Law on Commercial Enterprise (Articles 119, 140, 141).

Securities Law

The Law on the Issuance and Trading of Non-Government Securities governs the securities market, including securities issued by public limited companies or other legal entities permitted to publicly issue and trade securities. These include: (i) equity securities, including shares, (ii) debt securities, including bonds or debentures, (iii) interests in a managed investment scheme, (iv) derivative instruments and other financial instruments. The law outlines the functions of the Securities and Exchange Commission of Cambodia

(SECC) as well as those of clearance and settlement facility operations, securities depositories and other operators in the securities market. The law also outlines the terms for dispute resolution as well as the penalties that can be issued by the SECC for sanctioning misconduct, including insider trading, market manipulation, false statements, operating without a license, illegal public offers of securities and non-compliance with SECC instructions.

While the Law on Commercial Enterprises regulates most of the corporate governance-related issues including corporate form, governing bodies (shareholders meeting, board of directors and management), regulation of related-party transactions and basic shareholder rights, the Law on the Issuance of Non-Government Securities and Issuance of Government Securities covers issues relating to the issuance and sale of securities instruments. The additional implementation of regulations have been issued by the Securities and Exchange Commission of Cambodia, including the Corporate Governance Prakas⁸ (for listed and public listed companies) which regulates issues such as board composition, shareholder rights and director duties. In addition, the Securities and Exchange Commission issued a Disclosure Prakas which mainly deals with reporting requirements (annual, periodical and immediate disclosure) applicable to listed companies.

Listing regulations and corporate governance rules and code

The Law on Accounting and Auditing, which was updated in January 2016, sets out provisions for the annual audit of financial statements of businesses in Cambodia. Under the law, the National Accounting Council (NAC) oversees the adoption of Cambodian International Financial Reporting Standards (CIFRS)⁹, which are based on International Financial Reporting Standards (IFRS). According to the Ministry of Economy and Finance proclamation (i.e. ‘prakas’) dated 8 January 2009, the adoption of CIFRS is required for enterprises and for not-for-profit organisations in Cambodia in the period beginning on or after 1 January 2012. For commercial banks and financial institutions, the mandatory adoption of CIFRS was set for periods beginning on 1 January 2016, but this was later delayed to 2019 pursuant to a request made by the National Bank of Cambodia and the Department of Financial Industry within the Ministry of Economy and Finance, due to challenges in implementation.

In addition, corporate governance requirements and practices in Cambodia are also outlined in the *Law on the Issuance of Government Securities, Corporate Governance Prakas for Listed Companies, Corporate Governance Prakas for Listed Public Companies and Disclosure Prakas*. The Prakas on Corporate Governance of Listed Companies and the Prakas on Corporate Governance of Listed Public Companies set out further requirements for publicly listed companies (PLCs) and listed public companies (listed SOEs). The prakas provides requirements on board composition, disclosure of material information and the protection of shareholder rights. For example, PLCs must have at least five and no more than fifteen directors on the board and one-fifth of directors must be independent. Listed

⁸ Prakas (Proclamations) is a ministerial or inter-ministerial decision signed by the relevant Minister(s). A proclamation must conform to the Constitution and to the law or sub-decree to which it refers.

⁹ English translations of the regulations setting CIFRS can be found on the National Accounting Council website.

public companies, meanwhile, must have no more than seven board members and at least one independent director and one non-executive director.

The board of PLCs and listed public companies must form an audit committee composed of at least three board members chaired by an independent director. Public listed enterprises above a certain size (approximately USD 50 million in assets) must establish a separate risk management committee. Furthermore, the development of a Corporate Governance Code is currently under consideration by the Cambodian authorities. For a more complete list of laws and regulations related to company incorporation, listing and corporate governance requirements in Cambodia see Annex 2.A.

The rights and equitable treatment of shareholders and owners

The legal and regulatory framework to ensure the rights and equitable treatment of shareholders and owners is outlined in the LCE and the Prakas 2010 on Corporate Governance of Public Listed Companies. Particularly, the Prakas on Corporate Governance provides several articles on shareholders' rights (Article 5), minority shareholders' rights (Article 6), the equitable treatment of shareholders (Article 8), and shareholder protection (Article 9). The legal and regulatory framework created by these two important legal documents also provides basic protections to minority shareholders. However, the LCE and Prakas on Corporate Governance still omit some basic protections and have several loopholes. The latter may constrain the effective protection of the interests of minority shareholders and complicate the task of ensuring the rights and equitable treatment of shareholders and owners.

The current laws and regulations do not necessitate shareholder approval for the sale of up to 51% of assets¹⁰. Shareholders representing 10% or less of the company's share capital cannot call a shareholders' meeting, and shareholders are not required to approve the election and dismissal of the external auditor.

Current regulations in Cambodia require that shareholders' approve major transactions Although Article 119 (7) of the LCE requires that directors seek shareholders' approval for the sale of all or a substantial part of the assets of the company, but the law lacks a clear definition on what constitutes a major transaction and clear guidance regarding approval and disclosure procedures. Therefore, requirements of this kind are not clear or sufficiently strong. The lack of a clear definition of major transactions (e.g. any transaction representing 25% or more of the assets of the company) in the LCE and its guidelines is a significant constraint, hampering shareholders rights. Current regulations also omit good practices often seen in other countries such as a requirement to notify shareholders within a given number of business days (e.g. 21 days or three weeks) prior to the approval of the transaction, the review of the terms of the transaction by an independent party (e.g. external auditor or financial expert) or disclosure of the transaction (amount, parties to the transaction, copy of the auditor's report) in the annual report of the company. There have been no recent reforms in this respect.

The LCE allows shareholders holding 51% or more of the shares of the company to call an extraordinary shareholders meeting (Article 207 of the LCE). However, the threshold of 51% is high compared with the 10% level often seen in other economies. The high threshold fails to protect minority investors and leaves an opportunity for the abuse of power by

¹⁰ Buyer is the business used as assumption for the purpose of the measuring Protecting Minority Investors in Doing Business by the World Bank.

controlling shareholders. On the CSX, most of the listed companies have a float from 15% to 25% of capital. As a result, this high threshold makes it very difficult or impossible for minority shareholders of a company listed on the CSX to call for an extraordinary meeting.

As for pre-emptive rights to acquire offered shares, Article 151 of the LCE states that “shareholders have a pre-emptive right to acquire offered shares in proportion to their holdings of existing shares in that class, at such price and on such terms as those shares are to be offered to third parties”. This is a very important provision to ensure the rights of shareholders. However, there lacks specific regulations that guide the implementation of the provision, e.g. the stipulated timeframe for shareholders to exercise this pre-emptive right. As the law and its implementation regulations do not cover the timeframe needed, controlling shareholders of the company might propose a very short time for the exercise of such a right, making it impossible for minority investors to mobilise the funding needed to buy additional shares. As such, while the LCE provides a good legal background to protect pre-emption rights every time the company issues new shares. Introducing specific regulations and provisions would improve the effectiveness of this regulation.

Shareholders’ access to corporate records and company books at all times is an important indicator of the rights and equitable treatment of shareholders and owners. In Cambodia, Articles 110 and Articles 109 of the LCE confirms shareholders’ rights, regardless of the number of shares they own. According to LCE, “...shareholders and creditors of a company, their agents and legal representatives and the Director of Companies may examine the corporate records during the usual business hours of the company and may take extracts thereof, free of charge...” (Article 110), and “...corporate records shall include the articles and by-laws, and all amendments thereto, minutes of meetings and resolutions of shareholders, copies of all notices required to be sent or filed in accordance with this law, and a securities register...(Article 109). “...Shareholders of a company and their agents and legal representatives, upon request, may examine the annual financial statements during the normal business hours of the company and may make extracts free of charge...” (Article 225).

In addition, the Prakas 2010 on Corporate Governance of Public Listed Companies stipulates that “...the rights and interests of minority shareholders shall be protected by the board of the listed public company, such rights including, the right to seek information...” (Article 6). Furthermore, “...the listed public company should have a website on which the shareholders and the public can access information. Shareholders shall access audited annual financial statements, operating results, any quarterly financial reports, information about the directors and senior officers and other information about the listed public company. If the listed public company does not have a website for this purpose, shareholders may request the hard copies of the above mentioned information and are required to pay reasonable fees for the costs of printing and distribution...” (Article 7).

Requirements on shareholders’ approval for new share issuances: The LCE does not address the approval procedures of new share issues. The Prakas 2010 on Corporate Governance of Public Listed Companies has neither provisions on the procedures of new share issuance nor requirements on shareholders’ approval of new share issuance. As a result, listed companies or public listed companies “do not obtain its shareholders’ approval every time it issues new shares”¹¹. Often, new share issues are to be approved at the shareholders’ meeting to better protect the interests of the shareholders. The proposal for the issuance of new shares can come from the board of directors but needs to be approved

¹¹ Doing Business 2018, the World Bank.

by at least 2/3 of the shareholders. Such requirements are often provided in the incorporation document of companies. Future codes of good corporate governance practices in Cambodia should take this into account.

Requirements on the payment of dividends to shareholders within a reasonable timeframe. According to the LCE, "...subject to any restrictions contained in its articles, the directors may declare dividends out of the company's surplus or out of its net profits...", and "...the directors may set apart special reserves for the company to use in carrying on its business, by using any funds of the company available for distribution of dividends..." (Article 157). According to the law, the directors may declare dividends. However, the law doesn't cover the rights of shareholders in approving the resolution relating to the distribution of dividends. However, the LCE and other implementation guidelines have no provision on the timeframe for the payment of dividends. As a result, regulations leave it to the companies to make the decision on the timeframe for the payment of dividends and whether or not shareholders approve the resolution on distribution of dividends.

The right to vote at general shareholder meetings. The LCE protects the right to vote of the shareholders. According to the Law "...Every shareholder who owns voting shares or his proxy is entitled to attend and vote at the meeting in accordance with his share's voting rights..." (Article 218). The right is also reaffirmed in the Prakas 2010 on Corporate Governance, which states that "...shareholders have the right to...participate and vote in the general shareholder meetings..." (Article 5). The rights of shareholders to vote are also further elaborated and protected in other articles of the LCE and of the Prakas. However, these regulations are silent about the possibility of shareholders and directors to vote electronically.

Sound company and corporate governance practices, such as those introduced in the *G20/OECD Principles of Corporate Governance*, promote the use of modern communication means to facilitate the organisation of and voting in both board and shareholders meetings. This will help to facilitate shareholders' participation in the annual shareholders meetings, enabling them to vote in person or in absentia. Impediments to cross-border voting can also be eliminated. According to current regulations in Cambodia, management and the board are not legally responsible to respond to any questions from shareholders at the general shareholder's meeting. These issues could be considered as areas of further reform in the forthcoming corporate governance code or the regulations on companies and corporate governance in Cambodia.

Regarding the ease of shareholders in bringing lawsuit in Cambodia, before starting a lawsuit, shareholders representing 10% or more of company share capital can inspect the transaction documents. The plaintiff shareholder can also directly question the defendant and witnesses at trial. They can also recover their legal expenses from the company if they are successful, though they are unable to obtain any documents from the defendant and witnesses at trial. This contributes to Cambodia's score of 4/10 in the Ease of Shareholder Suits Index in the Protecting Minority Investors (World Bank Doing Business, 2018).

Disclosure and transparency

According to the *G20/OECD Principles of Corporate Governance*, a strong disclosure regime that promotes transparency is a pivotal feature of market-based company monitoring and is thus central to shareholders' ability to exercise their ownership rights on an informed basis. Transparency and disclosure practices remain an issue in Cambodia despite that Cambodia has implemented IFRS standards and that information transparency

and disclosure requirements are included in many provisions of the LCE and the Prakas No. 013/10 by the SECC on Corporate Governance of Listed Companies.

The type of information that needs to be disclosed and frequency

Disclosure of financial information

The Prakas No. 013/10 by the SECC on Corporate Governance devotes an entire chapter to disclosure and transparency. According to the Prakas, "...listed public companies shall disclose, in an efficient and timely manner, information that is required by laws and regulation and any other information that may influence the decision-making of shareholders and other stakeholders..."(Article 47). It also requires that "...listed public companies shall establish a transparent and fair mechanism when there are any actions leading to change in corporate control, such as takeovers, mergers, acquisitions and transfers of business or liquidation in accordance with the Law on the General Statute of Public Companies and the Anukret on the implementation of Law on the General Statute of Public Companies..." (Article 46).

Both the LCE and the Prakas on Corporate Governance provide clear requirements on the type of information that needs to be disclosed to shareholders, regulators and the public. The LCE requires that companies, including those listed on CSX, to disclose financial reports. "...At every annual general meeting of shareholders, the directors shall present an annual financial statement to the shareholders. The statement shall include (i) comparative financial statements for the current financial year and the prior financial year. In the first year of the company's existence, the financial statement shall cover the period beginning on the date the company came into existence and ending on a date not more than six months before the annual meeting; (ii) the report of the auditor; and (iii) any further information respecting the financial position of the company and the results of its operations required by the articles, the by-laws or any unanimous shareholder agreement". A review of the websites of five listed companies shows that they all provided audited financial reports, annual reports and quarterly financial reports to the CSX¹². This evidence is an important step towards better disclosure.

Current regulations in Cambodia also account for the accuracy and integrity of financial information that is disclosed. The LCE stipulates that companies must appoint an external auditor to conduct the annual external audit of the company (Article 229). Furthermore, the Law on Accounting sets additional criteria regarding external audit in terms of assets, number of employees and annual turnover. All companies listed in CSX have complied with this requirement as shown by the audited financial reports posted on their company websites. However, SECC disclosed that not all unlisted large corporations have had their accounts audited by an external auditor on an annual basis.

Disclosure of Related Party Transactions

Disclosure of related party transactions is a mandatory requirement for companies in Cambodia. According to the LCE, "...a director or officer of a company shall disclose the nature and extent of his interest in writing to the company or request to have a statement entered in the minutes of meetings of directors if he (i) is a party to a contract or proposed contract with the company, or (b) has a material interest in any person who is a party to a contract or proposed contract with the company..." (Article 134). As for the timing of

¹² See more on <http://csx.com.kh/main.do>

disclosure, in the case of a director, disclosure shall be made (i) at the meeting at which a proposed contract is first considered; (ii) if the director was not then interested in a proposed contract, at the first meeting after he becomes so interested; (iii) if the director becomes interested after a contract is made, at the first meeting after he becomes so interested; and if a person who is interested in a contract later becomes a director, at the first meeting after he becomes a director (Article 135). In the case of a manager, disclosure shall be made (i) as soon as he becomes aware that the contract or proposed contract is to be considered or has been considered at a meeting of the board of directors; (ii) if the officer becomes interested before a contract is made, immediately after he becomes so interested; or (iii) if a person who is interested in a contract later becomes an officer, forthwith after he becomes an officer. As such, in the LCE, related-party transactions and material transactions require detailed and immediate disclosure.

However, both the LCE, the Law on the Issuance and Trading of Non-Government Securities and the Prakas do not provide detailed or comprehensive definitions of related parties, related party transactions and material transactions¹³. This is one of the constraints that hampers the implementation of this requirement, as many related-party transactions are approved as normal transactions without any scrutiny or disclosure obligation. The three regulations do not require third party review of related-party transactions either. Such a practice could be particularly useful in listed companies. As soon as the board of directors is aware of a potential related-party transaction (for example, representing 10% or more of the assets of the company), it should request the appointment of an external independent auditor in order to produce a report about the transaction. The auditor's report should evaluate the main terms of the transaction and present an opinion on whether the transaction is being concluded on market terms. This report should be presented to the shareholders of the company before they vote on the transaction for a given number of business days in advance. This measure would increase shareholder protection from self-dealing and would allow them to take well-informed decisions when voting on these deals.

The LCE and the Prakas on Corporate Governance do not provide specific guidance on the approval process of related-party transactions. As a result, company directors and managers can, at their own discretion, make decisions on which transactions will be considered as RPTs and on the process under which such RPTs will be approved. This leaves considerable room for potential abuse. It is important that the regulations or the code on good corporate governance provides a fair and transparent approval process of related-party transactions.

Disclosure of Non-Financial Information

The Prakas on Corporate Governance requires listed companies to disclose *non-financial information on the board, its composition, duties, performance and remuneration*, etc. Specifically, the Prakas stipulates that information on the board be disclosed in line with the following: (i) The composition of the board, executive directors, non-executive directors, independent directors, board structure, management structure, incentive policies, policies regarding conflicts of interest and the code of conduct for directors and senior officers; (ii) Rights, roles and duties, and activities of the board's committees; and (iii) Activities of individual directors and the board (Article 47). The websites of the five listed

¹³ The definition can cover such things as assets/services that are going to be purchased/sold; terms of loans to company directors or affiliated companies, a description of the nature and amount of the transaction, a detailed description of the conflict of interest (e.g. director position, share ownership), and potential benefits from the transaction.

companies found that the Board of Directors' (BOD) organisational structure and news have been updated. Moreover, the websites have information on investors (GTI) or investment plans and projects (GTI, PAS, PPWA, PPSP and PPAP).

The Prakas does not require the disclosure of other non-financial information, such as ownership structures nor internal control structures. Furthermore, many of the listed companies do not have a dedicated investor page on their website. Good practices show that companies could enhance and develop their investor relations strategy in terms of disclosure and corporate governance through such a dedicated investor page on the company website. The websites of the listed companies do not have a database of related parties linked to the company, nor a page on which directors and managers should disclose and update their conflicts of interest as required by the law.

Channels for disseminating information

The Prakas No. 013/10 by the SECC on Corporate Governance requires that "...listed public companies shall have a website on which the shareholders and the public can access information. Shareholders shall access audited annual financial statements, operating results, any quarterly financial reports, information about the directors and senior officers, and other information about the listed public company..." (Article 7)

The requirement on listed companies to disseminate information through their website is a good practice as it provides equal, timely and cost-efficient access to relevant information by all stakeholders and shareholders of the company. The Prakas further emphasises that "... if the listed public company does not have the website, shareholders may request the hard copies of the above-mentioned information and are required to pay reasonable fees for the costs of printing and distribution..." (Article 7).

In addition, the Prakas also provides that the listed public company shall disclose information in an easy-to-understand form and avoid ambiguous and complicated technical terms. Publicly disclosed information shall be easily accessible at low cost. Where complicated terms are used in the disclosure, the terms shall be attached with explanations so that the public may understand easily. In the case where documents are prepared in a foreign language, the listed public company shall translate those documents into Khmer by an SECC recognised agent. The listed public company shall designate an officer to be responsible for information disclosure, including reporting to the market and the SECC by the board, and shall have an internal information control system that can quickly transmit the material information of the listed public company to that officer. In order to disclose corporate information in a timely, accurate and effective manner, the officer shall have prompt access to the information of the listed public company. These requirements are in line with international good practices to ensure equal, timely and cost-efficient access to relevant information by users, stakeholders and shareholders.

Responsibilities of the board

According to the *G20/OECD Principles of Corporate Governance*, the board 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. The Prakas No. 013/10 by the SECC on Corporate Governance has adopted the important good practice on corporate governance in the field of responsibilities and roles of the board of directors. Cambodia scored 10/10 in the sub-index of "Extent of Director Liability Index" in the World Bank Doing Business 2018. This is an area of corporate governance in which Cambodia has made the most progress in terms of regulations.

Composition of the board and qualification of board members

The Prakas No. 013/10 by the SECC on Corporate Governance stipulates “...the Board of listed public company shall not exceed seven members pursuant to the Law on the General Statute of Public Companies. The board shall have at least one independent director and one non-executive director as a representative of the private shareholders...” (Article 11). The requirement of having at least one independent director and one non-executive director is in line with good practices on corporate governance. Definition, qualification, nomination, mandates of directors and non-executive directors are provided in the Prakas (from articles 23 to 26). Particularly, the Prakas dedicates Chapter IV to the qualifications, mandate and nomination of independent directors.

According to the Prakas, independent directors shall participate in listed public companies’ decision-making and shall supervise and support the senior officers. The Board of directors shall ensure that the independent director(s) is free of any material relationship with the listed public enterprise’s senior officers or other employees that might interfere with the independent exercise of his/her best judgment for the exclusive interest of the listed public company. A clear definition of the independence of the independent director is provided, making it easier for implementation. For example, it stipulates that an independent director: (i) shall not hold more than 1% of the Listed Public Enterprise’s shares; and (ii) shall submit a letter of confirmation indicating that he/she has no material interest in the listed public company. A clear criterion is provided to check and verify if the independent director is qualified or disqualified to be nominated (Article 31 of the Prakas).

The same Prakas also provides a stipulation on the company secretary. According to the Prakas, the board shall appoint a corporate secretary to assist in their functions. The corporate secretary must have good character, be a Cambodian national and a senior officer of the listed public company with a solid track record of good performance, loyalty and strong commitment.

Roles and responsibilities of the board

The LCE does not address the duty of care and duty of loyalty of company directors. The LCE introduces vaguely the concept of liability of board members in Articles 140-142. However, the Prakas No. 013/10 by the SECC on Corporate Governance provides a very clear provision on the roles and responsibilities of the board of directors. The Prakas holds the board responsible for key roles, including (i) monitoring management; (ii) ensuring company governance practices; and (iii) ensuring the integrity of the company’s accounting and financial reporting systems, including disclosure and risk management among others.

Regulations in Cambodia require the board of directors in listed companies to perform their duties with loyalty, skill, and duty of care, by performing the following major roles:

- Shall take full responsibilities and serve the legitimate interests of the shareholders and the listed public company;
- Shall act honestly, in good faith and in the best interest of the listed public company and the shareholders;
- Shall ensure that the listed public company communicates effectively with shareholders, and other stakeholders;
- Shall determine, monitor, and evaluate strategies, policies, management performance criteria, and business plans;

- Shall set up and monitor internal controls;
- Shall provide leadership, by setting up strategic directions, and ensuring that the necessary resources are in place to meet its determined objectives; and
- Directors shall not abuse power by interfering in the senior officers' duties.
- Make recommendation to a technically responsible ministry on replacing a general director of listed public company.

Furthermore, the Prakas requires that the board shall be responsible for the public listed company's long-term success and the sustainability of its comparative advantage by ensuring the consistency with its legal responsibilities. The board shall fulfil its functions and duties in the best interest of the listed public company and shareholders. The Board shall ensure that the directors have adequate training in order to keep themselves updated on corporate governance developments, laws and other regulations that may affect the operation of the listed public company. The board shall incorporate the information about the directors' training in the annual report of the listed public company (Articles 12 and 18 of the Prakas).

In order to fulfil their responsibilities, board members need to have access to accurate, relevant and timely information. The Prakas requires that "...directors shall be provided with complete, adequate, accurate and timely information prior to Board meetings as defined on the Law on the General Statute of Public Companies. The board shall approve in principle the providence of such information thereto...", and "...the listed public company's senior officers have an obligation to provide the Board with complete, adequate and accurate information in a timely manner. In the case where it is necessary for the directors to fulfil their duties properly, individual directors may require additional information from senior officers...." (Article 15).

Board accountability to the company and shareholders

The board is responsible for strategic guidance and oversight of management, and functions as a trustee for shareholders. Therefore, they need to be accountable to the company and to shareholders. To ensure good corporate governance and to support the board's accountability to the company and to the shareholders, the Board is required to establish a number of committees, such as: (i) Audit committee, and (ii) Risk management committee in case the listed public company has assets from 2 hundred thousand million riels and above¹⁴. The listed public company with assets of less than 200 000 million riels may constitute a risk management committee, if necessary. Also, the board can constitute a nomination committee and other committees if necessary and when recommended by the SECC. Also for this purpose, the Prakas stipulates "...the board shall provide the shareholders with a balanced and understandable assessment of the Listed Public Enterprise's performance, position and prospects on semester basis, or as otherwise required by the SECC or the listing rules. The senior officers shall provide the board with a balanced and understandable assessment of the listed public company's performance, position and prospects on a quarterly basis and should report to the board on a monthly basis on financial position and material operation of the listed public company ..." (Article 36).

¹⁴ Equivalent to approximately USD 49 000

In addition to the regulations outlined in this section, the World Bank Doing Business framework also finds that shareholders representing 10% or more of the company's share capital can sue directly or derivatively for the damage the transaction caused to the company. Shareholders can hold the director in question liable for the damage the transaction caused to the company if it is unfair or prejudicial.

Corporate governance of state-owned enterprises (SOEs)

Overview of the SOE sector

Cambodia's state-owned enterprise sector has diminished significantly since the introduction of reforms to bolster economic liberalisation in the late 1980s. During the 1990s, the Cambodian government shifted the economic system from a planned economy to a market-driven system and privatised most of the state-owned enterprises. In 1989, there were 187 enterprises wholly owned by the State in Cambodia. By the end of 2000, 160 had been privatised, of which 139 were leased to the private sector, 12 transformed into joint ventures, 8 sold and 8 liquidated (UNCTAD, 2003). As of 2007, the remaining 17 state-owned enterprises employed 14 251 people, and had a total revenue of approximately USD 375 million (Ngov, 2011). As of the end of 2015, there were 10 state-owned enterprises in Cambodia. Most of the SOEs are in the sectors of utilities, logistics, construction and finance.

Rules governing the SOE sector

In accordance with the Law on the General Statute of a Public Company, there are two different types of commercial SOEs in Cambodia. These are: (i) state-owned companies in which all of the capital is owned by the state (e.g. Electricité du Cambodge), (ii) joint-ventures in which a majority of capital is owned by the state and a minority by private investors (e.g. Phnom Penh Water Supply Authority). In Cambodia, private enterprises are allowed to compete with state-owned enterprises under de jure equal terms and conditions.

The Law on the General Statute of the Public Company outlines a number of rules governing SOEs. The board of directors of SOEs must meet at least once every three months and has the following duties:

- i. Decide on the development projects of the enterprise,
- ii. Periodically evaluate the results achieved and set forth adjusting measures for implementation,
- iii. Decide on the proposed budget,
- iv. Adopt the balance and management of various accounts,
- v. Determine the organisational structure of the enterprise, the statute of the personnel and the salary system, and
- vi. Endorse public bidding. The agenda of the board meetings must be sent at least 10 days in advance to all members of the Council, state controllers and the responsible ministry or authority. Among the members of the board of directors, there must be one seat reserved for a representative of the employees selected from and by the employees of the SOE.

Institutional arrangements for State ownership

Each SOE in Cambodia operates under the supervision of a line ministry or government institution. The financial reports of SOEs are audited by the appropriate line ministry, the Ministry of Economy and Finance as well as the National Audit Authority, which is the supreme audit institution in Cambodia and which carries out scrutiny of budget implementation in conformity with the Budget Law. The National Audit Authority was established in 2000 by the Law on Audit. The authority is an independent entity reporting directly to the National Assembly with its own budget funded by the national budget.

The audits of the National Audit Authority focus on accounting records, management systems, operational controls and programmes of the relevant institutions. The National Audit Authority conducts its review of the budget process through an ex post audit process in which internal audit teams of the line ministries are consulted in order to ensure greater transparency and accountability. Regular reports regarding the effectiveness and efficiency of government funds are submitted to the National Assembly (Hang, 2012; Transparency International, 2014).

Privatisation strategies and future plans for reform of the SOE sector

The Cambodian government has expressed its commitment to continued reform of the SOE sector. SOEs with sound financial performance are encouraged to list on the stock market or attract private investors. Phnom Penh Water Supply Authority was the first company to list on the CSX in 2012 and Cambodia Life Insurance was sold to a private consortium in September 2015. However, efforts to establish separation between ownership and regulation have been limited. A number of economic activities, for example, are either performed within the general government sector or by companies that, while not classified as SOEs, are closely related to the government. There is also currently no clear state ownership policy in Cambodia.

Challenges and opportunities in the implementation of an effective national framework for corporate governance

The level of capital market development in the country and key challenges

The Cambodian Securities Exchange (CSX) began operations in July 2011 and, like the securities exchange of neighbouring Lao PDR, the CSX was set up with the support of Korea Exchange. With the establishment of CSX, the Cambodian government aims to improve access to longer-term and cheaper capital than the capital provided by banks. The first company which was listed on CSX was Phnom Penh Water Supply Authority (PWSA), a majority state-owned firm, in 2012. As of April 2018, CSX has five listed companies. The two shareholders of CSX are the Royal Government of Cambodia (55%) and Korea Exchange (45%).

Table 2.2. Listed firms on the Cambodia Securities Exchange (CSX)

As of 27 April 2018

	Issue name	Sector	IPO	Share price (USD)	Market capitalisation (USD)
Sihanoukville Autonomous Port	PAS	Transport	07/06/2017	1.26	108 065 972
Phnom Penh SEZ Plc	PPSP	SEZ	27/05/2016	0.71	41 339 286
Phnom Penh Autonomous Port	PPAP	Transport	08/12/2015	1.35	27 907 490
Grand Twins International (Cambodia) Plc	GTI	Manufacturing	16/06/2014	1.05	41 865 079
Phnom Penh Water Supply Authority	PWSA	Utilities	24/04/2012	0.94	81 752 976

Source: CSX, 2018

There are approximately 15 securities firms operating in Cambodia, of which six are licensed as underwriters, one as dealer, three as brokers and two as investment advisors. The SECC has also granted accreditation to securities-related cash settlement agents, securities registrars, securities transfer agents, paying agents, professional accounting firms and independent auditors and valuation companies providing services in the securities sector. In January 2011, the SECC signed a memorandum of understanding with the Financial Institute of Cambodia to offer financial education and training to the public (Asian Development Bank, 2012).

Cambodia's capital market remains small compared to its regional peers. With a market capitalisation of approximately USD 300 million as of April 2018, CSX is among the smallest capital markets in the world. The small size and the slow progress to list additional companies on the CSX are not favourable and signify that corporate governance has not been promoted widely in Cambodia.

Since its opening in 2011, CSX has faced challenges in boosting liquidity and attracting new companies to list. Despite support, the water utility Phnom Penh Water Supply Authority (PPWSA) faced challenges in preparing for the initial public offering, particularly in relation to information disclosure in English. Challenges to the development of the capital market in Cambodia have included difficulty in demonstrating to firms the business case for listing. The establishment of institutional investors and other intermediaries in the Cambodian securities market has been slow. The small size of the market and low level of liquidity are also important factors deterring investors. Overall, these factors adversely affect the improvement of the corporate governance of public companies in Cambodia.

The many challenges in which the Cambodian authorities need to address in the Action Plan for Financial Sector Development 2016-2025 include: (i) continuing to streamline regulations for SME listing, (ii) encouraging the listing of SOEs, (iii) promoting the creation of exchange traded funds, (iv) reviewing the effectiveness of tax and non-tax incentives for listed companies, and (v) promoting the listing of financial institutions.

In Cambodia, the majority of companies are very small (74% engage only one or two people, and 95% are classified as micro or small companies). The remaining 5% of companies are represented by approximately 10 large private companies or groups involved

in different sectors including garment, construction, tourism and agribusiness. In addition, many companies in Cambodia are informal and are not included in this information (98.8% of businesses with less than 10 employees are not registered).

The Law on Commercial Enterprises (LCE) provides an extensive chapter on incorporation, operations, governance, and winding up procedures for liability limited companies – under which most of the small enterprises in Cambodia exist. The same law provides the Public Limited Company corporate form. Corporate Governance requirements are almost the same for the two the two existing types of corporations with a few exceptions, for example non number of directors and number of shareholders. One of the challenges that Cambodia has to address is to ensure that the corporate governance provisions will be applicable to a larger number of enterprises, rather than only to the few large companies at the top of the pyramid. This is another challenge that Cambodia has to address, notably on the possible option of developing a simplified governance structure for micro and small enterprises and ensuring more rigorous standards for large private and public companies.

There is also a general lack of awareness on good corporate governance practices in Cambodia. Legal practitioners have not developed noteworthy capacity and knowledge on the topic and foreign legal counsels, which are more familiar with these concepts, have failed to generate demand of corporate governance services domestically. The private sector is unaware of the benefits of corporate governance, and courts are also unfamiliar with the topic and therefore no case law on corporate governance has been developed in Cambodian courts since the adoption of the Law on Commercial Enterprises in 2005.

The supporting institutions necessary to strengthen corporate governance are absent in Cambodia. There are few training institutions or consulting companies that can provide services or advice to the corporate sector on the subject. Universities, business associations and law firms are yet to pay adequate attention to corporate governance in their training curriculum or in their work agenda. This is a major challenge hindering the improvement of corporate governance in Cambodia.

Main opportunities

Cambodia has sustained an average economic growth rate of 7.6% throughout 1994 to 2017 and the size of the economy reached USD 21 billion in 2017. Economic growth is expected to remain strong over the next two years at 7% in 2018 and 2019 (ADB, 2018). Cambodia has been persistent in introducing policies and reforms to develop its private sector and business, with the objective of boosting economic growth through investment and trade. Cambodia has an open investment regulatory environment. Private sector businesses are burgeoning in Cambodia with a growing number of private sector businesses. There is also an increasing number of larger enterprises in Cambodia. These are favourable conditions for corporate governance to be strengthened in Cambodia.

The Royal Government of Cambodia continues to show a strong commitment to “promoting the use of international good practices in accounting and corporate governance”¹⁵. The Financial Sector Development Strategy for 2016-2025 of the Royal Government of Cambodia, which sets out specific targets for 2025, was endorsed. Capital market development emerges as an important priority of the strategy. The strategy articulates clear development policy areas such as: improving the performance of SOEs

¹⁵ The National Strategic Development Plan 2014-2018

and the sale of equity securities, making SME listing easier, promoting financial institutional listing, document and information disclosure, etc. The commitment of the Government represent a good opportunity for further promotion of corporate governance in Cambodia.

The Cambodian government has expressed its commitment to reform of the SOE sector. SOEs with sound financial performance are encouraged to list on the stock market or attract private investors. The domestic business sector in Cambodia is growing. According to the Federation of Association for Small and Medium-Sized Enterprises of Cambodia (FASMEC), Cambodia has an estimated 530 000 SMEs nationwide, of which 39 141 registered SMEs have registered as of end 2016¹⁶. There is a good possibility that there will be more companies to register and thus brought into the regulatory fold, adopting good corporate governance practices.

In September 2015, the authorities announced the creation of a new trading platform aimed at increasing participation of SMEs on CSX. Since this decision, SMEs seeking to raise capital have the option of listing on a “Growth Board” – in addition to the existing “Main Board”. The Growth Board reduces barriers to entry for many Cambodian enterprises. The requirements for listing on the Growth Board include:

- i. Shareholder equity must be no less than KHR 2 billion (USD 500,000) at the date of filing (compared to KHR 30 billion or USD 7.5 million for Main Board),
- ii. Either the company must have a net profit in the latest financial year prior to the date of the application (compared to minimum profit of KHR 2 billion or USD 500,000 in the last year and aggregate profit of KHR 3 billion or USD 750,000 in the last two years for the Main Board) or the company must have a positive operating cash flow and gross profit margin of at least 10%,
- iii. The number of minority shareholders must be at least 100 as of the date of filling application and these must hold at least 10% of the total voting shares (compared to 200 minority shareholders holding 7% of the total voting shares for the Main Board)
- iv. Audited financial reports for a period of 1 year (compared to 2 years for Main Board).

With the aim of creating a conducive environment to develop the capital market in line with the aim of ASEAN integration, an eco-system will need to be created, such as depositories, a clearing and settlement facility and a cash settlement system. To facilitate market transactions, capacity to undertake asset valuation for securities market transactions that meet international standards should be developed, in particular to align with ASEAN standards. As the market broadens and gains in sophistication, the SECC has plans to enhance its IT systems to improve information disclosure and market monitoring and surveillance. This improved environment for capital market development will contribute to the strengthening of corporate governance in Cambodia.

¹⁶ According to a sub-decree introduced by the Government in Feb 2017, a small business is defined as one that has an annual turnover from USD 62,000 to USD 175,000, while medium-size is classified as one with turnover from USD 175,000 to USD 500,000.

The outlook for future developments in the field of corporate governance

In recent years, Cambodia has been one of the fastest growing economies in the world. Since 1999, the government has focused its efforts on speeding up market-based private sector development and has achieved impressive results. Strong economic performance from 2004 to 2008 coincided with the launch of the government's Rectangular Strategy that stresses public financial management reform, public administrative reform, and decentralisation as three priority areas for reform. The government has invested heavily in infrastructure, stressing development of the provincial and rural road network. Foreign direct investment has increased substantially.

Cambodia's rapidly increasing real gross domestic product is powered by the private sector, which accounts for nearly all of the market output. Being one of the most open economies in Southeast Asia, with expanding market opportunities (as Cambodia joins the WTO) and with a government that sees business as central to the country's future prosperity, Cambodia's outlook for private enterprise is encouraging. Domestic investment has increased significantly over the years.

The development of the financial market has become a priority for the Government as well. It is strongly believed that a more efficient financial market and stronger corporate governance will be highly important to encourage foreign and domestic investors to invest more into Cambodian companies.

According to the Action Plan for Financial Sector Development 2016-2025, the Cambodian authorities aim to continue to develop policies to boost the growth of the capital market. Elements that are addressed in this plan include:

- i. Continuing to streamline regulations for SME listing,
- ii. Encouraging the listing of SOEs,
- iii. Promoting the creation of exchange-traded funds,
- iv. Reviewing the effectiveness of tax and non-tax incentives for listed companies, and
- v. Promoting the listing of financial institutions. Awareness raising activities with companies and other stakeholders on the benefits of capital market access is also a key component.

The Cambodian authorities have taken important steps towards establishing the legal and regulatory framework for corporate governance. According to the Financial Sector Development Strategy 2011–2020, in terms of developing the capital market, the Cambodian Government lays strong focus on (i) market transparency; (ii) development of other segments of the securities market; (iii) diversification of financial instruments and investment mechanisms; and (iv) investor education and protection. These priorities required that gaps in the current legal and regulatory framework continue to be filled, especially in the field of corporate governance. Good corporate governance practices will have to be instilled among both listed and unlisted companies. The *prakas* on corporate governance will be extended to unlisted companies. An awareness-raising campaign will be carried out to assist this process, with emphasis on the responsibilities of the board of directors, corporate secretaries, independent directors, and the management team. The Government will also promote education and awareness through the news media.

In addition, further efforts will be made with regards to the enforcement and implementation of this framework. The Cambodian government might consider placing

particular emphasis on improving the disclosure of financial and non-financial information by firms through capacity building seminars and targeted trainings. With a greater emphasis on disclosure compliance, the Cambodian authorities would make progress towards the facilitation of regional integration and move towards their expressed ambition of joining the ASEAN Corporate Governance Scorecard. The Government is also convinced that Cambodia's financial sector development plan can benefit from the ASEAN long-term goal through cross-border cooperation among capital markets in the region. Recently, to enhance the relationship with regional and foreign investors, CSX has signed a memoranda of understanding with the Stock Exchange of Thailand, Hanoi Stock Exchange and the Lao Securities Exchange.

Most recently, the SECC announced that it will further improve the corporate governance framework through the:

- i. Amendment of Prakas on corporate governance for listed companies and to promote SMEs to go public;
- ii. Integration of the corporate governance practice in ASEAN and encourage the use of the ASEAN corporate governance scorecard; and
- iii. Development of corporate governance guidelines and brochures to guide the companies to understand how to implement corporate governance and raise public awareness.

In addition, the Commission will step up a programme to promote corporate governance in an effort to raise public awareness. It will continue to cooperate with all related parties to raise public awareness of corporate governance in Cambodia. More local trainings on corporate governance for listed and potential entities will be conducted. The Commission will also organise a Corporate Governance Award for corporate governance practices of listed entities besides its regular activities of monitoring and supervising listed entities on the compliance with corporate governance regulations and rules. These activities will contribute significantly to improving the corporate governance framework and the compliance with corporate governance rules and principles by companies, both listed and unlisted, in Cambodia.

The Financial Sector Development Strategy for 2016-2025 of the Royal Government of Cambodia strongly emphasises the need for improving corporate governance in Cambodia and calls for such specific action as: “the Government will also consider the establishment of an institute of directors as a driver for improving governance and directorship”¹⁷. The commitment to these measures, both in terms of laws, regulations, codes and also trainings, awareness raising and other good practices covered in the G20/OECD Corporate Governance Principles, are important factors to increase adoption of good corporate governance practices among companies in Cambodia.

¹⁷ Royal Government of Cambodia (2016). Financial Sector Development Strategy 2016-2025, p.p. 53.

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Annex 2.A. Key laws and regulations on company incorporation, securities, listing and corporate governance in Cambodia

Name	Effective	Purpose	Notes
Law on Accounting and Auditing	14 January 2016	Accounting Law	Replaces Law on Corporate Accounts, their Audits, and the Accounting Profession
Law on the Issuance and Trading of Non-Government Securities	19 October 2007	Securities Law	Establishes the Securities and Exchange Commission of Cambodia
Law on Commercial Enterprises	19 June 2005	Companies Law	Passed in conjunction with WTO accession
Law on the General Statute of Public Companies	17 June 1996	SOE Law	-

Name	Promulgated	Purpose	Notes
Listing Rules of the Cambodia Securities Exchange	10 September 2016	Rules governing the issuance of and trading in equity securities	Replaces Prakas No. 004/Prk dated 3 May 2015
Prakas on Corporate Governance for Listed Public Companies	19 December 2007	Applies to state-owned enterprises listed on the stock exchange	-
Prakas on Corporate Governance for Listed Enterprises	31 December 2009	Applies to companies publicly listed companies (PLCs)	-
Prakas on the Implementation of Financial reporting Standards	8 January 2009	Requires the implementation of IFRS for publicly listed companies	-

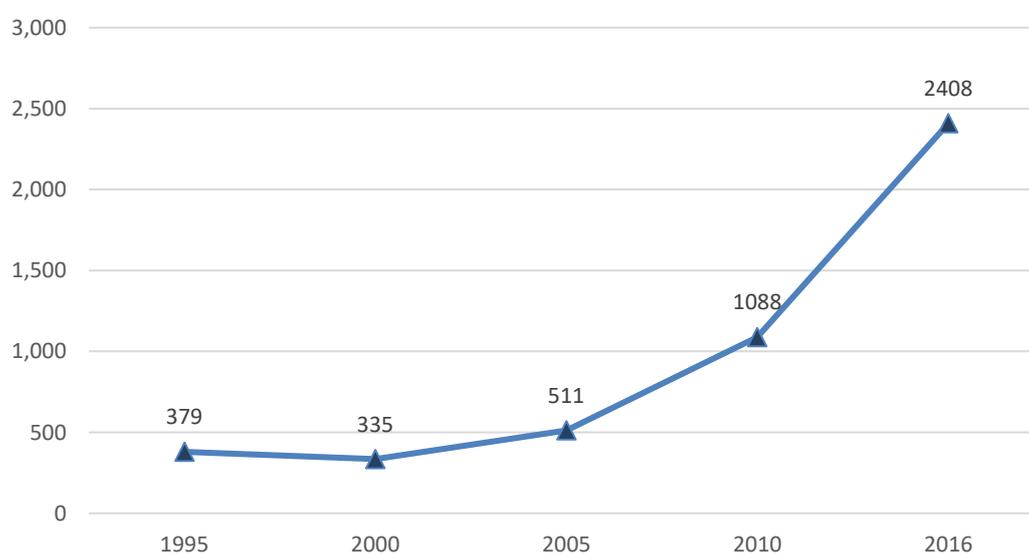
3. Country stocktaking report: Corporate governance in Lao PDR

Introduction and context of reforms

Located in the ASEAN region, Lao People’s Democratic Republic (Lao PDR) has a population of 6.7 million. Approximately 70% of the Lao workforce is employed in the agricultural sector. The country reached lower-middle income economy status in 2011, and became a member of the World Trade Organisation in February 2013. Since the “open-door policy” introduced in 1986, Lao PDR has made remarkable progress in enhancing economic growth. According to Laos Statistics Bureau, there has been a continuous increase in GDP growth of the country since these reforms.

Laos has maintained a robust growth rate in recent years, at 7.3% in 2015, 7.0% in 2016 and 6.8% in 2017. As a result, the country’s GDP per capita increased from USD 379 in 1996 to USD 2 408 in 2016. Lao PDR’s economy is increasingly driven by the private sector, while the role of State owned enterprises (SOEs) is declining.

Figure 3.1. GDP per capita of Lao PDR (USD)



Source: GDP per capita of Lao PDR.

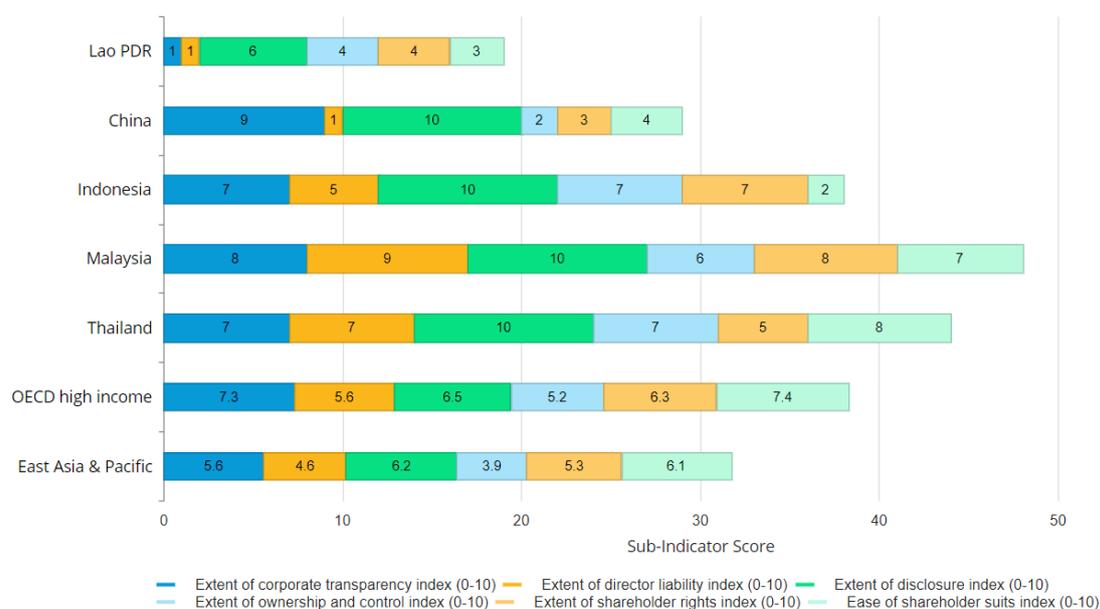
Lao Stock Exchange (LSX) was established in 2010 and became operational in 2011. With seven listed companies, the stock market of Lao PDR is small in terms of size. Therefore, this market has not contributed much to the development of the economy. The market capitalisation of the LSX is USD 1.28 billion and is much lower than that of other ASEAN economies. Comparing with some neighbouring countries, the capitalisation of the LSX is lower than that of Thailand (USD 577 billion) and Viet Nam (USD 137.7 billion) (as of

April 2018)¹⁸. Figure 1.2 in Chapter 1 displays comparative data of the capitalisation of LSX with other ASEAN countries.

The majority of companies in Lao PDR are classified as small and medium enterprises¹⁹. Larger enterprises are concentrated in industries such as alcoholic beverage production, construction and telecoms. The country has 130 SOEs with total assets of about USD 12.69 billion (LSC, 2017). The capital investment for private enterprises in Lao PDR is low. Private sector enterprises in Laos have limited access to credit, which is an important source of capital for small businesses. In Laos, the percentage of domestic credit to the private sector out of total GDP is 20.9%, lower than the rate of 147% in Thailand or 69.7% in Cambodia (See more in Figure 1.1. in Chapter 1).

According to the 2018 World Bank Doing Business Report, Laos ranks 172 out of 189 economies in the Protecting Minority Investor Index. The figure below shows that Laos PDR scores 3.3 in the Protecting Minority Investor Index which is below the regional average. Among the sub-indicators, Laos performs better in the disclosure index (6), the shareholder rights index (4), and the ownership and control index (4). However, Laos performs less satisfactorily on the director liability index (1) and the corporate transparency index (1).

Figure 3.2. Protecting Minority Investors in Lao PDR and Comparable Economies



Source: Doing Business 2018 (World Bank)

¹⁸ Source: compiled by Economica Viet Nam on the basis of data provided on websites of stock exchanges in all 10 ASEAN countries.

¹⁹ Small enterprises are those having an annual average number of employees not exceeding 19 people or total assets not exceeding two hundred and fifty million kip or an annual turnover not exceeding four hundred million kip. Medium sized enterprises are those having an annual average number of employees not exceeding 99 people or total assets not exceeding one billion two hundred million kip or an annual turnover not exceeding one billion kip.

The most recent reform introduced by Lao PDR in order to strengthen the protection of minority investors was in 2015, when Laos strengthened minority investor protections by introducing requirements on:

- Directors to disclose in detail their conflicts of interest to the other board members;
- Companies to promptly disclose related-party transactions to the Securities Commission and to include the information in their annual reports.

Table 3.1. Protecting Minority Investors in Laos – Measure of Quality

Index	Score
Extent of conflict of interest regulation index (0-10)	3.3
Extent of disclosure index (0-10)	6
Extent of director liability index (0-10)	1
Ease of shareholder suits index (0-10)	3
Extent of shareholder governance index (0-10)	3
Extent of shareholder rights index (0-10)	4
Extent of ownership and control index (0-10)	4
Extent of corporate transparency index (0-10)	1

Source: Doing Business 2018 (the World Bank, 2018).

That said, Lao PDR fully recognises the importance of good corporate governance practices and their impact on the investment decisions of long-term investors in the country. Government and relevant institutions consider the development of corporate governance as one of the priorities to strengthen Laos’ corporate operations and performance, to promote the country as a destination for investment. Improving corporate governance will help to improve the competitiveness of Lao businesses and attract local and international capital. It is also a vital factor for promoting market sustainability and ultimately leading to more inclusive economic development. Wider adoption of good practices in corporate governance among Lao businesses in general, and in listed companies on LSX in particular will be extremely helpful for the development of the capital market, the business sector and the whole of the Lao PDR economy.

Overview of policy developments and progress made at the national level in the field of corporate governance

The legal framework for corporate governance in Lao PDR

Lao PDR has set the goal of “becoming an upper-middle income country with innovative, green and sustainable economic growth by 2030”.²⁰ One of the key aims in achieving this goal is to develop a good capital market through the promotion of good corporate governance in order to develop the private sector of the economy. However, Lao PDR’s regulatory framework for corporate governance remains weak.

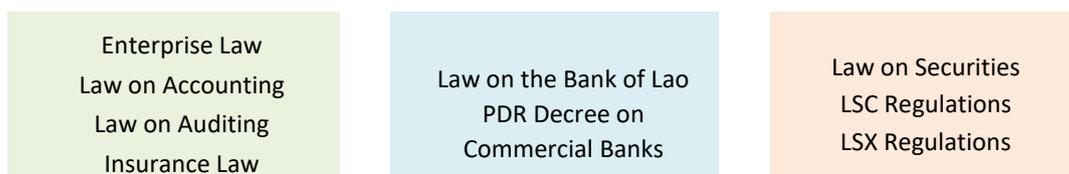
The concept of corporate governance was introduced in the country in 2005 with the enactment of the Enterprise Law. Currently, corporate governance and investor protection

²⁰ According to the 8th Five – Year National Socio-Economic Development Plan (2016–2020) of the Lao PDR (officially approved at the VIIIth National Assembly’s Inaugural Session, 20–23 April 2016).

are regulated by the Enterprise Law 2014 (which replaced the 2005 Enterprise Law) and the 2013 Law on Securities. Some of the corporate governance practices required for businesses are regulated by the Law on Accounting. In order to promote good governance of public listed companies, the Lao Security Exchange issued regulations regarding corporate governance norms and practices, for example the guidelines on the organisation of shareholders' meetings for public listed companies, regulations on reporting and information disclosure, decisions on related party transactions and decisions on boards of directors of listed companies, listing rules. The Strategic Plan on Capital Market Development of the Lao PDR for 2016-2025 was also released to support further development of the capital market and promote the adoption of good practices and international norms in corporate governance.

The Lao Securities Commission (LSC), which was established in 2009, oversees the Lao Securities Exchange (LSX) and is governed by the Law on Securities of 2012. LSC is chaired by the Deputy Prime Minister of Lao PDR. Its members include two Vice Chairmen (the Governor of the Bank of Lao PDR and the Minister of Finance) and nine Commissioners from selected Ministries and National Committees.

Figure 3.3. Key building blocks within the Lao PDR financial sector regulatory framework



Source: Lao Securities Commission (LSC, 2018)

In an effort to become further integrated into the ASEAN Economic Community (AEC), the Enterprise Law of Lao PDR was revised in 2013 and became effective in 2014. The new law is applicable to all enterprises, regardless of their ownership. Private sector enterprises and SOEs are therefore all governed by the law.

The law covers stipulations on the legal corporate forms of enterprises, registration process, investment into enterprises, issues related to shareholders and the issues related to the organisation of the board. The law consists of one chapter on enterprise formation, corporate forms including incorporation, operations, governance and winding-up procedures. The law devotes a chapter to public companies, which includes listed companies, and a chapter on SOEs. The law also provides stipulations on corporate governance, e.g. legal form of enterprises, governing bodies such as shareholders' meeting, board of directors and executives as well as fundamental rights of shareholders. The Enterprise Law also provides a chapter on public companies, which is the corporate form required of companies that list shares on the stock market.

It should also be noted that in addition to being small in size, the majority of enterprises in Lao are incorporated as limited liability companies.

The Law on Securities

Before 2013, the Government Decree on Securities and Securities Exchange of 2010 governed issues related to securities and security exchanges. In 2012, the decree was upgraded into the Law on Securities, which came into effect in 2013. The law covers a wide range of issues, including issuance, purchase of securities by national and foreign

individuals, jurisdictional entities and organisations in Lao PDR. The Law on Securities mostly covers issues related to the disclosure of corporate information, board independence and board composition. Additional implementing regulations have been issued by the Lao Securities and Exchange Commission, including the Instruction on Shareholders Meetings, Instruction on Related-Party Transactions and the Regulations on Board functioning and roles. The law also regulates the institutional structure and the role, duties and functioning of the Lao Securities Commission.

The Law on Accounting

The Law on Accounting was revised in 2014²¹. The Law on Accounting regulates financial and accounting norms, standards and requirements of all businesses and organisations in the public and private sectors. More specifically, the law regulates the use of the International Financial Reporting System (IFRS) in preparing and maintaining financial records of enterprises. The requirement on the use of IFRS is an important stipulation which calls for listed companies to comply with and to upgrade the quality of their financial reports.

Lao Security Exchange's regulation on corporate governance

The Regulation on Share Issuance was issued by the Lao Securities Commission in July 2015. In order to promote good governance of listed companies, the Lao Security Exchange issued some regulations specifically related to corporate governance. The regulations include the Disclosure Regulation (issued in January 2011) and the Stock Listing Regulation (in November 2015).

Table 3.2. Main laws and regulations relating to corporate governance in Lao PDR

Name	Effective date	Purpose	Notes
Enterprise Law, No. 46/NA, 26 December 2013	September 2014	Companies Law	Replaced Enterprise Law of 2005
Law on Securities, No. 21 /NA, 10 December 2012	March 2013	Securities Law	Upgraded from Decree on Securities and Securities Exchange of 2010
Law on Accounting, No. 47/NA, 26 December 2013	July 2014	Accounting Law	Replaced Law on Accounting of 2007
Stock Listing Regulations of the Lao Securities Exchange (LSX)	November 2015	Rules governing the issuance of and trading in equity and debt securities of listed companies	Pursuant to Regulation on Stock Issuance, No. 018/LSCO, 27 July 2015

Source: OECD-South Asia-Corporate Governance Initiative (2016), *Issues Paper 2015*

The rights and equitable treatment of shareholders and owners

The Enterprise Law includes procedures to ensure there is a secure record of company ownership. According to prevailing regulations in Laos, the company registry has the contact information of the founding members of the company. Prevailing regulations stipulate that the company registry will collect this information during the incorporation process. Companies are required to provide updates on changes in key positions including chief executive officers and board members. However, the company registry is still paper-

²¹ The Law on Accounting was introduced in 2007 and was revised in 2007.

based, and the majority of transactions are handled manually. Companies maintain internal shareholder and director registries but the reliability of these registries remains unclear. Further access to information on ownership for the general public is limited.

The legal framework in Laos provides ex-ante and ex-post protection to minority shareholders. However, such protection is currently at minimal levels. Article 163 of the Enterprise Law provides minority shareholders with access to all corporate documents except for those that constitute trade secrets. However, the law does not regulate measures to be taken in the case that the management of the company refuses to provide information to minority shareholders.

Articles 104 and 105 of the Enterprise Law state that companies are allowed to issue common and preferred shares. The law states that all shareholders of the same class of shares shall be treated equally and that within any series of a class, all shares shall carry the same rights. However, the law doesn't address all investors being able to obtain information about the rights attached to all series and classes of shares before they are purchased. Neither does it address the approval process regarding any changes in economic or voting rights by the classes of shares that are negatively affected.

Article 115 and Article 116 of the Enterprise Law allow shareholders to have pre-emptive rights to newly-issued shares of a company. However, the articles do not regulate the timeframe and the procedures for the shareholders to exercise their rights. As a result, the company's management might decide on the timeframe and procedures at its own discretion. This may create a potential for abuse of the rights of shareholders, if the notice regarding the duration for which this right can be exercised is too short. According to the *G20/OECD Principles of Corporate Governance*, regulations need to provide a suitable timeframe which allow the shareholders to consider, make a decision and mobilise the financial resources in order to buy the newly-issued shares if they wish to.

Article 155 of the Enterprise Law requires companies to pay annual dividends subject to the approval of the shareholders meeting. However, the Law does not regulate the timeframe and procedures for the payment of dividends. As a result, minority investors might face uncertainty linked to the timeframe for payment of dividends to the minority shareholders of a company.

Though the Enterprise Law regulates that the shareholders meeting shall issue a resolution for approving a "substantial sale of assets" before such a transaction takes place, it doesn't provide a clear definition of what a major transaction is. Neither does it provide a clear procedure for approval and disclosure of major transactions. Often, a transaction of an asset larger than 25% of total assets will be regulated as a "major transaction of asset". The Enterprise Law and its subordinate regulations currently don't address the steps and procedures for approval and disclosure of major transactions in order for the shareholders to exercise their approval right.

International good practices suggest that the notice of a shareholders meeting together with agenda, participation instructions, authorisation forms, and biographies of independent directors should be sent to the shareholders at least 21 days in advance. The Enterprise Law (Article 142 and Article 9) regulates a notice time of only five days for a limited liability company and 15 days for a listed company. Such a short notice of shareholders meetings may affect the rights of minority shareholders as they might not have sufficient time to receive the notices and to prepare for the meetings. This might adversely affect the exercise of their rights at the meetings.

The Enterprise Law (Article 144) regulates the process for the preparation of the agenda of a shareholder meeting of a limited liability company. However, the law, its sub-laws or regulations don't cover about such regulations for public listed companies. Therefore, minority shareholders of public listed companies can be informed of the meeting agenda in advance but probably on short notice. Furthermore, the agenda can be changed by the major shareholders during the meeting regardless of the opinion of minority shareholders. In addition, the law does not secure the rights of shareholders to raise questions to the company management about the performance of the company, and to hold the company management responsible for responding to such questions. This may result in the management of the company ignoring questions raised by shareholders, especially by the minority shareholders. International good practice and the G20/OECD Principles of Corporate Governance state that "shareholder should have the opportunity to ask questions to the board, to place items on the agenda of general meetings..."

The Enterprise Law (Article 163) regulates that minority shareholders have the right to access all company documents and reports. However, the law does not stipulate enforcement measures if company management refuses to provide information to a minority shareholder.

Though the Enterprise Law allows shareholders to vote at the general meeting by proxy, it does not specify whether an absent shareholder is allowed to vote via post, mail, by electronic means or other means.

Articles 126-128 of the Enterprise Law regulates the liability of company directors. The articles require that "measures applicable to directors" are regulated by the company statutes. According to article 128, if the company fails to comply with the "measures" included in the company statutes, company shareholders representing 25% of the shares can file a notice to the company to require the removal of the director. If the company fails to act on this notice, shareholders can go to court to request for the removal of a director. Good practices and the World Bank Doing Business Protecting Minority Investor Index, suggest that company shareholders representing 10% or more of the share capital of the company to sue directly or derivatively in case the company directors and managers breach fiduciary duties, mismanage, or violate third-party transaction regulations. The regulated 25% is higher than the recommended 10% and may adversely affect the rights of minority shareholders.

The current Enterprise Law and Law on Securities of Lao PDR do not regulate changes in share ownership that result in a change of controlling ownership. Prevailing regulations do not cover procedures, processes and cases in which some investors or group of shareholders buy in more share to reach the controlling ownership threshold. This lack of regulation may lead to a situation in which shareholder(s) reach the controlling share ownership threshold in a way that could harm the minority shareholders' rights.

Disclosure and transparency

The existing regulation on corporate governance in Lao PDR does not require the disclosure of biographies of all company directors in the invitation to shareholder meetings. It only requires that biographies of independent directors are shared. This may reduce the transparency of shareholder meetings.

Improvement of the regulation on insider trading prevention is needed. Currently, the Enterprise Law does not allow directors of a company to use information on share transactions within the organisation to their benefit (Article 139 of the Law).

Type of information that needs to be disclosed and frequency of disclosure

Disclosure of financial information

As regulated by the Law on Accounting, enterprises in Lao shall use the International Financial Reporting System (IFRS) for book-keeping and preparation of financial reports. Subsequently, the Ministry of Finance issued the timeframe to adopt IFRS. According to guidelines by the Ministry of Finance, Public Interest Entities (PIE) may start to apply IFRS from 2017 if they are ready to do so. Other enterprises can start applying IFRS within four years. This means these enterprises will have to apply IFRS by 2021 at the latest. By requiring enterprises to apply IFRS, the disclosure of financial information will be stronger and corporate governance is expected to be improved.

In practice, financial and nonfinancial disclosure by companies in general and by listed companies in Lao PDR remains weak. Notably, online access to company reports in English is a big challenge.

Disclosure of related party transactions

Article 129 and 130 of the Enterprise Law and Article 23 of the Securities Law provide guidance on activities that may constitute a conflict of interest for company directors, such as:

- Conducting business similar to those of the company they represent;
- Conducting transactions between the company they own and the company in which they serve as members of the board; and
- Receiving loans from the company.

However, these regulations are basic and generic. Both the Enterprise Law and Securities Law omit coverage of the approval process of related-party transactions. Neither of the laws require third party review of related-party transactions. Consequently, many related-party transactions are approved as normal transactions without any scrutiny or disclosure obligations.

The disclosure requirement in the Enterprise Law for conflicts of interest is very generic. According to Article 129, directors must disclose their conflicts of interest. However, the law does not address the content and procedure of such disclosure. In Article 162 of the Enterprise Law, companies are required to prepare an annual business report which covers such information as: total capital, registered capital, issued shares, types and number of shares issued, information on subsidiaries, general information on conflicts of interest and remuneration of company directors. Lack of precision in the disclosure of the conflict of interest and without sufficient details on related-party transactions can cause damage to the company and to minority shareholders.

Disclosure of non-financial information

The annual reports of the seven companies listed on LSX provide mostly financial information. Non-financial information provided in the reports is either scarce or simply non-existent. It is important to provide non-financial information to shareholders and to the public. The G20/OECD Principles of Corporate Governance suggest that disclosure of non-financial information includes ownership structures, composition of the board and its sub-committees, biographies of company directors and high-level management, internal control

structures, strategy and executive and non-executive directors' remuneration. However, listed companies in Lao PDR are yet to provide information of this sort.

Furthermore, information about investors and investor structure provided on the websites of the listed companies is limited and inaccessible in most of the cases due to technical errors in the websites.

Responsibilities of the board

According to the G20/OECD Principles of Corporate Governance, company directors play an important role in corporate governance. In general, the board of directors is in charge of all the management issues of a company as entrusted by investors and shareholders. Their operation and performance are important for the effective operation of the company. Stipulations related to board structure, composition, functions, duties, roles and responsibilities play a vital role in improving the performance of the board. However, the provisions on the responsibility of directors in the corporate governance legislation of Lao PDR are generally unclear and not fully enforceable in practice.

Composition of the board and qualifications of board members

There is no regulation regarding the number of members on a company's board of directors. However, the Enterprise Law requires that all companies that have assets of more than approximately USD 6 million equivalent set up a board of directors. External audit is mandatory for these companies. Members of the board must be selected through voting by shareholders at shareholders' meetings. The selection or the replacement of a director can be executed by way of cumulative or direct voting by shareholders. Companies are required to give notice to shareholders of at least five business days prior to a shareholders' meeting – a duration that is shorter than one often sees in international practice.

Role and responsibilities of the board

Besides the provision on the role and responsibility of directors of a company, the Law on Enterprise does not clarify the duty of care and duty of loyalty of company directors. The responsibilities of board members are vaguely defined in the Articles 126-129. According to the articles, directors shall be held responsible when he/she “acts outside the scope of the business purpose of the company”; or “breaches the charters and regulations of the company”; or “exercises duties beyond the scope of the assigned powers”; and “failure to exercise its assigned duties”.

Article 10 of the Securities Law requires independent members make up one third of the board of listed companies. The law also stipulates “an independent director means a member of the board of directors of an issuer and a listed company who does not have any conflict of interest with the company and is capable of giving opinions independently”. The stipulation on independent directors on the board is an improvement and helps to strengthen the role, responsibility and performance of the board.

Corporate governance of state-owned enterprises

Overview of the SOE sector

As defined by the Enterprise Law of 2013, there are two types of SOEs in Lao PDR, namely: (1) State-owned enterprises, which are established by the State, with capital contributed by the State of more than 50% of the total capital, and (2) limited liability

companies which are mixed enterprises jointly owned by the State and other parties (e.g. domestic or foreign investor). The fundamental principles for the business operations of SOEs outlined in the law are: i) strict compliance with the policy and the government's social economic development plan, ii) independent business operations based on commercial principles, iii) a transparent and modern management system subject to internal and external audits, and iv) full participation of the entire organisation, in view of contributing to improving the efficiency of business operations.

As of the end of 2016, Laos has 130 SOEs. These SOEs have total assets of USD 12.69 billion, equivalent to about 93% of Lao PDR's GDP. SOEs generated USD 3.44 billion in revenue in 2016. Despite the huge amount of assets held and sales generated, the net profit made by SOEs is humble at USD 38 million in the year. SOEs provide about 19 000 jobs (LSC, 2017). SOEs in Lao PDR continue to play a significant role in the economy and remain particularly prominent in such pivotal sectors as finance, telecommunications, energy and mining.

Reforms of SOEs started in the mid-1990s. A large number of poorly performing SOEs were divested by way of privatisation. The Government has divested over 80% of share capital in 640 SOEs since the start of SOE reform.

Type of rules governing the SOE sector

The Enterprise Law provides some general provisions on SOEs. In terms of policy, the Government of Lao PDR has issued some legislation on SOE administration and development, including (i) the 7th and 8th National Social Economic Development Plans; and (ii) the Prime Minister's Order of September 2013. The legal framework on SOEs in general and specifically on corporate governance in SOEs are basic²². Institutional arrangements for management and monitoring of SOEs face multiple limitations. Regulatory authorities and oversight bodies who oversee SOEs, for example the Ministry of Finance, could benefit from reforms to better meet their roles and functions.

Even though the total assets of SOEs is significant in comparison to the countries' GDP, the total income of SOEs in Lao PDR is still far behind the national target. SOEs face numerous challenges, for example limited access to finance, feeble financial capacity, weak accounting disciplines and lack of sound corporate governance. In order to overcome the challenges and further improve the SOE sector, the Lao Government is now in the process of drafting a new decree on public servant management in SOEs and the Strategic Plan on State-Owned Enterprises Reforms in the Lao PDR 2017-2025. These two legal documents will contribute to strengthening corporate governance practices in SOEs in Lao PDR.

Institutional arrangements for State ownership

The institutional arrangement applies differently to two types of SOEs in Lao PDR. These two types of SOEs are (1) State enterprises, which are established by the State and have a capital contribution from the State of more than 50% of the total capital, and (2) Limited liability companies which are jointly owned by the State and another party (e.g. domestic or foreign investor).

As for the state enterprises, the Ministry of Finance will represent (the state) as the owner of the capital and assets of these SOEs. The structure will be decided by the Ministry.

²² The OECD issued the "OECD Guidelines on Corporate Governance of State-Owned Enterprises" in 2015 and can be used as a good reference.

Ministry of Finance officials will be assigned to manage the enterprises as non-professional directors. For this type of SOE, corporate governance principles and practices are not prevalently applied.

In the case of limited liability companies, the structure of management and other operations are regulated in a chapter of the Enterprise Law. The chapter provides some basic requirements on corporate governance. For example, it is required that the board of directors shall be selected by way of shareholder voting according to the share ratio. Professional personnel, managers and officers shall be selected, and CEOs of the companies can be hired. In these companies, corporate governance frameworks apply though at different levels.

Privatisation strategies and future plans for reform of the SOE sector.

The Lao government began a privatisation programme of SOEs in 1986. In line with this programme, the central government devolved significant economic powers to regional governments and reduced the number of central ministries and ministry-equivalent organisations. In 1989, there were reportedly 640 SOEs, 200 of which controlled at the central level. This number has been steadily reduced through closing down, leasing, merging and selling-off the SOEs. Up to 2015, there were 130 state owned enterprises in Lao PDR. Approximately 55 of these SOEs operate at the central level and 42 under the responsibility of the Ministry of Finance²³.

With the aim of improving the governance and efficiency of SOEs, the government has encouraged a number of SOEs to partner with foreign firms, either in the form of joint ventures or by inviting strategic partners to buy shares. In 2005, the Danish beer company Carlsberg took a 50% stake in Lao Brewery, with the Lao government retaining the other 50%. In 2011, Russia's Vimpelcom, which operates the Beeline brand, acquired a 78% stake in Millicom Lao, a leading mobile telecom operator, leading to the creation of Vimpelcom Lao. In 2012, Compagnie Financière de la BRED (COFIBRED), a subsidiary of the French bank BRED Banque Populaire, took a 10% stake in Banque pour le Commerce Extérieur Lao (BCEL), a listed company that is 70% owned by the Lao government. In 2014, BCEL established a joint venture with Fudian Bank, a Chinese bank, to establish the Lao China Bank with an initial registered capital of USD 37 billion (OECD, 2016).

The Lao government has expressed its commitment to further reform the SOE sector. This reform entails reducing the number of enterprises wholly owned by the State from 130 to approximately 30, largely through attracting foreign ownership. SOEs with sound financial performance will be encouraged to list on the stock market. The stated objectives of the reforms are to:

- Strengthen state sector performance,
- Maximise public resource use,
- Enhance revenue contribution to the state budget, and
- Improve the quality of utility sector services.

Yet efforts to establish separation between ownership and regulation have been limited. There is currently no clear state ownership policy in Lao PDR. The *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, revised in 2015, offer internationally-

²³ Source: OECD-South Asia-Corporate Governance Initiative (2016), Issues Paper 2015.

recognised benchmarks for evaluating the corporate governance framework pertaining to SOEs and designing reforms.

With a large number of small-sized private enterprises, the capital market of Lao PDR can be developed faster by way of listing more SOEs. Experience from some neighbouring countries, e.g. in Viet Nam, show that listing of SOEs can have a good impact on capital market development. When undertaking the listing of an SOE, governments will need to take into consideration the advantages and disadvantages of floating a portion of shares to the market. Floating only a small portion of shares while the legal framework for protecting minority investors is inadequate or not functioning effectively will cause worry for minority shareholders. As a result, this can make the strategy of floating a small portion of the shares unsuccessful. Improving corporate governance, and strengthening protection of minority investors' rights is beneficial for SOE reforms in Laos.

Challenges and opportunities in the implementation of an effective national framework for corporate governance

The level of capital market development in the country

The Lao Securities Exchange (LSX) was launched in 2011 with support from both the Stock Exchange of Thailand (SET) and the Korea Exchange (KRX). LSX has seven listed companies and a market capitalisation of USD 1.28 billion as of 27 April 2018. According to a recent strategic plan for capital market development, LSX aims to have 25 listed companies by 2020, and 60 listed companies by 2025. KRX holds a 49% stake in the LSX operating company, while the Bank of Lao PDR holds 51% (LSC, 2018).

In 2017, the LSX succeeded in attracting more listed companies. The newly listed company is Phousy Construction and Development Public Company (PCD). In addition, the listed company BCEL issued additional shares by RO and PO. This helped to drive LSX market capitalisation to LAK 11,374.2 billion or an increase of 9.22% as compared with the end of 2016.²⁴ Among the six listed companies in the LSX in 2017, EDL-Gen is the biggest in terms of market capitalisation with a value of LAK 8,060.7 billion or 70.9% of total market capitalisation. It is followed by BCEL, PCD, PTL, SVN and LWPC, which account for 10.3%, 8.4%, 4.8%, 4.3% and 1.3% of total market capitalisation, respectively (LSX, 2018).

Between 2011 and 2017, the LSX Composite Index rose from 1 000 to 1 147 points (2016) and then fell to 998.39 points at the end of 2017. Also in this period LSX's market capitalisation rose from USD 580 million to USD 1.365 billion, or approximately 12% of GDP. It slightly decreased to USD 1.28 billion as of end of April 2018. Over this period, the number of investor accounts grew to 13,190 of which around 20.5% are foreign-owned.

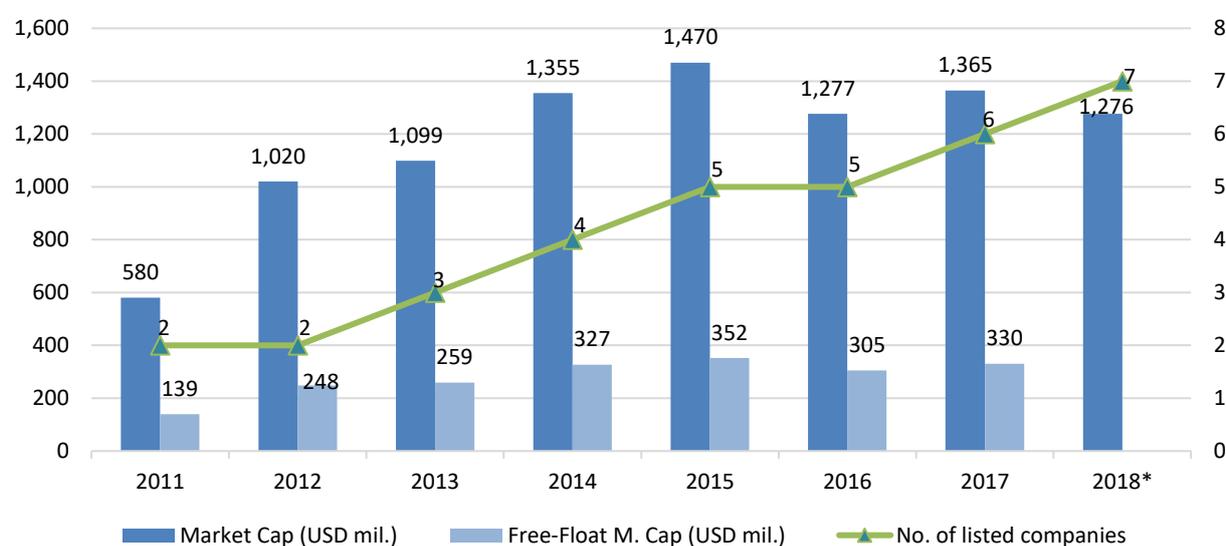
²⁴ "LSX Performance Report", LSX (2017).

Table 3.3. Listed firms on the Lao Securities Exchange by the end December of 2017²⁵ and end of April 2018²⁶

Name	Issue name	Sector	Free float	Closed share price in USD (end of April 2018)	Market capitalisation (in million USD)	
					End of Dec 2017	End of April 2018
EDL-Generation Public Company	EDL-Gen	Energy	25%	0.54	967.21	909.15
Banque Pour Le Commerce Extérieur Lao Public	BCEL	Finance	20%	0.64	140.87	132.45
Lao World Public Company	LWPC	Real Estate	10%	0.51	18.24	19.98
Petroleum Trading Lao Public Company	PTL	Energy	26%	0.20	64.91	48.06
Souvanny Home Center Public Company	SVN	Construction Materials	15%	0.35	58.44	57.57
Phousy Construction and Development Public Company	PCD	Construction	N/A	0.17	115.19	98.03
Lao Cement Public Company*	LCC	Construction Materials	30%	0.27	-	10.83
Total					1 364.86	1 276.07

Source: Laos Securities Exchange (LSX)

* First trading day: 02 March 2018

Figure 3.4. LSX market capitalisation

Source: Laos Securities Exchange (LSX).

Note: Data updated on 27th April 2018 and Free-Float M. Cap is not available

²⁵ Exchange rate: 8,334 LAK = 1 USD

²⁶ Exchange rate: 8,312 LAK = 1 USD

The online trading activities via the Home Trading System (HTS) have helped to increase both the number of HTS accounts and trading value. The number of HTS accounts at the end of 2017 totalled 222 accounts, an increase of 189 accounts as compared with the end of 2016. There were 54 active accounts, increasing by 34 accounts over the previous year. In 2012, the government increased the proportion of shares that foreigners can hold in a listed company from 10% to 20%. Overall, the capital market in Lao PDR is still at an early stage of development. In 2017 the average daily trading value has significantly increased with foreign and domestic trading reaching LAK 697.2 million and LAK 688.8 million respectively. These accounted for 50.3% and 49.7% of average daily trading value.

Key challenges

Given the high concentration of ownership of listed companies on LSX, corporate governance is an important issue. However, public listed companies in Lao PDR are yet to develop their own code of corporate governance for internal use. This can be attributed to the absence of specific guidelines and regulations on corporate governance targeted for listed companies by LSC and other relevant government agencies.

Most companies in Lao PDR are SMEs and are at the primary stage of business development. Around 100,000 businesses are legally registered domestically. According to Ministry of Commerce figures, the number of businesses registered in the Lao PDR increased from 71 000 in 2012 to 97 000 in 2013. Large-sized joint stock companies, those that have more potential and ready to adopt good corporate governance practices, are limited in number. Private companies are family business oriented. In these companies, financial disciplines and corporate governance are very weak. Accounting systems are not in line with international standards (IFRS). Spreading good corporate governance practices to the private company sector remains a challenge.

SOEs are yet to put a high priority on good corporate governance practices in their reform agenda. All SOEs are owned by the Ministry of Finance, which plays both the role of owner and Government regulator on SOEs. However, efforts to establish the separation lines between ownership, oversight and regulator have been limited. There is currently no clear state ownership policy in Lao PDR. The *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, revised in 2015, offer an internationally-recognized benchmark for evaluating the corporate governance framework pertaining to SOEs and designing reforms. The privatisation of SOEs in Lao PDR is on-going but is not as fast as expected.

There are not many institutions that support the promotion of corporate governance in Laos. The country is yet to have an institute of directors. Associations of financial investors or securities businesses are non-existent in Laos. Business associations still need to prioritise highly the topic of corporate governance in the agenda. Universities, training institutions and business do not consider corporate governance as an important part of their training curriculum.

Main opportunities

The Lao government has expressed its commitment to strengthen the reform of the SOE sector. The stated objectives of the reforms are to: i) strengthen state sector performance, ii) maximize public resource use, iii) enhance revenue contribution to the state budget and iv) improve the quality of utility sector services.

The Government of Lao PDR aims to reduce the number of enterprises wholly owned by the State from 130 to approximately 30 by 2020, largely through attracting foreign ownership. This is an opportunity to push for the stronger adoption of good corporate governance practices, especially those introduced in the *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, before and after privatisation. Adoption of sound corporate governance practices before an IPO will make an SOE more attractive to potential investors, including foreign ones. After privatisation, there is good opportunity for good corporate governance practices to be adopted thanks to the participation of external investors.

Private sector business is developing and there is a growing number of enterprises that will graduate from small to medium size and from medium to large size. Based on the enterprise survey conducted by the German Technical Cooperation (GIZ) in 2011 and 2013, about 6% of the small enterprises surveyed in 2011 had grown into medium-sized or large enterprises by 2013²⁷. These companies can be a good target group for good corporate governance practices. As suggested by *G20/OECD Principles of Corporate Governance* can be introduced to through awareness raising, training and education programmes.

The outlook for future developments in the field of corporate governance

The Lao government has expressed its ambition to expand its capital market. The Strategic Plan on Capital Market Development for 2016-2025 states the aim of having 25 listed companies by 2020 and 60 listed companies by 2025. Awareness-raising for companies and other stakeholders on the benefits of corporate governance and capital market development is a key component of this strategy. Additionally, the Lao authorities plan to: i) explore the bond market, ii) introduce mutual funds, iii) extend trading hours beyond the current morning session, and iv) launch a new exchange for small and medium-sized enterprises (SME). This objective will need to be supported by efforts to improve corporate governance among companies, both listed and unlisted, in Laos.

Laos is strengthening their relationship with regional and foreign investors. LSX has signed a memoranda of understanding with the Hanoi Stock Exchange, the Ho Chi Minh Stock Exchange and the Stock Exchange of Thailand. Looking ahead, LSX aims to become a member of the World Federation of Exchanges and the ASEAN Trading Link. Regional cooperation is expected to contribute significantly to improving the quality of corporate governance, both in terms of regulation and enforcement, in Laos.

Improved awareness and understanding of corporate governance is necessary for eventual adoption. There are positive opportunities for this to happen. Laos is seeing a growing number of companies listing on the LSX and graduating into large-sized joint stock companies, therefore the country is putting an increased emphasis on improving the performance of SOEs and privatised SOEs. With these measures, corporate governance in Laos is expected to improve in a gradual manner in the future.

²⁷ “Business Formalisation in the Laos PDR”, MekongBiz (ADB, DFAT) and EMC (2017).

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Annex 3.A. Regulations related to the securities market in Lao PDR

No.	Title	Type	No.	Date
1	Law on Securities	Law	21/NA	10/12/2012
2	Decree on the Establishment and Operations of the Lao Securities Commission	Decree	188/PM	24/7/2013
3	Decision on the Establishment and Operations of the LSC Office (amended)	Decision	013/LSCO	17/12/2013
4	Decision on Regulation for the Issuance and Public Offering of Shares	Regulation	008/LSCO	21/7/2010
5	Decision on Regulation for Supervision of the Securities Exchange	Regulation	012/LSCO	10/11/2010
6	Decision on Regulation for Accounting and Auditing in the Securities Sector	Regulation	013/LSCO	10/11/2010
7	Decision on Regulation for the Supervision of Foreign owned share Transactions on the Securities Exchange	Regulation	012/LSCO	19/5/2010
8	Decision on Regulation for Information Disclosure	Regulation	014/LSCO	19/5/2010
9	Regulation on Internet Trading Supervision in Lao PDR	Regulation	001/LSC	24/7/2013
10	Regulation on the Establishment and Operations of Securities Companies (amended)	Regulation	002/LSC	24/7/2013
11	Regulation on the Transfer of Listed Shares	Regulation	006/LSC	20/9/2013
12	Regulation on the Inspection of Securities Related Activities (amended)	Regulation	002/LSC	18/2/2014
13	Regulation on the Capital Adequacy Requirements of Securities Company	Regulation	003/LSC	18/2/2014

No.	Title	Type	No.	Date
14	Regulations on Supervision of Securities Professionals (amended)	Regulation	004/LSC	18/2/2014
15	Regulation on Reporting	Regulation	373/LSCO	24/2/2012
16	Regulation on Reporting and Disclosure for Listed Companies	Regulation	007/LSC	03/4/2014
17	Regulation on Custodian Banks	Regulation	010/LSC	07/5/2014
18	Notice on the Establishment, Development and Use of the IT Systems of Securities Companies	LSC Notice	371/LSCO	24/2/2012
19	Notice of the Lao Securities Commission on Implementation of International Financial Reporting Standards (IFRS)	LSC Notice	014/LSC	25/12/2013
20	Notice of the Lao Securities Commission on Capital Mobilisation through Securities Issuance and Listing of Companies Abroad	LSC Notice	001/LSC	14/2/2014
21	Decision on Fees of Issuance of Corporate Bonds Abroad	Decision	011/LSC	07/5/2014
22	Instruction on Securities Codes	Instruction	112/LSCO	07/2/2011
23	Manual on Requesting to Establish a Securities Company	Manual	482/LSCO	27/2/2012
24	Guideline on the Shareholders Meetings of Listed Companies	Guideline	257/LSCO	03/3/2014
25	Guideline on Implementation of Regulation on Capital Adequacy of Securities Companies	Guideline	281/LSCO	06/3/2014

4. Country stocktaking report: Corporate governance in Viet Nam

Introduction and context of reforms

Background of reforms

Viet Nam's economy (in real GDP terms) has grown at an average rate of between 6 and 7% per annum since 2000, enabling the country to double the size of its economy in only two decades (WB and GSO, 2018). It is forecasted that the economy will be able to accelerate the growth rate in the coming five years. Economic growth has become the foundation for developing the business sector. Enterprises, in turn, have become the main engine of economic growth and development in Viet Nam. This growth is supported by an emerging capital market, which has played an increasingly important role in supplementing credit supply driven growth.

Viet Nam currently has two stock exchanges. The first stock exchange, the Ho Chi Minh City Securities Trading Center, was established in 2000 with two listed stocks. The second Hanoi Stock Exchange (HNX), was established in 2005. The two exchanges currently have a combined listing of 739 companies (354 companies in HOSE and 385 companies in HNX)²⁸. A company may not list on both exchanges. The two exchanges have contributed significantly to the growth of the capital market and access to capital in Viet Nam. Requirements set by regulators for companies that are listed or will be listed on the two exchanges also contribute to the increasing adoption of good corporate governance practices among companies in Viet Nam, though much remains to be done.

Viet Nam reported strong economic growth in the first quarter of 2018. According to the General Statistics Office of Viet Nam (GSO), fuelled by a rise in exports, gross domestic product rose 7.4% in the first quarter of 2018 compared to the same period in 2017. Viet Nam has outperformed most of its Southeast Asian peers. In the ADB's Asian Development Outlook (ADO) 2018, which was announced by ADB on April 2018, Viet Nam is set to continue its strong economic performance, with GDP growth forecasted at 7.1% for the full period of 2018, before easing back to 6.8% in 2019. The growth will be driven by a rise in foreign direct investment, vigorous export growth, strengthened agriculture sector and robust domestic demand.

In 2018, Viet Nam has more than 561 000 active private sector businesses and 98.8% of them are SMEs²⁹. In addition, the country has 14 600 foreign invested enterprises and 2 701

²⁸http://www.ssc.gov.vn/ubck/faces/vi/vimenu/vipages_vithongtinthitruong/thongkettck/quymothitruong?_adf.ctrl-state=156mygdg3e_73&_afLoop=25509518084644794

²⁹ In Viet Nam, SMEs are defined as micro, small, and medium-sized enterprises having no more than 200 employees registered with the state social insurance scheme in a year and meeting either of the following two criteria: (i) total capital shall not exceed VND100 billion (around USD4.4

State-owned Enterprises^{30,31}. There were 110 000 private enterprises were registered in 2016 and 126 800 in 2017, bringing the total accumulative number of registered enterprises to 1 132 000 by the end of 2017 (MPI and GSO, 2017). However, the number of active private sector enterprises is only 561 000, indicating that 571 000 enterprises (or 50,4% of total) have exited from the market³². Besides the listed companies on the two stock exchanges, there is an increasing number of public companies³³. According to State Securities Commission of Viet Nam (SSC), Viet Nam has about 1473 public companies as of April 2018. The growth of Viet Nam's economy and of the enterprise sector needs to be supported by easier access to finance. It is highly important for companies in Viet Nam to improve its corporate governance – an indispensable factor for companies in Viet Nam to get access to the capital needed for future growth.

Despite progresses in recent years, Viet Nam still lags behind many countries in the index on protecting minority investors³⁴ within the World Bank Doing Business framework – which is a useful proxy indicator to measure the quality of regulations on corporate governance in a country. In the World Banking Doing Business 2018, Viet Nam scores lower than Indonesia, Malaysia and OECD high income countries in terms of protecting minority investors. While the country is doing well on some sub-indices like extent of shareholder governance, extent of shareholder right, and extent of corporate transparency, there is room for improvements in the areas of conflicts of interest regulation, director liability, and ease of shareholder suits index. Even in the areas where Viet Nam is doing better, the gaps between Viet Nam and more advanced countries in the region remains wide and need to be narrowed.

million); or (ii) total revenue of the preceding year shall not exceed VND 300 billion (around USD13.2 million).

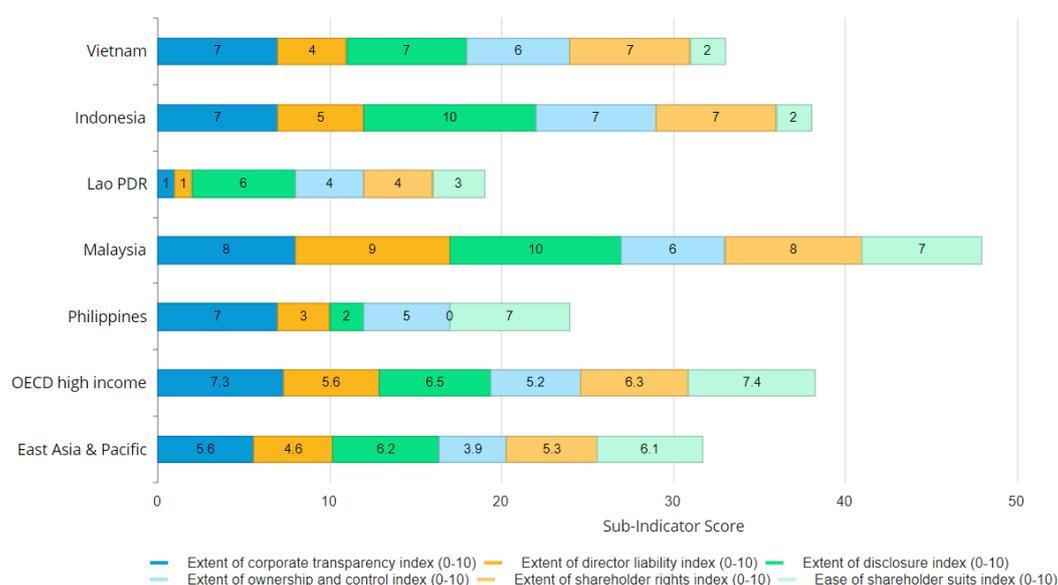
³⁰ State owned enterprises include the following: (1) Enterprises with 100% of state capital operating under control of central or local governmental agencies; (2) Limited companies under management of central or local government; (3) Joint stock companies with domestic capital, of which the government shares more than 50% charter capital (Explanation of terminology of Statistical Handbook of Viet Nam).

³¹ <http://www.gso.gov.vn/default.aspx?tabid=382&ItemID=18686>

³² “Private Sector in Viet Nam: Productivity and Prosperity”, MekongBiz (ADB, DFAT) and Economica Viet Nam (2018).

³³ According to the Securities Law (Article 25), a public company is a joint stock company which falls into either one of the following forms: (a) a company which has offered shares to the public; (b) a company which has securities listed in the Stock Exchange or the Securities Trading Centre; or (c) a company the shares of which are owned by at least 100 investors, excluding professional securities investors, and which has the paid-up charter capital of VND 10 billion VND or more.

³⁴ Protecting Minority Investor index measures the protection of minority investors from conflicts of interest through one set of indices (combined in the extent of conflict of interest regulation index) and shareholders' rights in corporate governance through another (combined in the extent of shareholder governance index).

Figure 4.1. Protecting Minority Investors in Viet Nam and Comparable Economies

Source: Doing Business 2018 (the World Bank, 2018).

Table 4.1: Protecting minority investors in Viet Nam – Measure of quality

Index	Score
Extent of conflict of interest regulation index (0-10)	4.3
Extent of disclosure index (0-10)	7
Extent of director liability index (0-10)	4
Ease of shareholder suits index (0-10)	2
Extent of shareholder governance index (0-10)	6.7
Extent of shareholder rights index (0-10)	7
Extent of ownership and control index (0-10)	6
Extent of corporate transparency index (0-10)	7

Source: Doing Business 2018 (the World Bank, 2018).

The level of capital market development in the country

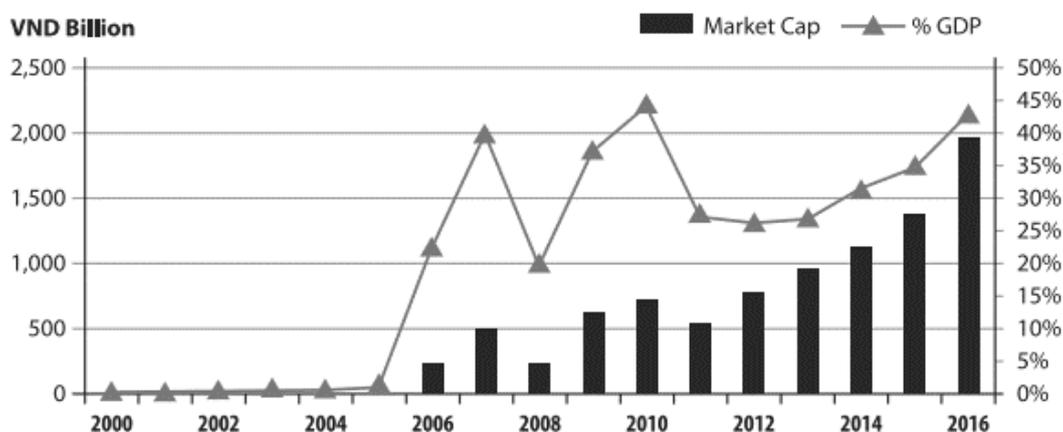
After 17 years of development, the Vietnamese capital market has been the fastest growing in the ASEAN and East Asia in term of scale and liquidity.

In addition to the stock market, the derivative market was launched in August 2017 and received relatively positive feedback from the public.

The securities market has become an important channel for capital mobilisation and for enterprises to access an alternative capital channel from credit offered by banks. The value of capital mobilised through the Securities Market since its inception has reached over VND 2 000 trillion as of 2017. From 2011 until 2018, the capital mobilisation through the Securities Market has reached VND 1 500 trillion, 5 times higher than that in the period of 2005-2010, contributing to an average of 21% of the total social investment capital and equivalent to 50% of the credit supply through the banking system. In particular, the establishment of the Securities Market has facilitated capital raising for the Government and enterprises to enable investments, increased production, and business growth. The

market has become the main distribution channel for the issuance of government bonds, raising capital for the State Budget.

Figure 4.2. Market capitalisation of Viet Nam stock markets



Source: State Securities Commission (2017)

The market capitalisation of the Vietnamese capital market has grown tremendously. At the launch of the Securities Market in 2000, only two companies were listed, and the market capitalisation was VND 986 billion (USD 48 million), equivalent to 0.28% of GDP. Viet Nam's Securities Market has become increasingly attractive to an increasing number of companies who have listed and registered for trading. As of the end of 2017, there were 731 stocks and fund certificates listed on the two stock exchanges and 679 stocks registered for trading on the UPCoM with the total value of VND 959 000 billion (or USD 41.7 billion)³⁵, an increase by 30% compared to that of 2016. As of the end of 2017, the value of capitalisation reached VND 3 360 000 billion (USD 146 billion), equivalent to 74.6% of the GDP³⁶. This indicates an increase of 73% compared to that of 2016. The business performance of listed companies in the first 9 months of 2017 has significantly improved in terms of revenue and profit with the increases by 18% and 23% respectively compared with those of same the term in 2016 (SSC, 2017).

The market organisation system, market model and structure of the capital market in Viet Nam is being continuously upgraded and developed. The Stock Exchanges (SE) and Viet Nam Securities Depository (VSD) have carried out the function of trading, depositing, settling and transferring securities smoothly and safely. Securities traders have become more effective in the role of financial intermediaries between investors and the market. They contribute positively as consultants on equitisation, issuance and merger and corporate restructuring. The number of securities companies has fallen recently (from 105 in 2008 to 79 companies in 2017) but the quality and performance of such companies has improved.

³⁵ At the exchange rate of USD 1 = VND 23,000 (August 2018)

³⁶ As of 27 April 2018, the combined market capitalization of HOSE and HNX was USD 137.7 billion.

The market has become increasingly attractive to domestic and foreign investors. In 2016, net foreign capital inflow in the Viet Nam was the highest in 8 years. The number of investor accounts have increased steadily, from around 3 000 investor accounts when the market was opened in 2000, to 1.7 million accounts as of early 2017. The number of foreign investors has also increased significantly. The market helps to mobilise about USD 17.3 billion of indirect investment capital as of the end of 2016.

Unlisted Public Company (UPCOM) Market on the Hanoi Stock Exchange

The UPCoM market was recently established by the MOF, SSC and HNX to regulate “over the counter” shares and convertible bonds of unlisted public companies. The objective the UPCoM is to establish a formal market for the trading of shares of unlisted listed companies and to narrow the informal “over the counter” market. The Government also aims at minimising the risks for investors related to fraud in information and payment, and at facilitating the trading of shares of unlisted companies.

Admission of a public company’s shares or convertible bonds for trading on UPCoM is mandatory for all public companies. By law, shares of public companies must be registered with the Viet Nam Securities Depository (VSD). “Listing” on UPCoM provides the advantage of being on a central, transparent trading platform. It also means that certain trading rules and restrictions apply, including a requirement that all trades be put through UPCoM (except for public offers or takeovers) and a trading price band³⁷.

In recent years, the UPCoM market saw a remarkable growth in scale. Recently, a number of regulatory reforms have been introduced by the Government in support of the development and growth of the UPCoM, for example:

- Circular No.180/2015/TT-BTC providing guidelines for trading registration on UPCoM
- Circular No.155/2015/TT-BTC guiding the information disclosure on the stock market.
- Decision No. 51/2014 / QD-TTg on some issues on divestiture, sale of shares and registering transactions and listing on the securities market of State owned enterprises.
- Circular No. 115/2016 / TT-BTC amending Circular 196/2011 / TT-BTC guiding the first sale of shares and management of proceeds from equitisation.

The new regulations help to accelerate the growth of the UPCoM, doubling the number of the companies listed on it in two years. Especially, Circular No.115/2016/TT-BTC has given a boost to the development of the UPCoM because it requires SOEs to list shares on the market within 20 days after their initial public offerings.

By the end of 2017, there were 769 companies being registered for trading on the UPCoM (as compared with 256 as of December 2015), with the total value of nearly VND 959,000 billion. The market includes companies operating in multiple sectors, e.g. industry, financial service, real estate, commerce and services. 11 equitised SOEs have been registered for trading on the UPCoM. The size of companies listed on the UPCoM is wide in range, with some companies’ capital consists of thousands of billions VND (including Viet Nam Airlines Corporation, Hai Phong Thermal Joint Stock Company, Viet Nam Steel

³⁷ A price band is a value-setting method in which a seller indicates an upper and lower cost limit, between which buyers are able to place bids.

Corporation...) while other companies within the market have capital of a few billions VND.

In order to improve transparency, strengthen market surveillance, protect investors' interests, the HNX issued the new UPCoM Market Organisation and Management Regulation attached to Decision No. 455 / QĐ- SGDHN on 20/06/2017. The Decision requires that:

- Companies registered for trading on the UPCOM shall meet requirements on information disclosure and corporate governance applicable with public companies in line with relevant laws and rules of the HNX.
- Major shareholders, founding shareholders, internal persons of organisations registered for trading on the UPCOM have to comply with requirements on information disclosure set by the HNX and relevant laws.

As such, HNX is requiring more stringent corporate governance standards applicable to companies listed on the UPCoM. In support of this, HNX introduced a Transparency and Disclosure Programme to promote corporate governance of companies traded on the HNX. This initiative was launched in 2012 and received positive feedback from the companies, the regulators and the market. The programme provides a tool to assess strengths and weaknesses of companies in terms of information disclosure and to take measures to do better or to address the constraints. This programme also helps companies to identify weaknesses and constraints. This enables companies to minimise the legal risks related to compliance with regulations on information disclosure. Additionally, this creates the basis for developing strategies for corporate governance enhancement, building the reputation of listed companies on the HNX, lowering the cost of capital mobilisation, approaching the goals of sustainable development and minimising the potential risks of investors. Besides, through awards to best-performing companies, the programme aims at more competition between companies and eventually better quality of information disclosure.

Overview of policy developments and progress made at the national level in the field of corporate governance

Multiple organisations are involved in regulating and promoting corporate governance in Viet Nam. The State Securities Commission (SSC) plays the leading role in enforcement for non-bank public companies. SSC is in charge of drafting and enforcing the Securities Law and the implementation of its regulations, including those on corporate governance and applicable to public companies and listed companies. Meanwhile, the Central Institute for Economic Management (CIEM) under the Ministry of Planning and Investment is responsible for designing and upholding the Enterprise Law – the law that governs the incorporation of all businesses in Viet Nam. The Enterprise Law also sets the foundation and key principles for corporate governance in all enterprises in Viet Nam. In addition, the State Bank of Viet Nam (SBV) is responsible for providing additional corporate governance regulations applicable to banks and financial institutions. The Ministry of Finance provides further regulations relating to the corporate governance of insurance companies.

Regarding listed companies, the SSC has a number of enforcement powers, including the ability to fine and to suspend or remove licenses. It may also issue directives to comply with relevant securities law and regulations. However, the SSC may not initiate civil actions in court and may not collect damages on behalf of shareholders. More generally, cumbersome judicial procedures render it hard for shareholders to enforce corporate

governance through the courts. As of 2017, the SSC has more than 400 staff. The SSC is reforming its listing department and has delegated some “front-line” regulator activities to the two stock exchanges.

Enforcement of the Enterprise Law is conducted on a local level and in a decentralised manner. The 63 Departments of Planning and Investment (DPIs) are responsible for registering companies and enforcing related provisions in the Enterprise Law. The central DPI is in Hanoi, Ho Chi Minh City. Online access to the general public of certain information on the national registry has been possible since 2012.

Overall, the legal and regulatory framework for corporate governance has developed rapidly in the last decade. The major laws which govern corporate governance in Viet Nam are the Enterprise Law, the Securities Laws and decrees, circulars which guide the implementation of these two laws. In addition, the Accounting Law, Law on Credit Institutions, Law on the Insurance Business also address issues related to corporate governance. The legal framework on corporate governance of Viet Nam that is provided by these regulations has improved significantly, enabling it to move closer to international standards and good practices on corporate governance.

Ensuring an effective corporate governance framework

Company Law

Before 1990, the legal framework for the incorporation of private-sector companies did not exist. In 1990, private sector companies and enterprises were recognised for the first time with the introduction of the Company Law and the Sole Proprietorship Law³⁸. The two laws provide the legal foundation for the establishment of the first private businesses in Viet Nam.

The Enterprise Law was introduced in 1999 and replaced the Company Law and the Sole Proprietorship Law. The law triggered a boom in the development of domestic private sector enterprises in Viet Nam. The Enterprise Law liberalised the freedom to do business of Vietnamese citizens and provided formal protection for private businesses as well as private ownership. The law introduced tremendous improvements in business start-up procedures, removed barriers to business entry and prompted a change in the mind-set of government institutions, ministries and local authorities towards private sector enterprises. As soon as the law was introduced, the number of enterprises registered annually increased dramatically and billions of US dollars have been invested by Vietnamese business people into the economy through enterprises registered under the Enterprise Law. However, it should be noted that corporate governance was not the top priority in this early version of the Enterprise Law.

Regulations on corporate governance were emphasised in the Enterprise Law which was revised in 2004, and then in Enterprise Law No.68/2014/ QH13, effective from 1 July 2015, replacing the Enterprise Law 2005. The Enterprise Law covers both private sector enterprises (including listed companies, public companies and all other companies) and SOEs. The 2014 Enterprise Law provides important stipulations on corporate governance, e.g. composition of the board of directors, liabilities of directors, information disclosure,

³⁸ Law No. 47-LCT/HDNN8 on Company dated 21 December 1990 by the National Assembly and Law No. 47-LCT/HDNN8 on Sole Proprietorship dated 21 December 1990 by the National Assembly.

protection of the rights and equitable treatments of shareholders, etc. In general, the newer versions of the Enterprise Law have helped to continuously narrow the gap with international good practices and principles on corporate governance.

Securities Law, listing regulations and corporate governance rules and code

In addition to the Enterprise Law, other laws have been introduced and have helped to further improve the policy and legal framework for corporate governance in Viet Nam. This includes: the Law on Independent Audit in 2011, the Law on Accounting in 2015, the new Law on Credit Institutions in 2010 and the Law on Insurance Business in 2010.

The Securities Law was adopted in 2006³⁹, providing regulation on corporate governance requirements applicable to listed companies and public companies.

Stipulations on listing, listing requirements, public offerings, issuance of shares to the public, etc. were further elaborated in the Decree No. 58/2012/ND-CP in 2012 (some articles of Decree No.58 was amended by Decree No.60/2015/ND-CP in 2015).

Under the laws, the MOF issued the Circular 121/2012/TT-BTC providing regulations on corporate governance applicable for public companies. The Circular set out 4 groups of regulations:

- i. Shareholders and GMS;
- ii. BOD and members of BOD;
- iii. Board of Supervisors and members of Board of Supervisors; and
- iv. Prevention of conflict of interest, reporting norms, and information disclosure. Furthermore, Circular 155/2015/TT-BTC provided guidance on information disclosure in the securities market. However, these circulars have been superseded by the Decree No. 71/2017/NĐ-CP which provides guidance on corporate governance in public companies. The Decree was introduced by the Government in 2017.

The Decree No. 71/2017/ND-CP provides new regulations on corporate governance to be consistent with the Enterprise Law, which was revised in 2014. The decree aims at creating a unified and consistent legal framework for the application and compliance of enterprises. The Decree's scope covers such issues as:

- i. Annual shareholder meeting;
- ii. Board of directors;
- iii. Supervisory committee;
- iv. Related third party transactions; and Reporting and information disclosure.

The Decree aims at improving corporate governance at public companies:

- i. A good governance structure;
- ii. Effectiveness of the board of directors and of the supervisory function;
- iii. Protecting the rights of shareholders and related stakeholders;

³⁹ Law No. 70/2006/QH11 on Securities dated 29 June 2006. Some articles of the law were amended by the Law No. 62/2010/QH12 dated 24 November 2010.

- iv. Equal treatments of shareholders; and
- v. Information transparency and disclosure (Article 1 and 2 of the Decree).

In general, corporate governance Regulations cover important aspects of governance such as shareholder rights, shareholder meetings, composition and responsibilities of the board, inspection committee and identifies relevant corporate disclosures. It further clarifies board and management responsibilities in cases of conflict of interest and establishes two different regimes for public companies and large-scale public companies/listed companies, de facto confirming a recent regulatory trend across the world of addressing governance aspects according to the complexity, sophistication and size of companies.

To further support the implementation of the Decree No. 71/2017/ND-CP, the Ministry of Finance issued Circular No. 95/2017/TT-BTC on 22 September 2017. The circular provides:

- i. The model charter that public companies should follow; and
- ii. The internal company regulation on corporate governance that public companies should adopt. The circular has adopted the most important principles on corporate governance as those introduced by G20/OECD in the Principles of Corporate Governance (2015).

In addition to this general rule, companies in the banking, investment, and insurance industries need to comply with specific legislation like the Credit Institution Law (2010) and the Law on Insurance Business (2010). For example, the Credit Institution Law requires additional requirements for banks that go beyond those of listed companies. This includes requirements with respect to internal controls, internal audit and risk management, and requirements for board members. Furthermore, Vietnamese companies are also subject to other accounting, anticorruption, auditing, bankruptcy, commerce, competition, construction, labour, tendering and taxation laws – all have requirements on complying with corporate governance good practices in different aspects.

Please refer to Annex 4.A. for the List of Regulations Related to Corporate Governances Applicable to Companies in Viet Nam.

The rights and equitable treatment of shareholders and owners

Regulations in Viet Nam provide basic ex ante and ex post shareholder rights. However, some constraints remain that can be further improved.

The Enterprise Law provides for *secure methods of ownership registration*. Ownership registration and the right for free transfer of shares are protected under the Enterprise Law. The law stipulates that:

- “...A joint-stock company must establish and maintain a register of shareholders from the date of issuance of the enterprise registration certificate. The register of shareholders may be in the form of a written document or an electronic file, or both...”
- “...The register of shareholders shall be retained at the head office of the company or at the Viet Nam Securities Depository. Shareholders have the right to inspect, consult or make an extract or copy of the register of shareholders during business hours of the company or of the Viet Nam Securities Depository...”

- Shareholders are provided with share certificates – a paper that is “...issued by a joint-stock company, in written form or in electronic form, to certify the ownership of one or more shares of such company... (Article 120).
- Ordinary shareholders have the right “...to freely transfer their shares to other persons...” (Except in the cases stipulated in articles 119.3 and 126.1 of this Law).
- “Shares may be freely transferable, except in the cases stipulated in article 119.3 of the Law and except where the charter of the company provides restrictions on assignment of shares. Share transfer shall be conducted in the form of a contract by normal methods or via trading on the securities market” (Article 126).
- “...Shareholders have the right to transfer their priority right for subscription for shares to other persons...” when the company increases the number of shares which may be offered for sale and sells all such shares to all shareholders in proportion to the respective number of shares they hold in the company (Article 124). They also have the right “...to receive dividends at the rate decided by the General Meeting of Shareholders...” (Article 114).

The Enterprise Law also requires that shareholders have the opportunity to participate effectively and vote in general shareholder meetings. As a result, they have the right to approve or participate in decisions concerning fundamental corporate changes. According to the law, ordinary shareholders have the rights “...to attend and express opinions at the General Meeting of Shareholders and to exercise the right to vote directly or through an authorised representative or in other forms stipulated in law or in the charter of the company. Each ordinary share shall carry one vote, they are also given priority in subscribing for new shares offered for sale in proportion to the number of ordinary shares each shareholder holds in the company. Upon dissolution or bankruptcy of the company, to receive a part of the remaining assets in proportion to the ratio of ownership of shares in the company...” (Article 114, Enterprise Law).

Regarding shareholders being able to vote in person or in absentia, the Enterprise Law protects the right of shareholders to vote, thus being able to participate in decisions concerning fundamental corporate changes. However, the law is silent about shareholders’ ability to vote in person or in absentia, and equal effect should be given to votes whether cast in person or in absentia. To address this issue, the Decree No: 71/2017/ND-CP issued by the Government in 2017 on Corporate Governance requires that “...public companies’ internal regulations on corporate governance shall specify the application of modern information technology for the shareholders to participate and give opinions in the meeting of general assembly of shareholders, including guidelines for shareholders to vote through the online meeting of the general assembly of shareholders, cast electronic votes or other forms of electronic voting specified in the Article 140 of the Law on enterprises and the company’s charter...”(Article 8 (3) of the Decree).

In order to better protect the interests of minority shareholders, cumulative voting was introduced in the Enterprise Law 2014⁴⁰. According to the Law, “...unless otherwise stipulated in the charter of the company, voting to elect members of the Board of Management and of the Inspection Committee shall be implemented by the method of cumulative voting, whereby each shareholder shall have as its total number of votes the total number of shares it owns multiplied by the number of members to be elected to the

⁴⁰ Cumulative voting was actually introduced in Enterprise Law 2009.

Board of Management or the Inspection Committee, and each shareholder has the right to accumulate all or part of its total votes for one or more candidates...” (Article 144 (3)).

A shareholder or a group of shareholders holding 10% of the total ordinary shares for a consecutive period of six months or more, or holding a smaller percentage as stipulated in the charter of the company have the rights to nominate candidates to the Board of Management and the Inspection Committee. They have the right to see and make an extract of the book of minutes and resolutions of the Board of Management, mid-year and annual financial statements in accordance with the norms of the Vietnamese accounting regime and reports of the supervision committee. They also have the right to request the convening of a General Meeting of Shareholders.

The Enterprise Law 2014 introduces a number of measures to better protect minority investors. For example, to meet the eligible conditions for a resolution in the GMS to pass, the law stipulates that it must be agreed upon by an equivalent number of shareholders representing:

- “...at least 51% of the total number of voting slips of all attending shareholders...” in normal case; and
- “...at least 65% of the total number of voting slips of all attending shareholders...” in special cases like those related to classes of shares and the total number of shares of each class, change of lines of business and business sectors, change of the organisational and managerial structure of the company, investment project or sale of assets valued at equal to or more than 35% of the total value of assets recorded in the most recent financial statements of the company, or re-organisation or dissolution of the company.

The requirements for representation as outlined above have been decreased as compared with those previously stipulated in the Enterprise Law 2009. As for the eligible conditions for conducting meeting of General Meeting of Shareholders, a meeting of the General Meeting of Shareholders shall be conducted where the number of attending shareholders represents at least 51% of the total number of voting slips. Where a meeting cannot be conducted for the first time because the condition stipulated in clause 1 of this article is not satisfied, a meeting of the General Meeting of Shareholders which is convened for a second time shall be conducted where the number of attending shareholders represents at least 33% of the total number of voting slips...” (Article 141).

Shareholders also have a say in important contracts and transactions of the joint-stock company. The Law requires that “...contracts and transactions between joint-stock companies and the following parties must be approved by the General Meeting of Shareholders or the Board of Management”:

- Shareholders or authorised representatives of shareholders holding more than 10% of the ordinary shares of the company and their related parties;
- Members of the Board of Management, director or general director and their related persons (Article 162).

Most recently, the Decree No: 71/2017/ND-CP issued by the Government in 2017 on Corporate Governance reiterates the rights of shareholders as specified in the Enterprise Law. Furthermore, the Decree confirms once again “...the right of shareholders to be treated fairly. Each share of the same class gives its holders the equal rights, obligations and interests. The rights and obligations associated with preferred shares (if any) must be approved by the general assembly of shareholders and made publicly available to

shareholders...” It guarantees the “...the right to fully access the periodical and unscheduled information published by the company in accordance with regulations of law...”, and “...the right for their legal interests being protected. In the cases where a decision made by the General Assembly of Shareholders or the board of directors violates the law or the company’s charter, causing damage to the company, shareholders have the right to request cancellation or suspension of such decision in compliance with the Law on Enterprise...” (Article 4).

Regulations in Viet Nam therefore have provided the basic *ex ante* and *ex post* shareholder rights. Progress in regulations to ensure the rights and equitable treatment of shareholders and owners has been acknowledged. The World Bank, in its Doing Business 2018, scored Viet Nam 7 out of 10 in the *shareholder rights index*.

Disclosure and transparency

Requirements for information disclosure and transparency are provided both in the Enterprise Law, the Securities Law and the Decree No: 71/2017/ND-CP issued by the Government in 2017 on Corporate Governance.

Type of information that needs to be disclosed and frequency

Disclosure of Financial information

All companies are required to “...disclose (i) annual financial statements and summary of annual financial statements which are audited by an independent auditing organisation within no more than one hundred and fifty (150) days from the end of a financial year, and (ii) semi-annual financial statements and summary of semi-annual financial statements which were audited by an independent auditing organisation; the time-limit for disclosure must be prior to 31 July each year...” (Article 108 of the Enterprise Law). The law further requires that the contents of these financial reports which are disclosed must include financial statements of the parent company and consolidated financial statements. In addition, companies shall disclose “...annual reports on business results, implementation of production and business plans for each year and for the latest three years as of the year of reporting...” (Article 108).

In the case of *joint-stock companies*, the requirement on financial reporting is stricter. “...Joint-stock companies must submit annual financial reports as approved by the General Meeting of Shareholders to competent State agencies in accordance with the law on accounting and relevant laws. A joint-stock company shall publish the following information on its website: ...annual financial reports approved by the General Meeting of Shareholders, and annual reports on evaluation of operational results of the Board of Management and the Supervision Committee...” (Article 171 of the Enterprise Law).

Public companies shall “...publicly announce and disclose information in accordance with the law on securities. Joint-stock companies in which the State holds more 50% of charter capital shall publicly announce and disclose information in accordance with articles 108 and 109 of the Enterprise Law...” (Article 171 of the Enterprise Law).

The Securities Law further requires that “...within ten days from the date of completion of an audited annual financial statement, public companies shall make periodical publication of information on its annual financial statement...” (Article 101). In addition to these obligations, listed companies shall disclose (i) publication of information within twenty-four hours after suffering a loss of the company assets equivalent to 10% or more of its equity capital; (ii) information on the quarterly financial statement within five days from

the date of completion of such financial statement; and (iii) information as might be further required by the rules of the Stock Exchange or Securities Trading Centre.

In order to ensure the implementation of these requirements, the Securities Law stipulates that Stock Exchanges and the Securities Trading Centres are required to "...promulgate the regulations on securities listing, securities trading, information disclosure and trading members...", "...to enforce the information disclosure of listed organisations, trading members at the Stock Exchange or the Securities Trading Centres..." (Article 37). Trading members are required to publish information as stipulated in the Securities Law and the regulations on information disclosure of the Stock Exchange or the Securities Trading Centre.

Disclosure of Related Party Transactions

The Enterprise Law 2015 provides relatively clear regulations on public disclosure of related parties and related interests. The Law articulates that all companies shall, on a periodical basis, publish a report providing an update on the management of the company. The report shall include, among others, key performance indicators, as well as "...information about related parties of the company and transactions of the company with related parties..." (Article 108, 2.(g)).

Except when the charter of the company does not provide any other stricter provisions, the public disclosure of related interests and related parties of a company shall be implemented in accordance with the following provisions:

- "...The company must gather and update a list of related parties of the company..."
- "...Members of the Board of Management, inspectors, the director or general director and other managers of the company must declare their relevant interests to the company, including: names, enterprise code numbers, head office addresses, business lines of enterprises in which they own contributed capital or shares; ratio and period of such ownership of contributed capital or shares; names, enterprise code numbers, head office addresses, business lines of enterprises in which their related persons jointly own or separately own contributed capital or shares of more 10% of charter capital..." (Article 159). Such disclosure must be made within seven working days from the date of the occurrence of such related interest.

Decree No: 71/2017/ND-CP issued by the Government in 2017 on Corporate Governance further requires that:

- "...members of a board of directors, controllers, directors (general directors) and other enterprise managers must publish the related interests in compliance with regulations of Law on enterprises and other relevant laws...", and
- "...Members of a board of directors, controllers, directors (general directors) and other enterprise managers have the obligation to inform the board of directors and the board of controllers the transactions between companies, subsidiaries and companies with over 50% or more of charter capital controlled by a public company and themselves or their related persons in compliance with regulations of law. The public company must publish information about the transactions of the abovementioned persons which have been approved by the general assembly of shareholders or the board of directors in accordance with regulations of Law on securities and publishing information..." (Article 24).

Members of the board of directors, controllers and general directors are held responsible for disclosing information. In addition to the responsibilities outlined in the Article 24 as described above, members of the board of directors, controllers and directors (general directors) must report to the board of directors and the board of controllers on the following transactions:

- Transactions between an ordinary company and a company in which the abovementioned members are founding members or members of the board of directors or the directors (general directors) over the last three years by the transaction time;
- Transactions between an ordinary company and a company in which related persons of the abovementioned members are members of the board of directors, directors (general directors) or majority shareholders (Article 32).

Disclosure of Non-Financial Information

Besides the requirements on disclosure of financial information, material transactions and related parties and transactions with related parties, the Enterprise Law also made it mandatory that public companies disclose non-financial information. The Enterprise Law, in its Article 108, requires that important non-financial information need to be disclosed, for example “...(i) basic information about the company and the charter of the company, mission, general objectives, specific objectives and targets of annual business plans; (ii) reports on results of implementation of public duties which are assigned in accordance with plans; (iii) Reports on the actual status of management and the organisational structure of the company...”.

Furthermore, all companies shall make available to the public a corporate governance report. The report should include, among others, the following:

- Information of the owners of the company;
- Information on managers of the company (including professional qualifications, work experience, managerial positions held, methods of appointment, managerial work assigned, remuneration, bonus, methods of payment of salaries and other benefits);
- Disclosure of related persons and entities (including their related interests in respect of the company, and their annual self-evaluation forms in the capacity as managers of the company, supervision committee;
- Details on the annual average number of employees and at the time of reporting;
- Details on the annual average salaries and other benefits per employee;

Article 31 of the Decree 71 stipulates that “...The salary of the director (general director) and other enterprise managers must be shown separately in the annual financial statements of the company and reported at the annual meeting of general assembly of shareholders...”.

Article 108 of the Enterprise Law requires that all companies disclose information on unexpected events occurring to the companies, for example the blockade of the company bank account, partial or entire suspension of business activity, amendments or additions made to the enterprise registration certificate, change of key managers of the company, judgement or decision of a court with respect to, one of the managers of the company, conclusion of the inspection agency or of the tax administrative agency on a breach of law by the company, decision on change of the independent auditing organisation, or the

auditing of financial statements being refused, and a decision on establishment, dissolution, consolidation, merger or conversion of a subsidiary company.

Channels for disseminating information

Companies are required to disclose information through Internet-based platforms such as the company website to facilitate easy and cost-effective access to information by company shareholders and stakeholders. In many articles, the Enterprise Law repeatedly request for the use of website and Internet-based information channels. For example:

- “...Companies must make periodic disclosure of information on the websites of the company...” (Article 108),
- “...A company must publish on its website and in its printed matter (if any) and publicly display at its head office and business locations extraordinary information within thirty-six (36) hours from the time of occurrence of unexpected and extraordinary events...” (Article 109).
- “...Invitations to meeting of General Meeting of Shareholders shall be... published on the website of the company and in a central or local daily...” (Article 139).
- “...Resolutions of the General Meeting of Shareholders must be notified to shareholders entitled to attend a meeting of the General Meeting of Shareholders within fifteen (15) days from the date of approval thereof. If the company has its own website, the resolutions may be published on the website of the company instead...”, and
- “The minutes of vote-counting must be sent to shareholders within a time-limit of fifteen (15) days from the date of completion of the vote-counting. If the company has its own website, the minutes of vote-counting may be published on the website of the company instead newspaper, if the company considers it necessary in accordance with the charter of the company...”.

At the end of a fiscal year, the Board of Management must prepare annual reports, which include a (a) Report on the business results of the company; (b) Financial statements; (c) Reports on the evaluation of the management and administration of the company. In cases of joint-stock companies which are required by law to be audited, the annual financial statements of such joint-stock companies must be audited before submission to the General Meeting of Shareholders for consideration and approval. The reports must be sent to the Supervision Committee for evaluation no later than thirty (30) days before the opening day of the annual meeting of the General Meeting of Shareholders unless otherwise stipulated in the charter of the company.

Reports and documents prepared by the Board of Management; evaluation reports of the Supervision Committee and audited reports must be available at the head office and branches of the company no later than ten (10) days before the opening day of the annual meeting of the General Meeting of Shareholders if the charter of the company does not provide for any other longer period (Article 170, Enterprise Law). The Enterprise Law further requires that “...joint-stock companies shall submit annual financial reports as approved by the General Meeting of Shareholders to competent State agencies in accordance with the law on accounting and relevant laws...” (Article 171).

Decree No. 71/2017/ND-CP issued by the Government in 2017 on Corporate Governance stipulates further for public companies. It requires that “...Shareholders and the public shall

have equal access to the published information. Language used to publish information shall be clear, comprehensible and avoid misunderstanding by shareholders and investors...” (Article 28). A public company must report to the State Securities Commission and the local stock exchange and publish information on the organisational structure of the management and operation of the company in compliance with the Article 134 of the Enterprise Law. In the event that the public company changes its operating model, it must report to the State Securities Commission and the local stock exchange and publish information in 24 hours after the decision to change the model is made by the general assembly of shareholders. Public companies must publish information on corporate governance at the annual general assembly of shareholders and in the company's annual report in compliance with the Law securities on publishing information. As an important means and channel to communicate with the public and to disseminate information, the Decree stipulates that “...public companies shall nominate at least one employee to in charge of disclosing information...” (Article 33).

Overall, regulations on information disclosure applicable to companies in Viet Nam in general and to public companies in particular are comprehensive, both in terms of type of information to be disclosed and the channel of dissemination. The gaps with international good practices on information disclosure are getting narrower, enabling Viet Nam to be scored relatively higher on the sub-index of Information Disclosure and Transparency in the World Bank Doing Business 2018.

Responsibilities of the board

Composition of the board and qualifications of the board members

According to the Enterprise Law, the Board of Directors shall have three to eleven (11) members. The term of office for the Management Board member's or independent members of the Board of Directors shall not exceed five years; and they may be re-elected for an unlimited number of terms (Article 150).

The Enterprise Law (Article 134) allows that joint-stock companies may select either of the following models of organisation of governance and operation, unless otherwise stipulated in the law on securities:

- a) A General Meeting of Shareholders, a member of the Board of Directors, a member of the Supervision Committee and a director or general director. In case a joint-stock company has less than 11 shareholders and if among these shareholders, institutional shareholders own less than 50% of the total shares of the company, it is not required to set up a Supervision Committee;
- b) A General Meeting of Shareholders, a member of the Board of Directors and a director or general director. In this case, at least 20% of the Board of Directors must be independent. In this case, it is required that an internal audit committee be set up under the Board of Director. Independent members shall perform the supervisory function and oversee the management and operation of the company.

The Enterprise Law aims to ensure that the board provides strategic guidance to the company and the effective monitoring of management. According to this regulation, regulators aim for the board to be able to exercise objective judgement. In reality, board independence usually requires that a sufficient number of board members will need to be independent of management. Requirements that “...at least 20% of the number of members of the Board of Directors must be independent members of the board. In this case, it is

required that an internal audit committee be set up under the Board of Director...” are supportive of this objective. The requirements for the “internal audit committee” as required by the Enterprise Law will support the board in performing its functions, particularly in respect to audit and also in respect to risk management and remuneration, depending upon the company’s size and risk profile.

The Enterprise Law also provides regulations on the composition and qualification of members of the board and independent members of the board. The law sets out clear criteria for director independence. In addition, composition requirements for the board of directors are further elaborated in the Decree No.71/ND-CP, which states that:

- “...The board of directors of a public company must have 3-11 members. The composition of the board of directors must be balanced in terms of the number of members having knowledge and experience in law, finance and business operations of the company and gender balance;
- At least 1/3 of the members of board of directors are non-executive members;
- A public company needs to minimize number of members of the board of directors who concurrently hold several executive titles of the company to ensure independence of the board of directors;
- If an unlisted public company operates under the model specified in Point b Clause 1 Article 134 of the Law on enterprises, at least 1/5 of members of the board of directors are independent members. If the board of directors of such company has fewer than 5 members, one of them must be the independent member; and
- At least 1/3 of the members of the board of directors of a listed company are independent members.....” (Article 13).

Role and responsibilities of the board

Article 149 of the Enterprise Law stipulates “...that the Board of Directors is the body overseeing the company and shall have full authority to make decisions in the name of the company and to exercise the rights and perform the obligations of the company which do not fall within the authority of the General Meeting of Shareholders... In general, the regulations on the functions of the board of directors in Viet Nam are in line with principles for good corporate governance. These principles require that the board should fulfil certain key functions, including, reviewing and guiding corporate strategy, major plans of action, risk management policies and procedures, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures.

The Decree No.71/ND-CP issued in 2017 adopts and incorporates many good practices and principles on the roles and responsibilities as suggested in the G20/OECD Principles of Corporate Governance (2015). According to the Decree, “...Members of the board are required to perform their duties honestly and cautiously in the best interests of shareholders and the company. They need to (i) participate in all the meetings of the board of directors and give clear opinions about the discussed issues; (ii) report adequately and promptly to the board of directors on the remuneration they receive from subsidiaries, affiliated companies and other organisations in which they are the representatives of the company's capital contribution; and (iii) report to the State Securities Commission and local stock

exchange and publish information when trading the shares of the company in compliance with regulations of law....” (Article 14).

Box 4.1. Rights and obligations of the Board of Directors in Viet Nam

The board of directors shall:

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|--|---|
| <ul style="list-style-type: none"> a. make decisions on medium term developmental strategies and plans, and on annual business plans of the company; b. recommend the classes of shares and total number of shares of each class which may be offered; c. make decisions on selling new shares within the number of shares of each class which may be offered for sale; to make decisions on raising additional funds in other forms; d. make decisions on the selling price of shares and bonds of the company; e. make decisions on redemption of shares; f. make decisions on investment plans and investment projects within the authority and limits stipulated by law; (g) make decisions on solutions for market expansion, marketing and technology; g. to approve contracts for purchase, sale, borrowing, lending and other contracts valued at 35% of the total value of assets recorded in the most recent financial; h. to elect, remove or discharge the chairman of the Board of Management; to appoint, remove, and sign contracts or terminate contracts with the director or the general director and other key managers of the company as stipulated in the charter of the company; to make decisions on salaries and other benefits of such managers; to appoint authorised representatives to participate in the members' council or general meeting of shareholders of other companies, and to make decisions on the level of remuneration and other benefits of such persons; | <ul style="list-style-type: none"> i. to supervise and direct the director or general director and other managers in their work of conducting the day-to-day business of the company; j. to make decisions on the organisational structure and the rules on internal management of the company, to make decisions on the establishment of subsidiary companies, the establishment of branches and representative offices and the capital contribution to or purchase of shares of other enterprises; k. to approve the agenda and contents of documents for the meetings of the General Meeting of Shareholders; to convene meetings of the General Meeting of Shareholders or to obtain written opinions in order for the General Meeting of Shareholders to pass decisions; l. to submit annual finalised financial reports to the General Meeting of Shareholders; m. to recommend the dividend rates to be paid, to make decisions on the time-limit and procedures for payment of dividends or for dealing with losses incurred in the business operations; n. to recommend re-organisation or dissolution [of the company], or to request bankruptcy of the company; o. other rights and obligations in accordance with the Enterprise Law and the charter of the company. |
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Source: *Enterprise Law, Article 149*

The Board of Directors is also held responsible for improving the quality of corporate governance in public companies. It is responsible for monitoring the effectiveness of the company's governance practices and for making changes as needed. The Decree requires that the board of directors of the listed companies must nominate at least 1 person to be in charge of corporate governance. The person in charge of corporate governance can take over the position as the company secretary. Such a person shall, besides other tasks:

- i. Advise the board of directors on the organisation of convening the meeting of general assembly of shareholders in compliance with regulations and law and the related work between the company and shareholders;

- ii. Prepare meetings of the board of directors, board of controllers and general assembly of shareholders at the request of the board of directors or the board of controllers; (iii) advise on the procedures of meetings;
- iii. Participate in meetings and advise on procedures for resolutions of the board of directors in accordance with regulations of law;
- iv. Provide financial information, copies of meeting minutes of the board of directors and other information for members of the board of directors and controllers;
- v. Monitor and report to the board of directors on the operation of publishing information of the company; and (vii) ensure the security of information in accordance with regulations of law and the company's charter.

The Enterprise Law provides detailed regulation on the procedures for conducting and voting at the general meetings of shareholders within articles 142, 149, 150, 151, 152, and 156. The stipulations provided in the articles provide a sufficient legal basis to ensure a formal and transparent board nomination and election process.

In order for the board members to act on a fully informed basis, and in good faith, with due diligence and care, and in the best interest of the company and its shareholders, the Enterprise Law protects the rights of Management Board members to be provided with information. The Enterprise Law stipulates that "... (i) a member of the Board of Management may request the director, deputy director or general director, deputy general director, and the managers of units in the company to provide information and documents on the financial situation and business operations of the company and of units in the company; (ii) A manager receiving such a request must provide all information and documents promptly, completely and accurately as demanded by a member of the Board of Management. The sequence and procedures for requesting for and providing information shall be as stipulated in the charter of the company..." (Article 155).

Board accountability to the company and the shareholders

The Decree also requires that "...the board of directors must:

- i. Take responsibility to the shareholders for the company's operations;
- ii. Treat fairly all the shareholders and protect the interests of the persons whose interests are related to the company;
- iii. Ensure the operations of the company in compliance with regulations of law and the company's charter and internal regulations;
- iv. Make the internal regulations on corporate governance and submit to the general assembly of shareholders for approval; and
- v. Report on the operation of the board of directors to the general assembly of shareholders...." (Article 15).

To align key executive and board remuneration with the long-term interests of the company and its shareholders, the Decree stipulates that "...the board of directors of a listed company can establish sub-committees to assist its operations including personnel sub-committee, remuneration sub-committee and other sub-committees. The board of directors needs to nominate 1 independent member of its members as the head of personnel and remuneration sub-committee; the establishment of these sub-committees must be approved by the general assembly of shareholders. If the personnel and remuneration sub-committees are not established, the board of directors can assign the independent members to assist it in the

human resources, and remuneration issues...” (Article 17). The committees will also be responsible for selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning.

The board of directors also holds responsibility for monitoring and managing potential conflicts of interest, board members and shareholders, including misuse of corporate assets and abuse in related party transactions. Article 32 of the Decree requires that members of the board of directors must report to the board of directors and the board of controllers on: (i) transactions between an ordinary company and a company in which the abovementioned members are founding members or members of the board of directors or the directors (general directors) over the last three years by the transaction time; and (ii) transactions between an ordinary company and a company in which related persons of the abovementioned members are members of the board of directors, directors (general directors) or majority shareholders.

Corporate governance of state-owned enterprises (SOEs)

Overview of the SOE sector

Since the 1990s, the Government of Viet Nam has taken significant steps toward restructuring state-owned enterprises (SOEs). The importance of SOEs in Viet Nam’s economy has steadily decreased but they remain dominant in many sectors. During the period of 1991 – 2017, the number of wholly state-owned enterprises dropped from 12,000 in 1991 to 6,000 in 2001. During the 1990s and the early 2000s, Viet Nam equitised thousands of SOEs. Equitisation is the term used in Viet Nam to describe the process of converting SOEs into joint stock companies or liability limited companies⁴¹. The number of SOEs have been declining dramatically, there are only 2,701 active SOEs as of the end of 2017 due to the equitisation process⁴². In 2015, SOEs still employed 1.37 million people, or 6.6% of total labour workforce in the business sector. SOEs contributed 28.81% to Viet Nam’s GDP in 2016 (GSO, 2017).

The Government has stepped up efforts to divest from SOEs. In 2016, the Prime Minister approved a project on the restructuring of State-owned enterprises (SOEs) for the period of 2016-2020, with a focus on State-owned economic groups and corporations. According to the project, the Government will divest from 137 SOEs from 2016 to 2020 by way of equitisation. The Government will wholly own only 103 enterprises after the 2016-2020 period⁴³. By the end of 2016, total equity of 583 SOEs was equivalent to USD 60 billion, and their total assets was of USD 133 billion (CIEM, 2017). As such, with the equitisation plan by the Government until 2020, the total capital divested by the Government from these SOEs between 2016- 2020 is estimated to reach dozens of billions of USD. It is highly likely that billions of USD in capital and assets will change hands and will be transferred to the private sector enterprise in the coming years, providing an opportunity for private

⁴¹ Before equitisation, SOEs are considered as one-member limited liability companies (in line with the Enterprise Law), with the single owner being the State. The entity representing the state could be a ministry or a Provincial People’s Committee (local government).

⁴² Out of this figure, there were around 500 enterprises wholly owned by the State as of the end of 2017 (CIEM, 2018).

⁴³ Prime Minister’s Decision No. 58/2016/QD-TTg dated December 28, 2016

sector enterprises in Viet Nam to grow and expand⁴⁴. It is important that private sector enterprises improve their capacity, including their corporate governance, to seize this opportunity.

Table 4.2. SOEs in Viet Nam – Key indicators⁴⁵

Criteria	Unit	2010	2011	2012	2013	2014	2015	2016f
Number of active SOEs	Enterprise	3 281	3 265	3 239	3 199	3 048	2 835	-
Number of employees	Thousands	1 691.8	1 664.4	1 606.4	1 660.2	1 537.6	1 371.6	-
Average capital	VND Trillion	3 701.8	4 568.6	4 946.8	5 793.4	6 250.8	6 944.9	-
Net turnover	VND Trillion	2 033.5	2 695.6	2 941.3	2 943.7	2 960.8	2 722.2	-
Contribution to GDP (at current prices)	VND Trillion	633.2	806.4	953.8	1 039.7	1 131.3	1 202.9	1 297.3
Contribution to State Budget revenue	VND Billion	112 143	443 731	477 106	189 076	188 062	227 022	257 321

Source: Statistical Handbook of Viet Nam (GSO, 2017).

Types of rules governing the SOE sector

In general, SOEs are now subject to the same rules and regulations as those applicable to private sector enterprises and foreign invested enterprises. In terms of corporate governance, SOEs are therefore subject to the same regulations as described above, including the Enterprise Law, Securities Law, Accounting Law, Audit Law and all decrees, circulars, which guide the implementation of these laws. The Decree No: 71/2017/ND-CP issued by the Government in 2017 on Corporate Governance is also applicable to SOEs, which have become public and have been listed on the stock markets.

SOEs are also subject to some additional regulations, e.g. the Law on Management and Use of State Capital Invested in Production and Business in Enterprises enacted in 2014. The law requires further information disclosure requirements applicable to enterprises and organisations representing state capital in SOEs. Other regulations, which are applicable to SOEs are the followings:

- Decree No. 81/2015/ND-CP dated 18 September 2015 by the Government regarding information disclosure by SOEs.
- Decree 97/2015/ND-CP dated 19 October 2015 by the Government on Key Position Holders at one-member liability limited companies and in which the State holds more than 50% of share capital.

⁴⁴ “Private Sector in Viet Nam: Productivity and Prosperity”, MekongBiz (ADB, DFAT) and Economica Viet Nam (2018).

⁴⁵ State owned enterprises includes the following: (1) Enterprises with 100% of state capital operating under control of central or local governmental agencies; (2) Limited companies under management of central or local government; (3) Joint stock companies with domestic capital, of which the government shares more than 50% charter capital (Explanation of terminology of Statistical Handbook of Viet Nam).

- Decree No. 106/2015/ND-CP dated 23 October 2015 by the Government on Persons Representing State capital at enterprises in which the State holds more than 50% of share capital.
- Decree 126/2017/NĐ-CP dated 16 November 2017 on transforming SOE and limited liability companies in which the State hold 100% of share into joint stock companies.

While Decree 126/127/ND-CP provides regulations regarding the equitisation process of SOEs and obligations to list securities on the UPCOM after equitisation, Decree 97/2015/NĐCP and the Decree 106/2015/NĐCP specify further roles and functions of boards of directors of SOEs. They also provide guidelines and regulations on the board nomination criteria and an official nomination and appointment procedure. All charters require that SOEs' boards of directors or supervisory boards shall take full responsibility for the company's performance and be granted with full autonomy to define strategies for the company in accordance with the objectives defined by the government. The Decrees also state that if a board member is found to have been unduly influenced by outside person(s) or institution(s), public authorities may implement and apply adequate disciplinary measures. Up to 80% of the SOE board can be made up of independent or non-executive directors and the chief executive officer of an SOE cannot serve as chair of the board at the same time. Nevertheless, in practice, public authorities often exert influence on SOEs' day-to-day business through the so-called state management function. There is considerable room for SOEs in Viet Nam to improve corporate governance practices and standards by adopting the OECD Guidelines on Corporate Governance of State-Owned Enterprises⁴⁶.

Institutional arrangements for State ownership

As of June 2018, several line ministries and provincial People's Committees are government agencies that have ownership stakes in SOEs. Ministries such as the Ministry of Industry and Trade, Ministry of Finance, Ministry of National Defence, Ministry of Transport, Ministry of Agriculture and Rural Development and the People's Committees of Hanoi, Ho Chi Minh City, Hai Phong and Da Nang exercise ownership rights over hundreds of SOEs.

The State Capital Investment Corporation (SCIC) was incorporated under Decisions No.151/2005/QĐ-TTg of the Prime Minister dated 20 June 2005. With its broad mandate, SCIC's creation is seen as a Government measure to enhance the efficiency in the use of state capital. SCIC's primary objectives are to represent the state capital interests in enterprises and invest in key sectors and essential industries with a view to strengthening the dominant role of the state sector while respecting market rules. SCIC is currently managing a large portfolio of over 500 enterprises that are operating in various sectors, such as financial service, energy, manufacturing, telecommunications, transportation, consumer products, health care and information technology.

The Government established the Commission for Management of State Capital at Enterprises in February 2018. The Commission is defined as a body under the Government and will act as the representative of the owner of enterprises at which the State owns 100% of charter capital and the representative of the state capital paid in the joint stock company, limited liability companies with two or more members. It was announced in 2018, that more

⁴⁶ "The OECD Guidelines on Corporate Governance of State-Owned Enterprises", OECD (2015).

than 30 SOEs will be transferred to the Commission. Of which, 9 are large State-owned economic conglomerates (except for Viettel which will remain under the Ministry of Defence) and 21 SOEs which are currently under the management of line ministries. The formation and setting-up of the Commission is ongoing.

Privatisation strategies and future plans for reform of the SOE sector

Equitisation of SOEs is one of the priorities of the Government of Viet Nam. As early as 1992, the focus of initial reform efforts was placed on SOE equitisation—converting SOEs into joint stock companies or limited liability companies. However most of the SOEs equitised through this process were small, unprofitable enterprises, with the larger SOEs occupying the majority of economic activity and employment remaining intact (CIEM, 2010). The Government equitised fully or partially 3,759 SOEs between 1999 and 2013 and 445 more between 2014 and 2016 (CIEM, 2017).

The Government has stepped up efforts to divest from SOEs. The Prime Minister approved a project on the restructuring of State-owned enterprises (SOEs) for the period of 2016-2020, with a focus on State-owned economic groups and corporations. According to the project, the Government will divest from 137 SOEs from 2016 to 2020 by way of equitisation. The Government will wholly own 103 enterprises in the list of SOEs subject to the restructuring in the 2016-2020 period according to the Prime Minister’s Decision No. 58/2016/QD-TTg dated December 28, 2016 (not including agroforestry and fisheries companies, defence and security businesses, the State Capital and Investment Corporation, the Viet Nam Debt and Asset Trading Corporation and the Viet Nam Asset Management Company).

To accelerate the equitisation of SOEs, in 2017 the Government released Decree 126/2017/ND-CP regarding the conversion of SOEs and one-member liability limited companies in which the State holds 100% of share capital into joint-stock companies.⁴⁷ The Decree aims to address many of the regulatory issues and constraints in SOE equitisation. It also introduces new measures which are believed to accelerate the equitisation of SOEs in Viet Nam, for example:

- The decree now allows four methods for launching an IPO - auction, underwriting, private placement and book building.
- State-owned enterprises (SOEs) can apply the book building method at their initial public offering (IPO) from the beginning of 2018⁴⁸.
- Transparency in SOE equitisation is improved and ensured, thus hastening the listing of equitised SOEs on the stock exchanges. According to the Decree, when preparing for IPO documents, the enterprise must at the same time prepare documents for registration at the Viet Nam Securities Depository (VSD) or for stock trading if eligible. Documents for registration at VSD or stock trading on the unlisted public company market must be completed within 90 days from the IPO. This regulation aims to speed up the listing of SOEs following their IPOs and thus

⁴⁷ The Decree replaces Decree NO. 59/2011/ND-CP dated 18/7/2011, Decree No. 189/2013/ND-CP dated 20/11/2013 and Decree No. 116/2015/ND-CP dated 11/11/2015.

⁴⁸ Book building, a systematic process of defining the selling price at an IPO upon demand from institutional investors as they indicate the expected number of shares they want to buy and the prices they are willing to pay. Book building is popular worldwide but new to Viet Nam. The new method is expected to make SOE equitisation attractive to strategic investors as the selling price is based upon a study of the market demand and negotiations with large buyers from the start.

has a strong implication on the requirements of improving corporate governance of SOEs while they are preparing for the IPO and after being equitised.

- The Decree also provides three methods for equitisation, i.e. (i) keeping State capital at SOEs intact and issue shares to increase charter capital, (ii) selling part of State capital at SOEs or combine State stake sale with additional share issuance, and (iii) selling entire State stake or combine entire State stake sale with additional share issuance.
- The decree also provides detailed instructions for evaluating an SOE's value, including land use right value and business advantage value. Business advantage value includes brand value and development potential value. The decree is expected to prevent cases in which its brand value was determined to be zero⁴⁹.
- The decree states that the State will not finance the equitisation of SOEs, including enterprises in which the State still holds more than 50% stake following equitisation.

The Decree is believed to have a strong impact on accelerating the equitisation of SOEs, ensuring the targets of reducing SOEs wholly owned by the State to 103 enterprises by 2020. This is expected to have far-reaching impacts on the quality of corporate governance in public, listed companies in particular and of the whole business sector in general.

Challenges and opportunities in the implementation of an effective national framework for corporate governance

Vietnamese Key challenges

The corporate governance framework in Viet Nam has been significantly improved recently to catch up with the G20/OECD Principles of Corporate Governance. However, a big gap remains between the principles as articulated in the laws, decrees and different types of regulation and enforcement and implementation in practice in Viet Nam. Implementation of corporate governance principles and good practices are the biggest challenges. For example according to a survey of enterprises by the Viet Nam Chamber of Commerce and Industry (VCCI), only 40% of the respondents disclosed their financial statements and merely 6.5% released annual reports; 30% of them made no public reports at all. The report also scored corporate governance performance in Viet Nam at 35.1, much lower than that in Thailand (84.5), Malaysia (75.2), Singapore (70.7) or Indonesia (57.3). In 2015, Viet Nam had no presence in the Top 50 best-governed listed companies in ASEAN⁵⁰.

Many public listed companies are yet to develop a code of conduct for their internal use. The awareness on corporate governance among companies in general and in public companies in Viet Nam remains weak. Knowledge and experiences in corporate governance is limited, thus preventing the enterprises' capacity to comply. Many companies only comply with the minimum requirement set in laws or they have little motivation to follow good corporate governance practices.

A key challenge is the enhancement of standards for the external auditing of companies; requiring disclosure of audit and non-audit information by independent audits would be

⁴⁹ For example, the case of the privatisation of Viet Nam Feature Film Studio.

⁵⁰ VCCI, 2016. "VCCI Business Annual Report 2015: Corporate Governance".

beneficial. In addition, the independence of the supervisory board and audit committee remains weak. This adversely affects the internal supervision and risk control capability of the supervisory board and audit committee.

All listed and unlisted domestic companies are required to use the Vietnamese Accounting Standards (VAS). According to the International Financial Reporting Standards (IFRS), Viet Nam has not adopted IFRS standards or the IFRS for SME's standards and VAS does not possess the equivalent. Neither has it made a public commitment in support movement towards a single set of high quality global accounting standards. Companies in Viet Nam use an accounting regime for SMEs developed by the Ministry of Finance which is simplified as compared to the Vietnamese Accounting Standards (VAS) (IFRS, 2016)⁵¹. In Viet Nam, there are still gaps in the quality of financial information for shareholders compared to the standards of financial information disclosure of the ASEAN.

The corporate governance of many SOEs remains poor, with weaknesses in terms of transparency, board professionalism and how the State acts as owner, which is often exercised in an opaque manner. Many large SOEs are still not equitised or corporatised. Many have been equitised but are still not listed on the stock exchange⁵².

There are institutional challenges as well. The SSC and the two stock exchanges have found it difficult to remain abreast of the rapid growth and increasing complexity of the market. The lack of coordination between key regulators also hinders the enforcement of corporate governance. There is a lack of clarity over supervision and accountability. The State Securities Commission (SSC) plays the lead role in enforcement for non-bank public companies, the State Bank of Viet Nam for banks and certain financial institutions, and the Ministry of Finance for insurance companies. However, there are substantial overlaps. There is not yet a mechanism for effective coordination between these agencies to improve the quality of corporate governance.

The SSC also faces limitations on its power and independence. SSC has a number of enforcement powers over listed companies, including the ability to fine and the suspension or removal of licenses. It may also issue directives to comply with relevant securities law and regulations. However, the SSC may not initiate civil actions in court and may not collect damages on behalf of shareholders.

The institutional capacity of other stakeholders, e.g. Viet Nam Financial Investors' Association (VAFI), Viet Nam Association of Securities Business (VASB) is limited, especially when it comes to efforts and programmes to promote for stronger adoption of good practices in corporate governance in public companies. The Viet Nam Institute of Directors (VIOD) is nascent as it is just newly established. In Viet Nam, enterprises tend to only meet minimum requirements on corporate governance set by laws, and have little incentives to follow good corporate governance practices. Business associations and training institutions are yet to focus on improving the awareness and capacity of companies to adopt good corporate governance and to comply with prevailing regulations on corporate governance.

⁵¹ "Private Sector in Viet Nam: Productivity and Prosperity", MekongBiz (ADB, DFAT) and Economica Viet Nam (2018).

⁵² According to the Securities Law and the Decision No. 51/2014/QĐ-TTg by the Prime Minister, all equitized SOE are required to be listed so they can be traded publicly. However, only 150 out of 759 SOEs have been listed on the stock markets after their equitization (MOF, 2018).

Main opportunities

Despite the challenges, there are opportunities to adapt more sound corporate governance practices in Viet Nam. Firstly, the number of companies and businesses keeps rising. In 2017, there were 126 859 companies registered and 16.71% of them are joint-stock companies⁵³. The number of public companies is also on the rise. Besides the listed companies on the two stock exchanges, there is an increasing number of public companies⁵⁴. According to the State Securities Commission of Viet Nam (SSC), Viet Nam has about 1 473 public companies as of April 2018. These companies have a need, which is believed to be stronger over the years, to adopt good corporate governance practices, both to comply with the regulations and laws, and to support their growth and access to capital markets.

In additions, as it is illustrated at the beginning of this chapter, the securities market has become an important channel for capital mobilisation and for enterprises to access an alternative source of capital than credit offered by banks. The market capitalisation of the Vietnamese capital market has grown tremendously. The UPCoM market was recently established by the MOF, SSC and HNX to regulate “over the counter” shares and convertible bonds of unlisted public companies. In recent years, the UPCoM market saw a remarkable growth in scale. There are both “carrots and sticks” for companies, especially public and equitized companies in Vietnam to comply with regulations on corporate governances as required by prevailing laws and regulations and by adopting the OECD Guidelines on Corporate Governance of State-Owned Enterprises.

The Government has stepped up efforts to divest from SOEs. In 2016, the Prime Minister approved a project on the restructuring of State-owned enterprises (SOEs) for the period of 2016-2020, with a focus on State-owned economic groups and corporations. According to the project, the Government will divest from 137 SOEs from 2016 to 2020 by way of equitisation. The Government will wholly own only 103 enterprises after the 2016-2020 period⁵⁵. By the end of 2016, total equity of 583 SOEs was equivalent to USD 60 billion, and their total assets was of USD 133 billion (CIEM, 2017). As such, with the government’s equitisation plan until 2020, the total capital divested by the Government from these SOEs between 2016- 2020 is estimated to reach dozens of billions of USD.

Consequently, it is expected that billions of USD in capital and assets will change hands and will be transferred to the private sector enterprise in the coming years, providing a precious opportunity for the private sector enterprises in Viet Nam to grow⁵⁶. This again shows the need for the private sector in Viet Nam to improve its corporate governance practices to be able to seize opportunities during this process. It will also be a very good opportunity for

⁵³ Business Registration Agency, Ministry of Planning and Investment (2018) and <https://dangkykinhdoanh.gov.vn>

⁵⁴ According to the Securities Law (Article 25), a public company is a joint stock company which falls into either one of the following forms: (a) a company which has offered shares to the public; (b) a company which has securities listed in the Stock Exchange or the Securities Trading Centre; or (c) a company the shares of which are owned by at least 100 investors, excluding professional securities investors, and which has the paid-up charter capital of VND 10 billion VND or more.

⁵⁵ Prime Minister’s Decision No. 58/2016/QĐ-TTg dated December 28, 2016

⁵⁶ “Private Sector in Viet Nam: Productivity and Prosperity”, MekongBiz (ADB, DFAT) and Economica Viet Nam (2018).

SOEs in Viet Nam to improve their corporate governance practices and standards by adopting the OECD Guidelines on Corporate Governance of State-Owned Enterprises⁵⁷.

The Government and line ministries are committed to adopting and enforcing corporate governance good practices among companies in Viet Nam, especially among public and listed companies and also at SOEs. The government is keen on improving the efficiency and transparency in operation of SOEs and of companies in which the State holds stake. The commitment to and persistent efforts in SOE privatisation also represent a good opportunity for corporate governance to be adopted further in Viet Nam.

Viet Nam's economy is becoming increasingly integrated into the regional and global economy. As a result, Vietnamese companies are also becoming more deeply integrating into the world economy, becoming part of global supply chains; exporting and importing more from other economies. Doing business with international and regional companies requires Viet Nam's companies to upgrade their capacity in all fields. Improving corporate governance is one of the priorities. It is expected that Vietnamese companies will become more and more aware of the need to take prompt actions to improve their corporate governance.

The outlook for future developments in the field of corporate governance

With the robust growth of private sector enterprises in Viet Nam and the determination of the Government in equitising SOEs, corporate governance will play a crucial role in Viet Nam in the future. In addition to regulations and guides officially introduced by the Government, there is an increasing number of large public companies and SOEs that should adopt good governance practices and are looking at the G20/OECD Principles of Corporate Governance and the OECD Guidelines on Corporate Governance of State-Owned Enterprises as an important guide and reference. More strict legal requirements and more visible market incentives will contribute to better corporate governance in Viet Nam in the future.

Corporate governance in Viet Nam will be affected by government efforts to divest from SOEs. The project on the restructuring of State-owned enterprises (SOEs) for the period of 2016-2020 to dramatically reduce the number of SOEs to only 103 enterprises by 2020⁵⁸ will have an important impact on the corporate governance landscape in Viet Nam.

The Government has recently established the Commission for Management of State Capital at Enterprises in February 2018. The Commission is a body under the Government and will act as the representative of the owner of enterprises at which the State owns 100% of charter capital, and as the representative of the state capital paid in joint stock companies, and in limited liability companies with two or more members. More than 30 SOEs will be transferred to the Commission. Of which, 9 are large State-owned economic conglomerates (except for Viettel which will remain under the Ministry of Defence) and 21 SOEs which are currently under the management of line ministries. The establishment of the Commission is ongoing. The Commission has announced that corporate governance of SOEs and information transparency will be a priority on its agenda. The Commission has also announced a project on making real time SOE information available and to disclose increased, more timely information to the public.

⁵⁷ "The OECD Guidelines on Corporate Governance of State-Owned Enterprises", OECD (2015).

⁵⁸ Prime Minister's Decision No. 58/2016/QĐ-TTg dated December 28, 2016

The Government also adopted the Strategy for Securities Market Development for 2011-2020 in 2013⁵⁹. The strategy emphasises the need to enhance corporate governance principles and standards, information transparency, adoption of IFRS and advanced audit standards and norms among Vietnamese companies as part of the strategy to improve the quality of companies that use the securities market. The strategy also requires stronger and more effective coordination between different ministries in law making and enforcement, including those related to corporate governance.

According to SSC, priorities in improving corporate governance in the immediate future will focus on the following:

- *Improving the legal framework on corporate governance:* The SSC is revising its securities law, with the aim to further improve the corporate governance framework in line with requirements of international economic integration. This will support the creation of a transparent investment environment which will be a driver of the equitisation process of SOEs in a sound manner. Additionally, the SSC is developing detailed guidelines on corporate governance to support the implementation of good corporate governance in electing auditors and related issues and governance reporting procedures. Focus will also be on regulations to strengthen the independence of audit committee/supervisory board and the independence of the head of the audit committee, etc.
- *Enhancing the awareness of enterprises and the market on corporate governance:* The SSC will continue with an information campaign, awareness raising activities and trainings on corporate governance for market participants and investors. At the same time, the SSC continues to cooperate with international organisations to conduct workshops and conferences to raise the awareness of corporate governance for regulators and enterprises.
- *Encouraging the application of good practices on corporate governance among listed companies, public companies and the whole business community:* The SSC is developing the Code of Corporate Governance for public companies listed on the Vietnamese securities market. This document will act as a guideline for compliance with legal requirements and for application of good practices which are suitable for Vietnamese enterprises. Measures will be taken to encourage public listed companies to develop their own Code of Conduct for their internal use, which requires their employees and leaders to follow.
- *In addition, corporate governance initiatives,* such as the Annual Report Awards, Transparency and Disclosure will be implemented to encourage enterprises to improve their corporate governance.
- *The Vietnamese Institute of Directors (VIOD)* which is established in April 2018 will be further supported and developed. The VIOD is expected to be the lead institution in improving corporate governance standards in Viet Nam.
- *More proactive participation in the ASEAN Corporate Governance Scorecard.* The ASEAN Scorecard has been reviewed and changes were made to improve the methodology basing on the *G20/OECD Principles of Corporate Governance*. The

59 Decision No. 252/QD-TTg dated 1 March 2012 by the Prime Minister on the Strategy of Developing the Viet Nam Securities Market 2011 – 2020.

initiative is believed to contribute practically to improving corporate governance among public companies in Viet Nam.

Viet Nam has a vibrant private enterprise sector and a growing number of public companies. The Government is increasingly focused on the reform of the SOE sector, both by divesting from SOEs and by improving the performance of those which remain to be wholly owned by the Government. Further regulatory and institutional reforms are being considered and will be introduced to improve the performance of the corporate sector. These are important factors for continued improvement in corporate governance in Viet Nam, both in private businesses and SOEs. Despite numerous challenges, the prospect for improving the corporate governance landscape in Viet Nam is promising.

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Annex 4.A. Key laws and regulations on company incorporation, securities, listing and corporate governance in Viet Nam

Document No.	Title	Issuer	Issue Date	Effective Date
Law				
62/2010/QH12	Law Amending, Supplementing a number of Articles of Law on Securities	National Assembly	24/11/2010	01/07/2011
70/2006/QH11	Law on Securities	National Assembly	12/07/2006	01/01/2007
68/2014/QH13	Law on Enterprises	National Assembly	12/12/2005	01/07/2015
88/2015/QH13	Accounting Law	National Assembly	20/11/2015	01/01/2017
61/2010/QH12	Law on Insurance Business	National Assembly	06/12/2010	01/07/2011
47/2010/QH12	Law on Credit Institution	National Assembly	29/06/2010	01/01/2011
Decree				
71/2017/ND-CP	Decree guiding corporate governance applicable to public companies	Government	06/06/2017	01/08/2017
126/2017/ND-CP	Decree on transforming SOE and limited liability companies in which the State hold 100% of share into joint stock companies	Government	16/11/2017	10/12/2015
86/2016/ND-CP	Decree on Requirements for Investment and Trading in securities	Government	01/07/2016	01/07/2016
81/2015/ND-CP	Decree regarding information disclosure by SOEs.	Government	18/09/2015	05/11/2015
60/2015/ND-CP	Decree Amending, Supplementing several Articles of the Government's Decree No. 58/2012/ND-CP dated 20/07/2012 on providing specific provisions for the implementation of certain Articles of the Law on Securities and the Law on Amending and Supplementing a number of Articles of the Law on Securities	Government	26/06/2015	01/09/2015
97/2015/ND-CP	Decree on Key Position Holders at one-member liability limited companies and in which the State holds more than 50% of share capital	Government	19/10/2015	05/12/2015
106/2015/ND-CP	Decree on Persons Representing State capital at enterprises in which the State holds more than 50% of share capital	Government	23/10/2015	10/12/2015
89/2013/ND-CP	Decree No. 189/2013/ND-CP dated November 20, 2013, amendments Decree No. 59/2011/ND-CP on transformation of wholly state-owned enterprises into joint-stock companies	Government	20/11/2013	15/01/2014
58/2012/ND-CP	Decree Stipulating in detail and guiding the implementation of a number of articles of the Securities Law and the Law amending and supplementing a number of articles of Securities Law	Government	20/07/2012	15/09/2012
Circular				
95/2017/TT-BTC	Circular guiding a number of articles of the Decree No. 71/2017 / ND-CP on corporate governance applicable to public companies	Ministry of Finance	22/09/2017	06/11/2017
115/2016/TT-BTC	Circular Amending and adding some articles of the Circular No.196/2011/TT-BTC dated 26/12/2011 of the Ministry of Finance guiding the initial sale of shares and management and use of proceeds from equitisation of wholly state-owned enterprises	Ministry of Finance	30/06/2016	01/11/2016
07/2016/TT-BTC	Circular on Amendments and supplements to certain articles of the Circular No.210/2012/TT-BTC dated 30/11/2012 on Guidelines for the establishment and operation of securities companies	Ministry of Finance	18/01/2016	15/03/2016

Document No.	Title	Issuer	Issue Date	Effective Date
203/2015/TT-BTC	Circular providing Guidelines for trading on securities market	Ministry of Finance	21/12/2015	01/07/2016
202/2015/TT-BTC	Circular providing Guideline for listing of securities on Stock Exchanges	Ministry of Finance	18/12/2015	01/03/2016
180/2015/TT-BTC	Circular providing guidelines on registration of securities trading on the trading system of unlisted securities	Ministry of Finance	13/11/2015	01/01/2016
155/2015/TT-BTC	Circular providing Guidelines for Information disclosure on securities market	Ministry of Finance	06/10/2015	01/01/2016
210/2012/TT/BTC	Circular providing guidance on the establishment and operation of securities company	Ministry of Finance	30/11/2012	15/01/2013
Decision				
455/QD-SGDHN	Decision on the new UPCoM Market Organisation and Management Regulation	Hanoi Stock Exchange	20/06/2017	20/06/2017
58/2016/QD-TTg	Decision on criteria for classification of wholly state-owned enterprises, particularly state-owned enterprises and list of state-owned enterprises undergoing restructuring in 2016-2020	Prime Minister	28/12/2016	15/02/2017
132/2013/QD-UBCK	Decision on Guiding working offices, material facilities in service for activities of securities business	State Securities Commission of Viet Nam	06/03/2013	06/03/2013
Rules				
958/QD-SGDHN	Decision on amendment and supplement of Regulation on Stock Listing at Hanoi Stock Exchange	Hanoi Stock Exchange	24/11/2017	24/11/2017
455/QD-SGDHN	Decision on regulation on organisation and management of the securities trading market of unlisted public companies on HNX	Hanoi Stock Exchange	20/06/2017	20/06/2017
639/QD-SGDHN	Regulation on listing of securities at Hanoi Stock Exchange	Hanoi Stock Exchange	13/10/2016	13/10/2016
606/QD-SGDHN	Regulation on information disclosure of Hanoi Stock Exchange	Hanoi Stock Exchange	29/09/2016	29/09/2016
309/QD-SGDHN	Regulation on trading members in listed market and trading registration market at Hanoi Stock Exchange	Hanoi Stock Exchange	27/05/2015	27/06/2015

5. Country stocktaking Report: Corporate Governance in Myanmar

Introduction

This chapter was prepared as a stand-alone report to provide an overview of recent policy developments and the status of corporate governance in Myanmar. The information included in this chapter builds on responses from Myanmar companies to the OECD's questionnaire and subsequent interviews. It aims to measure the gap between corporate governance practices by Myanmar companies and national regulations, as well as the gap between practices and the internationally recognised standards of corporate governance – the G20/OECD Principles of Corporate Governance. This chapter concludes with recommendations for further improvement of corporate governance in Myanmar; including the effective implementation of the new Companies Law and disclosure regulations and the formulation of a corporate governance code. In its Annex, the chapter includes excerpts from the stocktaking report of Myanmar submitted to the fifth meeting of the OECD-Southeast Asia Corporate Governance Initiative as well as the summary of companies' answers to the questionnaire.

Overview of the policy developments in Myanmar

Based on the notion that private sector development is crucial for national socio-economic growth by creating jobs and increasing incomes, the Government of Myanmar has been supporting the private sector to boost development.

As part of the wider economic reforms, the Securities Exchange Law was established and enacted in July 2013. The main purposes of the Law are (1) to establish a systematic capital market; (2) to protect investors; and (3) to regulate market participants such as public companies, securities companies and a stock exchange⁶⁰. The Securities Exchange Law provides the fundamental governance framework for the capital market including the establishment of a securities and exchange commission; and a stock exchange. In line with this, the Securities and Exchange Commission of Myanmar (SECM) was formed in 2014 and started its operation one year after the establishment.

The process to establish a stock exchange in Myanmar began in 1996⁶¹. Myanmar Economic Bank (MEB) and Daiwa Institute of Research Ltd. (DIR) formed the Myanmar Securities Exchange Centre Co., Ltd. (MSEC) in 1996 with the final goal of establishing a stock exchange. Through cooperation among the Japan Exchange Group, Inc (JPX), DIR and the Central Bank of Myanmar, Yangon Stock Exchange (YSX) was established in the form of a joint-venture owned by MEB, DIR, and JPX in 2014.

After establishment, YSX issued its Listing Criteria followed by Securities Listing Business Regulations and Enforcement Regulations clarifying the application of the

⁶⁰ <https://secm.gov.mm/en/securities-and-exchange-commission-of-myanmar/>

⁶¹ <https://ysx-mm.com/aboutysx/history/>

Business Regulations. In 2016, the First Myanmar Investment Co., Ltd. was listed on YSX as a first case. As of September 2018, there are five listed companies on the YSX, with an overall market capitalisation of almost 569 billion Myanmar kyats (approximately USD 369 million) and a daily trading volume of almost 72 million Myanmar kyats (approximately USD 47 000)⁶².

Myanmar has also set out a revision of the Companies Law which was first introduced in 1914. The new Companies Law was enacted on 6 December 2017 and came into effect on 1 August 2018. The Directorate of Investment and Company Administration (DICA) modernised the Companies Law to reflect the current business and regulatory environment through reducing registration procedures and facilitating electronic company registration, among others⁶³. One of the most important changes is that the revised Law stipulates that foreign investors are allowed to own up to 35% in local companies.

As seen above, Myanmar's security market has been developed with the financial and capacity building support of Japan since 1990s. The Government of Japan has also closely cooperated with the Myanmar government. In 2018, the Financial Services Agency of the Government of Japan, JPX and Daiwa Securities Group Inc. presented the Ministry of Finance of Myanmar with a support plan⁶⁴ for the further activation of the capital market of Myanmar. This support plan explicitly includes support for development of the corporate governance code.

OECD's cooperation with Myanmar in the field of corporate governance

The OECD has been contributing to the improvement of corporate governance framework in Southeast Asian countries including Myanmar through a series of projects with the financial support of the Government of Japan. In particular, the OECD-Southeast Asia Corporate Governance Initiative, which was launched in 2014, aimed to support the regional development of vibrant and healthy capital markets through the advancement of corporate governance standards and practices. In March 2018, the fifth meeting – final and conclusive meeting⁶⁵ – of the Initiative was held in Yangon, Myanmar. At the meeting, Myanmar, Viet Nam, Laos and Cambodia presented national stocktaking reports. In these reports, they acknowledge not only recent developments but also challenges that they have experienced since the launch of the OECD's Initiative in the region.

In January 2018, the OECD launched a country project “Supporting Corporate Governance Reform in Myanmar”. This project aims to enhance Myanmar's corporate governance framework and thereby improve Myanmar companies' access to capital needed for investment. As a first step of this multi-year project, the OECD conducted a fact-finding survey using the G20/OECD Principles of Corporate Governance and Methodology for implementation as benchmarks for assessment. The next section of this report presents the results of the survey.

⁶² The Market Data as of 1 September 2018 on the website of YSX

⁶³ See Annex I for the details of the revision.

⁶⁴ https://www.fsa.go.jp/en/news/2018/20180125_2.html

⁶⁵ After a full cycle of meetings in all countries, the 5th meeting was also concluding meeting of the OECD-Southeast Asia Corporate Governance Initiative and therefore presented the opportunity to welcome Myanmar, Laos and Cambodia into the OECD-Asian Roundtable on Corporate Governance.

Survey results

Overview of surveyed companies

As of June 2018, there are five listed companies, approximately 300 unlisted public companies⁶⁶ and 50 000 private companies⁶⁷ in Myanmar⁶⁸. In order to grasp the status of corporate governance in Myanmar, the OECD sent a questionnaire – which was formulated using the *G20/OECD Principles of Corporate Governance* and Methodology for implementation as benchmarks for assessment – to 51 Myanmar companies and received responses from 25 companies. These 25 companies consist of five listed companies, six unlisted public companies, and 14 private companies. A local consultancy firm⁶⁹ carried out interviews with all 25 companies on behalf of the OECD to confirm to what extent there is evidence that a company complies with the principles listed in the questionnaire.

Basic statistics of surveyed companies are shown in the following table. It should be noted that the average number of shareholders among private companies is fairly small since private companies' shareholders typically consist of a founder and her/his family members. Unsurprisingly, private companies in Myanmar are characterised by highly concentrated ownership structures.

Table 5.1. Basic statistics of surveyed companies⁷⁰

	Public Companies	Private Companies
Asset size (in million Myanmar Kyat and million USD)	MK 237 012 USD 175 (11)	MK 52 404 USD 39 (8)
Capital size (in million Myanmar Kyat and million USD)	MK 23 773 USD 18 (10)	MK 9 128 USD 7 (9)
Average number of shareholders	3 769 (11)	3 (10)
Total shareholding ratio of top three shareholders (arithmetic mean)	38.0% (9)	94.6% (7)
Total shareholding ratio of top three shareholders (weighted average using capital size as a weight)	31.6% (9)	96.9% (7)

⁶⁶ Section 1 (c) (xxviii) of the new Companies Law defines a public company as “a company incorporated under this Law, or under any repealed law, which is not a private company”. As can be seen from the definition of a private company, a company with more than 50 shareholders are classified as a public company.

⁶⁷ Section 1 (c) (xxv) of the new Companies Law defines a private company as “a company incorporated under this Law or under any repealed law which: (A) must limit the number of its members to fifty not including persons who are in the employment of the company; (B) must not issue any invitation to the public to subscribe for the shares, debentures or other securities of the company; and (C) may by its constitution restrict the transfer of shares”.

⁶⁸ These approximate figures of unlisted public companies and private companies were provided by the SECM.

⁶⁹ WinCom Solutions Co., Ltd and Trust Venture Partners Co., Ltd

⁷⁰ Figures in the parenthesis are the number of samples.

Analysis of questionnaire responses by companies

Notification to shareholders of general meetings

The right to participate in general shareholder meetings is a fundamental shareholder right. In order to allow investors adequate time for reflection and consultation, companies should be mindful of not sending voting materials too close to the time of general shareholder meetings. From this viewpoint, the following survey question was asked to companies:

Does your company provide shareholders – at least 14 days before the general shareholder meeting – with information concerning the date, location and agenda of the general shareholder meeting?

Public companies

Out of 11 public companies surveyed⁷¹, 10 companies answered “Yes” to this question. One company, which has recently transformed into a public company, has not yet held an annual general meeting (AGM) so that its answer to this question is classified as “N/A”⁷².

Regarding the timing of notification, three companies answered “14 days”, five companies answered “21 days”, and two companies answered “one month”. Companies usually attach an agenda, annual report and proxy form to the notification⁷³. In addition to sending a notification to their shareholders by delivery mail, companies also use a newspaper, website, or Social Networking Service (SNS).

Table 5.2. Timing of notification

	Number of companies
14 days	3
21 days	5
One month	2

It is natural that all companies answered “Yes” to this question because the Companies Law prior to the revision stipulated that public companies must, in principle, send a notification at least 14 days in advance of a shareholder meeting⁷⁴. Since the new Companies Law introduced a rule that requires a general meeting be called by not less than 21 days’ notice in writing (28 days’ notice in writing in the case of a public company)⁷⁵, it is expected that following the implementation of the new law the notification period will be longer than that of the past practice.

⁷¹ These include five listed companies. The same hereinafter.

⁷² This treatment is the same for Question 2 to Question 4.

⁷³ Two companies answered that they also attach “Director Nomination Form” to the notification.

⁷⁴ Section 79 (1) (a) of the Companies Law prior to the revision

⁷⁵ Section 152 (a) (i)

Private companies

Out of 14 private companies surveyed, four companies answered “Yes” to this question. 10 companies’ answers are classified as “N/A” since they do not have a practice of formally holding an AGM. It is assumed that these companies do not have to formally hold shareholders meetings since all shareholders – which typically consist of a founder and her/his family members – are board members and they meet and discuss at board meetings. For example, one company answered that it holds an annual business meeting in which shareholders and managers participate.

Equitable treatment of shareholders

Company procedures should not make it unduly difficult or expensive to cast votes. Examples of potential impediments to shareholder participation include (1) charging fees for voting; (2) the requirement of personal attendance at general shareholder meetings to vote; (3) holding the meeting in a remote location; and (4) allowing voting by a show of hands only. From this viewpoint, the following survey question was asked to the companies:

Do the processes and procedures for general shareholder meetings of your company allow for equitable treatment of all shareholders?

Public companies

Out of 11 public companies surveyed, 10 companies answered “Yes” to this question, and one company’s answer is classified as “N/A”.

Both the survey and interview results do not appear to be signalling ‘undesirable’ practices with respect to shareholder meetings; such as charging fees for voting, requiring personal attendance at general shareholder meetings to vote, or holding the meeting in a remote location. However, companies, in principle, allow voting by show of hands only. One company answered that it exceptionally counts votes in case of election of directors. This practice is not expected to change after the enactment of the new Companies Law because the Law stipulates that “a resolution put to the vote at a meeting must be decided by a show of hands unless a poll is demanded”⁷⁶⁷⁷.

Private companies

Out of 14 private companies surveyed, four companies answered “Yes” to this question, and 10 companies’ answers are classified as “N/A”. Since most of the private companies surveyed do not have a practice of formally holding an AGM as stated above, there is not much implication in their responses to this question.

⁷⁶ Section 152 (b) (iii)

⁷⁷ Section 152 (b) (iv) further stipulates that “a poll may be demanded on any resolution by (A) the chair; (B) at least five members; or (C) members with at least 10% of the votes that may be cast on the poll”.

Shareholders' right to ask questions to the board

In order to encourage shareholder participation in general shareholder meetings, many countries have improved the ability of shareholders to submit questions in advance of the general meeting and to obtain replies from management and board members. From this viewpoint, the following survey question was asked to the companies:

Does your company provide shareholders the opportunity to ask questions to the board?

Public companies

Out of 11 public companies surveyed, 10 companies answered “Yes” to this question, and one company’s answer is classified as “N/A”.

However, it seems that most of those 10 companies provide shareholders with the opportunity to ask questions only in AGMs. The new Companies Law also seems to assume that shareholders ask questions to the board in an AGM⁷⁸. Namely, shareholders who cannot attend an AGM are likely to lose the opportunity to ask questions to the board.

One company answered that due to time constraints throughout AGMs, it provides shareholders with extra three-day meetings (after the AGM) in which they can ask questions to the board.

Private companies

Out of 14 private companies surveyed, four companies answered “Yes” to this question, and 10 companies’ answers are classified as “N/A”.

Shareholder proposal rights

In addition to strengthening shareholders’ right to ask a question to the board, many countries have also improved the ability of shareholders to place items on the agenda with a view to encourage shareholder participation in the corporate decision making process. From this viewpoint, the following survey question was asked to the companies:

Does your company provide shareholders (with certain holding ratio) the opportunity to place items on the agenda of general shareholder meetings?

Public companies

Out of 11 public companies surveyed, one company answered “Yes”, nine companies answered “No”, and one company’s answer is classified as “N/A”.

Survey results indicate that it is not seen as a common practice to provide shareholders with the opportunity to place items on the agenda. Only one company answered “Yes” to this

⁷⁸ Section 146 (c) stipulates that “the chair must allow a reasonable opportunity for the members to ask questions or make comments about the management of the company”. Since the title of Section 146 is “Annual general meeting”, it is reasonable to interpret that the new Companies Law assumes that shareholders ask questions to the board in an AGM.

question and said that it may arrange a special board meeting upon request from major shareholders and then may place items requested by them on the agenda of an AGM.

After August 2018, companies are required to adapt to the new Companies Law which stipulates that “members holding shares providing not less than one-tenth of the votes that may be cast at a general meeting of the company, or at least 100 members who are entitled to vote at a general meeting, may give notice to the company of a proposed resolution to be moved at a meeting of the company”⁷⁹.

Private companies

Out of 14 private companies surveyed, four companies answered “Yes” to this question, and 10 companies’ answers are classified as “N/A”. Since private companies’ shareholders typically consist of a founder and her/his family members and at the same time they are members of the board, they may be able to freely place or change items on the agenda. Therefore, it is plausible that more private companies – relative to public companies – answered “Yes” to this question. It should be noted that one company answered that it allows shareholders to add or change items on the agenda until two days ahead of shareholders meetings.

Shareholders’ participation in nomination and election

To elect the members of the board is also a basic shareholder right. For the election process to be effective, shareholders should be able to participate in the nomination of board members and vote on individual nominees. The new Companies Law also stipulates that “the directors of the company shall be appointed by the members passing an ordinary resolution in a general meeting”⁸⁰. From this viewpoint, the following survey question was asked to the companies:

Does your company facilitate effective shareholder participation in key corporate governance decisions, such as the nomination and election of board members?

Public companies

Out of 11 public companies surveyed, nine companies answered “Yes”, one company answered “No”, and one company’s answer is classified as “N/A”.

As far as can be seen from the survey and interview results, there are no undesirable practices where shareholders cannot vote on individual nominees. In this respect, public companies seem to have already complied with the new Companies Law which stipulates that “A resolution at a general meeting to appoint a director may only refer to one proposed director; however separate resolutions to appoint additional directors may be made at the same meeting”⁸¹.

One company answered “No” to this question saying that there has not been much interest in becoming a company director because of uncompetitive remuneration, although this

⁷⁹ Section 151 (g)

⁸⁰ Section 173 (a) (ii)

⁸¹ Section 173 (c)

statement does not directly answer the above question on shareholders' participation in nomination and election.

Private companies

Out of 14 private companies surveyed, two companies answered "Yes", two companies answered "No", and 10 companies' answers are classified as "N/A". Although one company which answered "No" to this question said that there is no formal nomination and election process for board members, the company also said that each shareholder has right to nominate its representative director based on its shareholding ratio.

Vote in absentia

In order to facilitate shareholder participation, many countries have promoted the use of information technology in voting, including secure electronic voting in all listed companies. Although the new Companies Law enables foreign investors to invest in Myanmar companies⁸², it may be difficult for foreign investors to physically attend shareholder meetings. Therefore, voting in absentia will be one of the important issues to be addressed by Myanmar authorities. From this viewpoint, the following survey questions were asked to the companies:

- (1) *Does your company enable shareholders to vote in absentia?*
- (2) *Does the vote in absentia have equal effect as the vote in person?*

Public companies

With respect to the first question, all 11 public companies surveyed answered "No". Therefore, their answers to the second question are classified as "N/A".

All 11 public companies surveyed do not enable shareholders to vote in absentia nor use electronic voting system. This is partly because the Companies Law – both the one prior to the revision and the revised law – does not explicitly allow shareholders who do not attend shareholders meetings to exercise their votes in writing. In addition, introducing voting in absentia which utilises electronic voting system may be challenging at this moment given the stage of the development in the country's infrastructure.

On the other hand, all 11 public companies surveyed answered that they allow shareholders to exercise their voting rights by using a proxy and that equal effect is given to votes whether cast by a proxy or not. It should also be noted that the new Companies Law allows proxy voting and gives it an equal effect as the vote by a shareholder who appoints a proxy⁸³.

⁸² Section 1 (c) (xiv) stipulates that "foreign company means a company incorporated in the Union in which an overseas corporation or other foreign person (or combination of them) owns or controls, directly or indirectly, an ownership interest of more than thirty-five per cent". In other words, the new Companies Law will allow foreign ownership of up to 35% in Myanmar companies, before the companies are classified as "foreign companies" under the law.

⁸³ Section 154 (a) stipulates that "a member entitled to attend and vote at a meeting of a company may appoint a proxy to attend the meeting and exercise the right of the member to votes on their

Private companies

With respect to the first question, all 14 private companies surveyed answered “No”. Therefore, their answers to the second question are classified as “N/A”. The reason why all private companies surveyed answered “No” to this question is the same as that of public companies.

Only two private companies said that they allow shareholders to exercise their voting rights by using a proxy. This result seems to be plausible since most of the private companies surveyed do not have a practice of holding shareholders meetings.

Managing abusive related party transactions

As can be seen from the overview of surveyed companies, corporate ownership is concentrated in Myanmar, and significant portions of income and/or costs may arise from related party transactions (RPTs). Foreign investors such as institutional investors would pay great attention to whether those transactions are adequately addressed to protect their own interests. Therefore, how to prevent potential abuse of RPTs is an important policy issue in the market, and from this viewpoint the following question was asked to the companies:

Does your company approve and conduct RPTs in a manner that ensures proper management of conflict of interest and protects the interest of the company and its shareholders?

Public companies

Out of 11 public companies surveyed, 10 companies have written procedures on how to manage RPTs and answered “Yes” to this question. Only one public company does not have RPT procedures and answered “No” to this question.

In particular, three listed companies elaborate in their disclosure document for listing (DDL)⁸⁴ or Prospectus their RPT procedures. In general, they first define related parties, RPTs, and material RPTs using certain quantitative criteria. Then, they set procedures on how to approve and review material RPTs. For example, two listed companies classify RPTs into three categories using the latest audited net tangible asset as a criterion, and set approval and review procedures for each category as shown in the following table.

behalf in accordance with this section and subject to the company’s constitution”. Also, Section 154 (b) stipulates that “the proxy need not be a member of the company and shall be entitled to exercise the same powers on behalf of the member appointing them that the member itself could exercise at the meeting of the company or in voting on a resolution”.

⁸⁴ Companies that are going to be listed without making public offering are required to publish a DDL. See Listing Procedure on YSX’s website: <https://ysx-mm.com/regulations/listing-procedure/>

Table 5.3. Example of RPT procedures in listed companies

	Range of each category	Approval and review procedure
Category 1	RPTs of which value is equal to or above three percent of the latest audited net tangible asset of the company	RPTs must be approved by the Audit Committee prior to entry
Category 2	RPTs of which value is below three percent of the latest audited net tangible asset of the company but is equal to or above 100 million Myanmar Kyat	RPTs do not have to be approved by the Audit Committee prior to entry, but must be approved by the Chair prior to entry and shall be reviewed on a quarterly basis by the Audit Committee.
Category 3	RPTs of which value is below 100 million Myanmar Kyat	RPTs do not have to be approved by the Audit Committee nor Chair prior to entry, but shall be reviewed on a quarterly basis by the Audit Committee.

With respect to unlisted public companies that answered “Yes” to this question, two out of five companies have RPT procedures in place which are almost the same as those of listed companies shown in the above table. Regarding the other three unlisted companies’ RPT procedures, it is unknown whether they are as detailed as those of listed companies since this survey has not analysed the content of their written procedures⁸⁵.

The new Companies Law contains rules on RPTs and provisions of benefits to directors. Specifically, the Law stipulates that “the board of a company may ... authorise a payment or benefit or loan or guarantee or contract of the kind ... to a director or other related party of the company if it is approved by members”⁸⁶. The Law also stipulates that “the director or relevant related party must not vote on the resolution at the general meeting”⁸⁷. It should be noted that no surveyed companies have a practice or procedure of leaving material RPTs up to shareholders’ judgement as required by the new Companies Law.

Private companies

Out of 14 private companies surveyed, three companies answered “Yes” to this question, while 11 companies answered “No”.

Out of three companies which answered “Yes”, one company said that it has RPT procedures for inter-company transactions. In addition, another company said that interest of directors must be declared before shareholders meetings and necessary procedures must be followed if RPTs are detected.

Disclosure of financial statements

Audited financial statements showing the financial performance and the financial situation of the company enable investors to monitor company performance and also to value its securities. From this viewpoint, the following survey questions were asked to the companies:

⁸⁵ RPT procedures of these three unlisted public companies are not publicly available. Myanmar authorities have pointed to a potential need for further examination on whether these procedures are adequately implemented.

⁸⁶ Section 188 (a)

⁸⁷ Section 188 (f)

(1) Does your company publicly disclose financial statements – including the balance sheet and the profit and loss statement – at least annually?

(2) Are financial statements audited by an external auditor before being disclosed?

Public companies

Out of 11 public companies surveyed, 10 companies answered “Yes” to the first question and publicly disclose financial statements annually. One company, which answered “No” to this question, discloses its financial statements only to shareholders.

This positive result is in line with disclosure regulations which (i) require companies to send financial statements to their shareholders with a notification of shareholders meetings⁸⁸; and (ii) require public companies having more than 100 shareholders and listed companies to submit to the SECM an annual report, a half-yearly report and an extraordinary report⁸⁹. It should be noted, however, that nearly half of the public companies which are subject to the latter requirement have not filed disclosure documents⁹⁰, and that the SECM has not published the submitted ones on its website.

With respect to the second question, all 11 public companies surveyed answered “Yes”. This result is also in line with the new Companies Law which stipulates that the financial statements shall be audited by the auditor of the company^{91,92}.

Private companies

All 14 private companies surveyed answered “No” to the first question. All of them disclose financial statements only to shareholders. With respect to the second question, all except one private company answered “Yes”. The private company which answered “No” to this question may fail to comply with the provision of the new Companies Law stated above.

Disclosure on major shareholdings

To be informed about the ownership structure of the company is one of the basic rights of investors. Disclosure of ownership data should be provided once certain thresholds of ownership are passed. From this viewpoint, the following survey question was asked to the companies:

⁸⁸ Section 260 (c) of the new Companies Law stipulates that “every company ... shall send a copy of such financial statements ... to the registered address of every member of the company with the notice calling the meeting at which it is to be laid before the members of the company”. It should be noted that Section 257 (c) stipulates that small companies are exempt from this requirement.

⁸⁹ Notification (1/2016) of the SECM, Section 1 (a)

⁹⁰ The stocktaking report submitted to the fifth meeting of the OECD-Southeast Asia Corporate Governance Initiative

⁹¹ Section 260 (b)

⁹² It should be noted that only Myanmar citizen desirous of registration as a Certified Public Accountant may apply to the Myanmar Accountancy Council for such registration. See Section 12 of the Myanmar Accountancy Council Law.

Does your company publicly disclose its major shareholders and their holding ratio at least annually?

Public companies

Out of 11 public companies surveyed, six companies answered “Yes” to this question and publicly disclose information about major shareholders and their holding ratio in their annual report and/or on their website. Out of these six companies, two companies answered that it discloses top 10 shareholders, one company answered that it discloses top 20, and one company answered that it discloses top 50⁹³.

Five companies answered “No” to this question. Out of these five companies, two companies answered that they disclosed the 10 largest shareholders in their DDL or Prospectus when they were listed on the YSX but have not updated the information since then. One company out of these five answered that it discloses its shareholder distribution in its annual report but does not disclose information about major shareholders in detail. Also, one company answered that it discloses this information only to shareholders, and another company answered that it will start disclosing this information⁹⁴.

Public companies which make public offering are required to disclose information about their top 10 shareholders in their Prospectus⁹⁵. Also, companies which are going to be listed are required to disclose information about their top 10 shareholders in their DDL⁹⁶. However, since the SECM has not prepared a format of an annual and semi-annual report, it is not ensured that these companies will disclose information about major shareholders periodically⁹⁷.

It is worth noting that the average number of shareholders among companies which answered “Yes” is 4 973, while the average among companies which answered “No” is 2 322. It is assumed that companies are under more pressure to disclose information about major shareholders when the number of shareholders is larger.

Private companies

All 14 private companies surveyed answered “No” to the question. All of them disclose information about major shareholders only to shareholders. This result seems to be

⁹³ The other two companies did not specify in their answer to the question the range of major shareholders they disclose in their annual report and/or on their website.

⁹⁴ This company also said that since the number of its shareholders is limited, all shareholders know each other’s shareholdings.

⁹⁵ Public companies which make public offering must prepare a Prospectus pursuant to Notification (2/2015) of the SECM, Section 3. The format of a Prospectus has been prepared by the SECM.

⁹⁶ The format of a DDL is the same as that of a Prospectus.

⁹⁷ It should be noted that companies are required to disclose a change of their major shareholders in an extraordinary report, but this disclosure is ad-hoc (not periodical) and limited to a change of shareholders who own more than 20% of voting rights. See Notification (1/2016) of the SECM, Section 4 (b).

plausible because generally the number of shareholders in private companies is limited and they know other shareholders' holding ratio.

Disclosure on remuneration of board members and key executives

Information about board and executive remuneration is also of concern to investors. Companies are generally expected to disclose information on the remuneration of board members and key executives so that investors can assess the costs and benefits of remuneration plans. From this viewpoint, the following survey questions were asked to the companies:

(1) Does your company publicly disclose remuneration of board members at least annually?

(2) Does your company publicly disclose remuneration of key executives at least annually?

Public companies

Out of 11 public companies surveyed, three companies answered “Yes” to the first question. Out of these three companies, two companies publicly disclose a total amount of remuneration of board members, while one company publicly discloses distribution of remuneration of board members using a salary range⁹⁸.

Out of 11 public companies surveyed, eight companies answered “No” to the first question. Out of these eight companies, two companies answered that shareholders know remuneration of board members. Also, three companies out of eight answered that board members are underpaid or do not receive remuneration.

With respect to the second question, out of 11 public companies surveyed, three companies answered “Yes”. Out of these three companies, two companies publicly disclose a total amount of remuneration of key executives, while one company publicly discloses remuneration amounts at individual level.

Out of 11 public companies surveyed, eight companies answered “No” to the second question. Out of these eight companies, one company discloses this information only to shareholders. Also, one company publicly discloses “salary and allowance” in its annual report, but it seems to include remuneration of key executives as well as that of other staff members.

The standard formats of Prospectus and DDL require companies to disclose the aggregate amount of remuneration and benefits in kind paid to directors, managing directors, managers and managing agents of the issuer⁹⁹. However, as described above, it is not ensured that companies will disclose the information periodically since the standard formats of annual and semi-annual reports have not been prepared yet.

It is worth noting that the average number of shareholders among companies which answered “Yes” to these questions is 8 673, while the average among companies which

⁹⁸ This company discloses neither a total amount nor an individual amount.

⁹⁹ It should be noted that the format of a Prospectus does not explicitly require companies to disclose remuneration of board members and remuneration of key executives separately.

answered “No” is 1 929. It is assumed that companies are under more pressure to disclose information about remuneration when the number of shareholders is larger.

Private companies

All 14 private companies surveyed answered “No” to the first question, out of which 13 companies answered that they disclose remuneration of board members only to shareholders. Also, all 14 private companies surveyed answered “No” to the second question, out of which 12 companies answered that they disclose remuneration of key executives only to shareholders.

Disclosure on board members’ qualification

Investors require information on individual board members in order to evaluate their experience and qualifications and assess any potential conflicts of interest that might affect their judgement. From this viewpoint, the following survey question was asked to the companies:

Does your company publicly disclose information about board members’ qualification?

Public companies

Out of 11 public companies surveyed, six companies answered “Yes” to this question, while five companies answered “No”.

For example, one company out of these five companies which answered “No” discloses only qualification of candidates of board members and does not disclose qualification of existing board members.

The formats of DDL and Prospectus require companies to disclose information about their board members and they include board members’ biography and education. Therefore, it is assumed that companies disclose some information about board members’ qualification at least when they were listed or made public offering.

Private companies

Out of 14 private companies surveyed, two companies answered “Yes” to this question and disclose information about their board members on their website. 12 companies answered “No”, out of which nine companies disclose the information only to shareholders.

Disclosure on selection process of board members

On the same basis as in the previous subsection on disclosure on board members’ qualification, the following survey question was asked to the companies:

Does your company publicly disclose information about selection process of board members?

Public companies

All 11 public companies surveyed answered “No” to this question.

It seems to be a common practice across those 11 companies that the board or the nomination committee nominates candidates for directors to be elected by shareholders at the AGM. Although this procedure is recognised by shareholders, it is not formally written and publicly disclosed by any of those companies.

Private companies

All 14 private companies surveyed answered “No” to this question, out of which three companies answered that they disclose information about selection process of board members only to shareholders.

Disclosure on other company directorships of board members

On the same basis as in the section on disclosure on board members’ qualification, the following survey question was asked to the companies:

Does your company publicly disclose information about other company directorships of board members?

Public companies

Out of 11 public companies surveyed, three companies answered “Yes” to this question. These three companies publicly disclose board members’ directorships in other companies in their annual report and/or website.

Out of 11 public companies surveyed, eight companies answered “No” to this question. One company publicly discloses board members’ directorships in other companies, but the information is limited to directorships in other listed companies and the information on board members’ directorships in other unlisted companies has not been disclosed.

The formats of DDL and Prospectus require companies to disclose information about their board members and it includes board members’ material concurrent positions at other corporations. Therefore, it is assumed that companies disclose information about other company directorships of board members at least when they were listed or made public offering.

Private companies

Out of 14 private companies surveyed, one company answered “Yes” to this question and discloses information about other company directorships of board members on its website. Other 13 companies answered “No” to this question, out of which six companies answered that they disclose the information only to shareholders.

Disclosure on board members’ independence

On the same basis as in the section on disclosure on board members’ qualification, since transparent criteria on board members’ independence are important for investors to assess any potential conflicts of interest that might affect their judgement, it would be desirable to disclose reasons why board members are considered as independent. From this view point, the following survey question was asked to the companies:

Does your company publicly disclose whether board members are regarded as independent by the board?

Public companies

Out of 11 public companies surveyed, eight companies answered “Yes” to this question, while three companies answered “No”.

Out of eight companies that answered “Yes”, one company publicly discloses its criteria on independence such as “a board member who has no relationship with the company” and also reviews independence of each director annually. However, the other seven companies have not disclosed what kind of elements constitutes independence.

Private companies

Out of 14 private companies surveyed, one company answered “Yes” to this question. Other 13 companies answered “No” to this question, out of which one company discloses only to shareholders information about whether its board members are regarded as independent or not but does not disclose to shareholders its criteria on independence.

Disclosure on material RPTs

To ensure that a company is being run with due regard to the interests of all its investors, it is essential to fully disclose all material RPTs and the terms of such transactions to the market individually. From this viewpoint, the following survey question was asked to the companies:

Does your company publicly disclose material RPTs at least annually?

Public companies

Out of 11 public companies surveyed, six companies answered “Yes” to this question, while five companies answered “No”.

The Myanmar Accounting Standard (MAS)¹⁰⁰ 24 requires disclosures about transactions and outstanding balances with a company’s related parties. Therefore, in principle, all companies are supposed to disclose their RPTs in their financial statements¹⁰¹.

Out of five companies that answered “No”, one company said that it discloses material RPTs only to authorities. Also, one company said that it neither has written RPT procedures nor disclose material RPTs in its annual report, and one company said that it does not disclose material RPTs since it does not understand the requirement of accounting

¹⁰⁰ According to the IFRS Foundation’s website, the Myanmar Accounting Standards (MAS) and Myanmar Financial Reporting Standards (MFRS) issued by the Myanmar Accountancy Council (MAC) are substantively identical to the 2010 version of IFRS Standards.

¹⁰¹ It is assumed that companies disclose information about material RPTs in their DDL and/or prospectus at least when they were listed or made public offering.

standards. These examples indicate the necessity to improve the enforcement of disclosure regulations in terms of disclosure on material RPTs.

Private companies

Out of 14 private companies surveyed, one company answered “Yes” to this question. Other 13 companies answered “No” to this question, out of which five companies disclose material RPTs only to shareholders. Some companies answered that RPTs are not a concern since their companies are family-owned and minority shareholders do not exist.

Responsibilities of the board

Together with guiding corporate strategy, the board is chiefly responsible for monitoring managerial performance and achieving an adequate return for shareholders, while preventing conflicts of interest and balancing competing demands on the company. Another important board responsibility is to oversee the risk management system and systems designed to ensure that the company obeys applicable laws.

From this viewpoint, the companies were asked whether their board fulfils the following key functions:

- reviewing and guiding corporate strategy and major plans of action;
- reviewing and guiding risk management policies and procedures;
- reviewing and guiding annual budgets and business plans;
- setting objectives regarding future performance of your company;
- monitoring implementation and corporate performance;
- overseeing major capital expenditures, acquisitions and divestitures;
- selecting, compensating, monitoring and, when necessary, replacing key executives;
- ensuring a formal and transparent board nomination and election process;
- monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions;
- ensuring the integrity of the company’s accounting and financial reporting systems;
- ensuring that appropriate systems of control for compliance with the law and relevant standards are in place; and
- overseeing the process of disclosure and communications.

Public companies

All 11 public companies surveyed answered that their board fulfils all key functions listed above. Seven companies answered that they set up specialised committees¹⁰² in order for their boards to fulfil these functions. Most of them have committees on audit, nomination and remuneration, and some have committees on risk management and/or corporate governance.

¹⁰² This does not necessarily mean that other four public companies do not have specialised committees since the questionnaire does not explicitly ask companies whether they have specialised committees.

The companies were also asked whether their board treats all shareholders fairly when board decisions may affect different shareholder groups differently, and all 11 public companies surveyed answered “Yes” to this question.

Private companies

Responses from 14 private companies surveyed are shown in the below table. Although some companies answered “No” to most of the questions, it is shown that the board of most of the private companies surveyed fulfils all key functions listed in the table. It should be noted, however, that some companies said that these key functions are fulfilled by the board together with senior management staff. It is presumed that a board which consists of only the founder and her/his family members may not be able to fulfil its functions without the help of senior managers.

Table 5.4. Private companies’ answers to the question on the responsibilities of board

Does your board fulfil the following key functions?	Yes	No
reviewing and guiding corporate strategy and major plans of action	12	2
reviewing and guiding risk management policies and procedures	11	3
reviewing and guiding annual budgets and business plans	13	1
setting objectives regarding future performance of your company	12	2
monitoring implementation and corporate performance	12	2
overseeing major capital expenditures, acquisitions and divestitures	13	1
selecting, compensating, monitoring and, when necessary, replacing key executives	12	2
ensuring a formal and transparent board nomination and election process	11	3
monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions	10	4
ensuring the integrity of the company’s accounting and financial reporting systems	14	0
ensuring that appropriate systems of control for compliance with the law and relevant standards are in place	12	2
overseeing the process of disclosure and communications	12	2

The companies were also asked whether their board treats all shareholders fairly when board decisions may affect different shareholder groups differently, and all 14 private companies surveyed answered “Yes” to this question.

Independent non-executive board members

Independent non-executive board members enable the board to exercise independent judgement to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are ensuring the integrity of financial reporting, the review of RPTs, nomination of board members and key executives, and board remuneration. Independent non-executive board members can provide additional assurance to investors that their interests are safeguarded. From this viewpoint, the following survey question was asked to the companies:

Does the board of your company have a sufficient number of independent non-executive board members?

Public companies

Out of 11 public companies surveyed, nine companies answered “Yes” to this question, while two companies answered “No”. Number and ratio of independent directors are shown in the below table.

Table 5.5. Number and ratio of independent directors in public companies

	Number of Companies		Number of Companies
One independent director	2	Below 10%	3
Two independent directors	2	Between 10% and 50%	3
Three independent directors	3	Above 50%	2
More than three	2	N/A ¹⁰³	1

It is also worth noting that the average number of shareholders among companies which answered “Yes” is 4 594, while the average among companies which answered “No” is 54. It is assumed that companies are under more pressure to appoint independent directors when the number of shareholders – in particular, minority shareholders – is larger.

Although majority of public companies surveyed have independent directors, companies seldom define and disclose what kind of elements constitutes independence as described in the section on disclosure on board members’ independence. This fact gives rise to suspicion that there is no clear difference between independent non-executive directors and non-independent executive directors and companies do not fully utilise functions of independent directors. This holds true for the private companies surveyed.

Currently no regulations define independence of board members; however, the new Companies Law stipulates that the DICA may prescribe the qualifications, rights and duties of independent directors by notification¹⁰⁴. It should be noted by Myanmar authorities and companies that, for example, (i) people who worked for the company in the past, (ii) family members of board members, (iii) directors who hold executive positions in other companies which have strong relationship with the company (for example, a parent company or banks), and (iv) major shareholders will not be regarded as independent from the viewpoint of global standards.

Private companies

Out of 14 private companies surveyed, four companies answered “Yes” to this question, while 10 companies answered “No”. Number and ratio of independent directors are shown in the below table.

¹⁰³ One company answered the number of independent directors but did not answer the number of board members.

¹⁰⁴ Section 175 (h). This notification has not yet been published by the DICA.

Table 5.6. Number and ratio of independent directors in private companies

	Number of Companies		Number of Companies
One independent director	3	Below 10%	0
Two independent directors	0	Between 10% and 50%	3
Three independent directors	0	Above 50%	1
More than three	1	N/A	0

Board members' access to information

Board members require relevant and timely information in order to support their decision-making. Particularly, non-executive board members do not typically have the same access to information as key managers within the company. The contributions of non-executive board members to the company can be enhanced by providing access to certain key managers within the company. From this viewpoint, the following survey question was asked to the companies:

Do board members of your company have access to accurate, relevant and timely information in order to fulfil their responsibilities?

Public companies

All 11 public companies surveyed answered “Yes” to this question. Two companies mentioned that their board members have access to timely information by using Social Networking Service (group chat).

In this respect, the new Companies Law stipulates that a board member may inspect the books and records of the company at all reasonable times¹⁰⁵.

Private companies

Out of 14 private companies surveyed, 13 companies answered “Yes” to this question, while one company answered “No”. Several companies which answered “Yes” said that board members have access to necessary information since they are owners of the company and oversee all operations in a timely manner.

Recommendations

Governance requirements in Myanmar have been substantially strengthened by the new Companies Law. Myanmar authorities are expected to effectively implement it so that corporate governance practices in Myanmar companies would be raised to the level of the revised Law's expectation. It should be noted that this report has found a gap between the revised Law and the practices in the area of notification to shareholders, shareholder proposal rights, and sound management of RPTs, among others. Those weaknesses would be significant when benchmarked against the G20/OECD Principles of Corporate Governance.

¹⁰⁵ Section 161 (a)

Effective implementation would be necessary also for disclosure regulations. Further efforts by Myanmar authorities are needed to encourage public companies to comply with the disclosure requirements¹⁰⁶ and to make their financial statements publicly available.

Myanmar authorities should also be aware that some challenges pointed out in this report – disclosure of major shareholdings and disclosure on remuneration of board members and key executives, among others – would be solved by preparing an appropriate format for an annual report and half-yearly report and making it clear that public companies have to publicly disclose these information not only when they were listed or made public offering but also subsequently and periodically.

In the process of improving corporate governance in Myanmar, soft law approaches would serve as a useful complement to legislation and regulation. This could limit the regulatory burden on Myanmar companies by appropriately utilising non-binding (“comply or explain” type¹⁰⁷) instruments such as corporate governance codes, which rely on market discipline through disclosure¹⁰⁸.

It is expected that a Council which consists of Myanmar authorities, representative companies, the OECD, and other international experts and relevant institutions will be established in an effort to provide a policy forum to discuss the issues addressed in this report.

References

OECD (2015), G20/OECD Principles of Corporate Governance, OECD, Paris

OECD (2017), Methodology for Assessing the Implementation of the G20/OECD Principles of Corporate Governance, OECD, Paris.

¹⁰⁶ Questions from 2.2.8 to 2.2.15

¹⁰⁷ The G20/OECD Principles of Corporate Governance describes that “the legislative and regulatory elements of the corporate governance framework can usefully be complemented by soft law elements based on the “comply or explain” principle such as corporate governance codes in order to allow for flexibility and address specificities of individual companies”. A typical example of such tools is corporate governance codes established by stock exchanges.

¹⁰⁸ In the stocktaking report submitted to the fifth meeting of the OECD-Southeast Asia Corporate Governance Initiative, Myanmar authorities pointed out that one of their main challenges is that there is no tailor-made framework for corporate governance in Myanmar. See Annex II for the details.

Annex 5.A. Significant changes introduced under the new Companies Law¹⁰⁹

Easier incorporation of companies: The law will allow companies with a single shareholder and single director to be established. A single individual can have complete control of the company, and still enjoy the separate liability of the corporate entity. This will make the company as a business entity a more attractive option for businesses, entrepreneurs and start-ups, and encourage more businesses to move into the formal sector. In addition, the law allows for the incorporation of various types of companies such as public companies and companies limited by guarantee. Companies incorporated overseas which are carrying on business in Myanmar are also required to be registered under the new law (as “overseas corporations”) and will have specific reporting requirements. Business associations will continue to be able to register under the law. The procedure for registering a company has been simplified and streamlined. Applications for registration of companies will be based on a single form and do not require authentication signatures. With the introduction of a new electronic registry system in the near future, the process for company formation, filings and due diligence on companies will significantly improve.

Company constitution to replace Memorandum and Articles of Association: Under the new Companies Law, a company’s Memorandum and Articles of Association will be replaced by a single document called a “company constitution”. The company constitution, together with the provisions in the Companies Law, will provide all the processes and provisions necessary for the internal decision-making and capital management of a company. A new model constitution will be provided by DICA for private companies limited by shares. However, if a company wishes to tailor certain provisions for itself, it can adopt its own company constitution. The Memorandum and Articles of Association of existing companies will be deemed to be the new company constitution and will continue to have effect (to the extent they are not inconsistent with the new law). Importantly, the new law gives companies unlimited capacity to carry on any business and a company is no longer restricted by the business objects clause in its Memorandum of Association. The objects clause, which is required under the existing Companies Act, was often used by various regulators as a means of vetting proposed business activities of companies. For existing companies, the business objects expressed in the Memorandum of Association will continue to apply until the end of the transition period (12 months from the date of commencement of the new law). The objects clause will be deemed to have been removed after this unless a special resolution is passed to maintain it, and the resolution is lodged with DICA.

No more par value for shares and authorised capital: Shares issued by companies will no longer have a fixed par value. This means companies will no longer need to specify a fixed value for shares on registration. The directors now have the discretion to determine the appropriate value for the shares each time they are issued. Consequently, companies

¹⁰⁹ Excerpt from the stocktaking report submitted to the fifth meeting of the OECD-Southeast Asia Corporate Governance Initiative

are no longer bound by any authorised share capital limit, and are no longer required to specify their authorised capital in the company constitution. Any provision in a company's existing Memorandum or Articles of Association specifying the company's authorised share capital (and dividing that share capital into shares of a fixed par value) will be automatically repealed.

Foreign ownership threshold in companies: In one of the most important changes, the new Companies Law will now allow foreign ownership of up to 35% in local companies, before the companies are classified as “foreign companies” under the law. This is a significant liberalisation measure as foreign investors can now own up to 35% of the equity in Myanmar owned companies (directly or indirectly) without changing the company’s status to a “foreign company”. There are no restrictions on the transfer of shares in companies between local and foreign shareholders, but any change in a “foreign company” status of a company will need to be notified to DICA and also reported in a company’s annual return. The “foreign company” status will be disclosed on the electronic registry and updated as the status changes.

Every company must appoint a Myanmar resident director: The new law will now require all companies established in Myanmar to appoint at least one director who is “ordinarily resident” in Myanmar. A person will be considered to be ordinarily resident if they hold permanent residency or is resident in Myanmar for at least 183 days in each 12 month period. The period of residency will be calculated from the date of incorporation of a company (or the date of commencement of the new law for existing companies). Public companies must now appoint at least 3 directors, and at least one of the directors must be a Myanmar citizen who is ordinarily resident in Myanmar. The law allows companies a transitional period of one year to meet these new director residency requirements.

Branch offices to be registered as Overseas Corporations: Overseas registered companies which wish to carry on business in Myanmar must register with DICA under the new Companies Law as “overseas corporations”. Whether a company is carrying on business will depend on the circumstances of the company and its activities in Myanmar. The Companies Law sets out a list of activities which will not cause a foreign registered company to be regarded as carrying on business in Myanmar. The new Companies Law now contains detailed requirements for the registration and filing of documents by such “overseas corporations” with DICA. All overseas corporations are also required to appoint a person who is ordinarily resident in Myanmar to act as its representative in the country. The residency test for authorised representatives is the same as for resident directors (so they must reside in Myanmar for at least 183 days in each 12-month period).

Lower compliance burden for small companies: Small companies will no longer be required to hold annual general meeting (AGM) or prepare audited financial statements, unless required by their shareholders, DICA or their company constitution. Small companies are defined as companies with no more than 30 employees and an annual revenue in the prior financial year of less than 50,000,000 Kyats in aggregate. Public companies and their subsidiaries are excluded from this exemption and must still comply with AGM and audit requirements. Companies are no longer required to hold physical general meetings, to reflect the changing nature of business communication and technology today. Companies and their board of directors may approve written resolutions in place of meetings. Shareholders must unanimously sign off on a resolution for it to be effective as an ordinary resolution. Companies with one shareholder can pass a resolution by that shareholder signing the written resolution. This procedure may be used to pass both ordinary and special resolutions. Similarly, the board of directors can pass a directors’

resolution by all directors signing the resolution without holding a physical meeting. Companies with a single director may pass a director resolution by that sole director signing the resolution.

Easier decision making for companies: To make it easier for companies to do business daily, formalities such as company seals have been removed. Company seals are now optional, provided that the company's constitution does not require the company to have a seal. Existing companies may amend their constitutions to remove any requirement for a company seal. A company can sign documents (including contracts) without using a company seal by having two directors, or a director and a secretary sign the document. For a company with a single director, documents may be executed by that sole director. The Companies Law now specifically provides that a person dealing with a company is entitled to assume that documents signed in such a manner have been properly executed, unless the person knew or suspected at the time of dealing that this was not the case.

New “Solvency Test” safeguards: While providing more flexibility to companies, the Companies Law also introduces certain safeguards to protect third parties doing business with companies and the rights of creditors of companies. Directors of companies must ensure that the company is solvent when the company undertakes a declaration of dividend, reduction of capital, provision of financial assistance, redemption of preference shares and share buybacks. The solvency of a company will be assessed based on a new ‘solvency test’ of whether a company is able to pay its debts as they become due in the normal course of business and the company’s assets exceed its liabilities. Where there is a breach of this solvency test, the directors will face personal liability for losses of the company and may face criminal sanctions.

Annex 5.B. Challenges and Opportunities Identified by Myanmar Authorities¹¹⁰

Main challenges

No tailor-made framework for corporate governance: Until now, there is no particular law regarding the corporate governance. Some provisions can only be found in the Companies Law. In order to raise the level of corporate governance in Myanmar companies and enable them to access capital needed for investment, it is urgent to establish corporate governance framework which is compatible with global standards.

Insufficient knowledge about corporate governance among companies: In Myanmar, most companies are family-owned. In order to increase the transparency of management and to create a more equitable, efficient and sound company with the market confidence and business integrity, it is needed to enhance the corporate performance. As the corporate governance culture is not well developed among Myanmar companies, the Government is committed to take forward the corporate governance by providing knowledge and raising awareness.

Insufficient corporate disclosure practices: As mentioned above, listed companies and certain public companies are subject to periodic and ad-hoc disclosure. However, nearly half of the public companies that are subject to this disclosure requirement have not filed disclosure documents. It is necessary to continue efforts to improve enforcement and corporate disclosure practices of the companies so that clear, concise and relevant information about their businesses will be provided shareholders and potential investors.

Needs for building a track record of public offerings: End of last year, one company has achieved to raise funds from the public equity market (YSX). Further efforts are needed to promote the use of public equity market by listed companies and potential listed companies.

Main opportunities

Enactment of Myanmar Companies Law on 6th December 2017: In the Myanmar Companies Law, the provisions that can enhance the corporate governance such as directors and their powers and duties, member rights and remedies, financial reports and etcetera are included.

Government's support for the corporate governance development in Myanmar: The Government has been trying to provide a strong legal framework for promoting corporate governance by many ways. Furthermore, the Government is cooperating with the stakeholders for achieving its objectives.

Support from the international organisations such as OECD and IFC: OECD and the Securities and Exchange Commission of Myanmar are cooperating and coordination for the Corporate Governance Code. Likewise, IFC and the Securities and Exchange Commission of Myanmar are striving to emerge the Institute of Directors in Myanmar.

¹¹⁰ Excerpt from the stocktaking report submitted to the fifth meeting of the OECD-Southeast Asia Corporate Governance Initiative

Annex 5.C. Summary of Companies' Answers to the Questionnaire

Questionnaire	Public Companies	Private Companies
2.2.1. Does your company provide shareholders – at least 14 days before the general shareholder meeting – with information concerning the date, location and agenda of the general shareholder meeting?	Yes: 10 No: 0 N/A: 1	Yes: 4 No: 0 N/A: 10
2.2.2. Do the processes and procedures for general shareholder meetings of your company allow for equitable treatment of all shareholders?	Yes: 10 No: 0 N/A: 1	Yes: 4 No: 0 N/A: 10
2.2.3. Does your company provide shareholders the opportunity to ask questions to the board?	Yes: 10 No: 0 N/A: 1	Yes: 4 No: 0 N/A: 10
2.2.4. Does your company provide shareholders (with certain holding ratio) the opportunity to place items on the agenda of general shareholder meetings?	Yes: 1 No: 9 N/A: 1	Yes: 4 No: 0 N/A: 10
2.2.5. Does your company facilitate effective shareholder participation in key corporate governance decisions, such as the nomination and election of board members?	Yes: 9 No: 1 N/A: 1	Yes: 2 No: 2 N/A: 10
2.2.6. (1) Does your company enable shareholders to vote in absentia?	Yes: 0 No: 11 N/A: 0	Yes: 0 No: 14 N/A: 0
2.2.6. (2) Does the vote in absentia have equal effect as the vote in person?	Yes: 0 No: 0 N/A: 11	Yes: 0 No: 0 N/A: 14
2.2.7. Does your company approve and conduct RPTs in a manner that ensures proper management of conflict of interest and protects the interest of the company and its shareholders?	Yes: 10 No: 1 N/A: 0	Yes: 3 No: 11 N/A: 0
2.2.8. (1) Does your company publicly disclose financial statements – including the balance sheet and the profit and loss statement – at least annually?	Yes: 10 No: 1 N/A: 0	Yes: 0 No: 14 N/A: 0
2.2.8. (2) Are financial statements audited by an external auditor before being disclosed?	Yes: 11 No: 0 N/A: 0	Yes: 13 No: 1 N/A: 0
2.2.9. Does your company publicly disclose its major shareholders and their holding ratio at least annually?	Yes: 6 No: 5 N/A: 0	Yes: 0 No: 14 N/A: 0
2.2.10. (1) Does your company publicly disclose remuneration of board members at least annually?	Yes: 3 No: 8 N/A: 0	Yes: 0 No: 14 N/A: 0
2.2.10. (2) Does your company publicly disclose remuneration of key executives at least annually?	Yes: 3 No: 8 N/A: 0	Yes: 0 No: 14 N/A: 0
2.2.11. Does your company publicly disclose information about board members' qualification?	Yes: 6 No: 5 N/A: 0	Yes: 2 No: 12 N/A: 0
2.2.12. Does your company publicly disclose information about selection process of board members?	Yes: 0 No: 11 N/A: 0	Yes: 0 No: 14 N/A: 0
2.2.13. Does your company publicly disclose information about other company directorships of board members?	Yes: 3 No: 8 N/A: 0	Yes: 1 No: 13 N/A: 0

Questionnaire	Public Companies	Private Companies
2.2.14. Does your company publicly disclose whether board members are regarded as independent by the board?	Yes: 2 No: 9 N/A: 0	Yes: 1 No: 13 N/A: 0
2.2.15. Does your company publicly disclose material RPTs at least annually?	Yes: 6 No: 5 N/A: 0	Yes: 1 No: 13 N/A: 0
2.2.16. Does the board of your company fulfil certain key functions, including:		
reviewing and guiding corporate strategy and major plans of action	Yes: 11 No: 0 N/A: 0	Yes: 12 No: 2 N/A: 0
reviewing and guiding risk management policies and procedures	Yes: 11 No: 0 N/A: 0	Yes: 11 No: 3 N/A: 0
reviewing and guiding annual budgets and business plans	Yes: 11 No: 0 N/A: 0	Yes: 13 No: 1 N/A: 0
setting objectives regarding future performance of your company	Yes: 11 No: 0 N/A: 0	Yes: 12 No: 2 N/A: 0
monitoring implementation and corporate performance	Yes: 11 No: 0 N/A: 0	Yes: 12 No: 2 N/A: 0
overseeing major capital expenditures, acquisitions and divestitures	Yes: 11 No: 0 N/A: 0	Yes: 13 No: 1 N/A: 0
selecting, compensating, monitoring and, when necessary, replacing key executives	Yes: 11 No: 0 N/A: 0	Yes: 12 No: 2 N/A: 0
ensuring a formal and transparent board nomination and election process	Yes: 11 No: 0 N/A: 0	Yes: 11 No: 3 N/A: 0
monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions	Yes: 11 No: 0 N/A: 0	Yes: 10 No: 4 N/A: 0
ensuring the integrity of the company's accounting and financial reporting systems	Yes: 11 No: 0 N/A: 0	Yes: 14 No: 0 N/A: 0
ensuring that appropriate systems of control for compliance with the law and relevant standards are in place	Yes: 11 No: 0 N/A: 0	Yes: 12 No: 2 N/A: 0
overseeing the process of disclosure and communications	Yes: 11 No: 0 N/A: 0	Yes: 12 No: 2 N/A: 0
2.2.17. Does the board of your company have a sufficient number of independent non-executive board members?	Yes: 9 No: 2 N/A: 0	Yes: 4 No: 10 N/A: 0
2.2.18. Do board members of your company have access to accurate, relevant and timely information in order to fulfil their responsibilities?	Yes: 11 No: 0 N/A: 0	Yes: 13 No: 1 N/A: 0

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