

New guideline of Vietnam Government on the corporate governance applicable to public companies

June 2017



Contents

On June 06th, 2017, Vietnam Government issued Decree No. 71/2017 / ND-CP ("Decree 71") regarding the corporate governance applicable to public companies effective from August 01st, 2017. Circular No. 121/2012 / TT-BTC dated July 26th, 2012 issued by the Ministry of Finance stipulated corporate governance applicable to public companies, will be repealed on the effective date of Decree 71.

Grant Thornton Vietnam summarizes some important points for your reference as follows:

1. Internal policy on corporate governance
2. Rights and obligations of shareholders
3. Board of Directors
4. Person in charge of corporate governance
5. Inspection committee and inspector
6. Prevention of interest conflict
7. Disclosure of income information of Director (General Director)

Please note that Clause 2, Article 12 of Decree 71 stipulates that the Chairman of Board of Directors must not concurrently hold the position of Director (General Director) of the same public company will be effective after 3 years; Clause 3, Article 12 of Decree 71 states that Members of the Board of Directors of a public company must not concurrently be a member of the Board of Directors of more than 5 other companies will take effect after 02 years from the effective date of this Decree.

1. Internal policy on corporate governance

- The Board of Directors (“BOD”) of the public company formulates the internal policy on corporate governance and gets the approval of the General Assembly of Shareholders.
- According to Decree, the Ministry of Finance will guide the template of internal policy on corporate governance for public companies to refer when formulating their policy.



2. Rights and obligations of shareholders

- The right of full access to periodical and extraordinary information announced by the company as regulated.
- In case the decision of the General Assembly of Shareholders breaches the law or the company charter, or the decision of BOD is passed contrary to provisions of law or the company charter causing loss to the company, the shareholders have the right to request cancellation or suspension of such decision in accordance with the provisions of the Law on Enterprise.
- Major shareholders are obliged to disclose information, must not exploit their advantage, adversely affecting on the rights and interests of the company and of other shareholders as prescribed by law and the charter of the company.

3. Board of Directors

- The number of members of BOD of a public company shall be from three (03) to eleven (11). The structure of BOD must ensure a balance as between members having knowledge about and experience in law, finance, and business line of the company and consider gender factors.
- Members of BOD need not be the company's shareholders.
- The Chairman of BOD must not concurrently be Director (General Director) of the same public company.
- Member of BOD of a public company must not concurrently be a member of BOD of more than five (05) other companies.
- At least 1/3 of the total number of BOD members must be non-executive members.
- Independent members of BOD:
 - Unlisted public company operates under the model prescribed at Point b, Clause 1, Article 134 of the Law on Enterprises, is required to ensure at least 1/5 of BOD members is independent members. In case the members of BOD of public company is less than five (05), the company must ensure that at least one member of BOD is independent member.
 - BOD of listed company must ensure 1/3 of BOD members is independent member.
- BOD members could be subject to liability insurance provided by the company after the approval of General Assembly of Shareholders. This insurance does not cover the liabilities of any members of BOD for a breach of law or the company charter.



1/5

of BOD members is independent members (at least)

4. Person in charge of corporate governance

- BOD of a listed company must appoint at least one person to perform the duties of the person in charge of corporate governance.
- Person in charge of corporate governance may concurrently hold the position of Company Secretary and be recruited by the Chairman of BOD to assist BOD and the Chairman of BOD to fulfill the obligations as regulated under the law and the company charter.
- Person in charge of corporate governance must be a person with knowledge of law and must not concurrently works for an independent audit firm which audits the company's financial statements.

5. Inspection committee and inspector

- Inspectors must satisfy the criteria and condition stipulated in the Law on enterprises, the company charter and do not subject to the following cases:
 - Work for the [accounting/ finance departments of and finance](#) of the company;
 - Being a member or employee of an independent auditing firm who audited the financial statements of the company in previous three consecutive years.
- Inspectors of a listed company or of a public company in which the States holds about 50% charter capital must be auditors or accountants.
- The head of inspection committee must be a professional accountant or auditor and must work full time at the company.
- Inspection committee is required to conduct meeting at least twice a year and has right to request members of BOD, Director (General Director) and representative of independent audit firm to attend the meeting and reply to issues which concern the inspectors.



6. Prevention of interest conflict

- A member of BOD is not allowed to vote for the transaction which benefits such member or his/ her related persons in accordance with the Law on enterprises and the company charter.
- Public company must apply necessary methods to prevent related persons from interfering in the company's activities and causing loss to the interests of the company by controlling transaction, trading, and prices of goods and services of the company.
- Public company must apply necessary measures to prevent shareholders and related persons from conducting any transaction causing a loss of capital, of assets, or of other resources of the company.
- Public company is not allowed to provide loans or guarantees to individual shareholders and their related persons being individuals, except for some cases stipulated on Decree 71.

7. Disclosure of income information of Director (General Director)

- Salary of Director (General Director) and other management members are required to be separately stated on annual financial statements of the company and reported to the General Assembly of Shareholders at the annual meeting.

Nearly 25 years of operation in Vietnam, Grant Thornton Vietnam provides professional consultant services, corporate governance compliance review. Our experts are willing to discuss details with you regarding this issue.

Contacts

This news letter is for reference purposes only. Grant Thornton Vietnam holds no responsibility for mistakes therein, as well as damages caused by the use of information from this newsletter without official advisory opinions from Grant Thornton Vietnam before practice.

Should you need to us information from this newsletter or support from Grant Thornton Vietnam, please contact our professional consultants

Head Office in Hanoi

18th Floor, Hoa Binh International Office Building
106 Hoang Quoc Viet Street, Cau Giay District, Ha Noi, Vietnam
P +84 24 3850 1686
F +84 24 3850 1688



Hoang Khoi

Tax Partner, Hanoi Office
National Head of Tax
D +84 24 3850 1618
E Khoi.Hoang@vn.gt.com



Nguyen Dinh Du

Tax Partner, Hanoi Office
D +84 24 3850 1620
E Du.Nguyen@vn.gt.com



Nguyen Hung Du

Tax Partner, Ho Chi Minh City Office
D +84 28 3910 9231
E HungDu.Nguyen@vn.gt.com



Kaoru Okata

Director – Japanese Desk, Hanoi Office
D +84 24 3850 1680
E Kaoru.Okata@vn.gt.com



Pham Ngoc Long

Tax Director, Hanoi Office
D +84 24 3850 1684
E Long.Pham@vn.gt.com



Valerie – Teo Liang Tuan

Tax Director, Ho Chi Minh City Office
D +84 28 3910 9235
E Valerie.Teo@vn.gt.com



Tran Nguyen Mong Van

Tax Director, Ho Chi Minh City Office
D +84 28 3910 9233
E MongVan.Tran@vn.gt.com



Tran Hong My

Tax Director, Ho Chi Minh City Office
D +84 28 3910 9238
E HMy.Tran@vn.gt.com



Tomohiro Norioka

Director – Japanese Desk, Ho Chi Minh City Office
D +84 28 3910 9205
E Tomohiro.Norioka@vn.gt.com

To view more information
Please visit our website

www.grantthornton.com.vn

Ho Chi Minh City Office

14th Floor, Pearl Plaza
561A Dien Bien Phu Street, Binh Thanh District, Ho Chi Minh, Vietnam
P + 84 28 3910 9100
F + 84 28 3914 9101

