



International Finance Corporation



Ministry of Finance



Organisation for Economic Cooperation
& Development

International Corporate Governance Meeting:

Why Corporate Governance Matters for Vietnam

OECD/ World Bank Asia Roundtable on Corporate Governance

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Global Corporate Governance Forum

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Morning Session: Context: Corporate Governance in Vietnamese Banks
Mr. Phung Khac Ke, Deputy Governor, State Bank of Vietnam

The role of state corporate governance in Vietnam

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State - owned - enterprises (SOEs) operating under the Law on State - owned - enterprises are entities the State owns 100% charter capital. SOEs are organized under the form of independent state's enterprises and Corporation.

The Government unitedly acts as the owner representative of the SOEs. Ministries, agencies or Provincial People's Committees have been decentralized and authorised to implement functions as the owner representatives.

The State invests directly into the SOEs. SOEs are allowed to use the state's capital, loans and other legal capital sources to invest in other enterprises which are operating under the Law on the Enterprises.

The SOEs are in charge of conserving state's investment capital and ensuring to get the target on financial issues such as the ratio of profits/state's capital. So, good corporate governance is the measurement for the SOEs to gain their targets.

There are two models of organizational structures for the SOEs under the Law on State – Owned – Enterprises, including: SOEs with Board of Directors and SOEs without Board of Directors. For the first one, the Law has stipulated organizational structure and business management of SOEs as well as the rights, obligations or other relations among entities within enterprises such as: owners, Board of Directors, General Director, workers and others. Organizational structure has not only enabled to supervise business operation of the enterprises and the relating entities, but also improved the efficiency of State's control for the enterprises. Moreover, organizational structure as above mentioned has made managers to control the SOEs' operation carefully with their higher responsibilities. According to the Law on the SOEs, the corporate governance have been comprised of factors as follows:

1. Rights and responsibilities of owner representatives as follows:

a. The rights:

- Approving the regulation, deciding targets and development strategy or organizational structure of the enterprises; assigning or dismissing members of Board of Directors; determining some large transactions of the enterprises such as: investment in fixed assets, capital investment in other entities, assets liquidation, capital raising; stipulating profits after tax distribution mechanism; getting the remaining profits after being distributed to funds.

- Receiving enterprises' information periodically and unexpectedly;

- Inspecting and supervising as well as evaluating operation results of the SOEs;

b. The responsibilities:

- Investing adequately charter capital for the enterprises; not transferring capital under no payment method; Being in charge of debts and assets liability within charter capital of the enterprises...

- Supporting the enterprise's activities and carrying out other obligations stipulated by regulations/rules.

2. The Board of Directors

The Law on state – owned – enterprises has stipulated that Board of Directors of corporations are the direct owner representatives of state's capital. Members of Board of Directors are assigned by the person who has approved the regulation of the enterprise. They are awarded annually and at the end of each term due to operation results. Accordingly, the Board of Directors have rights to decide all issues relating to determining and implementing targets, obligations and interests of the enterprises; being in charge of business results before the person who has approved regulations or before laws as stipulated. Board of Directors have the basic rights and responsibilities as follows:

a. Obtaining, managing and using state's capital, assets invested in the enterprises efficiently;

b. Selecting, signing the contract for hire or assignment, deciding the salary for the General Director of SOEs after being agreed by the person who has approved the regulations;

- Selecting, assigning and deciding the salary of Board of Directors of one-member-state limited company;

- Deciding to nominate the representative for the enterprise's capital invested in the other companies...

c. Deciding some large transactions such as: investment in fixed assets, capital investment in other companies, assets liquidation, capital raising under decentralized administration by the person who has approved the regulations.

d. Inspecting, supervising General Directors or Managers in their acting functions and responsibilities as stipulated.

Supervising and accessing the efficiency of operation of the SOEs or other enterprises due to legality and its regulations.

e. Board of Directors evaluate the enforceability and efficiency of Resolutions, Decisions in management quarterly and annually as well as operation efficiency of enterprises. Board of Directors also make reports on results, shortcomings and give solutions in control of BODs and management of General Director's (or Directors)

f. Members of Board of Directors are dismissed in the following cases:

- The enterprise makes loss in 2 executive years or does not get target on profits/state's capital in 2 executive years or in case of profit and loss fluctuation but the enterprises can not overcome.

- The members are not honest in making their duties or taking their abuses to get personal interests or others due to their positions and rights, not making true reports on financial situations of the enterprises...

g. Criteria and conditions to assign the members of Board of Directors

- Being Vietnamese

- Having Bachelor's Degree with business competence

- Having good essence, honesty with knowledge and good legal abide actions

h. Obtaining information of the SOEs

Current legal documents has stipulated that Boards of Directors are allowed to obtain information relating to the enterprise's operation process such as: investment and construction, manufacturing, operation results and profits distribution through the rights of internal supervision to the operation of Board of Directors.

3. The labours in the SOEs:

The labours will act as supervisors to operation of the enterprises through people's inspection, Trade Unions and Labour Congress under some measurements as: making discussions and giving views before being approved by the authorized person. They must examine the implementation process on the following issues:

- Plans, strategies and measurements to develop manufacture, and to restructure operation of the enterprises;

- Regulations and Rules relating directly to the interests and obligations of labours;

- Solutions to protect working labour, enabling working conditions, living-standards and sprits, protecting the environment, training or retraining the professional and develop labours' knowledge in the enterprises;

- Voting to examine confidence of some key positions as Chairman, members (if existence) of Board of Directors, general directors, vice directors (managers, deputy managers), chief accountant when being required by the authorities;

- The labours have the rights to discuss, approve and decide the following issues through Trade Union and Labour Congress:

+ Adjustment or supplement of the contents of collective labour agreement. It is the base for representative of the labours signing the contract with General Directors or Managers of SOEs.

+ Regulations/Rules using funds as welfare, awards or operation targets relating directly to interests and obligations of the labours in accordance with rules/regulations;

+ Evaluation on operation results and performance programmes as well as vote for People's Inspection Agency

4. Public and transparency of the enterprises' operation, including financial situation, results and corporate governance.

Public and transparency on operation and financial situation of the enterprises are the bases to access operation efficiency, management of the enterprises and that to build up solutions as well as decide manufacture in the next few years. Transparency requirements of the enterprises are specific as follows:

a. Key information needed to publicize for transparency has been stipulated at legal documents, including:

- Information of operation results and financial situation

- Salary, awards from management board, enterprises' control
- Salary and awards policies for the labours

b. Current regulations have stipulated that enterprises must make reports and present all information on enterprises's operation basing on financial and accounting standards. In case, above reports do not show financial situation truly, the enterprises must be in liability before the laws. At that time, Board of Directors or General Director will be dismissed.

c. Public and transparent information on enterprise's operation have been stipulated under legal documents on accounting, operation supervision of the SOEs, which are shown as follows: the enterprises must make their financial statement quarterly and annually (the Law on Accounting) or reports on their quarterly operation supervision and income statement annually (Supervision Rules evaluating operation efficiency of the state's enterprises).

d. Current legal documents has stipulated that financial statements of SOEs must be audited by independent auditing companies or the state's auditing agency.

Governance structure system of the SOEs stipulated in the Law on state – owned – enterprises has formed basic factors encouraging staffs in the enterprises. It has restricted illegal behaviors of staffs such as their abuse of positions and rights for personal interests, not for common interests. It has also created chances for staffs, including owners, to implement their obligations and responsibilities efficiently, enabling to reduce costs and to get the profit target, as well to strengthen operation efficiency of the enterprises.

Hanoi, November 2004