

Report on Independent Directors Survey in Public Companies in Vietnam

February 2023



Contents

7	1 Executive summary
10	2 Survey objectives and methodology
10	2.1 Objectives
11	2.2 Survey methodology
12	3 Regulatory overview of Independent Directors in Vietnam
12	3.1 Development of Independent Directors in the world
20	3.2 Independent Directors in Vietnam
36	4 Survey findings and discussions
36	4.1 Board size
38	4.2 Compliance rate per sector
40	4.3 Compliance rate by Marcap
41	4.4 Disclosure and reporting of Independent Directors in listed companies
42	4.5 Board structure (One-tier vs. Two-tier) and Independent Directors
43	4.6 Board size and number of Independent Directors
45	4.7 Gender diversity of Independent Directors
46	4.8 Expertise of Independent Directors
46	4.9 Age diversity of Independent Directors
47	4.10 Compensation for Independent Directors
48	4.11 Summary of Key Findings
50	5 Conclusions and Policy recommendations
50	5.1 Regulatory framework for Independent Directors
54	5.2 Disclosure and reporting activities related to Independent Directors
55	5.3 Nomination and appointment of Independent Directors
56	5.4 Capacity building, training and qualifications for Independent Directors
57	5.5 Evaluation of the Board and Independent Directors
58	5.6 Independent Directors' personal liability and D&O liability insurance
59	5.7 Promotion of Independent Directors as a career
60	APPENDICES
60	APPENDIX 1 – SURVEY QUESTIONNAIRE
65	APPENDIX 2 – SURVEY SAMPLE POPULATION BY SECTOR
66	APPENDIX 3 – LIST OF REFERENCED LEGAL DOCUMENTS
67	DISCLAIMER

List of Abbreviations

BOD	Board of Directors
CEO	Chief Executive Director
CG Code	2019 Vietnam Corporate Governance Code of Best Practices
CPD	Continuing Professional Development
CPE	Continuing Professional Education
CSR	Corporate Social Responsibility
D&O	Directors and Officers
ESG	Environmental, Social and Governance
GMS	General Meeting of Shareholders
HOSE	Ho Chi Minh Stock Exchange
HNX	Hanoi Stock Exchange
IFC	International Finance Corporation
ID	Independent Director
IIA	Institute of Internal Auditors
IR	Investor Relations
OECD	Organization for Economic Co-operation and Development
SSC	State Securities Commission of Vietnam
UPCOM	Unlisted Public Company Market
VIOD	Vietnam Institute of Directors
VNIDA	Vietnam Independent Directors Association

Foreword



According to international practices on modern corporate governance, transparency is considered the top criterion to ensure the effectiveness and sustainability of corporate governance activities and protect the stakeholders' legitimate interests. One cornerstone to enhance corporate governance transparency is the improvement of both the role and performance of independent directors on the company's board.

In Vietnam, principles of international corporate governance codes have been increasingly adopted into local law, especially those related to independent directors. The legal framework on independent directors has been significantly updated with more detailed regulations governing board independence, transparency, and equity in corporate governance.

However, the implementation of these regulations, especially in public companies, has not been carefully considered. The appointment of independent directors is often merely for compliance purposes rather than aiming at the actual value that independent directors could bring to the company. In addition, some recent reports¹ have even revealed that the presence of independent directors has a negative effect on business performance. Such practice possibly results from both subjective and objective reasons, which could be, among others, a lack of clarity in the current regulations, the capacity of independent directors, and the dominance of controlling shareholders in the company.

¹ Independent directors and performance of companies listed on the Ho Chi Minh Stock Exchange, Nguyen Hai Yen, Ngo Phu Thanh, <http://stdjelm.scienceandtechnology.com.vn/index.php/stdjelm/article/view/784>

Foreword

As a social-professional association of independent directors in Vietnam, Vietnam Independent Directors Association (VNIDA), in collaboration with our strategic partner, FiinGroup Vietnam, has conducted a survey to examine the current status and role of independent directors in public companies in Vietnam, and identify challenges as well as existing problems faced by independent directors and companies. This report has been prepared as a result of the survey and research of the project's working team, with findings and recommendations that serve as a basis for stakeholders, including the legislative body, regulators, practitioners, investors/shareholders, the corporate sector, and other stakeholders, to improve the role and functioning of independent directors for better corporate governance in Vietnam.

We hope the report will help to improve the role and performance of independent directors in Vietnam, develop and promote independent directors as a career, and enhance governance standards and practices in the country.

Nguyen Sinh Dung Thang

President

Vietnam Independent Directors Association (VNIDA)

Acknowledgement

The survey and the report have been conducted by FiinGroup Vietnam and VNIDA, with the primary technical support from IFC through the SECO-funded Vietnam Integrated ESG Program. We would like to express our sincere thanks to VIOD, Ernst & Young Vietnam Limited (EY Vietnam), and Indochine Counsel for their valuable support during the survey process and preparation of the report. Special thanks and appreciation are also given to those companies, corporate directors, and representatives who have participated in the survey.

We would like to thank the project's working team from FiinGroup Vietnam and VNIDA:

FiinGroup Vietnam

- Mr. Nguyen Quang Thuan, Chairman of FiinGroup Vietnam
- Mr. Nguyen Huu Hieu, CEO of FiinGroup Vietnam
- Ms. Truong Thi Minh Trang, Senior Managing Director, Financial Information
- Ms. Do Thi Lan
- Mr. Dao Duy Duc Cuong

VNIDA

- Mr. Dang The Duc, Vice President and Secretary General of VNIDA and Managing Partner of Indochine Counsel
- Mr. Dang Hong Tan, Member of the Inspection Committee of VNIDA
- Mr. Le Hong Linh, Vice President of VNIDA
- Mr. Ngo Dang Loc, Junior Associate of Indochine Counsel

We also would like to give our sincere thanks and appreciation to the following experts who have reviewed the report and provided valuable comments and recommendations:

- Ms. Nguyen Thien Huong, Environmental, Social and Governance Department, IFC
- Ms. Leyal Savas, Environmental, Social and Governance Advisory Officer, IFC
- Dr. Nguyen Thu Hien, Director in charge of the VIOD Academic Advisory Council
- Professor Mak Yuen Teen, NUS Business School, National University of Singapore
- Mr. Hoang Duc Hung, President of IIA Vietnam
- Mr. Nguyen Tuan Minh, Managing Partner of Vietnam Premier Lawyers LLC
- Ms. Hoang Hai Anh, Vice President and Secretary General of the Vietnam Association of Securities Business (VASB)

Executive Summary

1.1 Regulatory Framework for Independent Directors in Vietnam

Since being introduced in 2007, the regulations on independent directors have been significantly enhanced and widely applied to private joint stock companies, public companies (including listed companies and non-listed public companies), and companies in certain specialized sectors (banking, insurance, and fund management).

The management models of one-tier board and two-tier board are adopted in the Vietnamese laws, and companies operating under one of these models may be required to have independent directors (together with an audit committee or a supervisory board) on the BOD, subject to the type of the company and management model adopted.

The requirement for the minimum number of independent directors is clearly provided by the laws for each type of company, which varies from one-fifth to one-third of the total number of directors on the BOD.

The laws have provided quite specific requirements for ensuring the independence of independent directors; however, it appears that such requirements are not truly clear on some points and are insufficient to ensure the independence of those directors.

Other than those generally for board directors under the Enterprise Law 2020, the roles, powers, and duties of independent directors are not specifically regulated by the laws. Instead, the laws confer the GMS the right to define roles, powers, and duties of independent directors in the company charter. To facilitate the independent power, independent directors need to be empowered with appropriate rights, including but not limited to the right to access information and the right to opine in important areas of the companies (audit, board evaluations, nomination, remuneration, etc.).

1.2 Independent Director Survey: Findings and Discussions

Survey findings indicate that the current practice by public companies in Vietnam with the ID adoption is mainly to meet the minimum regulatory requirement. Although public companies are making progress in improving governance practices, and awareness regarding independent directors has been enhanced, the independent directors regulatory compliance is still somewhat superficial.

- Many companies still do not comply, either with no independent director on the board or having independent directors on the board but at a number lower than that required by law.

Executive Summary

- Many companies still do not fully disclose the information about independent directors regarding age, qualifications, and remuneration.
- Low remuneration across many companies may suggest that independent directors do not play essential roles in many companies, and are mainly there to meet the regulatory requirement.

Key recommendations are:

- Further promote and strengthen the importance of corporate governance in general and independent directors in particular;
- Further enforce independent directors regulations to provide a better legal framework for independent directors to exercise and maximize value from their expected duties and responsibilities; and
- Continuously enhance the quality of, and code of conduct for, independent directors so that more companies will see the benefits and follow the practice;

1.3 Policy Recommendations

Regulatory Framework for Independent Directors

It is necessary to develop more explicit and efficient regulations to improve the operation of IDs, including: (i) criteria for “independence” of independent directors; (ii) powers of independent directors; (iii) supplementation of regulations on sanctions; and (iv) establishment of regulations on the specialized committees.

Disclosure and Reporting Activities related to Independent Directors

The current laws have comparatively provided sufficient disclosure requirements related to independent directors. However, it should be regulated by the current law that public companies must also disclose their nomination and appointment process for independent directors. Regarding reporting, there should be a detailed regulation on specific and mandatory contents and criteria for the report of independent directors and the BOD, as well as regulation on ad hoc reports in order to promptly recognize and assess the performance and operation of independent directors and the whole BOD.

Nomination and Appointment of Independent Directors

The effectiveness of independent directors is highly dependent on their selection, quality, and performance. When controlling shareholders have the power to influence the nomination and appointment of independent directors, true independence becomes an issue. This could be handled through two-tier voting, nomination committee with transparent procedures as well as enlarged source of potential independent directors candidates promoted via referral or introduction by professional associations.

Executive Summary

Capacity Building, Training and Qualifications for Independent Directors

Independent directors should be equipped with specialized knowledge such as corporate governance, finance, audit, law & compliance, ESG and CSR; and other essential skills in order to conduct their role as well as improve their performance in the company. For such purposes, compulsory general standards should be developed to determine basic qualities for independent directors and there should be mandatory courses and training programs for independent directors to help them achieve and improve such qualities.

Evaluation of the Board and Independent Directors

The current regulations on the evaluation of the performance of the BOD are limited. In order to enhance the quality of the operation of board evaluation and rating, best practices for board evaluation should be promoted.

Independent Directors' Personal Liability and D&O Liability Insurance

Compared to executive directors, the risk that independent directors breach or fail to discharge their fiduciary duties is much higher. Therefore, it is essential to have a regulation requiring public companies (or at least listed companies) to purchase for their independent directors a directors and officers liability insurance (D&O Liability Insurance).

Promotion of Independent Directors as a Career

To promote the role and effectiveness of independent directors, professional associations and institutions should be encouraged to create and maintain a platform or network to connect independent directors, set standards/criteria for independent directors, support independent directors' voices, enhance expertise, and share experience.



2.1 Objectives

The overall objective of the survey is to examine the current status and role of independent directors in public companies in Vietnam, and identify challenges as well as existing problems facing by independent directors and companies. The findings can serve as a basis for stakeholders including the legislative body, regulators, practitioners, investors/shareholders, corporate sector and other stakeholders to improve the role and functioning of independent directors for better corporate governance.

The specific objectives of the survey are to:

- 1 Assess the independent directors compliance rate in public companies;
- 2 Explore issues that limit the role and function of independent directors in public companies; and
- 3 Provide implications and recommendations to the relevant Government agencies on possible regulatory improvements to enhance the role of independent directors for better corporate governance in public companies.

For the compliance review findings on independent directors in public companies in Vietnam, we used Decree No. 155/2020/ND-CP dated 31 December 2020 guiding the implementation of the Securities Law 2019 (“**Decree 155**”) as the benchmark.

Survey Objectives and Methodology

2.2 Survey Methodology

The survey results come from a combination of responses to a questionnaire survey and public information disclosed by companies.

The survey questionnaire contained 24 questions. The questionnaire was sent to 1,300 public companies in HOSE, HNX and UPCOM by email, inviting them to complete an online survey. The survey questionnaire form is attached in Appendix 1.

In addition, we also collected the relevant information for 20 out of the 24 questions from our data review on independent directors status based on public announcements of the companies, including corporate governance disclosures (1H2022), annual reports (2021) and other public information. This the main source of information for the survey, as replies to the survey questionnaire were few. Also, since companies on UPCOM seldom have disclosures due to less strict requirement, we use companies on HOSE and HNX.

The study covered 544 companies that have disclosures on independent directors out of 769 companies listed on HOSE and HNX, comprising:

- 1 Companies in 18 out of the 19 industries under the FTSE Russell's Industry Classification Benchmark (ICB level 2). There is no representative in Telecommunications on HOSE and HNX; and
- 2 Companies with a combined 96.7% of the market capitalization of HOSE and HNX as of 31 October 2022, 92.1% of the 2021 net sales, and 96.0% of the 2021 net earnings of all listed companies on HOSE and HNX.

3 Regulatory Overview of Independent Directors in Vietnam



3.1 Development of Independent Directors in the World

3.1.1. The Origin and Concept of Independent Directors

The Origin of Independent Directors

Independent director is originally a Western concept that emerged after the collapse of corporate giants, especially the collapse of Penn Central, a major railway company in the US in the 1970s. In that case, Penn Central's board was criticized by the Securities and Exchange Commission for failing to oversee operations, lacking independence, and not being able to identify the company's problems.²

The independent director concept then spread to other countries, including developed and developing countries and transition economies. In the early 1990s, the concept was adopted and refined in the UK, based on the Cadbury Report released in 1992, which emphasized the importance of independent directors, and recommended an enhanced function for independent directors and an increase in the number of independent directors on boards.

² The rise of independent directors in the United States, 1950-2005: Of shareholder value and stock market prices, Gordon, J. N. (2007).

Regulatory Overview of Independent Directors in Vietnam

The rationale for the claim that independent directors are crucial to corporate governance reform is that their independence from management may enhance the effectiveness of the board of directors. Board members working within a company or those who have close relationships with insiders and/or target companies may not be able to assess firm performance objectively, or they may have a vested interest in the company's activities, while independent directors can provide more objective monitoring and diversified views concerning the company's operations.³

The Concept of Independent Directors

Despite the fact that it has long been considered an important corporate governance mechanism, there is no universal definition of independent directors⁴.

According to Ravina and Sapienza, an independent director is simply understood as *“someone who has never worked at the company or any of its subsidiaries or consultants, is not related to any of the key employees, and does not/did not work for a major suppliers or customers.”*⁵



However, according to Harald Baum, the definition of *“independence”* mainly depends on the function that the director is supposed to fulfill⁶. In general, there are two main groups of criteria determining an independent director: (i) independence from the company's managerial officers and management board; and (ii) independence from the company's controlling shareholders. If the primary function assigned to the independent directors is to monitor management as a means to solve the classic agency conflict between managers and owners, independence from the company's management seems to be the most important criterion. However, if the independent director's task is defined predominantly as protecting minority shareholders against controlling shareholders, independence from the controlling shareholders will be the decisive characteristic.

³ What Do Independent Directors Know? Evidence from Their Trading, Enrichetta Ravina and Paola Sapienza (2010).

⁴ The Rise of the Independent Director: A Historical and Comparative Perspective, Harald Baum, (2016).

⁵ What Do Independent Directors Know? Evidence from Their Trading, Enrichetta Ravina and Paola Sapienza (2010).

⁶ The Rise of the Independent Director: A Historical and Comparative Perspective, Harald Baum, (2016).

Regulatory Overview of Independent Directors in Vietnam

IFC has provided an indicative definition of “Independent Directors” as follows:

“Independent Director” means a director who has no direct or indirect material relationship with the Company other than membership on the board and who:

- (a) is not, and has not been in the past five (5) years, employed by the Company or its Affiliates;
- (b) does not have, and has not had in the past five (5) years, a business relationship with the Company or its Affiliates (either directly or as a partner, shareholder (other than to the extent to which shares are held by such Director pursuant to a requirement of Applicable Law in the Country relating to directors generally), and is not a director, officer or senior employee of a Person that has or had such a relationship);
- (c) is not affiliated with any non-profit organization that receives significant funding from the Company or its Affiliates;
- (d) does not receive and has not received in the past five (5) years, any additional remuneration from the Company or its Affiliates other than his or her director’s fee and such director’s fee does not constitute a significant portion of his or her annual income;
- (e) does not participate in any share option [scheme]/[plan] or pension [scheme]/[plan] of the Company or any of its Affiliates;
- (f) is not employed as an executive officer of another company where any of the Company’s executives serve on that company’s board of directors;
- (g) is not, nor has been at any time during the past five (5) years, affiliated with or employed by a present or former auditor of the Company or any of its Affiliates;
- (h) does not hold a material interest in the Company or its Affiliates (either directly or as a partner, shareholder, director, officer or senior employee of a Person that holds such an interest);
- (i) is not a member of the immediate family (and is not the executor, administrator or personal representative of any such Person who is deceased or legally incompetent) of any individual who would not meet any of the tests set out in (a) to (h) (were he or she a director of the Company);
- (j) is identified in the annual report of the Company distributed to the shareholders of the Company as an independent director; and
- (k) has not served on the Board for more than [ten (10)] years.

For purposes of this definition, “material interest” shall mean a direct or indirect ownership of voting shares representing at least [two percent (2%)] of the outstanding voting power or equity of the Company or any of its Affiliates.

Source: IFC

Regulatory Overview of Independent Directors in Vietnam

3.1.2. Common Board Models and Independent Directors in the World

Common Board Models in the World

There are two (2) main board models in the world: one-tier board (monistic governance model or Anglo-Saxon model) and two-tier board (dualistic governance model or German model), which is categorized based on the application of a supervisory mechanism in a company. Generally, according to the OECD, the one-tier board structure is favored in twice the number of jurisdictions compared with the two-tier board.⁷

For the two-tier board model, there is a separation between management and supervisors, which includes a management board and a supervisory board. The two-tier board model can be structured with either (i) a single line pattern, where the management board is derived from and responsible to the supervisory board, or (ii) a parallel line pattern, under which the management board/board of directors and the supervisory board are both elected by and therefore responsible to the shareholders. Two significant jurisdictions adopting the two-tier board model include China (parallel line pattern two-tier board model) and Germany (single line pattern two-tier board model), both civil law jurisdictions.



⁷ OECD Corporate Governance Factbook (2021).

Regulatory Overview of Independent Directors in Vietnam

Figure 1: Single line pattern two-tier board model

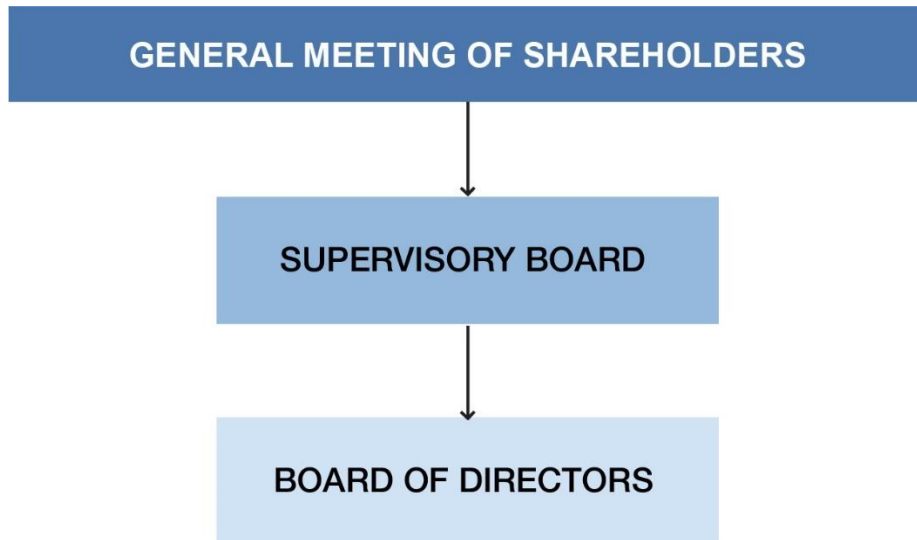
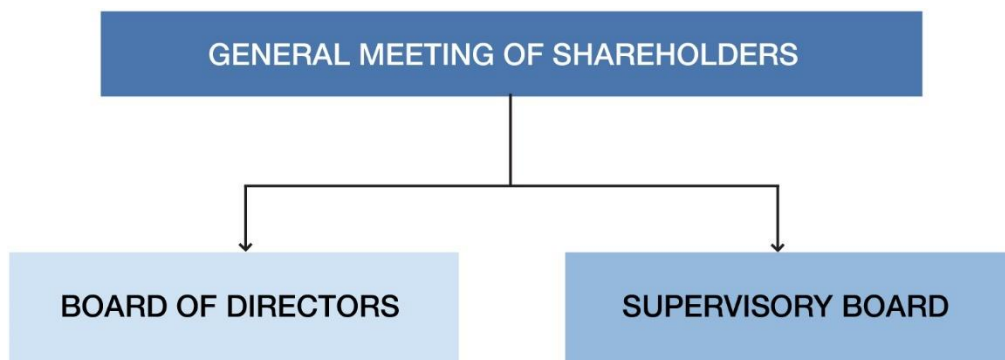


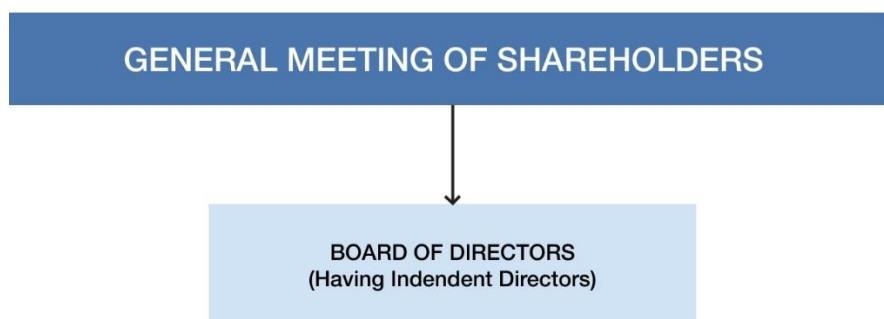
Figure 2: Parallel line pattern two-tier board model



Regulatory Overview of Independent Directors in Vietnam

For the one-tier board model, there is only one board comprising executive directors, non-executive directors, and independent directors. In this model, independent directors will take the monitoring role instead of the supervisors in the supervisory board under the two-tier model. Major jurisdictions adopting the one-tier board model include Australia, the United States, the United Kingdom, Singapore, and Malaysia, all of which are common law jurisdictions.

Figure 3: One-tier board model



In addition to the one-tier and two-tier board model, some jurisdictions are adopting a hybrid board structure. In Japan, for instance, there are three models of board structure:

Model A

“*Company with statutory auditors*” model. This model includes (i) a board of directors and (ii) statutory auditors. The board must have at least one executive director and may include non-executive directors. Where this model is adopted, there is a separate organ of the company called the “statutory auditors” (*Kansayaku*) which has the function of auditing the execution of duties by the directors.

Model C

“*Company with three committees*” model. This model includes (i) a board of directors and (ii) three committees. Here, the company must establish three committees (nomination, audit, and remuneration committees), each composed of three or more directors, of which the majority must be outside directors.

Model S

“*Company with an audit and supervisory committee*” model. This model includes (i) a board of directors and (ii) an audit and supervisory committee. Under this model, the company must establish an audit and supervisory committee composed of more than three directors, with the majority being outside directors. The committee has mandates similar to that of the statutory auditors and expresses its views on board elections and remuneration at the shareholder meeting.

Regulatory Overview of Independent Directors in Vietnam

Independent Directors in the World

A summary of regulations regarding the minimum number and requirements for independent directors in listed companies of selective jurisdictions is briefly shown in the table below⁸:

Table 1: Summary of ID Rules in Selective Countries

Jurisdiction	Board Model	Minimum number or ratio of independent directors	Key factors in the definition of independence			
			Term Maximum term of office & effect at the expiration of term	Independence from “substantial shareholders”		
				Requirement	Shareholding threshold of “substantial shareholders” for assessing Independence	
China	2	(33%)	(6)	No independence	Yes	(5%); rank in the top 5 shareholders
Germany (a)	2	-	-	-	(Yes)	
United Kingdom	1	(50%)	9	Explain	No	-
United States	1	[>50%] (b)				
Australia	1	(>50%)		-	(Yes)	5%
Singapore (c)	1	(Majority) [1/3]	[9]	Explain	(Yes)	5%
Malaysia	1	1/3 or 2, whichever is higher	(9)	Explain (d)	Yes	10% or more of the total number of voting shares in the corporation; or 5% or more of the number of voting shares where such person is the largest shareholder of the corporation
Japan (e)	Model A	[1] and (2)				10%
	Model S and Model C	Majority of each committee, [1] and (2)				

Keys:

- “[]” means requirement by the listing rule.
- “()” means a recommendation by the codes or principles.
- “-” means the absence of a specific requirement or recommendation.

⁸ OECD Corporate Governance Factbook (2021).

Regulatory Overview of Independent Directors in Vietnam



NOTES

(a) In Germany, according to the German Corporate Governance Code, the Supervisory Board shall include an adequate number of independent members (regarding the members appointed by the shareholders), and not more than two former members of the Management Board shall be members of the Supervisory Board. Furthermore, a member of the Supervisory Board is to be considered independent if he/she is independent from the company, its Management Board, and a controlling shareholder.

(b) In the United States, controlled companies are not subject to this independence requirement.

(c) In Singapore, a majority of independent directors is recommended for companies if the Chair is not independent. Furthermore, in Singapore, with effect from 1 January 2022, the SGX Listing Rules require the appointment of independent directors who have served beyond nine years to be subject to a two-tier vote requiring approval by the majority of (i) all shareholders; and (ii) all shareholders excluding shareholders who also serve as directors or the CEO (and their associates).

(d) In Malaysia, the Corporate Governance Code recommends that the tenure of an independent director should not exceed a cumulative term of nine years. Upon completion of the nine years, an independent director may continue to serve on the board as a non-independent. If the board continues to retain the independent director after the 12th year, the board should seek annual shareholders' approval through a two-tier voting process. However, starting from June 2023, the listing rules have imposed a maximum tenure of 12 years of independent directors.

(e) In Japan, the Companies Act requires a certain type of company with no outside director to explain in the annual shareholders meeting the reason why appointing one is "inappropriate" and to explain that reason in the annual reports and the proxy materials of the shareholder meetings. However, the Companies Act was amended in 2019 to require those companies to appoint at least one outside director, meaning that they can no longer avoid appointing an outside director by explaining the reason. The amendment came into effect in 2021. In addition, Japan's Corporate Governance Code indicates that companies should appoint at least two independent directors, although if a company, in its own judgment, believes it needs to appoint at least one-third of directors as independent directors, it should disclose a roadmap for doing so.

Regulatory Overview of Independent Directors in Vietnam

3.2 Independent Directors in Vietnam

3.2.1. Overview of Development of Independent Directors' Legislation

After a long period of applying State centrally-planned economic policy, in 1986, Vietnam initiated a renovation policy (in Vietnamese “*Đổi Mới*”), which allows and supports the existence and development of the private economic sector (in Vietnamese “*khu vực kinh tế tư nhân*”). This was followed by the introduction of legislation to recognize privately-held economic entities in 1990 when the Vietnamese National Assembly enacted the Company Law 1990 and the Private Enterprise Law 1990.

The Enterprise Law 1999 and the Enterprise Law 2005 were subsequently released, which improved the regulations on corporate governance issues. In the earlier development of enterprise legislation, corporate governance issues were only stipulated to a limited extent, and the law did not consider or regulate the case of independent directors in companies.

In 2000, the Vietnamese stock market made its trading debut. In early 2007, after a booming stock market in 2006, the first corporate governance rule for listed companies was officially issued by the Ministry of Finance under Decision 12. This was the first legal document regulating the position of independent directors as a “must-have” position on the board of directors of listed companies. Under Decision 12, independent directors were defined as a person not being (general) director, deputy (general) director, chief accountant, and other managers appointed by the board of directors with a minimum number of around one-third the number of directors on the board.



Regulatory Overview of Independent Directors in Vietnam

Decision 12 was subsequently replaced by Circular 121 in 2012 and Decree 71 in 2017, which provide more specific rules on independent directors. In particular, Circular 121 introduces more precise criteria and conditions for independent directors⁹ and requires public companies¹⁰ to have independent directors. In addition, while Circular 121 maintains the one-third rule regarding the proportion of independent directors on the board of directors, Decree 71 applies such rule to listed public companies only, and reduces the ratio to one-fifth for non-listed public companies.

Decree 155, which guides the implementation of the Securities Law 2019, replaces Decree 71 and makes several adjustments related to independent directors' practices. Details of this regulation will be discussed below.

Along with the development of regulations on independent directors in the securities sector, the Enterprise Law 2014, which generally governs private companies, adopted the mechanism of independent directors through the regulations on the board structure of joint stock companies. In particular, per the Enterprise Law 2014, the operation and management structure of a joint stock company can be structured in the form of either a one-tier board or a two-tier board. This regulation is maintained under the Enterprise Law 2020 and will be discussed in more detail in Section 3.2.2 below.

In 2019, the first version of the Vietnam Corporate Governance Code of Best Practices (the “**CG Code**”) for public companies, which was developed by the SSC and the IFC, was issued. It provides specific guidance and recommendations on the best practices for corporate governance in general and independent directors in particular. However, the CG Code acts as a guide rather than a compulsory requirement for public companies.

3.2.2 Company Management Structure and Independent Directors

Generally, Vietnamese laws adopt both concepts of the one-tier and two-tier board in the operation and management structure of joint stock companies. In the two-tier board model, a supervisory board (inspection committee) is required to be organized beside the board of directors. In both management structures, the requirement of having independent directors on the board of directors may be applied, subject to the type of the company.

⁹ Article 2.3, Circular 121.

¹⁰ Public companies include public listed companies and public non-listed companies. Per Article 25.1 of the Securities Law 2006, public non-listed companies include (i) companies having conducted the public offering of its stocks, (ii) companies having (a) its stocks owned by at least 100 investors, excluding professional securities investors, and (b) its charter capital of VND10 billion or more.

Regulatory Overview of Independent Directors in Vietnam

One-tier Board Model (Model with Audit Committee and without Supervisory Board)¹¹

In the one-tier board model, the management structure of a company includes (i) a general meeting of shareholders (GMS), (ii) a board of directors (BOD), and (iii) a (general) director (i.e., chief executive officer in other jurisdictions).

In this structure, the BOD must have at least 20% (one-fifth) of independent directors and set up an audit committee. The audit committee shall be established as a professional organ of the BOD with at least two (2) members. The chairperson of the audit committee is required to be an independent director, and the other committee members must be non-executive directors. The audit committee's primary responsibility is supervising the financial issues, risk control, and internal control of the company.

Ordinary joint stock companies¹², insurance firms established in the form of joint stock companies,¹³ and non-listed public companies¹⁴ have the right to elect (but not an obligation) to operate under this one-tier board model.

¹¹ Article 137.1(b), the Enterprise Law 2020.

¹² Article 137.1, the Enterprise Law 2020.

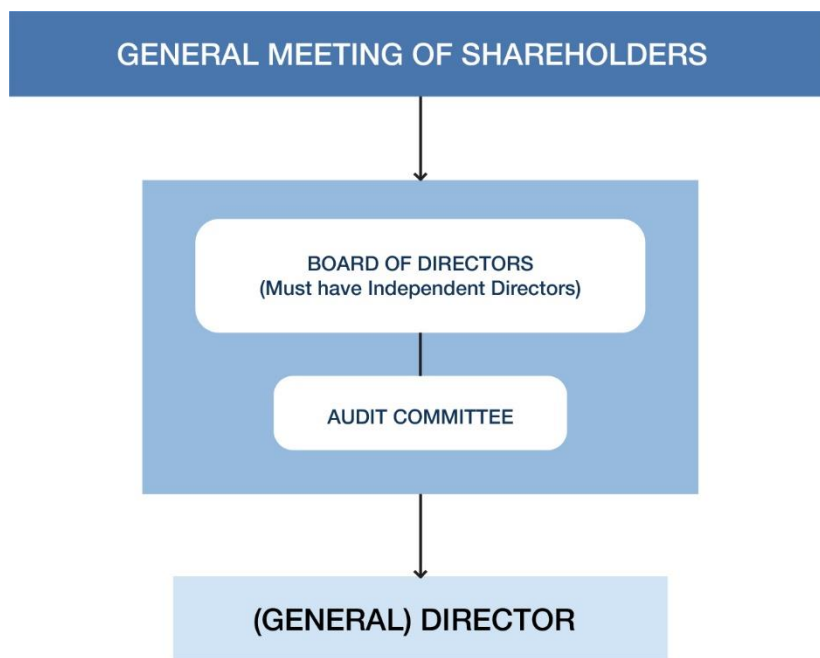
¹³ Article 79.1(b), the Insurance Business Law 2022, which is due to take effect on 1 January 2023.

¹⁴ The definition of non-listed public companies has been updated under Article 32.1(a) of the Securities Law 2019, particularly, non-listed public companies include (i) companies having conducted the public offering of its stocks, (ii) companies having (a) its contributed charter capital equal to VND30 billion or more, and (b) at least 10% of voting shares held by at least 100 investors not being major shareholders.

Regulatory Overview of Independent Directors in Vietnam

The management structure under the one-tier board model is illustrated in the diagram below:

Figure 4: One-tier board model



Two-tier Board Model (Model with Supervisory Board)¹⁵

The management structure under the two-tier board model includes (i) a GMS, (ii) a BOD, (iii) a supervisory board, and (iv) a (general) director. Under this model, subject to the type of the company, the requirement of having independent directors on the BOD may be applied.

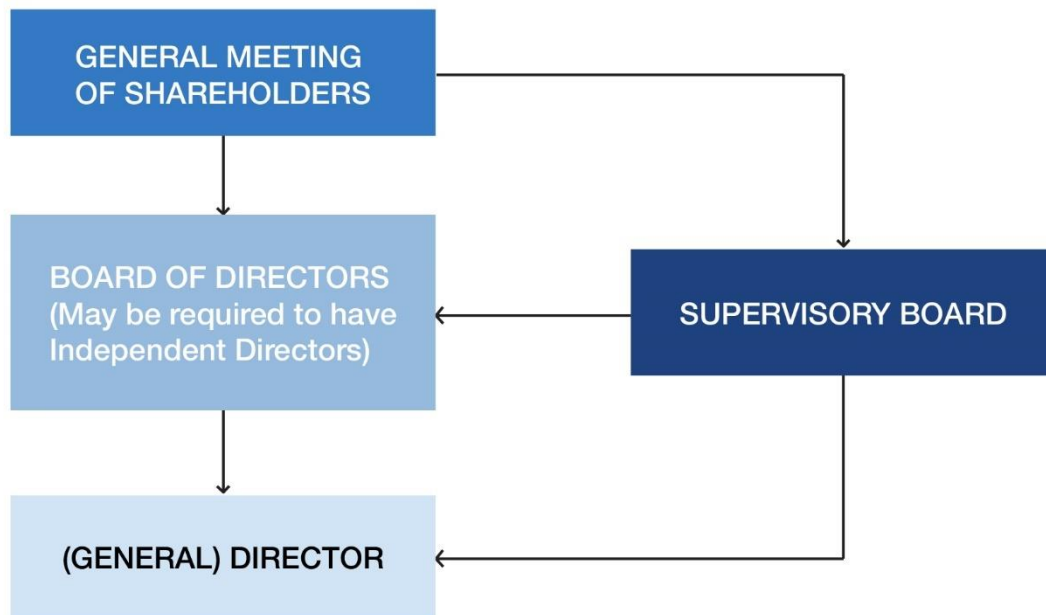
¹⁵ Article 137.1(a), the Enterprise Law 2020.

Regulatory Overview of Independent Directors in Vietnam

In principle, ordinary joint stock companies, insurance firms, and non-listed public companies electing to operate under the two-tier board model are not required to either appoint independent directors on the BOD or establish the audit committee. However, listed public companies¹⁶, fund management companies (in the form of a joint stock company)¹⁷, and credit institutions¹⁸ are required to appoint independent directors on the board, even though such companies have a supervisory board.

The management structure under the two-tier board model is illustrated in the diagram below:

Figure 5: Two-tier board model



¹⁶ Article 276.4, Decree 155.

¹⁷ Article 3 and Appendix XII, Circular 99.

¹⁸ Article 62.1, the Credit Institutions Law 2010.

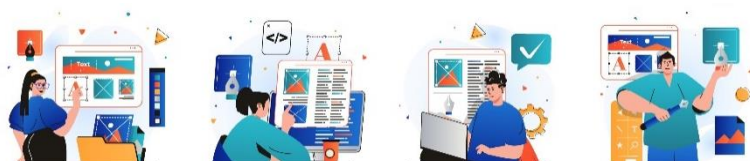
“Credit institutions” include banks, non-bank credit institutions, microfinance institutions and people's credit funds (Article 4.1, the Credit Institutions Law 2010).

Regulatory Overview of Independent Directors in Vietnam

3.2.3 Categories of Directors on the BOD

Board directors can be generally divided into three groups: (i) executive directors, (ii) non-executive directors, and (iii) independent directors.

Per the Enterprise Law 2020, a director on the BOD (regardless of which type of company) is required to meet the following regulatory requirements:



- Not being restricted persons as stated under Article 17.2 of the Enterprise Law 2020 (e.g., state officials/employees, functionaries, non-commissioned officers, national defense workers/officers, minors, persons whose capacity for civil acts is restricted or lost, persons who are prosecuted for criminal liability, etc.); and
- Have professional expertise and experience in business management or the company's sectors or business lines and may not be the company's shareholders unless otherwise stipulated by the company charter (i.e., article of association or constitutional document).

The laws allow a director on the BOD to hold directorship in other companies concurrently. However, a director on the BOD of a public company is allowed to concurrently hold a directorship of up to five (5) other companies only.¹⁹

Executive Directors

A definition of an executive director is not explicitly provided by the current laws, including Enterprise Law 2020 and Securities Law 2019. Per Decree 155 (applicable to public companies only), it only regulates that a (general) director, deputy (general) director, chief accountant and other executives as stipulated in the company charter is the executive. Thus, it can be implied that a director holding one of the mentioned positions is considered as the executive director.

¹⁹ Article 275(a), Decree 155.

Regulatory Overview of Independent Directors in Vietnam

Non-executive Directors

Non-executive directors are only mentioned as directors who are in-charge for the position of member of the audit committee per the Enterprise Law 2020. Given the audit committee must have at least one member beside the chairperson being an independent director, it can be interpreted that joint stock companies which have the audit committee in the management structure must have at least one non-executive director on the BOD.

While the Enterprise Law 2020 and Securities Law 2019 are silent on the definition and requirements for non-executive directors, Decree 155 (applicable to public companies only) stipulates that non-executive directors are directors who are not a (general) director, a deputy (general) director, a chief accountant, and other executives as regulated by the company charter. This is similar to the first regulation applied to independent directors under Decision 12.

Decree 155 also mandates that a public company must have at least one-third of non-executive directors on its BOD.



Independent Directors

As mentioned in Section 3.2.2 above, independent directors are regulated as a “must-have” position in the management structure of certain specialized companies and companies that operate under the one-tier board model. In the audit committee, an independent director will hold the committee chair position, while non-executive directors will serve as committee members. The regulatory requirements for independent directors are provided more specifically than non-executive directors by the current laws (including the Enterprise Law 2020 and other specialized branch laws), respectively discussed in detail in Section 3.2.4 and Section 3.2.5 below.

Regulatory Overview of Independent Directors in Vietnam

3.2.4. Requirements for “Independence” of Independent Directors

Private Companies and Public Companies

Criteria for determining the independence of independent directors specified in the Enterprise Law 2014 are basically maintained in Article 155.2 of the Enterprise Law 2020, which are generally applicable to private and public companies. In particular, an independent director must satisfy all five (5) conditions:

- Not being a person currently working for the company, the parent company, or subsidiary company of the company; or not being a person having worked for the company, the parent company, or subsidiary company of the company for at least three (3) preceding years;
- Not being a person currently entitled to salary or remuneration from the company, except for allowances for the position of the director on the BOD as regulated;
- Not being a person whose spouse, (natural or adoptive) parent, (natural or adopted) child, or sibling (collectively, “family members”) is a major shareholder of the company; or being a manager of the company or its subsidiary company;
- Not being a person directly or indirectly owning at least one percent (1%) of the total voting shares in the company; and
- Not being a person who used to hold the position of director on the BOD or member of the supervisory board of the company for at least five (5) preceding years (unless he or she was elected for two (2) consecutive terms).

The above criteria aim to ensure independent directors' independence by preventing conflicts of interest, ownership, and personal relationships of independent directors from influencing the discharge of their duties and responsibilities. However, to some extent, these requirements remain unclear and/or insufficient to ensure the independence of independent directors.

For example, the third condition has no definition of a major shareholder per the Enterprise Law 2020. A major shareholder is stipulated by the Securities Law 2019 as owning 5% of voting shares in the company. However, the Securities Law 2019 regulations apply only to public and fund management companies, not other common joint stock companies.

The fourth condition in the Enterprise Law 2020 does not define “*indirectly owning*,” which may create confusion and disputes when applying such a condition in practice.

Regulatory Overview of Independent Directors in Vietnam

The above-listed requirements may not ensure the independence of the independent directors from the influence of controlling shareholders. Given that independent directors are elected by the cumulative voting mechanism,²⁰ (except otherwise regulated by the charter of the company) which is similar to the voting mechanism applicable to other directors of the BOD, their appointment will still be somehow impacted by the intention of the controlling shareholders. This may result in independent directors acting in the best interest of the controlling shareholders (instead of the company's best interest as a whole) and refraining from actions against the controlling shareholders who had voted for the independent directors.

Credit Institutions

Credit institutions' regulatory requirements for independent directors are slightly different from those for private and public companies. The specific requirements applicable to independent directors under the Credit Institutions Law 2010 are presented (in comparison with the provisions applicable to private and public companies under the Enterprise Law 2020) as follows²¹:

- *(similar)* Not being a person currently working for the credit institution or subsidiary of the credit institution, or not being a person having worked for the credit institution or subsidiary of the credit institution for at least three (3) preceding years;
- *(similar)* Not being a person entitled to salary or regular remuneration from the credit institution, except for allowances for the position of the director on the BOD as regulated;
- Not being a person whose spouse, parent, child, or sibling, and the spouse of such these persons is a major shareholder of the credit institution, a manager or member of the supervisory board of the credit institution, or a subsidiary of the credit institution;
- Not being a person directly or indirectly owning at least one percent (1%) of the charter capital or the total voting shares of the credit institution; or together with its related person owning at least five percent (5%) of the charter capital or the total voting shares of the credit institution; and
- Not being a person used to hold the position of *manager* or member of the supervisory board of any credit institution for at least five (5) preceding years.

²⁰ Cumulative voting is a voting mechanism in which each voter (as shareholder) has as its total number of votes equivalent to the total number of shares it owns multiplied by the number of directors to be elected to the BOD, and each voter (as shareholder) has the right to accumulate all or part of its total votes for one or more candidates.

²¹ Article 50.2, the Credit Institution Law 2010.

Regulatory Overview of Independent Directors in Vietnam

Although the Credit Institutions Law 2010 was issued ten (10) years earlier than the Enterprise Law 2020, the independence requirements of independent directors applicable to credit institutions are more precise than those for independent directors in private and public companies.

In particular, the third condition clearly states that independent directors are not a person whose spouse, parent, child, or sibling and the spouse of such these persons is a manager of the credit institution or a subsidiary of the credit institution.

Furthermore, the Credit Institutions Law 2010 defines “*major shareholders*” as shareholders holding 5% of the total voting shares,²² and “*indirectly owning*” is defined as owning through related persons²³ or investment trusts.²⁴

3.2.5. Requirements for the Proportion of Independent Directors

In general, the minimum number of independent directors is at least equal to 20% (one-fifth), up to one-third of the total number of directors on the BOD, depending on the type of the company.

Private Companies

For private companies, including common joint stock companies, insurance firms established in the form of a joint stock company, which select to operate under a one-tier board model, the minimum number of independent directors must be at least 20% (one-fifth) of the total number of directors on the BOD.



²² Article 4.26, the Credit Institutions Law 2010.

²³ “*Related persons*” are defined under Article 4.28 of the Credit Institutions Law 2010.

²⁴ Article 4.27, the Credit Institutions Law 2010.

Regulatory Overview of Independent Directors in Vietnam

Public Companies

For public companies, the minimum number of independent directors is subject to the type of company, particularly:

- Non-listed public companies electing to operate under a one-tier board model: 20% (one-fifth) of the total number of directors on the BOD.
- Listed companies:
 - 1 At least one (1) independent director if the BOD has three (3) to five (5) directors.
 - 2 At least two (2) independent directors if the BOD has six (6) to eight (8) directors.
 - 3 At least three (3) independent directors if the BOD has nine (9) to eleven (11) directors.

Credit Institutions

Per the Credit Institutions Law 2010, a credit institution established as a joint stock company must have at least one (1) independent director on the BOD.

The total number of independent directors and non-executive directors of a credit institution must be equal to half of the total number of directors on the BOD. Since (i) there is no requirement for the minimum number of non-executive directors, and (ii) the BOD of a credit institution must have at least five (5) directors, in the case where a BOD has only one (1) non-executive director, the minimum number of independent directors may exceed more than one (1).

3.2.6. Tenure for Independent Directors

Article 154.2 of the Enterprise Law 2020 expressly provides that an individual shall only be elected as an independent director on the BOD of the company for no more than two (2) consecutive terms. It means that an individual who has served as an independent director of the company for two (2) consecutive terms will not be qualified to be elected to such a position in the following term without any cooling-off period. Since the Enterprise Law 2020 regulates that the term of office of a board director may not exceed five (5) years, it can be construed that the maximum mandatory cap on the tenure of an independent director is ten (10) years.

Regulatory Overview of Independent Directors in Vietnam

3.2.7. Sanctions for Violations of Statutory Requirements regarding Independent Directors



PUBLIC COMPANIES

Public companies failing to meet the requirement on the minimum number of independent directors on the BOD or having independent directors who are not in full compliance with all regulatory conditions shall be subject to an administrative fine in the amount of VND100,000,000 to VND150,000,000²⁵. The penalty for such violations applied to credit institutions varies from VND20,000,000 to VND30,000,000²⁶. Independent directors in public companies shall be subject to an administrative fine in the amount of VND30,000,000 to VND50,000,000 for failure to provide a report on the performance of the BOD.²⁷



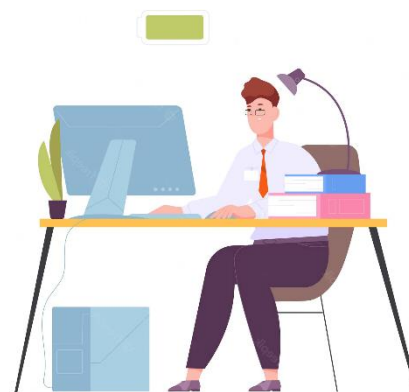
PRIVATE JOINT STOCK COMPANIES

For other private joint stock companies, there is no penalty for violating requirements regarding independent directors.

3.2.8. Roles, Powers and Duties of Independent Directors

Generally, there is a lack of regulations and guidelines on the rights and duties of independent directors in the current regulatory framework, and the laws merely set out the general rights and responsibilities of the BOD as a whole and board directors in general.

Apart from certain rights and duties of independent directors mentioned in some regulations, the Enterprise Law 2020 stipulates that the company shall be responsible for regulating a specific number of rights, duties, and operations of independent directors in the company charter.



²⁵ Article 15.5, Decree 156.

²⁶ Article 6.1, Decree 88.

²⁷ Article 15.3, Decree 156.

Regulatory Overview of Independent Directors in Vietnam

Roles

The role of independent directors is not provided explicitly by the current law.

However, in practice, independent directors on the BOD are assigned two primary roles – monitoring and advisory. In Vietnamese listed companies, independent directors prefer to play advisory roles²⁸. The possible explanation for such a practice is that independent directors do not have sufficient power, and they may choose to put less emphasis on the monitoring role to avoid conflict with other directors and management.

However, under the Enterprise Law 2020, independent directors may implement their monitoring role through their position as a chairperson of the audit committee, which is responsible for monitoring the following issues:

- the truthfulness of the financial statements of the company and any official announcement relating to the financial results of the company;
- internal control and risk management system;
- related party transactions;
- internal auditing division of the company;
- independence and impartiality of the auditing company and the efficiency of the auditing process; and
- other compliance issues.

In addition, the audit committee shall have the right to make recommendations on (i) transactions requiring corporate approval of the BOD or the GMS of the company; and (ii) an independent auditing company, the level of remuneration, and the relevant terms in the service agreement signed with the auditing company.

Powers

Under Article 159.1 of the Enterprise Law 2020, directors have the right to request the (general) director, deputy (general) director, and other managers in the company to provide information and documents on the financial status and business operation of the company and other units/departments in the company. While information right is regarded as essential for independent directors to carry out their monitoring and advisory roles, it is similar to the information right of other directors, with no additional privileges.

²⁸ Perceptions of independent directors about their roles and challenges on corporate boards: Evidence from a survey in Vietnam, Mai Nguyen, Elaine Evans, and Meiting Lu (2019).

Regulatory Overview of Independent Directors in Vietnam

In addition, according to Article 157.3(a) of the Enterprise Law 2020, independent directors have the right to request a chairperson of the BOD to convene a BOD meeting. Upon receipt of a request from the independent director, the chairperson must call a BOD meeting within seven (7) working days. If the chairperson fails to convene the meeting within the above period, the independent director shall have the right to call a BOD meeting in place of the chairperson.

Duties

Similar to other directors of the BOD, independent directors have fiduciary duties in addition to their specific personal responsibilities. The fiduciary duties of directors on the BOD are regulated under Article 165.1 of the Enterprise Law 2020 as follows:

- To exercise delegated powers and perform delegated obligations in accordance with the laws, the company charter, and the resolutions of the GMS;
- To exercise delegated powers and perform delegated obligations honestly and prudently to the best of ability to assure the maximum legitimate interests of the company;
- To be loyal to the interests of the company and shareholders; not to abuse the position and power, and not to use information, know-how, business opportunities, and other assets of the company for personal benefit or the benefit of other organizations or individuals;
- To promptly notify the company thoroughly and accurately of any regulatory issues; and
- Other responsibilities in accordance with the Enterprise Law 2020 and the company charter.

Additionally, independent directors in public companies shall be responsible for assessing the BOD's performance²⁹.

In addition, the Enterprise Law 2020 provides that an independent director must notify the BOD when they no longer satisfy any regulatory independence criteria.³⁰ The law also mandates that the BOD must give notice when an independent director no longer meets the requirements and conditions for independence at the next GMS or must convene a GMS meeting to elect an additional member or to replace the independent director within six (6) months from the receipt date of the notice from the independent director in question.

²⁹ Article 277.3, Decree 155.

³⁰ Article 155.3, the Enterprise Law 2020.

Regulatory Overview of Independent Directors in Vietnam

3.2.9. Independent Directors in Specialized Committees

According to the CG Code³¹, a BOD of public companies needs to set up its own subordinate committees, including an audit committee, a risk management committee, and a committee of corporate governance, nomination, and remuneration, to assist the BOD with specific tasks and avoid any conflicts of interest. In these committees, independent directors shall serve as the chairperson and comprise most committee members.



However, except for the audit committee (which is governed by specific regulations³² and a template for operational rules³³), the organization, operation, and the rights and duties of other committees are unregulated. For public companies, based on the model charter of public companies issued under Circular 116³⁴ (the “**Model Charter of Public Companies**”), it is only regulated that the BOD of public companies *may* set up subcommittees to be in charge of development policy, human resources, remuneration, internal audit, and risk management, and the operation of these subcommittees must be in accordance with the company charter, internal company rules on corporate governance, and rules of the BOD.

According to the Model Charter of Public Companies³⁵, each subcommittee must have at least three persons, including directors on the BOD and outside members. It is recommended (but not mandatory) that independent and non-executive directors make up a majority of the subcommittee, and one of these directors should be appointed as the head (chairperson) of the subcommittee.

³¹ Principle 4, the CG Code.

³² Apart from the mentioned regulations, the operation of the audit committee of listed public companies are further regulated by Decree 05 on internal audit.

³³ Appendix V, Circular 116.

³⁴ Appendix I, Circular 116.

³⁵ Article 31.1 Appendix I, Circular 116.

Regulatory Overview of Independent Directors in Vietnam

3.2.10. Key Findings and Observations

To sum up, there are several key findings and observations from the current Vietnamese legal framework concerning independent directors as follows:

- The regulations on independent directors were initially introduced in 2007 and applied only to listed companies. The rules on independent directors have been significantly enhanced and widely applied to private joint stock companies, public companies (including listed companies and non-listed companies), and companies in specific specialized sectors (banking, insurance, and fund management).
- The models of the one-tier board and two-tier board are adopted in Vietnamese laws, and companies operating under one of these models may be required to have independent directors (together with an audit committee or a supervisory board) on the BOD, subject to the type of the company and management model adopted.
- The requirement for the minimum number of independent directors is clearly provided by the laws for each type of company, which varies from one-fifth to one-third of the total number of directors on the BOD.
- The laws have provided specific requirements for ensuring the independence of independent directors; however, it appears that such requirements are unclear and insufficient to ensure the independence of independent directors.
- Other than those that generally apply for board directors under the Enterprise Law 2020, the roles, powers, and duties of independent directors are not specifically regulated by the laws. Instead, the laws confer the GMS the right to define roles, powers, and duties of independent directors in the company charter. To facilitate an effective discharge of their duties, independent directors need to be empowered with appropriate rights, including but not limited to the right to access information and the right to opine on important areas of the companies (audit, board evaluations, nomination, remuneration, etc.).



4.1

Board Size

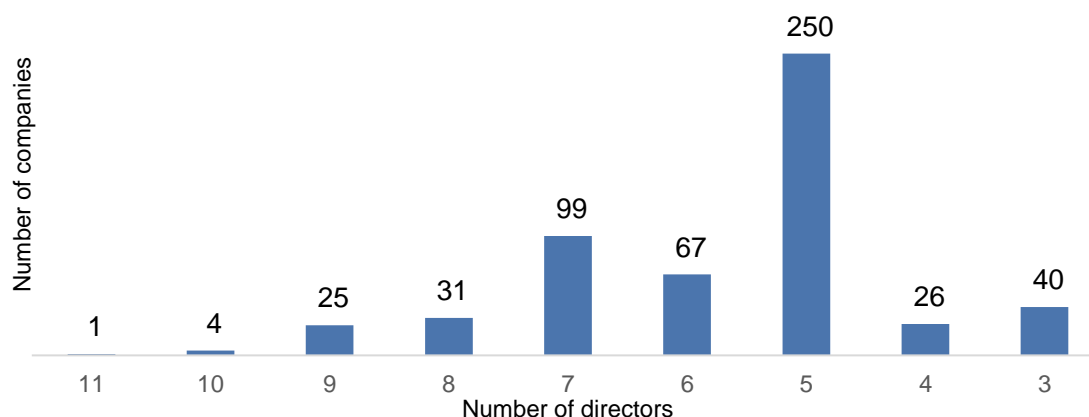
In terms of board size, listed companies in Vietnam fully meet regulatory requirements.

The board size varies between **3-14 directors per company** across industries, which is fully in accordance with Decree 155 which took effect in January 2021.

In total, there are **3,107 directors** in these **544 listed companies** covered in the survey. It resulted in an average board size of six directors, but five-director boards comprise the most (250 companies) as shown in Figure 6 below.

Survey Findings And Discussions

Figure 6: Average board size in listed companies in Vietnam



Across industries, financial institutions (banks, insurance, financial services companies) and the real estate sector have larger-than-average board sizes due to stricter regulatory requirements.

Table 2: Distribution of directors by industry

NO.	ICB-LEVEL 2	# OF COMPANIES	DIRECTORS	
			TOTAL	PER COMPANY
			PERSONS	PERSONS
1	Basic Resources	37	209	6
2	Chemicals	35	181	5
3	Healthcare	17	93	5
4	Utilities	44	237	5
5	Technology	12	73	6
6	Personal & Household Goods	25	152	6
7	Travel & Leisure	12	70	6
8	Retail	13	75	6
9	Financial Services	26	151	6
10	Food & Beverages	43	243	6
11	Real Estate	74	417	6
12	Construction & Materials	91	506	6
13	Industrial Goods & Services	66	383	6
14	Media	10	58	6
15	Automobiles & Parts	10	59	6
16	Insurance	6	39	7
17	Banks	19	135	7
18	Oil & Gas	4	26	7
Subtotal		544	3,107	6

Survey Findings And Discussions

4.2

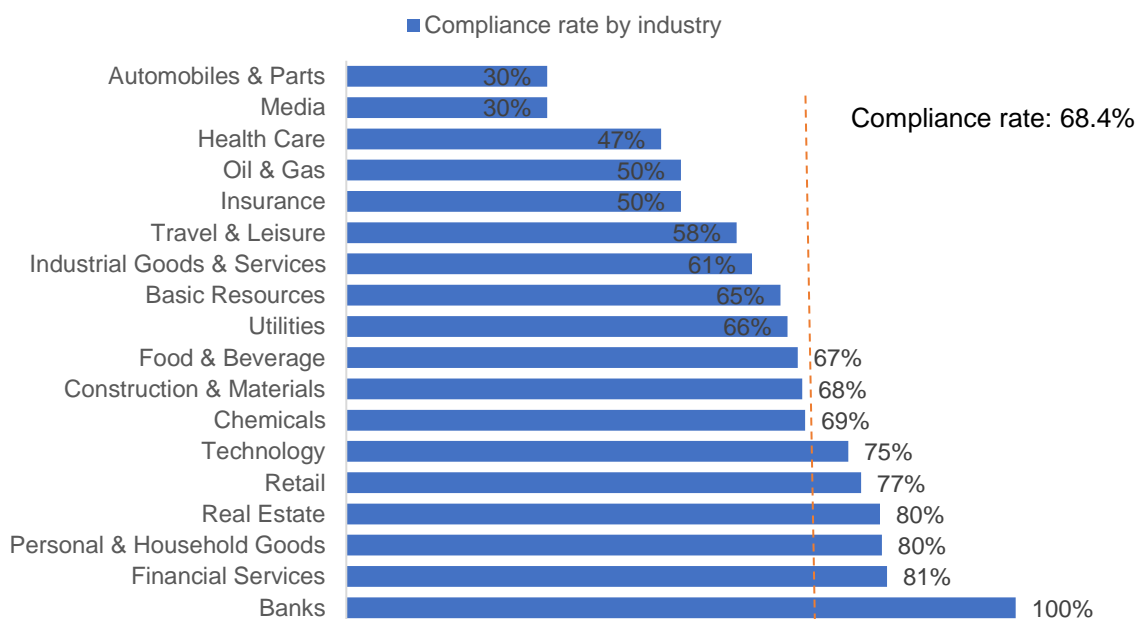
Compliance Rate per Sector

1 68.4% of listed public companies are complying with minimum legal requirement on independent directors: 372 out of 544 surveyed companies are complying with a minimum requirement on independent directors, equivalent to an average compliance rate of 68.4%. The lowest rate is 30% (in Automobiles & Parts) while the highest rate is 100% (in Banks).

“Decree 155 requires a listed company's board to have (i) at least one independent director (if there are three to five board members in total); (ii) at least two independent directors (if there are six to eight board members); or at least three independent directors (if there are nine to eleven board members).”

In the financial sector, banks has the highest compliance rate (at 100%), followed by 81% in Financial services. Two of the top five are consumer goods industries (Personal & Household Goods and Retail), which are among industries most-favored by foreign investors in recent years. In contrast, Insurance and Basic resources firms are among poor-performing industries in terms of compliance rate.

Figure 7: Compliance rate of ID regulations by industry

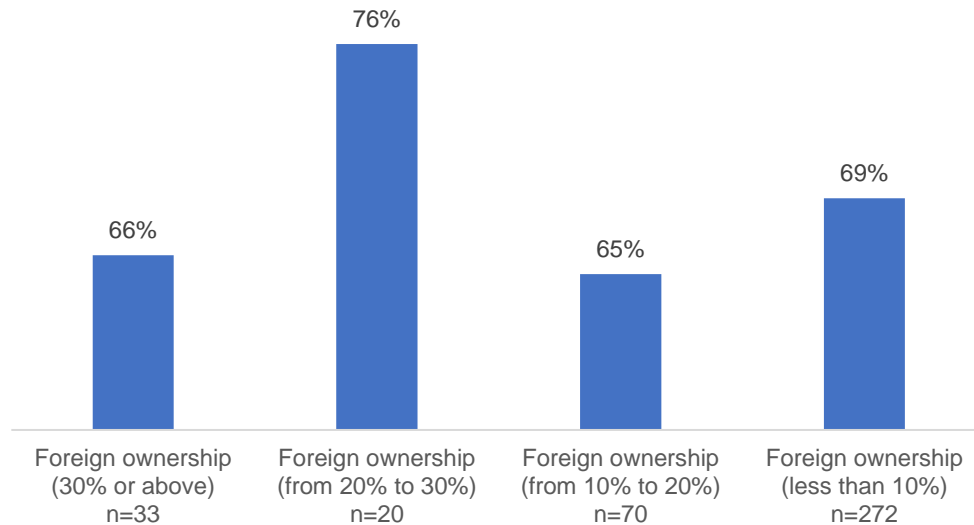


Notes: The compliance rate is the ratio of listed companies complying with the requirement on the number of independent directors

Survey Findings And Discussions

2 Having higher degree of foreign ownership doesn't mean better compliance rate of independent directors: The survey found that 20 companies with foreign ownership ratio of between 20% and 30% were complying with minimum requirement on independent directors, equivalent to a compliance rate of 76%. This is the highest compliance rate among four groups in terms of foreign ownership ratio as shown in Figure 8. Interestingly, the survey found relatively high compliance rate (69%) among companies with foreign ownership of less than 10%. Those with foreign ownership ratio of 30% or above, however, has lower compliance rate (66%).

Figure 8: Compliance rate of ID regulations by foreign ownership

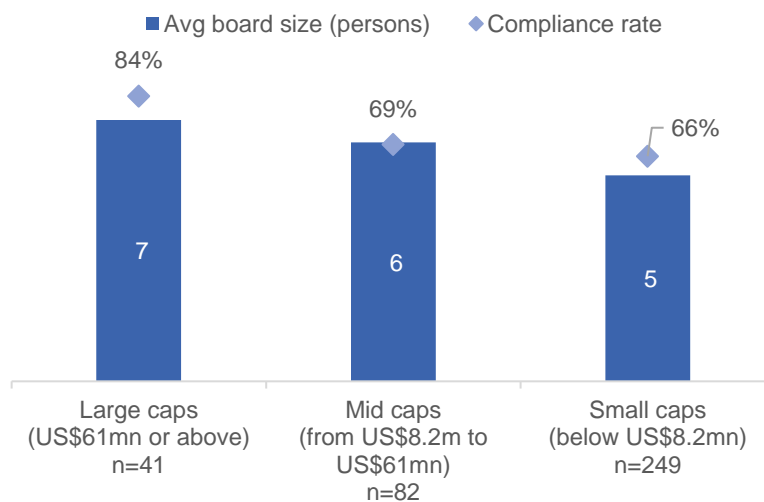


Survey Findings And Discussions

4.3 Compliance Rate by Market Capitalization

1 Large caps have higher compliance rate of independent directors than small and mid caps: Among 372 listed companies complying with minimum requirement on independent directors, there are 41 large-caps, 82 mid-caps and 249 small-caps. The compliance rates at small and mid caps are quite lower than large caps (see Figure 9 below).

Figure 9: Compliance rate of ID regulations by market capitalization



2 Boards' awareness of requirements on independent directors is strong in mid and small caps but rather low in large caps: In this survey, market capitalization is used as a proxy for company size. Accordingly, large caps have market cap size of US\$61 million or above. Small caps are those with market size of less than US\$8.2 million while mid-caps take the rest.

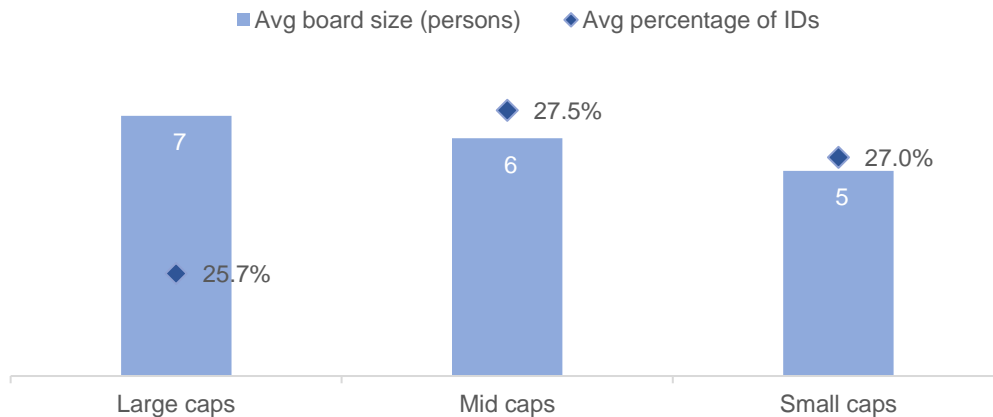
The survey showed that large caps have larger board size (7) but the percentage of independent directors is rather low at 25.7%. The percentage of independent directors at mid-caps (27.5%) and small caps (27%) is significantly higher than the legal requirement (at 20%).

It should be noted that there are 41 large-cap companies in our sample, including seven commercial banks with an average BOD size of as large as 11 members, but the percentage of independent directors is as low as 11.8%. In fact, banks are pursuant to the Credit Institutions Law 2010, instead of the Enterprise Law 2020 and the Securities Law 2019. Accordingly, a credit institution established in the form of a joint stock company is required to have at least one (1) independent director regardless of the BOD size.

Survey Findings And Discussions

If seven banks are excluded, the average BOD size of remaining large caps is seven members and the percentage of independent directors is averaged at 17%, which remains below the legal requirement (at 20%).

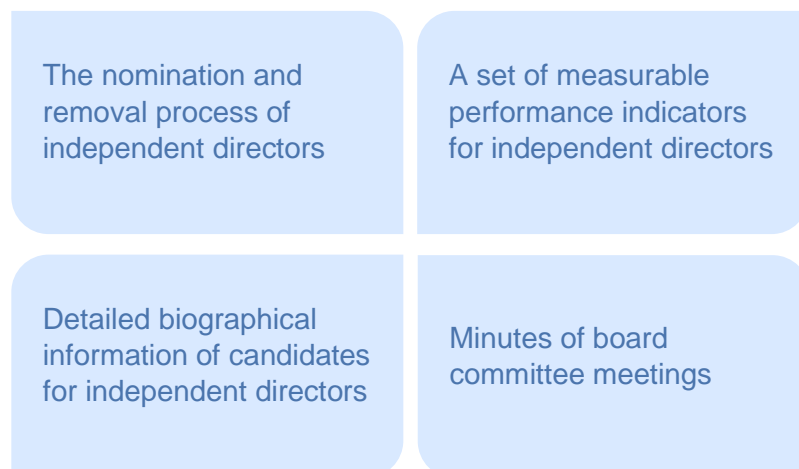
Figure 10: Large caps have lower board’s awareness of IDs’ requirements



4.4 Disclosure and Reporting of Independent Directors in Listed Companies

1 Disclosures on independent directors tend to be boilerplate among listed companies and fall short of the necessary information about independent directors.

Generally, listed companies disclose information on independent directors through their corporate governance reports and annual reports. However, we observed that most disclosures tend to be boilerplate and lack the following necessary information about independent directors:



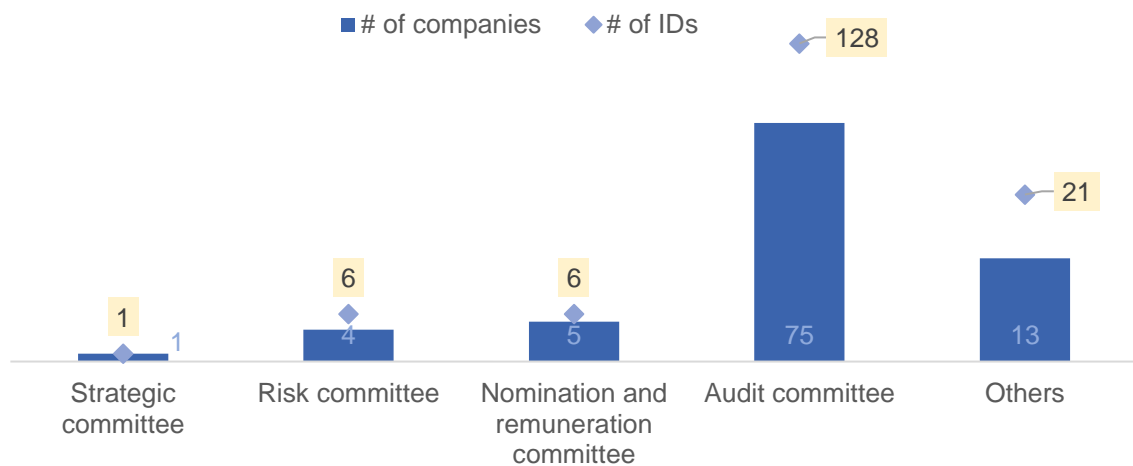
Survey Findings And Discussions

4.5 Board Structure (One-tier vs. Two-tier) and Independent Directors

1 The role of board committees (such as strategy committee, audit committee and risk committee) has not yet considered appropriately in listed companies: 43 of 544 listed companies have two-tier boards, but as few as 36 out of the 43 have a total of 51 independent directors serving on audit committees, while seven others had no details disclosed.

In total, there are 162 independent directors serving various board committees of 98 out of 544 listed companies. No independent directors took seats on IR and ESG committees. Audit committee has the largest size of 1.7 persons, or 128 independent directors per 75 companies, while strategic committee has the lowest, with only one person.

Figure 11: Audit committee has the largest size of IDs

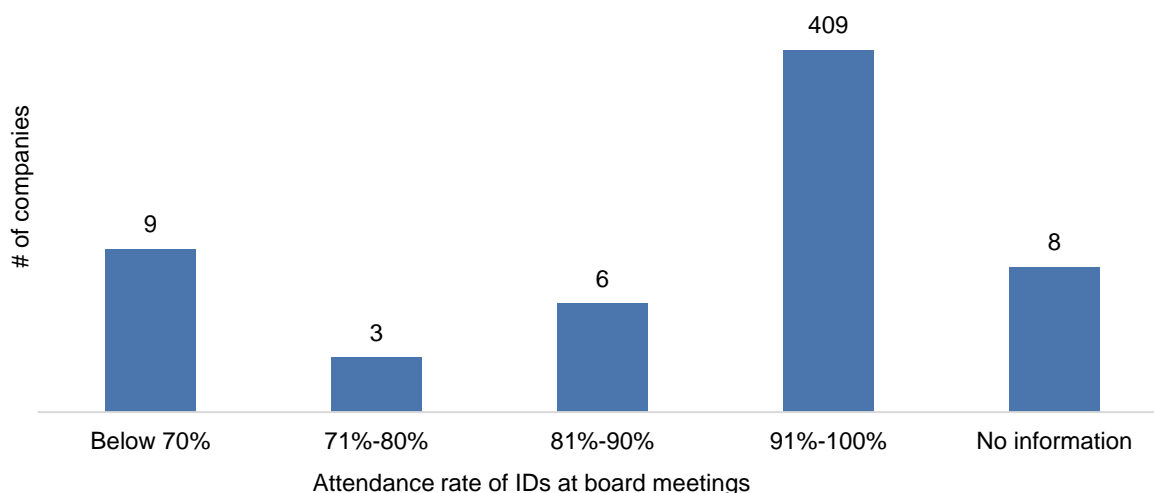


Survey Findings And Discussions

2 The average attendance rate of independent directors at board meetings is above the minimum acceptable rate (75%): The attendance rate of independent directors at board meetings varies between 45% and 100%, but the average attendance rate remains above 91% thanks to a high proportion of the 91-100% range as shown in Figure 12.

Generally, investors consider an attendance rate of at least 75% as the minimum acceptable rate for independent directors to exercise their obligations in representing shareholders to bring objectivity and independent judgement on matters discussed at board meetings.

Figure 12: Attendance rates mostly recorded in 91-100% range

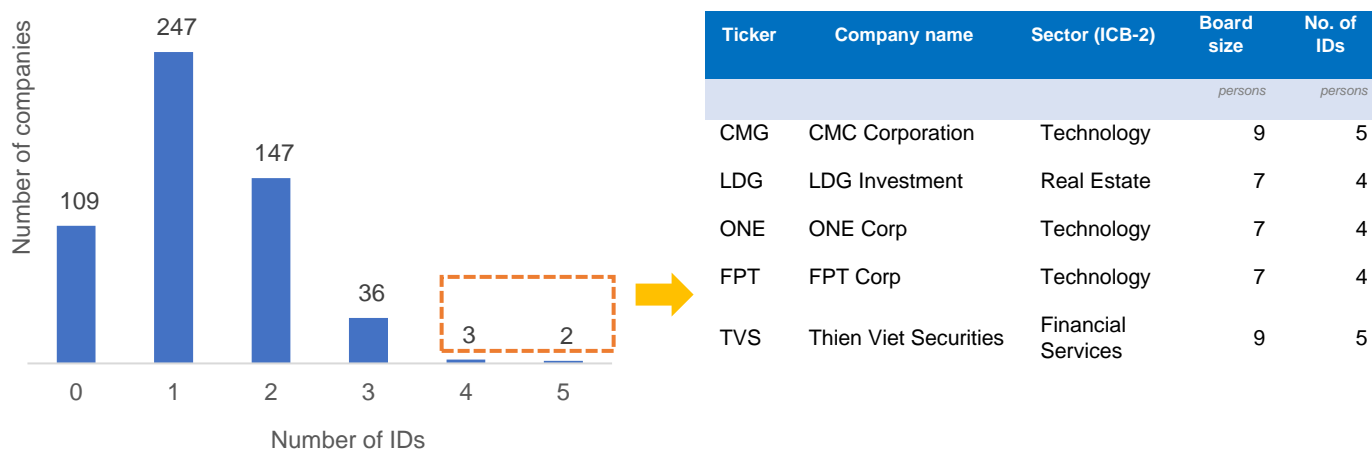


4.6 Board Size and Number of Independent Directors

1 Up to 80% of listed companies have at least one independent director on their boards: 435 out of 544 surveyed companies (around 80%) have appointed at least one independent director on board. The ratio was much higher than our observations (less than 50%) before the Enterprise Law 2020 took effect from January 2021.

Survey Findings And Discussions

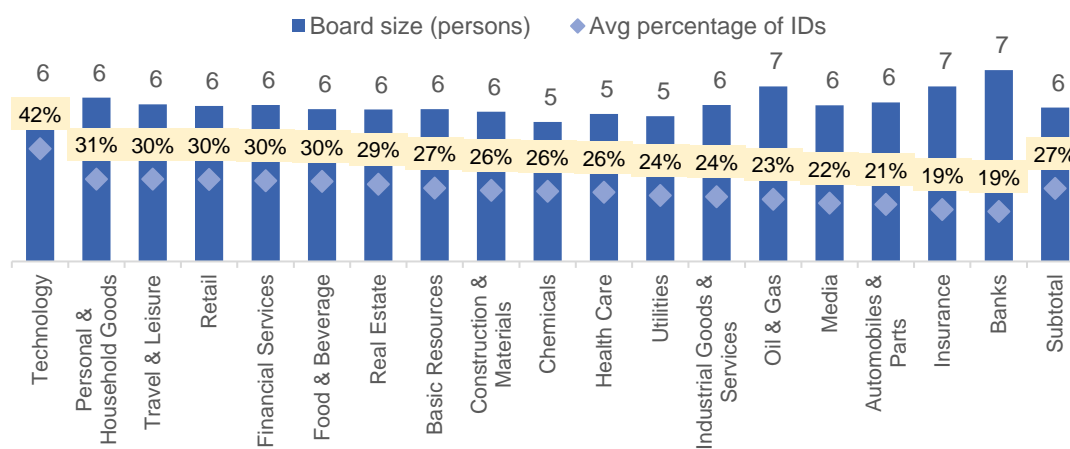
Figure 13: Independent directors appeared in 80% of listed companies



2 The percentage of independent directors on boards has increased but remains low across industries, especially in Financials: Across industries, the average number of independent directors per board is 1.5 persons while the average board size is six directors. Accordingly, the average percentage of independent directors is 27%, which remains below the minimum requirement for the six-director board size in Decree 155.

Industries with the largest percentage of independent directors include Technology (42%) and Personal & Household Goods (31%). Financials (Insurance, Financial Services) and Real Estate have a lower-than-required percentage, in which Insurance have the largest board size (7) but the lowest percentage of independent directors (at 19%).

Figure 14: Percentage of independent directors on Board by industry



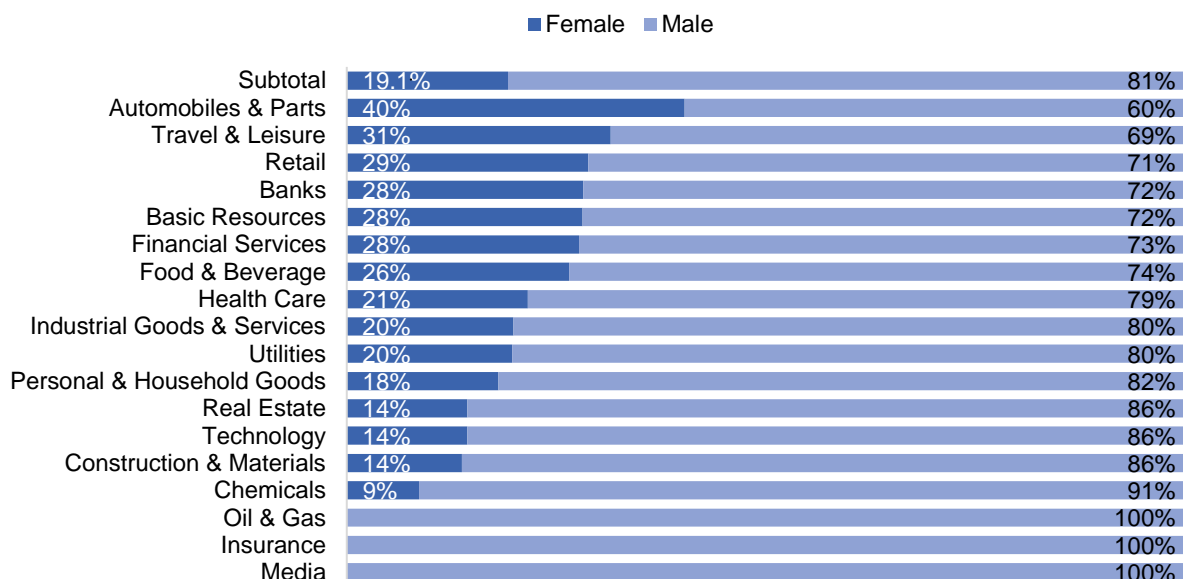
Survey Findings And Discussions

4.7 Gender Diversity of Independent Directors

1 Women’s board representation is higher than Asia’s average 19% of independent directors in our sample are women, deemed a high number for a developing country in Asia. A study by Deloitte covering 10,493 companies in 51 countries shows that women held 19.7% of board seats in 2021. In Asia, the number was lower at 11.7%. The numbers for ASEAN countries varied: Malaysia (24%), Thailand (17.8%), Philippines (17.7%), Singapore (17.6%), and Indonesia (8.3%), but still generally better than some East Asian countries such as South Korea (4.3%), Japan (8.2%), and China (13.1%). Accordingly, women occupied 17% of the board seats in Vietnam’s listed companies and 19% in the Top 50 listed companies.³⁶

The percentage of women as independent directors in Vietnam varies significantly by industry. Top industries with women’s participation include automobiles & parts (40%), travel & leisure (31%), retail (29%), financial services (28%), basic resources (28%), and banks (28%). Meanwhile, some industries have no female representation, including media, oil & gas, and insurance.

Figure 15: Independent director gender diversity by industry



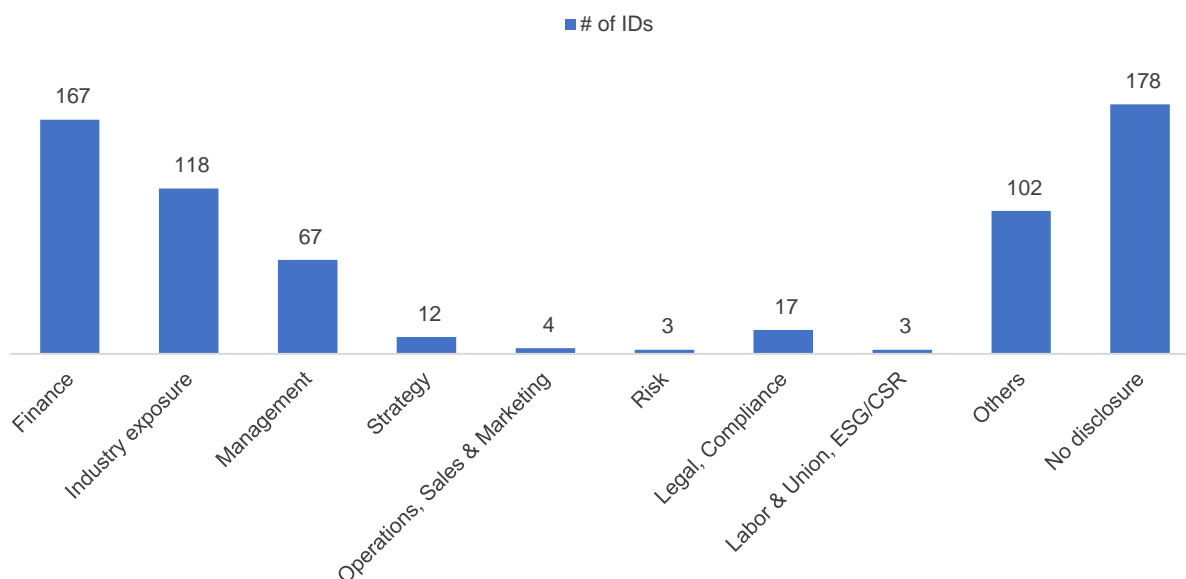
³⁶ Women in the boardroom: A global perspective, 7th Edition, Deloitte (2021).

Survey Findings And Discussions

4.8 Expertise of Independent Directors

1 Most independent directors have knowledge or experience in finance and management: In our sample of 544 listed companies with 671 independent directors, 178 independent directors (26.5%) do not have their qualifications disclosed. Among those with their qualifications disclosed, the percentage of independent directors with academic qualifications or professional experience in finance or business management is 74.6%. Meanwhile, merely three out of 493 independent directors have experience in risk management, which explains why there are not many independent directors sitting on risk committees, same as with labor and union/ESG/CSR.

Figure 16: Qualifications of independent directors

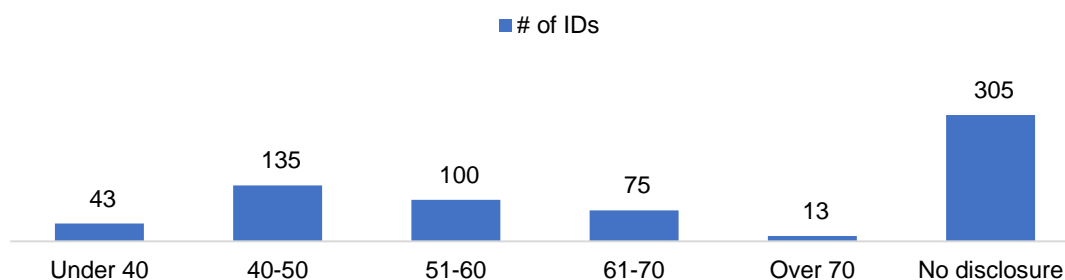


4.9 Age Diversity of Independent Directors

1 The majority of independent directors are in 40-60 age range: In our sample of 544 listed companies with 671 independent directors, 305 independent directors (45.5%) do not have their ages disclosed. Among those who had their ages disclosed, only 3.6% are over 70 years old, followed by 11.7% of the under-40 age group. The majority of independent directors are under 61 (76%), with the 40-50 age range accounting for the highest proportion.

Survey Findings And Discussions

Figure 17: Independent director age breakdown



4.10 Compensation for Independent Directors

1 Low compensation suggests a non-critical role of independent directors at companies: In our sample of 544 listed companies with 671 independent directors, 373 independent directors (55.6%) did not have their remuneration disclosed. The pay for independent directors does not seem to be commensurate with their qualifications and responsibilities. Among those who had their remuneration disclosed, 188 independent directors (63.1%) have annual compensation under VND180 million (US\$7,300), followed by 60 independent directors (20.1%) with VND180-360 million (US\$7,300-14,600).

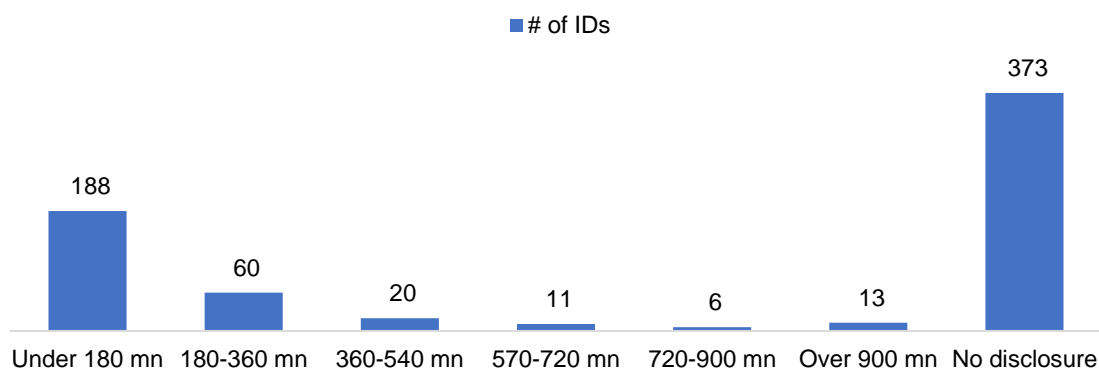
There is also a significant gap in annual remuneration among independent directors in Vietnam's listed companies, with the highest figure of US\$41,600 and the lowest US\$1,400. Across all sectors, the average remuneration for independent directors in Vietnam's listed companies is US\$550 a month or US\$6,600 a year, much lower than annual compensation for non-executive directors in other markets such as India (US\$11,000, plus US\$31,000 in incentives), China (US\$34,000), Malaysia (US\$43,000), Hong Kong (US\$64,000), and Singapore (US\$75,000).³⁷

Low compensation, in general, indicates that independent directors do not play essential roles in many companies. Instead, their presence might only be intended to meet regulatory requirements.

³⁷ Board compensation in Asia: Current practices and next steps for traded companies, Trey David (2020).

Survey Findings And Discussions

Figure 18: Annual compensation of independent directors (in VND)



4.11

Summary of Key Findings

Our survey findings suggest that current compliance with independent directors regulations is mainly to meet regulatory demand. Although public companies are making progress in improving governance practices and awareness about independent directors has been enhanced, independent directors regulatory compliance is still somewhat superficial.

- Many companies still do not fully comply, either by having no independent director on the board or having a lower number of independent directors than that required by law. The list includes large companies in VN30, such as Hoa Phat Group Joint Stock Company (HPG) and Petro Vietnam Power Corporation (POW).
- Many companies do not fully disclose information about independent directors regarding age, qualifications, and remuneration.
- Low remuneration across many companies indicates that independent directors do not play a substantive role and are mainly there to meet regulatory demand.

Survey Findings And Discussions

Key recommendations are:

- 1** Further promote and strengthen the importance of corporate governance in general and the business case of having independent directors in particular.
- 2** Further enforce independent directors regulations implementation. In 2022, the SSC started to enforce independent directors regulations. Both HPG and POW were fined in the amount of VND125 million (US\$5,000). Even though more companies are complying purely to avoid fines and negative publicity, it is still a step in nudging them in the right direction.
- 3** Improve the legal framework for independent directors to exercise and maximize value from their expected duties and responsibilities.
- 4** Continuously enhance the quality of and code of conduct for independent directors so that more companies will see the benefits and follow the best practices. This includes setting and improving standards for independent directors regarding their expertise, professionalism, and performance evaluation.



5.1 Regulatory Framework for Independent Directors

Given the issues as analyzed in Section 3.2 regarding the current regulatory framework for independent directors, it is necessary to develop more explicit and efficient regulations to improve the operation of independent directors. This can contribute to improving corporate governance as well as enhancing business performance.

5.1.1. Criteria for “Independence” of Independent Directors

Due to the lack of clarity in the current requirements for independent directors, the independence of independent directors may not be adequately ensured. In order to increase the independence of independent directors, the current requirements should be updated/ revised, or they should be supported with more detailed guidance. An “exclusion method” being applied to define an independent director under the current laws can remain. However, it should be updated with more clarity and details on the kind of person who is restricted from holding the position of an independent director.

In particular, the requirement regarding family members of independent directors under Article 155.2(c) of the Enterprise Law 2020 should be expanded to mandate that family members of an independent director are not managers of the parent company. In addition, such a requirement should also be applied to the spouse of the family members of the independent director (similar to the respective regulation under the Credit Institutions Law 2010). The requirement regarding family members of independent directors should be amended as follows:

Conclusions and Policy Recommendations

“

Not being a person whose spouse, (natural or adoptive) parent, (natural or adopted) child, or sibling, or the spouse of such persons is a major shareholder of the company, or being a manager of the company or its subsidiary company or its parent company.”

Furthermore, taking reference from the Credit Institutions Law 2010, the requirement regarding share ownership of independent directors under Article 155.2(d) of the Enterprise Law 2020 should be supplemented to capture the case that independent directors shall not own shares (regardless of the type of shares) accounting for one percent (1%) of the charter capital in addition to owning voting shares accounting for at least one percent (1%) of the total voting shares in the company. It should also restrict a person who, together with his/her related persons, owns shares accounting for five percent (5%) of the charter capital or voting shares of the company. This requirement regarding share ownership of independent directors should be amended as follows:

“

Not being a person directly or indirectly owning shares accounting for at least one percent (1%) of the charter capital or voting shares accounting for at least one percent (1%) of the total voting shares; or together with his/her related persons owning shares accounting for at least five percent (5%) of the charter capital or voting shares accounting at least five percent (5%) of the total voting shares of the company.”

There should also be regulation to define the terms “*major shareholder*” and “*indirectly owning*” in the Enterprise Law 2020. Reference can be made to the definitions of “major shareholder” and “*indirectly owning*,” which have been respectively provided under the Securities Law 2019 and the Credit Institutions Law 2010, as follows:

- “*major shareholder*” is a shareholder owning 5% of voting shares of the company; and
- “*indirectly owning*” is a form of owning through related persons³⁸ or investment trusts.

³⁸

“*Related persons*” are defined under Article 4.23 of the Enterprise Law 2020 (similar to the definition provided under Article 4.28 of the Credit Institutions Law 2010).

Conclusions and Policy Recommendations

The definition of “Independent Directors” as provided by IFC in the IFC Corporate Governance Methodology should also be taken into account:

“Independent Director” means a director who has no direct or indirect material relationship with the Company other than membership on the board and who:

- (a) is not, and has not been in the past five (5) years, employed by the Company or its Affiliates;
- (b) does not have, and has not had in the past five (5) years, a business relationship with the Company or its Affiliates (either directly or as a partner, shareholder (other than to the extent to which shares are held by such Director pursuant to a requirement of Applicable Law in the Country relating to directors generally), and is not a director, officer or senior employee of a Person that has or had such a relationship);
- (c) is not affiliated with any non-profit organization that receives significant funding from the Company or its Affiliates;
- (d) does not receive and has not received in the past five (5) years, any additional remuneration from the Company or its Affiliates other than his or her director’s fee and such director’s fee does not constitute a significant portion of his or her annual income;
- (e) does not participate in any share option [scheme]/[plan] or pension [scheme]/[plan] of the Company or any of its Affiliates;
- (f) is not employed as an executive officer of another company where any of the Company’s executives serve on that company’s board of directors;
- (g) is not, nor has been at any time during the past five (5) years, affiliated with or employed by a present or former auditor of the Company or any of its Affiliates;
- (h) does not hold a material interest in the Company or its Affiliates (either directly or as a partner, shareholder, director, officer or senior employee of a Person that holds such an interest);
- (i) is not a member of the immediate family (and is not the executor, administrator or personal representative of any such Person who is deceased or legally incompetent) of any individual who would not meet any of the tests set out in (a) to (h) (were he or she a director of the Company);
- (j) is identified in the annual report of the Company distributed to the shareholders of the Company as an independent director; and
- (k) has not served on the Board for more than [ten (10)] years.

For purposes of this definition, “material interest” shall mean a direct or indirect ownership of voting shares representing at least [two percent (2%)] of the outstanding voting power or equity of the Company or any of its Affiliates.

Source: IFC

Conclusions and Policy Recommendations

5.1.2. Powers and Roles of Independent Directors

Compliance with all legal requirements for independence is a must for independent directors; however, it is not enough for them to perform their roles and function. To fulfill their roles effectively, independent directors must overcome challenges such as the information asymmetries between insiders (executive directors) and outsiders (independent directors) and the prevalence of controlling shareholders on the BOD. Independent directors need to be given specific rights and powers to overcome these challenges.

Currently, the rights and powers of independent directors are mainly subject to the company charter rather than being statutorily stated. To a certain extent, the controlling shareholders (who collectively hold a large number of voting shares) may somehow affect the powers and rights of independent directors.³⁹ To avoid situations where the controlling shareholders limit the power of independent directors through the company charter, it is necessary for the laws to specify the statutory rights and powers of independent directors.

One of the most crucial rights for independent directors to perform their roles, including monitoring and advisory roles, is the right to access information. Information right is considered an effective tool for independent directors to overcome the challenge of information asymmetries. The Enterprise Law 2020 generally regulates the directors' right to request access to information. However, given that independent directors do not work full-time in a company, they may not be kept updated on all issues happening in the company. Therefore, independent directors' right to access information should be more privileged than other directors on the BOD. For example, independent directors should be periodically provided with specific information and promptly informed about critical issues when they occur without needing prior requests from independent directors. This will help ensure that more information is made available to independent directors and therefore contribute to improving their effectiveness in performing their monitoring and advisory roles.

Another recommendation is to encourage independent directors' engagement with shareholders. When the chairperson of the BOD is not an independent director, the BOD should designate a lead independent director or senior independent director accountable to the shareholders. The appointment of a lead independent director would provide an alternative channel for shareholders to communicate concerns when normal channels to the chairperson of the BOD or the (general) director of the company fail. The role of a lead independent director may include chairing BOD meetings in the absence of the chairperson and working with the chairperson in leading the BOD. The presence of a lead independent director provides an additional mechanism for all independent or non-executive directors to hold confidential discussions on any concerns and facilitate the resolution of conflicts of interest.

³⁹ This is because the content of the company charter is dependent to the decision of the GMS of the company, which requires affirmative votes accounting at least 65% of the total voting shares to be passed.

Conclusions and Policy Recommendations

5.1.3. Supplementation of Regulations on Sanctions

To enhance the enforcement of regulations on independent directors, the sanctions for not having the minimum independent directors applicable for public companies and credit institutions should apply to other types of companies, including private joint stock companies which choose to operate under a one-tier board model.

5.1.4. Establishment of Regulations on the Specialized Committees

To enhance the specific roles of independent directors on the specialized committees of the BOD, it is necessary to have a more explicit legal framework for the organization and operation of such committees rather than allowing the company to decide freely.

In particular, similar to the audit committee, there should be the issuance of templates for the operation rules of other committees/subcommittees. It is recommended that the minimum number of members on the audit committee be increased to three (3) like other committees. In addition, like the audit committee, an independent director should hold the position of chairperson of other committees / head of other subcommittees.



5.2 Disclosure and Reporting Activities related to Independent Directors

5.2.1. Disclosure

The current law stipulates that public companies are subject to a set of disclosure requirements provided for in Circular 96, including periodic and ad hoc disclosures, as well as certain disclosures upon request from the SSC or the relevant stock exchange. For periodic disclosures, Circular 96 requires public companies to disclose, in their annual report and corporate governance report, information on members and structure of the BOD, particularly on independent directors, activities of independent directors, BOD committees and the role of independent directors in such committees, and directors' remuneration and allowance (including independent directors). For ad hoc disclosures, Circular 96 requires public companies to disclose information related to the appointment and dismissal of insiders⁴⁰ (including independent directors).

The current laws have sufficient disclosure requirements for independent directors. However, to promote greater transparency in the nomination and appointment of independent directors, it should be regulated by the current laws that public companies must also disclose the following information related to their nomination and appointment process:

⁴⁰ In Vietnamese “*người nội bộ*” as defined under Article 4.45 of the Securities Law 2019.

Conclusions and Policy Recommendations

- the process used for identifying and nominating potential individuals and why the individual should be elected, and why the individual is considered to be independent;
- the perspectives, skills, and experience that the individual can bring to the BOD; and
- how the individual contributes to the diversity of the BOD.

5.2.2. Reporting

The current law regulates that independent directors in public companies are responsible for preparing a report on the assessment of the BOD's activities. The BOD must also report on the performance of independent directors in the BOD's operation report submitted to the GMS's annual meeting. However, there is a lack of detailed regulation on specific criteria and mandatory contents for either the report of independent directors on the operation of the BOD or the BOD report on the performance of the independent directors.

This is different from the regulation on the reporting duty of independent directors in the audit committee. Article 284.1 of Decree 155 specifies mandatory contents for the report of independent directors in the audit committee, such as remuneration, operating costs, and other benefits of the audit committee; results of the supervision of financial statements, operational status, and financial status of the company; results of the assessment of the risk management and internal control system of the company; results of supervision of the BOD, the (general) director, and other executives.

The lack of adequate regulation has resulted in widespread practices, whereas the assessment and reporting on the performance of independent directors and the BOD are merely perfunctory. To strengthen the monitoring role of independent directors, there should be a detailed regulation on specific criteria and mandatory contents for the report of the independent directors and the BOD report, similar to the regulation on the reporting duty of independent directors in the audit committee under Article 284.1 of Decree 155.

Furthermore, there should be regulation on ad hoc reporting to promptly assess the performance and operation of independent directors and the entire BOD, timely measurements for remediation, and plans for optimizing the performance of independent directors and the BOD as a whole.

5.3 Nomination and Appointment of Independent Directors

The effectiveness of independent directors is highly dependent on the selection, quality, and performance of independent directors. When controlling shareholders have the power to influence the nomination and appointment of independent directors, true independence becomes elusive.

Conclusions and Policy Recommendations

- The current law recognizes cumulative voting for the election of board directors in Vietnam. In practice, controlling shareholders typically control the appointment of independent directors while sidestepping the voice of minority shareholders. In the long run, two-tier voting should be adopted for the election of independent directors (not just after nine years, like in Singapore). For example, in Israel, external directors have to be approved by two votes – a vote of all shareholders and a vote of minority shareholders only.
- Nomination committees should be responsible for identifying and recommending independent directors, after consideration of their relevant skills and experience, among other factors. There should be formal and transparent procedures for the appointment, re-election, and removal of independent directors for listed companies. Standard terms of reference (TOR) or service agreements should be developed and agreed upon with the company following the appointment of independent directors.
- The source of potential independent directors candidates should be enlarged and promoted via referral or introduction by professional associations (like VNIDA or VIOD) or professional recruitment firms. In most countries, professional recruitment firms play an increasingly more significant role in hiring independent directors.

5.4 Capacity Building, Training and Qualifications for Independent Directors

Independent directors should be equipped with specialized knowledge such as corporate governance, finance, audit, law & compliance, ESG and CSR, and other essential skills to effectively perform their role and improve their company performance. For such purposes, compulsory general standards should be developed to determine essential qualities for independent directors. There should be mandatory courses and training programs for independent directors to help them achieve and improve their skills and qualifications.

Independent directors shall be awarded the qualifications or certifications upon completion of the course and passing the relevant exams. In the long run, the legislation should be amended to provide mandatory director training with applicable competencies for independent directors, and all independent directors should undergo comprehensive training and continuing professional development (CPD) similar to lawyers and certified public accountants.

Under the current laws, no formal qualification or training is required to serve on a company board in Vietnam, except for specific requirements for banking and finance-related entities. Directors must have knowledge and experience to contribute to the board's work, with a combination of skills and experience to allow it to cover all issues relevant to the company and its industry. The CG Code provides for Principle 2.1 and Principle 2.4 with recommended practices for the qualifications and training of board directors:

Conclusions and Policy Recommendations

Principle 2.1: Collectively, the Board should possess a diversified and broad range of views, expertise, skills, and competencies sufficient to provide effective stewardship and oversight of the company.

Principle 2.4: The Company should provide in its Board Charter and Corporate Governance Regulations a policy on the continuing development of directors, including an orientation program for first-time directors and relevant annual continuing training for all directors.

Currently, in Vietnam, training courses and CPD programs for board directors are still limited, with a few training institutes and professional entities involved. VIOD, a social enterprise established in 2018, provides training courses and programs on corporate governance and directorship. To build and promote a strong pool of independent directors, more professional bodies and private training institutions should be involved in capacity building and training for board directors in general and independent directors in particular. Newly established professional associations like VNIDA and IIA Vietnam can provide more choices for training and CPD for independent directors in the country.



5.5 Evaluation of the Board and Independent Directors

The current regulations on the evaluation of BOD performance are limited. To enhance the quality of board evaluation, best practices for board evaluation should be promoted. Specifically, the BOD's performance should be reviewed at two levels, individually for each director, for each BOD committee, and collectively for the entire BOD. Periodically, a board evaluation should be conducted or facilitated by an external consultancy or a professional body. That way, independent directors can work in parallel with the external consultancy and learn about the evaluation process. Additionally, in the case that a chairperson is not an independent director, a senior independent director should be responsible for the performance evaluation of the chairperson, after having canvassed the views of the other directors.

Conclusions and Policy Recommendations

5.6 Independent Directors' Personal Liability and D&O Liability Insurance

According to the Enterprise Law 2020, directors who breach their fiduciary duties shall have personal liability or joint liability (with the whole BOD) to (i) pay compensation for lost benefits/interests, (ii) return benefits received, and (iii) pay compensation for all losses to the company and third parties. Additionally, per Article 166.1 of the Enterprise Law 2020, a shareholder or group of shareholders owning at least 1% of the ordinary shares of a company has the right to initiate legal proceedings against directors to claim benefits or compensation for damages arising from the following actions of the directors:



Commit fraud in its fiduciary duties as regulated under Article 165.1 of the Enterprise Law 2020;



Fail to (completely and promptly) implement their assigned rights and obligations or implement such assigned rights and obligations contrary to the provisions of law, the company charter, or resolutions and decisions of the BOD; or



Abuse their position and power and use information, know-how, business opportunities, and other assets of the company for their own personal benefit or for the benefit of other organizations or individuals.

The risk that independent directors breach or fail to discharge their fiduciary duties or obligations is much higher than executive directors, mainly due to the lack of regulation providing sufficient power to independent directors to perform their roles and discharge their obligations.



Conclusions and Policy Recommendations

Additionally, independent directors do not have a preferred position like other executive directors to have comprehensive and in-depth information about the company, which may negatively affect their decision. Given that the number of independent directors only accounts for one-fifth to one-third of the BOD, the voice of independent directors is comparatively weaker, and they do not have a significant influence on most decisions of the company. Thus, it is possible that independent directors shall be jointly (with the BOD) liable for the damages arising from the decision of the BOD, which is not entirely in their control.

To protect independent directors from personal liabilities arising from (unintentional and/or those beyond their control) breaches, it is essential to have a regulation requiring public companies (or at least listed companies) to purchase directors' and officers' liability insurance (D&O Liability Insurance) for their independent directors.

5.7 Promotion of Independent Directors as a Career

To promote the role and effectiveness of independent directors, professional associations and institutions should be encouraged to create and maintain a platform or network to connect independent directors, set standards/criteria for independent directors, support independent directors' voices, enhance expertise, and share their experiences.

This part is one of VNIDA's missions and VNIDA is endeavoring to complete it, aiming to promote independent directors as a career, thereby enhancing the effectiveness of the independent directors in Vietnam.



APPENDIX 1 – SURVEY QUESTIONNAIRE

I. COMPANY SIZE
1. Based on market capitalization (VND bn) as at the latest closing date a) Below VND100 bn b) Above VND100 bn to VND1,000 bn c) Above VND1,000 bn to VND10,000 bn d) Above VND10,000 bn
2. Based on profit after tax (VND bn) as at the latest closing date a) Below VND1 bn b) Above VND1 bn to VND50 bn c) Above VND50 bn to VND500 bn d) Above VND500 bn
II. INDUSTRY SECTOR OF COMPANY
3.1 Type of Company a) Listed company b) Non-listed public company c) Fund management company d) Securities company e) Credit institution f) Other (please specify)
3.2 The company operates in a) Energy b) Materials c) Industrials d) Consumer Discretionary e) Consumer Staples f) Health Care g) Financials h) Information Technology i) Telecommunication Services j) Utilities k) Other sector: (Please specify)

Appendices

III. GOVERNANCE STRUCTURE
4. The Company has a) Board of Directors, Supervisory Board and CEO b) Board of Directors, Audit Committee (under the Board) and CEO c) Board of Directors (with Audit Committee), Supervisory Board and CEO
IV. BOARD COMPOSITION
5. Board size (Please specify the number of directors) a) 3 – 5 b) 6 – 8 c) 9 – 11
6. Is board chair a) Independent Chair b) Non-executive Chair c) Executive Chair
7. Board committees (select all, if relevant) a) Strategy committee b) Risk committee c) Nomination and Remuneration d) Audit committee e) Investors relation committee f) Sustainability/ESG committee g) Other (please specify)
8. Composition of the Audit Committee (including the board directors) a) 0 member b) 1-2 members c) 3 members d) More than 3 members
9. Skills and expertise of the Audit Committee members (select all, if relevant) a) Auditing b) Risk management c) IT auditing d) Compliance (legal, taxation, etc.) e) Industry and ESG (Environmental, Social and Governance) f) Other (please specify)

Appendices

10. Number of the Audit Committee meetings per year ? a) 0-3 b) 4-6 c) 7-9 d) 10-11
V. INDEPENDENT DIRECTORS
11. Number of independent directors (please specify the number)
12. Number of independent directors being women a) 0 b) 1 c) 2 d) 3 e) More than 3
13. Number of Vietnamese independent directors: (please specify the number)
14. Age diversity of independent directors a) Less than 40 years of age b) From 41 to 50 years of age c) From 51 to 60 years of age d) From 61 to 70 years of age e) Above 71 years of age
15. Attendance of independent directors at board meetings (as % number of required meetings) a) Less than 70% b) 71%-80% c) 81% - 90% d) 91%- 100%
16. Participation of independent directors in board committees (please specify the number of independent directors for each committee) a) Strategy committee: b) Risk committee: c) Nomination and remuneration: d) Audit committee: e) Investors relation committee: f) Sustainability/ESG committee: g) Other (please specify):

Appendices

<p>17. Skill and expertise of independent directors (multiple choices, if relevant)</p> <ul style="list-style-type: none">a) Financeb) Industry Knowledge/Experiencec) Corporate Governanced) Strategye) Management-General, operational, Sales and marketingf) Riskg) Legal, compliance and regulationsh) Labor & Trade union/Environmental/Social/ Sustainable development/ESG/CSRi) Other (please specify)
<p>18. (Optional) Remuneration for independent directors excluding the chair (each per year)</p> <ul style="list-style-type: none">a) Under VND180 milb) From VND180 mil to under VND360 milc) From VND360 mil to under VND540 mild) From VND540 mil to under VND720 mile) From VND720 mil to under VND900 milf) Above VND900 mil
<p>19. (Optional) D&O liability insurance for independent directors</p> <ul style="list-style-type: none">a) Yesb) Noc) Considering
<p>20. (Optional) Source for nomination of independent directors</p> <ul style="list-style-type: none">a) Personal contact of board membersb) Nomination by the parent company or controlling shareholderc) Executive search firmsd) Other (Please specify)
<p>21. (Optional) Is there a written labor agreement between the independent directors and the company?</p> <ul style="list-style-type: none">a) Yesb) Noc) Other (please specify)
<p>22. (Optional) Number of independent directors that the company wishes to recruit for the next five years</p> <ul style="list-style-type: none">a) 2023:b) 2024:c) 2025:d) 2026:e) 2027:

Appendices

23. (Optional) Skill and expertise of independent directors that the company prefers a) Finance b) Industry Knowledge/Experience c) Corporate Governance d) Strategy e) Management-General, operational, Sales and marketing f) Risk g) Legal, compliance and regulations h) Labor & Trade union/Environmental/Social/Sustainability/ESG/CSR i) Other (please specify)
24. (Optional) Number of hours of training that independent directors have attended for updating their specialized knowledge (CPE / CPD hours) per year a) Under 16 hours b) From 16 hours to under 24 hours c) From 24 hours to under 32 hours d) Above 32 hours
VI. THE COMPANY AND THE RESPONDENT INFORMATION
25. Company's name:
26. The Respondent's Information
Full name
Position a) Person in charge of corporate governance b) Corporate Secretary / Board Secretary c) Board director d) Other (please specify)
Tel
Email

Appendices

APPENDIX 2 – SURVEY SAMPLE POPULATION BY SECTOR

NO.	ICB-LEVEL 2	# OF COMPANIES	MARKET CAPITALIZATION			NET REVENUE			NET EARNINGS		
			10/31/2022	% TOTAL	AVG PER COMPANY	2021	% TOTAL	AVG PER COMPANY	2021	% TOTAL	AVG PER COMPANY
			USD BN	%	USD BN	USD BN	%	USD BN	USD BN	%	USD BN
1	Banks	19	51.7	31.0%	2.7	17.9	16.0%	0.9	5.7	39.4%	0.30
2	Real Estate	74	37.3	22.4%	0.5	13.8	12.3%	0.2	2.3	15.8%	0.03
3	Food & Beverage	43	20.0	12.0%	0.5	12.5	11.2%	0.3	1.2	8.5%	0.03
4	Utilities	44	13.4	8.0%	0.3	9.0	8.1%	0.2	0.8	5.7%	0.02
5	Chemicals	35	5.8	3.5%	0.2	5.0	4.5%	0.1	0.6	4.3%	0.02
6	Basic Resources	37	5.6	3.4%	0.2	13.5	12.1%	0.4	1.9	12.7%	0.05
7	Construction & Materials	91	4.8	2.9%	0.1	6.4	5.7%	0.1	0.3	2.3%	0.00
8	Industrial Goods & Services	66	4.5	2.7%	0.1	5.1	4.6%	0.1	0.5	3.1%	0.01
9	Retail	13	4.1	2.5%	0.3	8.2	7.4%	0.6	0.3	1.8%	0.02
10	Financial Services	26	3.9	2.3%	0.1	1.8	1.6%	0.1	0.6	4.5%	0.02
11	Technology	12	3.8	2.3%	0.3	2.0	1.8%	0.2	0.2	1.7%	0.02
12	Travel & Leisure	12	3.8	2.3%	0.3	1.8	1.6%	0.1	(0.5)	-3.6%	(0.04)
13	Personal & Household Goods	25	2.1	1.3%	0.1	2.6	2.3%	0.1	0.2	1.1%	0.01
14	Insurance	6	2.0	1.2%	0.3	2.0	1.8%	0.3	0.1	0.9%	0.02
15	Oil & Gas	4	1.9	1.1%	0.5	7.1	6.4%	1.8	0.1	0.9%	0.03
16	Health Care	17	1.2	0.7%	0.1	1.1	1.0%	0.1	0.1	0.6%	0.01
17	Automobiles & Parts	10	0.5	0.3%	0.1	1.6	1.4%	0.2	0.0	0.3%	0.00
18	Media	10	0.1	0.0%	0.0	0.1	0.1%	0.0	0.0	0.0%	0.00
Subtotal		544	166.6	100.0%	0.3	111.7	100.0%	0.2	14.6	100.0%	0.03
% Total (HOSE+HNX)			70.2%	96.7%		92.1%			96.0%		

Appendices

APPENDIX 3 – LIST OF REFERENCED LEGAL DOCUMENTS

1. Law on Company No. 47-LCT/HDNN8 dated 21 December 1990 (the “**Company Law 1990**”);
2. Law on Private Enterprises No. 48-LCT/HDNN8 dated 21 December 1990 (the “**Private Enterprise Law 1990**”);
3. Law on Enterprises No. 13/1999/QH10 dated 12 June 1999 (the “**Enterprise Law 1999**”);
4. Law on Enterprises No. 60/2005/QH11 dated 29 November 2005 (the “**Enterprise Law 2005**”);
5. Law on Enterprises No. 68/2014/QH13 dated 26 November 2014 (the “**Enterprise Law 2014**”);
6. Law on Enterprises No. 59/2020/QH14 dated 17 June 2020 (the “**Enterprise Law 2020**”);
7. Law on Securities No. 70/2006/QH11 dated 29 June 2006, as amended by Law No. 62/2010/QH12 dated 24 November 2010 (the “**Securities Law 2006**”).
8. Law on Securities No. 54/2019/QH14 dated 26 November 2019 (the “**Securities Law 2019**”);
9. Law on Credit Institutions No. 47/2010/QH12 dated 16 June 2010, as amended by Law No. 17/2017/QH14 dated 20 November 2017 (the “**Credit Institutions Law 2010**”);
10. Law on Insurance Business No. 08/2022/QH15 dated 16 June 2022, which shall come into effect on 1 January 2023 (the “**Insurance Business Law 2022**”);
11. Decree No. 71/2017/ND-CP dated 6 June 2017 providing guidelines on the corporate governance applicable to public companies (“**Decree 71**”);
12. Decree No. 05/2019/ND-CP dated 21 January 2019 on internal audit (IA) (“**Decree 05**”);
13. Decree No. 88/2019/ND-CP dated 14 November 2019 providing for penalties for administrative violations in the monetary and banking sector, as amended by Decree No. 143/2021/ND-CP dated 31 December 2021 (“**Decree 88**”);
14. Decree No. 155/2020/ND-CP dated 31 December 2020 guiding the implementation of the Securities Law 2019 (“**Decree 155**”);
15. Decree No. 156/2020/ND-CP dated 31 December 2020 providing penalties for administrative violations against regulations on securities and securities market, as amended by Decree No.128/2021/ND-CP dated 30 December 2021 (“**Decree 156**”);
16. Circular No. 96/2020/TT-BTC of the Ministry of Finance dated 16 November 2020 providing guidelines on disclosure of information on securities market (“**Circular 96**”);
17. Circular No. 99/2020/TT-BTC of the Ministry of Finance dated 16 November 2020 providing guidance on the operation of securities investment fund management companies (“**Circular 99**”);
18. Circular No. 116/2020/TT-BTC of the Ministry of Finance dated 31 December 2020 guiding a number of articles on corporate governance under Decree 155 (“**Circular 116**”);
19. Circular No. 121/2012/TT-BTC of the Ministry of Finance dated 26 July 2012 stipulating corporate governance applicable to public companies, which has been repealed on the effective date of Decree 71 (1 August 2017) (“**Circular 121**”); and
20. Decision No. 12/2007/QD-BTC of the Ministry of Finance dated 13 March 2007 promulgating the corporate governance regulations applicable to companies listed on the Stock Exchange/ Securities Trading Center, which has ceased to be effective (“**Decision 12**”).

Disclaimer

This report was prepared by FiinGroup Vietnam Joint Stock Company (FiinGroup) and the Vietnam Independent Directors Association (VNIDA) for reference only. This report does not recommend buying, selling, or holding any stock or any particular transaction.

The information contained in this report, including data, charts, tables, analysis, and judgments, is used for reference only at your own risk. FiinGroup and VNIDA will not be responsible for any loss or consequences that may result from the use of the information in this report.

This report is subject to change without prior notice. The content and opinion in this report may be changed or outdated depending on the actual situation and the additional information we have. FiinGroup and VNIDA will not be responsible for updating, modifying, and adding content according to those changes.

All information in this report is compiled and processed based on public information and other sources obtained by FiinGroup and VNIDA. We have not carried out procedures to perform independent verification of the accuracy, completeness, or suitability for use, and we make no commitments about the accuracy of such information.

FiinGroup and VNIDA have copyright ownership of this report and all content in the report. This report is protected under the provisions of the law on copyright in Vietnam and other countries under the treaties between Vietnam and other countries.

None of the content, including data, charts, tables, models, and judgments contained herein, may be reproduced, duplicated, modified, commercialized, or published in whole or in part in any way without the consent of FiinGroup and VNIDA.