

Corporate Governance



# OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam





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# Foreword

The Government of Viet Nam has made progress in recent years to improve its frameworks for the ownership and corporate governance of its state-owned enterprises (SOEs). This Review assesses the corporate governance framework of the Viet Nam state-owned sector relative to the OECD Guidelines on Corporate Governance of State-Owned Enterprises (“SOE Guidelines”). It then puts forward recommendations to help the Vietnamese authorities address remaining challenges and further professionalise the state ownership function. The Review was requested by Viet Nam’s Commission for the Management of State Capital at Enterprises (CMSC) and the Ministry of Finance (MOF) under a project supported financially by the Government of Korea. It takes place in the context of Viet Nam’s ambition to improve the governance of SOEs by revising and aligning the Law No. 69/2014/QH13 on Management and Utilisation of State Capital with the SOE Guidelines.

This Review is based on (1) information submitted by the Vietnamese authorities, including response to the OECD’s standard questionnaires and a letter addressed to the Vietnamese authorities from the Chair of the OECD Working Party on State Ownership and Privatisation Practices (the “Working Party”); (2) independent desk research by the OECD Secretariat; and (3) additional documents and information obtained through a series of virtual fact-finding meetings in 2021 and 2022 with relevant stakeholders including representatives of government officials, SOEs and independent think tanks.

The report draws on the chapter on “Enhancing SOE Efficiency in Viet Nam” in the 2020 OECD Multi-Dimensional Review of Viet Nam. It also reflects inputs from the webinar on “Responsible Business Conduct and Vietnamese SOEs” co-organised by OECD and CMSC in 2021 which brought together officials from the CMSC and several major SOEs in Viet Nam.

This report is the ninth country review conducted by the Working Party, the body responsible for encouraging and overseeing the effective implementation of the SOE Guidelines. This report is published within the framework of the Viet Nam – OECD Memorandum of Understanding (MOU) signed on 5 November 2021 by the Viet Nam Foreign Minister Bui Thanh Son and the OECD Secretary-General Mathias Cormann in the presence of Pham Minh Chinh, Prime Minister of Viet Nam.

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# List of acronyms and abbreviations

ACL	Anti-Corruption Law	MOHA	Ministry of Home Affairs
ADB	Asian Development Bank Institute	MOJ	Ministry of Justice
ASEAN	Association of Southeast Asian Nations	MOLISA	Ministry of Labour, Invalids and Social Affairs
BoC	Board of Controllers	MoU	Memorandum of Understanding
BoD	Board of Directors	MPI	Ministry of Planning and Investment
BoM	Board of Members	ODA	Official Development Assistance
CAR	Capital Adequacy Ratio	OECD	Organisation for Economic Co-operation and Development
CEO	Chief Executive Officer	PPP	Purchasing power parity or public-private partnership
CIEM	Central Institute for Economic Management	RCEP	Regional Comprehensive Economic Partnership
CMSC	Commission for the Management of State Capital at Enterprises	ROA	Return on Assets
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership	ROE	Return on Equity
EU	European Union	SAV	State Audit Office
EVFTA	EU-Viet Nam Free Trade Agreement	SBV	State Bank of Viet Nam
FDI	Foreign direct investment	SCIC	State Capital Investment Corporation.
FOLS	Foreign Ownership Limits	SME	Small and medium sized enterprise
GDP	Gross domestic product	SOE	State-owned enterprise
GIV	Government Inspectorate of Viet Nam	SSC	State Securities Commission
GMS	General Meeting of Shareholders	USD	US dollar
GSO	General Statistics Office of Viet Nam	VCCI	Viet Nam Chamber of Commerce and Industry
HOSE	Ho Chi Minh Stock Exchange	VJEPA	Vietnam-Japan Economic Partnership Agreement
HNX	Hanoi Stock Exchange	VKFTA	Vietnam-Korea Free Trade Agreement
IFRS	International Financial Reporting Standards	VND	Vietnamese dong
IPO	Initial Public Offering	VNDB	Viet Nam Development Bank

JSC	Joint Stock Company		
LLC	Limited Liability Company		
LOE	Law on Enterprises		
MOF	Ministry of Finance		

# Executive summary

The Government of Viet Nam has taken important steps in recent years to improve its ownership and corporate governance frameworks for state-owned enterprises (SOEs). Viet Nam established the Commission for the Management of State Capital at Enterprises (CMSC) – a ministry-level entity – with a view to improving efficiency, facilitating equitisation and separating ownership of the country's largest 19 SOEs and state corporate groups from the state's regulatory function. It enacted a new Enterprise Law, subsequent Decrees and circulars to guide the streamlining of the SOE sector. The number of SOEs has been reduced from 12 000 in 1990s to around 2 100 today thanks to the government's extensive divestment and equitisation programmes.

In terms of next steps, the government recently announced its intention to revise Law No. 69/2014/QH13 on Management and Utilisation of State Capital to bring it more in line with the SOE Guidelines as well as a 5-year roadmap to adopt International Financial Reporting Standards (IFRS). It has also recently made substantial commitments by signing Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and EU-Viet Nam Free Trade Agreement (EVFTA) which would necessitate further reforms in the SOE sector in the years to come.

Despite these achievements and the continuing reform agenda, Viet Nam still faces many challenges in further improving SOE governance and efficiency. State-owned enterprises still account for one-third of gross domestic product and dominate many of the sectors such as energy, transport, telecommunications and finance. While the government has made great strides in establishing and implementing a legal regulatory framework for state ownership, it is still a work in progress, with a lack of institutional and capacity for enforcing relevant laws. Viet Nam has yet to develop a concrete and unified ownership policy. The policy framework for state ownership builds on a number of documents delineating state ownership rights and responsibilities across government representatives.

The powers of the new state ownership entity CMSC place it, in OECD vernacular, somewhere in between being a state ownership agency or a state co-ordination agency. It has a co-ordination power over SOEs in its portfolio, but a number of important decisions can be taken only in concert with other government bodies. Moreover, due to the CMSC's relatively limited resourcing and lack of in-depth sectoral knowledge across its portfolio of SOEs, line ministries in practice continue to play an important role in the control of the companies that are in the portfolio of the CMSC.

For this and other reasons, state ownership and market regulatory functions are in practice still exercised in concert in many cases. In addition to the institutional placement of oversight roles, a second complication arises from regulations on the management and use of state capital vested with SOEs. These are often so closely aligned with the government's public policy objectives that they allow only a limited distinction between production and business activities of SOEs and the state's exercise of political powers. While Vietnamese law does not explicitly confer legal privilege to SOEs or board members, SOEs are treated "favourably" in all aspects including by the government, sectoral ministries and local governments who give their affiliated SOEs privileges such as access to capital, natural resources, land, and human resources. Competition enforcement powers against anti-competitive behaviour by SOEs in practice remain limited and they generally do not extend to policing a level playing field.

The degree of disclosure and quality of information (both financial and non-financial) vary depending on the responsible line ministry or controlling stakeholder, with many SOE websites appearing non-compliant. There is weak disclosure for SOEs where the state holds 100% of chartered capital and information on debt obligations of SOEs is not publicly available. While the government submits the aggregate report to the Prime Minister and the cabinet member, the state does not have in place a dedicated website which publishes the information contained therein and on individual SOEs.

More remains to be done to assure a strong, autonomous role for SOE boards of directors. The processes applied by governments to nominate and appoint SOE board members are often influenced by the degree to which the state has professionalised its enterprise ownership function, the size of the state's ownership stake in an SOE, and the balance between commercial and non-commercial priorities. Politically motivated ownership interference leads to unclear lines of responsibility and a lack of accountability and efficiency losses in the corporate operations.

The existing mix of in-company state and Party control procedures with business practices aspiring to meet international standards creates substantial challenges to effective internal control of SOEs – particularly but not only in those 100% owned by the state. It appears that one of the most effective corporate 'checks and balances' is the Party Committee, which may be providing disincentive for the true adoption of international practices in internal audit and corruption-risk management.

# 1 Economic and political context of Viet Nam

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Since the *Doi Moi* reforms in the 1980s, Viet Nam has emerged to become one of the most dynamic economies in the Southeast Asia region, mainly thanks to its export-oriented, foreign direct investment-led economic model. This chapter summarises how Viet Nam is undertaking reforms to further encompass trade and investment liberalisation and how the country is further integrating within global capital markets.

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## 1.1. The economic and political context

### 1.1.1. Economy

The Vietnamese economy has seen remarkable growth in the last 30 years, transforming itself from one of the poorest in the world into a lower middle-income country. GDP per capita has multiplied almost six-fold over the course of 34 years, doubled every decade, making Viet Nam one of the fastest growing countries in Southeast Asia (OECD, 2020<sup>[1]</sup>). Viet Nam acceded to the Association of Southeast Asian Nations (ASEAN) in 1995 and the World Trade Organisation in 2007. With the coming into force of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the EU-Viet Nam Free Trade Agreement (EVFTA), and the Regional Comprehensive Economic Partnership (RCEP) within the last three years, Viet Nam is expected to integrate even deeper into global supply chains.

Since the *Doi Moi* reforms in 1986, the Vietnamese economy has been restructured from agriculture-centred production to a modern, foreign direct investment-led manufacturing economy. Internationalisation has been swift. Exports have expanded at a rate of 106% over the last five years, and as of 2020, Viet Nam's share of trade (export and import) to GDP is 200%, one of the highest in the world.

The country is also an important destination for foreign direct investment as USD 3 billion worth of FDI is registered on average per month as Viet Nam become a central manufacturing and assembly hub in several global value chains (World Bank, 2022<sup>[2]</sup>). Since 1990 Viet Nam has attracted average foreign-direct-investment inflows worth 6% of GDP each year, exceeding twice the global level (OECD, 2020<sup>[1]</sup>).

**Table 1.1. Selected economic and social indicators (2017-21)**

	2017	2018	2019	2020	2021
GDP, current prices (in bln USD)	281.3	308.7	330.3	343.2	362.2
GDP per capita, current prices (in USD)	2 874	3 231	3 424	3 526	3 694
Real GDP growth (annual percentage)	6.8	7.1	7.0	2.9	2.6
Inflation rate, average consumer prices (annual percentage)	3.5	3.5	2.8	3.2	1.8
General government gross debt (as percentage of GDP)	46.3	43.7	43.6	46.3	47.9
Current account balance (BoP, current bln USD)	-1.6	5.9	13.1	15.6	-3.81
Per capita GNI, PPP (in current USD)	6 610	7 270	7 840	8 150	
Poverty ratio at national poverty lines (as percentage of total population)		6.7			

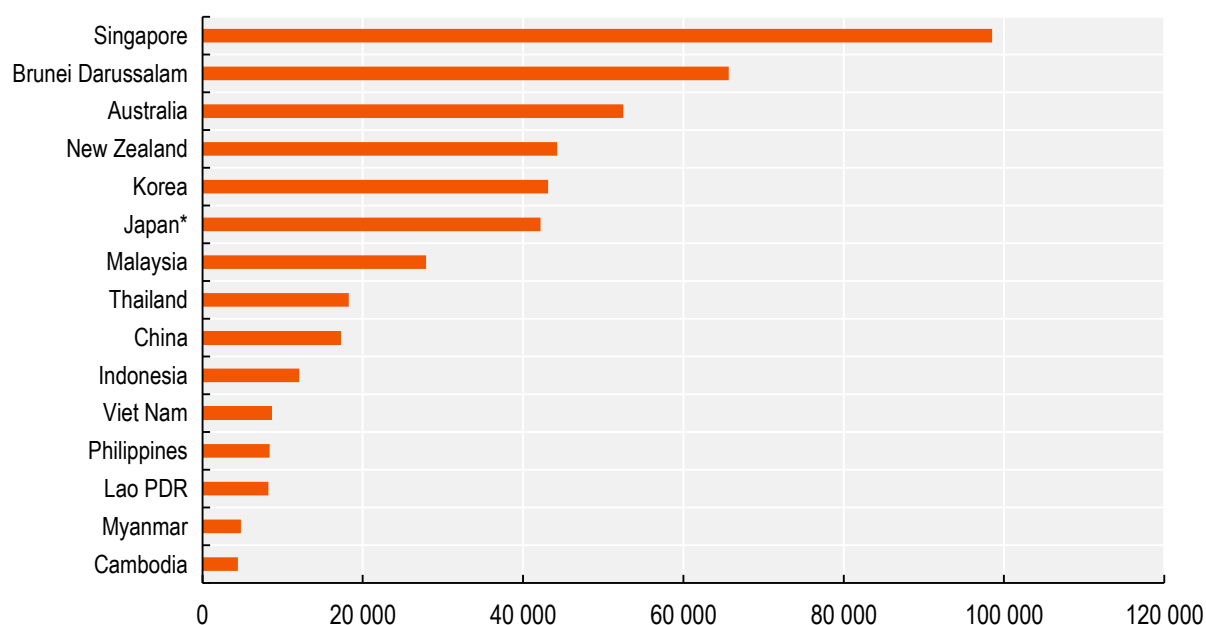
Source: OECD compilation based on data from the World Bank, <https://databank.worldbank.org/>, CEIC Data Economy, IMF, General Statistics Office of Viet Nam.

The recently signed international trade and investment agreements have as one of their goals to subject previously shielded domestic sectors (e.g. finance; retail) to foreign competition and bolster those sectors of the Vietnamese economy that focus on domestic demand. This could trigger transformation of the sectors and allow a broadening of inward FDI from setting up low-cost production facilities in Viet Nam, to more broadly based commercial strategies taking advantage of Viet Nam's large home market. A short-term effect would be enhanced consumer welfare through cheaper supply ranging from staple food to pharmaceuticals, whereas Vietnamese entrepreneurs are expected to benefit in the longer run.

Key challenges for maximising the benefits from foreign corporate presence is upgrading domestic firms to capture a greater part of the corporate value chains and move to more high-tech and more value-adding activities. Regarding SOEs in general, and their linkages with the emerging private enterprise sector in particular, it remains somewhat limited by the dominance of SOEs in a number of sectors, including the extractive industries, electricity, telecommunication and finance. Further reform is foreseen mostly through equitisation of more companies.



Figure 1.1. GDP per capita, PPP 2020 (current international dollar, East Asia and the Pacific Region)



Note: \*value of 2019.

Source: International Comparison Program, World Bank | World Development Indicators database, World Bank | Eurostat-OECD PPP Programme.

### 1.1.2. Government

After the end of the Viet Nam War the country was structured along the Soviet model of organisation of the state and the economy, endorsing a planned economy with collectivisation of agriculture, strong capital accumulation, and a rapid industrialisation driven by SOEs. However, the initial pursuit of central planning and self-reliance as principles of economic management quickly proved untenable. The Communist Party as Head of the government decided to introduce *Đổi Mới* reforms in 1986 in which the market is the organising principle of the economy. Today's system is referred to as a law-ruled socialist market economy. The 2013 Constitution designated the state to play the leading role, providing favourable environment for the private sector on the basis of respecting market rules.

The political and administrative organisation remains socialist with the Communist Party of Viet Nam as the supreme institution (OECD, 2020<sup>[1]</sup>). The 2013 Constitution and the Land Law 2013 gave power to the State to perform ownership rights as representative of the people. As such, the State remains the owner of the land. Individuals, enterprises, or organisations are granted "land use rights certificate" in accordance with the law. Foreigners can retain the land use rights up to 50 years while local can retain indefinitely (Quoc Thai, 2021<sup>[3]</sup>).

The division of powers of state is as follows. The Communist Party, through its General Secretary, leads the State's ideological and political trajectory. The National Assembly is the highest-level representative body of the people, with its members elected by the citizens every five years. The State President is the Head of State, elected by the National Assembly from among its deputies. The Prime Minister is the Head of Government, which in addition to him/her consists of Deputy Prime Ministers, Ministers and other high-ranking Party members. The government has the same five-year term of office as the National Assembly.

As for the Communist Party, together with the General Secretary, a four-member collective leadership known as the "four pillars" constitute the Politburo. A new Politburo Cabinet was elected during the

13 National Congress of the Communist Party of Viet Nam and the National Assembly Congress, concluded in February and May 2021, respectively. The Party General Secretary remains Nguyen Phu Trong, the primer Prime Minister Nguyen Xuan Phuc becomes the State President, the new Prime Minister Pham Minh Chinh was elected, and the primer Deputy Prime Minister Vuong Dinh Hue becomes Chair of the National Assembly.

### **1.1.3. Legal system**

Vietnamese legal system bases on civil law which is laid out in the 1992 Constitution of Vietnam. The Constitution is the fundamental law of the State and has the highest legal effect, amendable only by the National Assembly upon at least two-thirds of its total parliamentarians. Over the last 30 years, there had been three amendments to the Constitution, including promulgating the 1992 Constitution to replace the 1980 Constitution; amending and supplementing the 1992 Constitution in 2001 and promulgating the 2013 Constitution (OECD, 2020<sup>[1]</sup>).

The Vietnamese law system includes three fundamental elements: 1) legal norms (elementary unit of the system), 2) legal classes (group of legal norms that have the same features and regulate a group of correlative social relations), 3) legal branches (system of legal norms that have the same specialities to govern a sort of social relations in a certain field of society). The judiciary system includes the Supreme People's Court, local People's Courts, Military Tribunals and other tribunals established by law. Various legal branches specialise in fields of law including (but not limited to) finance, labour, commercial and administrative law.

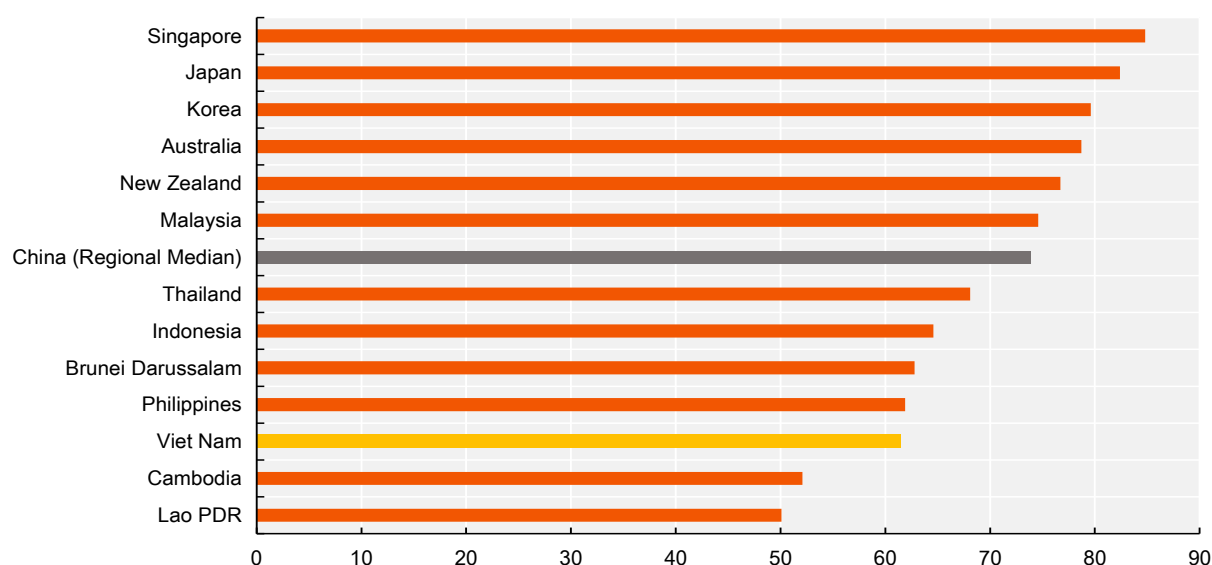
### **1.1.4. Business environment**

Vietnamese business environment has improved over the last years. The World Economic Forum's 2019 Global Competitiveness Index ranks Viet Nam 67 out of 141 economies, jumped ten places compared to the previous year, becoming the most improved country of 2019 (OECD, 2020<sup>[1]</sup>). Viet Nam's Global Competitiveness Index score reached the all-time high at 61.543 Score in December 2019 (OECD, 2020<sup>[1]</sup>) (see Figure 1.2).

At the same time, Viet Nam remains behind several of the other Southeast Asian countries such as Indonesia, Thailand, and Malaysia, particularly in terms of sub-indicators such as the ease (or the opposite) of starting a business, paying taxes, resolving insolvency and trading across border. Viet Nam only scores 85.1 on a scale of 100, ranks 115 at the Starting a Business Score, for example. It is further reported that paying taxes in Viet Nam would take businesses 384 hours, compared with 64 hours in Singapore, 174 in Malaysia and 191 hours in Indonesia. In the World Bank's Doing Business Index 2020, Viet Nam scored lower than Indonesia, Malaysia and OECD high income countries in terms of protecting minority investors.

The government has taken some recent steps to improve. Viet Nam has seen some improvement in efficiency of legal frameworks, notably linked to structural reform efforts to boost FDI. These should allow firms to reduce their tax payments and to accelerate their trade procedures. With the CPTPP taking effect on 14 January 2019, the EVFTA came into force in August 2020, and the RCEP entered force on 1 January 2021, Viet Nam is undertaking reforms to further encompass trade and investment liberalisation and facilitation.

Figure 1.2. Global Competitiveness Index 2019 Score (East Asia and the Pacific Region)



Note : 2020 and 2021 data is not yet available in public domain.

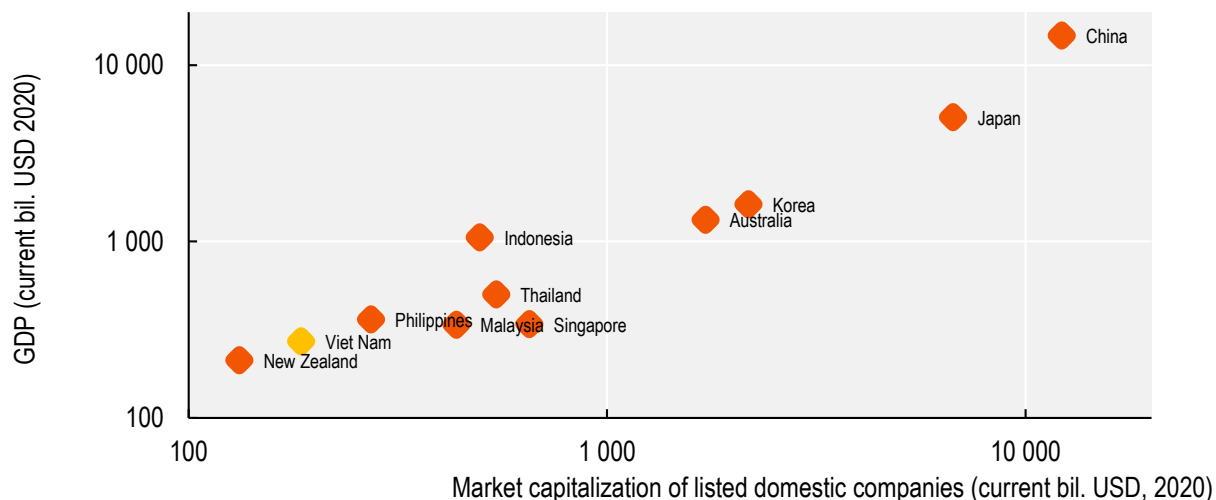
Source: The Global Competitiveness Report 2019, World Economic Forum, <https://www.weforum.org/reports/global-competitiveness-report-2019/>

### 1.1.5. Capital markets

In 2000, Viet Nam's first stock market officially came into operation through the establishment of the Ho Chi Minh City's Stock Trading Centre (HOSE), followed by the Hanoi Stock Trading Centre (HNX) establishment in 2005. Both centres were upgraded to stock exchange centres in 2007 and 2009, respectively. The market capitalisation of HOSE in 2020 surpassed USD 170 billion while HNX retained a fraction below USD 10 billion. One of the main reasons for the significant gap being Ho Chi Minh City's reputation as a more dynamic and vibrant market that attract big companies' listing; whereas the political capital Hanoi tends to attract the listing of smaller companies.

Viet Nam's equity markets have grown briskly in recent years, with the overall market size expanding from less than 40% of GDP in 2011 to 104% of GDP in 2020. But the markets are still small compared with regional peers and other countries (Figure 1.3). Viet Nam in essence remains a bank-based economy with its securities sector accounting for a relatively limited 32% of total financial assets, while credit institutions holding another 67% (OECD, 2020<sup>[1]</sup>).

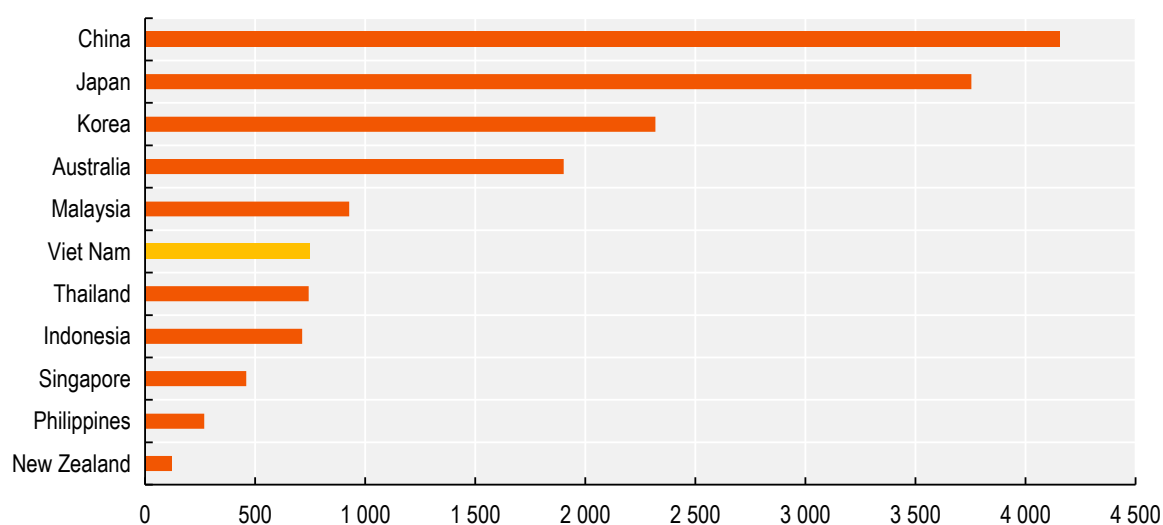
Figure 1.3. Market capitalisation to GDP in selected in East Asian and Pacific economies, 2020



Source: Author calculations based on the World Federation of Exchanges database <https://www.world-exchanges.org/our-work/statistics> (Market capitalisation). World Bank national accounts data, and OECD National Accounts data files (GDP).

Moreover, a recent OECD study on Asian equity market pointed out that Viet Nam is not yet well integrated within global capital markets. Capital markets are still not sufficiently developed to effectively channel resources into the domestic private sector, and the bond market is predominantly tilted towards public sector borrowing. While other ASEAN economies account for a certain portion of share in the MSCI Emerging Market Index (MSCI EM Index), Viet Nam is still considered a “frontier market” without presence in the Index (OECD, 2019<sup>[4]</sup>). At the same time, the number of Vietnamese listed companies is quite large by regional standards (Figure 1.4). So as markets mature and the valuation of listed companies presumably rise the size and importance of the equity market is expected to grow, supported by the government’s target to reach emerging market status by 2025 and the new Securities Law, which is expected to allow for public companies to increase the foreign ownership limit (FOL) to 50% or above, or to remove it when given approval by the State Securities Commission except for sectors that are important to national security. It is also notable that individual investments or retail investors boomed in the stock market in recent years, with nearly 400 000 new trading accounts opened in 2020 alone (VN Economy, 2021<sup>[5]</sup>).

Figure 1.4. Listed domestic companies in selected in East Asian and Pacific economies, 2020



Source: World Federation of Exchanges database <https://www.world-exchanges.org/our-work/statistics>

Continued state ownership is a defining feature of the equity markets. While it is a common phenomenon that stock exchanges operating in advanced economies have transformed to become listed on their own exchange, stock exchanges in Viet Nam are still run as state-owned institutions. Public sector is an important owner of large listed companies with holding being 28% of the capital in Viet Nam's 100 largest listed companies. Private corporations hold 30% of the capital. Institutional investors only hold 6% and foreign investors' ownership hold 8.3% (Van&Nghia, 2021<sup>[6]</sup>).

Finally, an alternative market place called the UPCoM (Unlisted Public Company Market) was launched by the MOF, SSC and HNX in June 2009 with ten initial companies to regulate "over the counter" shares and convertible bonds of unlisted public companies. The aim of UPCoM is to ultimately establish a formal market for the trading of shares of unlisted companies and to reduce the informal "over the counter" market. Admission of a public company's shares or convertible bonds for trading on UPCoM is obligatory for all public companies. Shares of public companies are required to be registered with the Viet Nam Securities Depository (VSD) (OECD, 2019<sup>[7]</sup>).

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# 2

## Overview of the Vietnamese state-owned sector

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State-owned enterprises play an essential role in the economic development of Viet Nam. They account for a large share of the economy and dominate in key business areas and receive preferential treatment from the government. This chapter provides an overview of Viet Nam's SOE sector and its evolving presence in the national economy. Lastly it discusses the government's recent efforts to improve the Vietnamese business environment by facilitating the SOE equitisation progress.

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### 2.1. Number and type of state-owned enterprises

State-owned enterprises still account for a large share of the economy in Viet Nam. They dominate most of business areas in the economy and also have a close relationship with the government. Thanks to the government's efforts to reduce the sector through equitisation and restructuring, the number of SOEs and its share in overall employment has significantly decreased over the years. However, SOEs still have a significant impact on the economy through their preferential position regarding access to credit and land. OECD mission team is informed that SOEs are treated "favourably" in all aspects by the government. Sectoral ministries and local governments give their affiliated SOEs privileges such as access to capital, natural resources, land, and human resources.

Although there are no explicit provisions in the Vietnamese law that indicate SOEs are entitled to preferential lending rates, in practice, a state enterprise that has higher operational costs than its private competitors can benefit from lower borrowing costs resulting from government guarantees extended by

state-owned banks which hold more than 40% of assets of all credit institutions as of end-2020 (Public-Private Infrastructure Advisory Facility, 2016<sup>[1]</sup>; OECD, 2022<sup>[2]</sup>; World Bank Group, 2019<sup>[3]</sup>).

The new 2020 Law on Enterprises has broadened the definition of SOEs categorising SOEs into two groups based on the percentage of state ownership. As prescribed in Article 88 of the new Law on Enterprises, SOEs are i) enterprises with 100% charter capital held by the State and (ii) enterprises with more than 50% (but less than 100%) charter capital or voting shares held by the State. The previous 2014 Law on Enterprises had defined SOEs as enterprises with the form of a one-member limited liability company with the state as the sole owner. According to the new definition, there are 2 109 SOEs held by central government in the country,<sup>1</sup> providing 1.1 million jobs as of 2019 (GSO, 2021<sup>[4]</sup>). Additionally, there are around 1 100 SOEs at the subnational level according to the General Statistics Office of Viet Nam. Enterprises with less than 50% state ownership are categorised and treated as private enterprises under the Vietnamese law. For instance, both Vinamilk and FPT are partially owned by the state but less than controlling shares level. As such, they are treated the same as private enterprises.

Both the absolute number of SOEs and its share in all enterprises significantly decreased over the past decade from 3 281 (1.18%) in 2010 to 2 109 (0.31%) in 2019 as a result of the government's initiative on equitisation and divestment of SOEs. In the same period, its share in turnover in all enterprises reduced from 27.2% to 13.6%; pre-tax profit from 32.3% to 23.2% – implying that the government is divesting profitable SOEs and maintaining ownership for less profitable SOEs – consequently resulting in a decline in the contribution to the state budget from 45.4% to 26.9% (GSO, 2021<sup>[4]</sup>; ADBI, 2020<sup>[5]</sup>) (see Figure 2.1, Figure 2.2).

Regardless of such downward trend in several indicators, the state-owned sector is still a significant contributor to the national economy compared to domestic private enterprises and foreign direct investment (FDI) enterprises. State-owned enterprises constitute 22.8% of the country's capital, accounting for around 30% of the country's GDP (ADBI, 2020<sup>[5]</sup>; OECD, 2020<sup>[6]</sup>; GSO, 2021<sup>[4]</sup>). During the 2016-19 period, the state-owned enterprise sector still attracted considerable capital for production and business accounting for around a quarter of the total amount of capital attracted by all enterprises in the same period (GSO, 2021<sup>[4]</sup>).

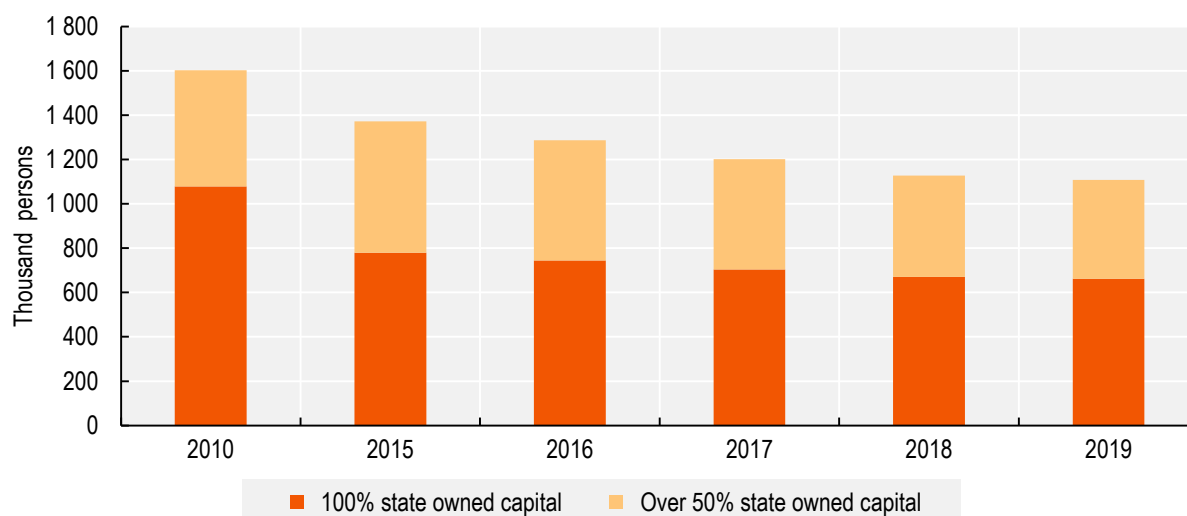
**Table 2.1. Share of contributions by SOEs in comparison with other types of enterprises (%)**

Types of enterprises	Number of enterprises		Employees		Capital		Revenue		Profit before tax		Contribution to the state budget	
	2010	2019	2010	2019	2010	2019	2010	2019	2010	2019	2010	2019
State-owned enterprises	1.2	0.3	16.5	7.31	34.1	22.8	27.2	13.6	32.3	23.2	45.4	26.9
Domestic private enterprises	96.2	96.9	61.4	59.9	50.3	59.1	54.3	57.5	32.5	31.2	28.3	38.8
Foreign direct investment enterprises	2.6	2.8	22.1	32.8	15.6	18.1	18.5	28.9	35.2	45.6	26.3	34.3

Source: Author calculations based on ADBI (2020) and the General Statistics Office (GSO) of Viet Nam (2021).

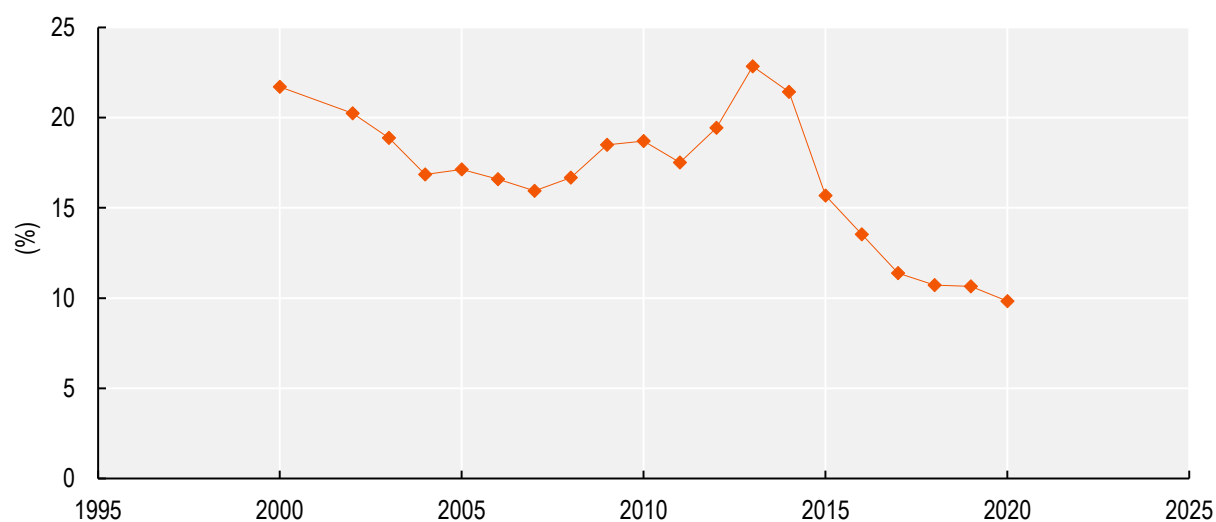


Figure 2.1. Number of employees of SOEs



Source: GSO (2021<sup>[4]</sup>), Statistical Yearbook of Viet Nam, <https://www.gso.gov.vn/en/data-and-statistics/2022/08/statistical-yearbook-of-2021/>.

Figure 2.2. Share of revenue from SOEs in state budget revenue



Source: GSO (2021<sup>[4]</sup>), Statistical Yearbook of Viet Nam, <https://www.gso.gov.vn/en/data-and-statistics/2022/08/statistical-yearbook-of-2021/>.

## 2.2. Size and sectoral distribution of the SOE sector

State-owned enterprises are dominant across the economy and the most economically important ones are found in essential sectors. Like in many other countries large-scale SOEs are prevalent in the public utilities and network industries (e.g. telecommunication, energy, water and transportation). The economic importance of SOEs remains significant by international standards, with entire sectors still dominated by a few of these companies, such as in energy (electricity (87%) and petroleum products (84% of gasoline retail sale) and telecommunications (90% of mobile phone subscribers), thwarting potential economy-wide productivity gains (OECD, 2022<sup>[2]</sup>). Electricity of Vietnam (EVN) and PetroVietnam (PVN), the two largest

corporations in the energy industry by total assets are fully state-owned. Only three companies – Electricity Vietnam (EVN), Petro Vietnam (PVN) and Viettel Telecom represent up to half of the state-owned sector's total revenues.

Since the start of the equitisation process in 2010, the state's presence in the manufacturing industries has reduced especially in the electronics and food processing sector – though it bears mentioning that the state still has widespread ownership (of 446 companies) in the manufacturing industries particularly with regard to textile and garment sector. The country also retains strong state ownership in sectors such as agriculture (in “primary sectors” in Table 2.2); finance; real estate and construction; and wholesale and retail trade (OECD, 2020<sup>[6]</sup>).

Other than fully state-owned VietnamBank for Social Policies and Vietnam Development Bank, the state owns more than 50% of shares in the largest domestic commercial banks such as Vietinbank, BIDV, Agribank and Vietcombank (Vuong and et al., 2019<sup>[7]</sup>). Vietnamese commercial banks deserve some credits for their financial stability, with the average capital adequacy ratio (CAR) of commercial banks from 2010 to 2015 being 14.79% which is above the requirement of the CzR regulated in the BASEL II (8%) (Nguyen, 2020<sup>[8]</sup>). Both return on equity (ROE) and return on assets (ROA) indicate relatively good performance in recent years (Korea Trade Promotion Corporation (KOTRA), 2020<sup>[9]</sup>). However, presence of FOLs and non-performing loans make banking sector less attractive for equitisation, in particular for some banks where bad assets could be hiding in the loan book.

**Table 2.2. Sectoral distribution of SOEs held by central government**

	Wholly state owned			Majority state owned		
	Number of SOEs	Employees	Eq. value (US\$ bn.)	Number of SOEs	Employees	Eq. value (US\$ bn.)
<b>Total</b>	1 271	663 010	32.6	894	358 745	14.5
<b>Primary sectors</b>	352	211 054	11.1	66	69 314	3.1
<b>Manufacturing</b>	206	104 098	2.3	240	138 266	3.8
<b>Electricity and gas</b>	32	95 922	6.3	37	11 798	1.9
<b>Water and sewerage</b>	54	29 248	0.6	16	4 439	0.1
<b>Finance</b>	43	6 132	1.4	8	2 915	0.3
<b>Telecom and other ICT</b>	35	14 949	1.1	17	2 493	0.2
<b>Transportation</b>	69	29 446	0.8	92	33 554	1.0
<b>Real estate and construction</b>	147	74 197	2.5	174	54 789	1.0
<b>Wholesale and retail</b>	133	64 376	5.7	159	27 019	2.6
<b>Other services</b>	200	33 588	0.9	85	14 158	0.6

Note: USD 1 = VND 22 837 on 7 October 2021. Vietnamese government confirmed that aggregate data on size and sectoral distribution of majority-owned unlisted enterprises held at the central level of government is only partially available. Therefore, this table is based on author calculations based on database of the General Statistics Office of Viet Nam (GSO), 2016 Enterprise Survey, and data submitted by Vietnamese authorities.

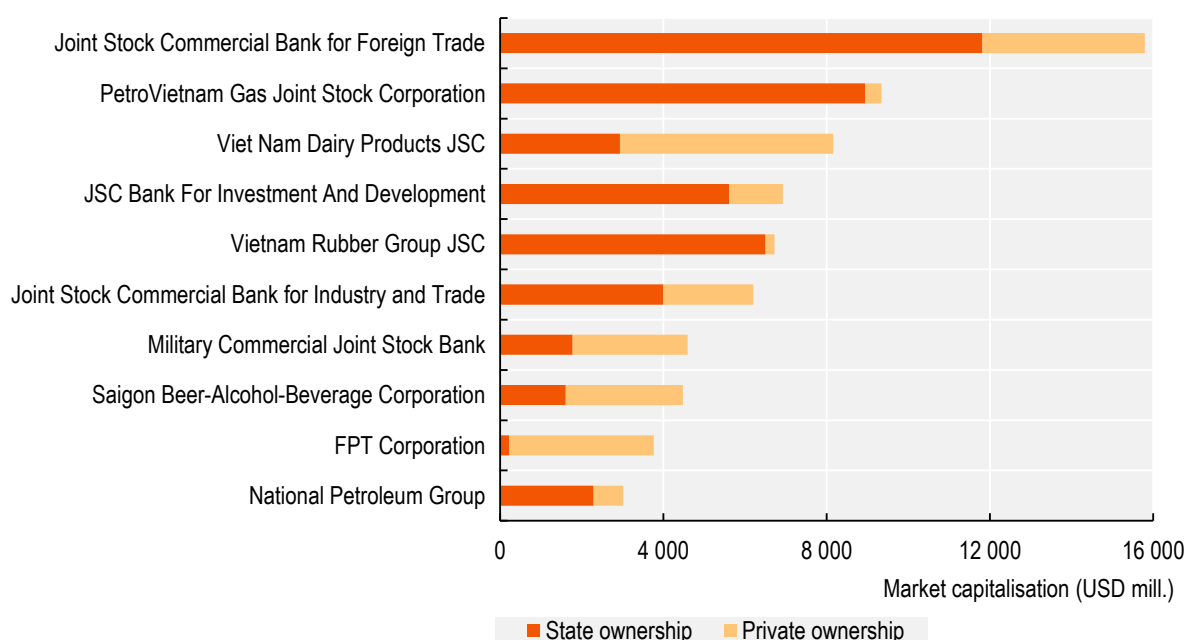
Source: Author calculations based on database of the General Statistics Office of Viet Nam (GSO), Vietnam Enterprise Survey 2016, and data submitted by Vietnamese authorities.

### 2.2.1. Listed SOEs

Among the listed companies in Viet Nam are 35 SOEs with majority state ownership. An additional 25 companies have the state as a significant minority shareholder (with a stake exceeding 10% of the voting shares) (see Annex C). As shown in the table below, among the ten largest SOEs with state ownership share, four are found in the financial sector and two belong to the PetroVietnam hydrocarbons group. The largest listed company with a majority shareholding is Joint Stock Commercial Bank for Foreign Trade of Viet Nam (market capitalisation of USD 15.8 bn.). The largest listed company with a minority state shareholding is Viet Nam Dairy Products (market capitalisation of USD 8.2 bn.) in which the state has 37.9% of the shares (see Figure 2.3). Partial privatisations through stock market listings have not brought much change in public sector ownership control in stock markets. In Viet Nam, the public sector still holds 28% of the capital of the largest listed companies as of end-2018 (see Figure 2.4).

According to an OECD study, most countries engaging in listing SOEs expect the companies to enjoy better access to financing going forward and to maintain higher standards of transparency and disclosure in consequence of the stock market listing and maintenance rules (OECD, 2016<sub>[10]</sub>). In Viet Nam, while listed SOEs have consistently performed better than other types of SOEs, their performance is less impressive than private listed companies. In an attempt to fix this problem, the Ministry of Finance has recently announced five-year roadmap on application of IFRS to all enterprises including SOEs.

**Figure 2.3. Ten largest listed companies with state ownership share**

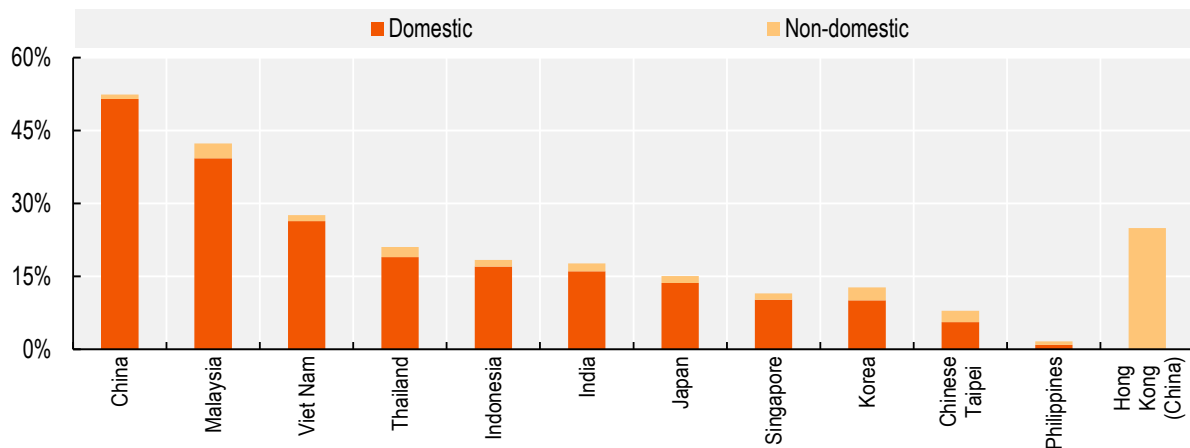


Note: Data on market capitalisation and state ownership share of the listed companies is extracted from VietStock, <https://finance.vietstock.vn/> on 7 October 2021.

Note: USD 1 = VND 22 837 on 7 October 2021.

Source: Author's elaboration based on VietStock, <https://finance.vietstock.vn/>, submissions from the Ministry of Finance and SCIC on size and sectoral distribution of listed companies with state ownership of no less than 10%. Integrated information from the submissions is available in Annex B and Annex C.

**Figure 2.4. Public sector ownership of stock-market listed enterprises in Asia, end 2018**



Note: The table shows market capitalisation weighted average ownership for the public sector. Calculations are based on ownership data for the 100 largest listed companies in each market.

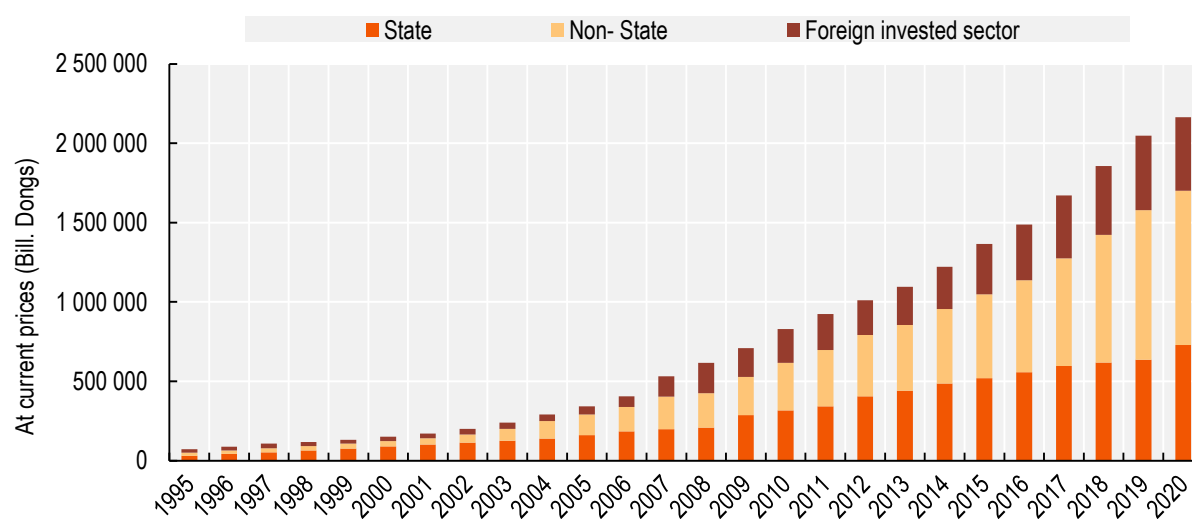
Source: OECD (2019), Equity Market Review of Asia 2019, OECD Capital Market Series, Paris, <http://www.oecd.org/daf/ca/oecd-equity-market-review-asia.htm>.

### 2.2.2. SOE as an investor

The state-owned sector has consistently been an important contributor to investment over the past two decades. Its share in total investment by corporate sector with different types of ownership is similar to that of domestic private companies and almost two times larger than that of foreign-invested sector (Figure 2.5). Such large presence of the state-owned sector in investment landscape and rather limited investor base can be explained by restrictions on foreign participation in the SOE equitisation process and prohibition in the past on majority foreign ownership of public companies. The OECD mission team was informed that foreign investors are often discouraged from buying stakes in SOEs as they are offered only minority stakes when doing so. Reluctance among investors have been often linked to the continued mix of commercial and non-commercial objectives in equitised firms, as well as the government's insistence on holding more than 50% post equitisation. Government often retains significant direct or indirect shareholdings or strategic veto rights in listed companies.

The government has tried to address this issue by improving regulations on foreign ownership limits (FOLs) in recent years. New Security Law which came into effect in 2019 aims to remove FOLs in most industries except for specific sectors important to national security. This allows for public companies to take steps to increase the foreign ownership to 50% or above, or to remove foreign ownership restrictions when given approval by the State Securities Commission. However, a timeline for the implementation is not clear.

Figure 2.5. Investment by types of ownership



Note: "Non-State" indicates domestic private invested sector.

Source: OECD Secretariat's elaboration based on data from General Statistics Office of Viet Nam.

### 2.2.3. SOEs as vehicles of national development: A historical perspective

State-owned enterprises in Viet Nam are traditionally expected by the government to play a double role of implementing national development strategies and serving its central government. Legal texts, government strategies and policy guidelines are often developed with a view to achieving development strategy goals, which means that they are directed at the incumbent SOEs.

Reforms of ownership and governance have as their main objectives raising the effectiveness, cost efficiency and accountability in respect of their public policy objectives. Financial performance, while not neglected, traditionally came across as a secondary consideration mostly linked to the fact that the government wants to avoid fiscal loss. This has led to providing government guarantees on debt issued by SOEs, distorting level playing field.

At the meeting of the 12<sup>th</sup> Party Central Committee in May 2017, Vietnamese Government officially recognised for the first time the need to restructure and enhance efficiency of SOEs and the importance of promoting private sector<sup>2</sup> by passing resolutions to tackle these issues. The resolutions have been translated into Socio-Economic Development Strategy for 2021-30 endorsed by the 13 National Party Congress in 2021 (Foster and Tien, 2021<sup>[11]</sup>). While the State officially recognised that the private sector is the foundation for economic growth and no longer the State in its official declaration at the Five Year Party Congress that met in late January, in certain markets, differences in access remain a problem. Notably, a preference for SOEs among state-owned financial institutions is often asserted. State-owned banks hold more than 40% of assets of all credit institutions as of end-2020 and development of non-bank financial sector and diversification of financial channels will help achieve more efficient resource allocation and better market access for private businesses. Avoiding bailing out lagging SOEs with state aid is important to facilitate market access for new entrants (World Bank Group, 2019<sup>[3]</sup>; OECD, 2022<sup>[2]</sup>).

There have been recent improvements in the Vietnamese business environment – mostly driven by better and clearer laws and regulations implemented by government. The latest measures aiming to improve a business-friendly regulatory framework and ensure a level playing field between SOEs and private firms including foreign ones include the new Public Private Partnership (PPP), the amended Labour Code and the amended Competition Law. In the same vein, the government set a target to increase the share of

private sector activities to 50% of its GDP by 2020, up from 43% in 2017 through equitisation of SOEs, encouraging the entry of innovative domestic SMEs and exit of insolvent SOEs. Vietnamese laws and regulations do not prescribe regulatory discrimination between companies based on ownership. However, this principle is often not adhered to in practice. This issue is covered more extensively in the Chapter 3 on “SOEs in the Marketplace” of the Part II of this report.

Most economically significant SOEs are located within business groups. In the earlier phases of the reform process a number of individual SOEs were merged into larger and more financially strong state general corporations (SGCs). With Viet Nam’s accession to the WTO many SGS were clustered into giant and highly diversified state economic groups (SEGs). The SEGs were at the time of formation considered as representatives of the “commanding heights” in the economy, likened by many researchers to the Korean Chaebols and Japanese Keiretsu. However, unintended consequence of their creation is that they have distorted competition landscape as directed lending within the large state-controlled Groups has been often practiced.

Ministry of Planning and Investment has recently set out a plan on development of large-scale SOEs focusing on developing the seven major state-owned companies with the combined total assessed value of over VND 20 trillion as industry leading companies to support the overall growth of their respective sectors. The government has emphasised that the plan is to allow for bigger autonomy for these SOEs in their decision making, removing certain regulations related to investment projects in order to reduce the state intervention in their internal affairs. However, it remains to be seen whether these state-owned companies will have a better access to government finance and guarantees compared to other SOEs or private companies.

### 2.3. Equitisation of SOEs

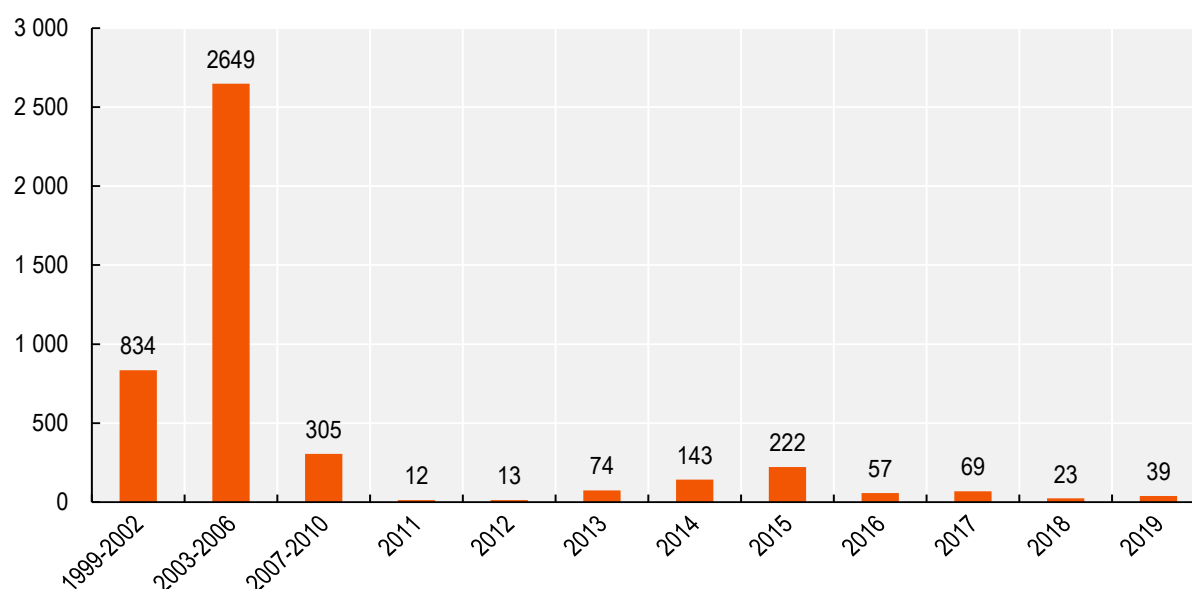
Since “Doi Moi” market-oriented economic reforms was launched in 1986, the restructuring of state-owned enterprises (SOEs) has been one of the top priorities of the economic reform process in the country. The equitisation of SOEs went ahead at fast pace in the 1990s and early 2000s but has slackened over the past decade. The total number of equitised SOEs was 2 649 during 2003-06 period. However, the number went down to 305 during 2007-10 period.

Equitisation means the conversion of a wholly owned company into a company that is owned by multiple shareholders. Enterprise Development Agency of the Ministry of Planning and Investment has been assigned to draft a decision by the Prime Minister on the classification of SOES – wholly owned, over 50%-owned, over 65% and under 50%. Depending on the state ownership extent, plans for sale of shares to external parties vary. When the state doesn’t have to earn controlling shares at a particular SOE, then external investors can purchase as much as they wish to control the company.

As a measure to accelerate the equitisation process of SOEs, in 2016, the Prime Minister approved a project on the restructuring of state-owned economic groups and corporations for the period of 2016-20. In 2017, the government successfully sold 54% of Saigon Beer Company (Sabeco) to Thai Beverage. From 2016 to June in 2020, Viet Nam had 175 equitised enterprises reaching a total enterprise value of VND 443.5 trillion, of which the state capital scale accounts for VND 207.1 trillion (GSO, 2021<sup>[4]</sup>).

A number of SOEs did not meet 2020 deadlines specified in Decision No. 26/2019/QD-TTg of Prime Minister and deadlines were reset for 2021. In 2021, only three SOEs were equitised amid the prolonged COVID-19 pandemic, and none were on the list approved by the Prime Minister. Viet Nam aims at completing the restructuring process of SOEs by 2025, through which around USD 11 billion in proceeds is expected to be raised.

Figure 2.6. Equitisation of SOEs



Source: (ADB, 2020<sup>[5]</sup>) (OECD, 2020<sup>[6]</sup>), Viet Nam Chamber of Commerce and Industry (VCCI).

Divestment and equitisation process in recent years has been widely criticised as being too slow and constantly behind schedule. Major challenges in undertaking equitisations include too tight deadlines, unclear directions from government notably related to land ownership rights, land valuation and evaluation of book value of SOEs. Reluctance among investors have been often linked to the continued mix of commercial and non-commercial objectives in equitised firms, as well as the government's insistence on holding more than 50% post equitisation. A number of equitised SOEs still have important share of state ownership and have failed to attract foreign investors. Government often retains significant direct or indirect shareholdings or strategic veto rights in listed companies (OECD, 2016<sup>[10]</sup>; 2019<sup>[12]</sup>)

The delay in equitisation is not only related to the approval process of real estate rearrangement and handling, but also due to complex state ownership arrangements consisting of a number of ownership representative agencies (Commission on Management on State Capital at Enterprises, Ministries, agencies, People's Committees of Provinces) which do not have a clear guidance for SOEs in their respective portfolio to review and develop a business project in accordance with the direction of the Prime Minister. Multiple layers of bureaucracy have made it difficult and time-consuming for SOEs and related investors in participating in equitisation process. Plus, the COVID-19 pandemic in the past two years has diluted the Government's priority over equitisation of SOEs.

Further reform is foreseen mostly through equitisation of more companies and in the foreseeable future SOEs will maintain their dominant position only in sectors directly related to defence or national security. In an ideal scenario, all others will be open to foreign participation and/or competition. The government's Socioeconomic Development Strategy (2011-20) recognises the importance of SOE reform, prioritizing faster rates of equitisation and privatisation. The government also plans to enact a new equitisation plan until 2025 period in the first half of 2022.

According to the government, SOEs after equitisation perform better and operate more efficiently as the use and management of state capital was improved. The mission team was informed that this has been reflected in the growth rates, production and business activities, the average income of employees and the total payment to the State budget. Some of the examples include Vinamilk (Viet Nam Dairy Products JSC), FPT (Information-telecommunication-technology group FPT Corporation) or REE (The Refrigeration

Electrical Engineering Corporation) which maintain a high capitalisation value after equitisation according to stakeholders.

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## Notes

<sup>1</sup> There are also a large number of provincial and municipal SOEs which are managed at a sub-national level by their respective local governments. The SOE Guidelines would be applicable to these companies if their owners decided to implement them, but sub-national level SOEs are not in the scope of this review. The report is only focused on the SOE sector at the national level.

<sup>2</sup> Private sector in Viet Nam mostly consists of small and medium-sized enterprises (SMEs), whereas SOEs tend to be large and operate in shielded sectors. A general concern of business community in Viet Nam is a relative scarcity of the funding available to SMEs, which is also spotted in many OECD countries.



# 3 Legal and regulatory framework

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This chapter provides an overview of the legal regulatory framework for SOE governance in Viet Nam. The first part looks at main national laws and regulations that are applicable to the corporate sector in general. The second part examines laws, regulations legal documents and policies that govern SOEs particularly with respect to professionalising boards of directors; transparency and disclosure; equitisation process; and land issues. Lastly, it examines the current legal regulatory landscape concerning participation of foreign investors in the SOE equitisation process and IPOs.

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## 3.1. Main laws and regulations on corporate sector

The legal and regulatory framework for corporate governance has developed at a fast pace in the last decade. The main laws which govern corporate governance in Viet Nam are the Enterprise Law (2020), the Securities Law (2019) and the Decrees, circulars and decisions which guide the implementation of these two laws. The Accounting Law (2015) and the Law on Independent Audit (2011) establish the statutory framework for financial reporting, accounting and auditing in corporate sector in Viet Nam. In addition, other laws – Law on Investment (2005), Law on Competition (2018), Law on Credit Institutions (2010) and Law on Insurance Business (2010) – have further enhanced corporate governance frameworks in the country. Vietnamese companies are also subject to anti-corruption, bankruptcy, commerce, competition, construction, labour, tendering and taxation laws.

Key organisations involved in regulating corporate governance in Viet Nam are the State Securities Commission, the Central Institute for Economic Management (CIEM) under the Ministry of Planning and Investment, the State Bank of Viet Nam (SBV) and the Ministry of Finance. Details on the roles of these institutions are provided in Section 4.1.

However, while relevant laws and regulations ensure some clarity over supervision and accountability in corporate governance of companies, compliance by individual companies is still weak. The legal regulatory framework for corporate governance remains complex and there is a lack awareness by participants in the market (OECD, 2018<sup>[1]</sup>). Institutional challenges remain. For instance, the overlapping roles and responsibilities between the State Securities Commission (SSC), State Bank of Viet Nam and the Ministry of Finance, as well as a lack of co-ordination and accountability mechanism between them, hampers the effectiveness of the enforcement of corporate governance.

Regarding listed companies, the SSC has a number of enforcement powers, including the ability to fine and to suspend or remove licenses. It may also issue directives for compliance with relevant securities law and regulations. However, it is not a regular practice for the SSC to initiate civil actions in court and collect damages on behalf of shareholders. Complicated judicial procedures make it hard for shareholders to enforce corporate governance through the courts. Enforcement of the Enterprise Law that governs the incorporation of all businesses including SOEs is conducted on a local level and in a decentralised manner. The 63 Departments of Planning and Investment (DPIs) are responsible for registering companies and enforcing related provisions in the Enterprise Law. The central DPI is in Hanoi, Ho Chi Minh City (OECD, 2019<sup>[2]</sup>).

**Company Law (Commercial Law).** Before 1990, the legal framework for the incorporation of private-sector companies did not exist. In 1990, private sector companies and enterprises were recognised for the first time with the introduction of the Company Law (Law No. 47-LCT/HDNN8 on Company dated 21 December 1990 by the National Assembly) and the Sole Proprietorship Law (Law No. 48-LCT/HDNN8 on Sole Proprietorship dated 21 December 1990 by the National Assembly). The two laws provided the legal foundation for the establishment of the first private businesses in Viet Nam.

**Enterprise Law.** It was first introduced in 1999 replacing the Company Law and the Sole Proprietorship Law. The law prompted a boom in the development of domestic private sector enterprises in Viet Nam. The Enterprise Law provided formal protection for private businesses as well as private ownership. It improved business start-up procedures and reduced barriers to business entry. As a result, the number of registered enterprises increased dramatically, and large-scale investments were made by Vietnamese business people through enterprises registered under the Enterprise Law. However, the initial version of the Enterprise Law did not recognise corporate governance as a top priority. In 2005, the issuance of the new Law on Enterprises was a landmark in the history of Vietnamese economic policy. It unified three different laws – Law on State-Owned Enterprises, Law on Foreign Direct Investment and Law on Private Enterprises, creating a legal framework applicable to both SOEs and private enterprises.

Regulations on corporate governance were emphasised in the amended version of the Enterprise Law in 2014, replacing the previous version. The 2014 Enterprise Law provides the main elements for corporate governance framework in all businesses in Viet Nam covering both private sector enterprises (including listed companies, public companies and all other companies) and SOEs. The 2014 Law set out more comprehensive and stricter corporate governance requirements for SOEs. It stipulates composition of the Board of Members (BoM) or Board of Directors (BoD), representation of independent board directors in certain JSCs, liabilities of directors, information disclosure, and protection of rights of shareholders, etc.

Under the law, SOEs must conduct periodical disclosure of various financial and non-financial information and the Chair of the BoM or a CEO may be dismissed if they do not meet the business target in the approved business plan. It also increased the number of days for which shareholders must be notified for annual general meetings. This Law is considered as an important milestone in improvement of corporate governance framework in the SOE sector. The Law last revised in 2020 and the resultant 2020 Enterprise Law is currently in force.

The new Law on Enterprises No. 59/2020/QH14 was passed by the National Assembly of Viet Nam on 17 June 2020 and took effect from 1 January 2021. It again broadened the definition of SOEs, put more attention to treatment of minority shareholders and simplified the business registration process. The

amended Law regulates the establishment, organisation of management, reorganisation, dissolution and other activities of enterprises. It defines the requirements for being designated as SOEs, outlines the types of SOEs and provides information related to the management body, the appointment and composition of BoMs and BoDs and disclosure requirements, which are considered key elements in the country's SOE corporate governance framework. For instance, it stipulates that members/partners/shareholder of partially state-owned enterprises (over 50% of charter capital or voting shares is held by the State) must not designate a relative of the executive and the person having the power to designate the executive as representative of another company. It has brought business practices in Viet Nam closer to international good practices.

**Securities Law.** The Securities Law (No. 70/2006/QH11) was adopted in 2006 and revised in 2019, providing regulation on corporate governance requirements applicable to listed companies and public companies. Listing requirements, public offerings, issuance of shares to the public, were further elaborated in the Decree No. 58/2012/ND-CP in 2012. Some articles of Decree No.58 were amended by Decree No.60/2015/ND-CP in 2015.

**Accounting Law.** Under the Law on Accounting, revised in 2015, the MOF is required to develop accounting standards on the basis of international accounting standards but taking into account the national context into consideration. As of now, IFRS are still not adopted in Vietnam. Vietnamese Accounting Standards are applied by all enterprises during the preparation of financial statements. The IFRS is only applied when reporting to foreign investors. The MOF has recently issued Decision No. 345/QD-BTC to fully adopt IFRS. According to the MOF, there are three phases, including: preparatory phase from 2020 to 2021, 1st phase (voluntary application) from 2022 to 2025, and 2nd phase (compulsory application) after 2025.

**Law on Independent Audit.** This law adopted in 2011 required all SOEs to be subject to external audit. According to the Article 37 of the Law and Article 15 of Decree No. 17/2012/ ND-CP guiding the Law, among the subjects that are required to audit are annual financial statements of foreign-invested enterprises; annual financial statements of credit institutions established and operating under the Law on Credit Institutions; annual financial statements of public companies, issuers and securities trading organisations; and annual financial statements of SOEs, except for SOEs operating in the field of state secrets<sup>1</sup> as prescribed. Administrative penalties are applied in case of failing to conduct audits and violations in the field of independent accounting and auditing.

**Investment Law.** The amended 2020 Law on Investment provides updates on conditional business lines, investment incentives and related mechanisms while simplifying administrative approval process for investment projects of a certain type. It provides conditions for selecting investors for projects involving land use, including the auction of land use rights.

**Competition Law.** A first competition law was established in 2004, as part of Viet Nam's accession to the WTO, and applied to all sectors of the economy and enterprises including SOEs. It regulates classic anti-trust issues such as acts of unfair competition, abuse of market dominant positions and concentration in product and service markets. A market share threshold of 30% is used to determine substantial market power and to prevent certain anti-competitive behaviours, while a merger can be suspended if the consequent combined market share is 50% or more. In 2018, Viet Nam adopted a new competition law (No. 23/2018/QH14). It makes it clear that it is applied to: "business organisations and individuals, including enterprises that produce and provide public-utility products and services, enterprises that operate in state-monopolised sectors/domains [and] public sector entities." (OECD, 2021<sup>[3]</sup>)

The **Credit Institution Law** requires additional requirements for banks that go beyond those of listed companies. This includes requirements with respect to internal controls, internal audit and risk management, and requirements for board members.

**Circular 121/2012/TT-BTC.** Under the laws, the Ministry of Finance issued the Circular 121/2012/TT-BTC providing regulations on corporate governance applicable for public companies. The Circular set out regulations on the following areas: shareholders and GMS; BoD and members of BoD; Board of Controllers (BoC) and members of the BoC; prevention of conflict of interest; and information disclosure and reporting. Furthermore, Circular 155/2015/TT-BTC provided guidance on information disclosure in the securities market.

**Decree No. 71/2017/NĐ-CP.** The above circulars have been superseded by the Decree No. 71/2017/NĐ-CP which provides guidance on corporate governance in public companies. The Decree provides regulations on corporate governance to be consistent with the Enterprise Law. The Decree aims at establishing a more comprehensive policy framework for the application and compliance of enterprises with dispersed shareholding. The regulations provided in the Decree cover important aspects of corporate governance such as rights of shareholders and related stakeholders, equal treatment of shareholders, shareholder meetings, composition and responsibilities of the BoD, inspection committee and identifies relevant corporate disclosures. It further clarifies board and management responsibilities in cases of conflict of interest and establishes different regulatory regimes for public companies according to size of companies.

**Circular No. 95/2017/TT-BTC.** To further support the implementation of the Decree No. 71/2017/ NĐ-CP, the Ministry of Finance issued Circular No. 95/2017/TT-BTC on 22 September 2017. The circular provides: (i) the model charter that public companies should follow; and (ii) the internal company regulation on corporate governance that public companies should adopt.

### 3.2. Legal and regulatory framework applicable to SOEs

In general, SOEs are subject to the same rules and regulations as those applied to private sector enterprises as mentioned above. Further to the above-mentioned laws and regulations on corporate governance, the general policy framework regulating state ownership and management in the country includes Law on Management and Utilisation of State Capital Invested in Enterprises (“State Capital Management Law”- Law No. 69/2014/QH13), Decrees, sectoral ministries’ circulars and the accompanying guidelines which have enumerated the rights and responsibilities of state ownership representative bodies. The Ministry of Planning and Investment is also considering to developing a new corporate governance code for SOEs. The details of the plan are not available yet.

State-owned enterprises can operate in the form of a limited liability company or a joint stock company. The current Law on Enterprises does not prescribe other legal forms for enterprises of other economic actors (see Box 3.1). Private companies (without state capital) reserve the right to operate under these models, so the law does not allow SOEs to operate under any exclusive model different from other types of companies. Benefits of employees in SOEs are delivered per regulations of the government and sectoral ministries while private enterprises must implement labour policies per their commitments and agreements with employees and provisions of the Labour Code.

### Box 3.1. Article 88 of chapter IV on State-Owned Enterprises in the 2020 Law on Enterprises

Article 88. State-owned enterprises.

1. State-owned enterprises shall be limited liability companies or joint stock companies, including:
  - a) Wholly state-owned enterprises (100% of charter capital of which is held by the State)
  - b) Partially state-owned enterprises (over 50% of charter capital or voting shares is held by the State, except the enterprises specified in Point a Clause 1 of this Article).
2. Wholly state-owned enterprises specified in Point a Clause 1 of this Article include:
  - a) Single-member limited liability companies 100% of charter capital of which is held by the State that are parent companies of state-owned corporations or parent companies in groups of parent company – subsidiary companies;
  - b) Independent single-member limited liability companies 100% of charter capital of which is held by the State.
3. Partially state-owned specified in Point b Clause 1 of this Article include:
  - a) Multiple-member limited liability companies and joint stock companies over 50% of charter capital or voting shares of which is held by the State that are parent companies of state-owned corporations or parent companies in groups of parent company – subsidiary companies;
  - b) Independent multiple-member limited liability companies and joint stock companies over 50% of charter capital or voting shares of which is held by the State.
4. The government shall elaborate this Article.

Source: Enterprise Law of Viet Nam (2020); World Laws Information Center, <https://world.moleg.go.kr/web/main/index.do>

The **State Capital Management Law (Law No. 69/2014/QH13)** enacted in 2014 is the government's most important recent attempt to develop and implement a comprehensive framework that consolidates state ownership practices. It is notable that the Law No. 69 established the right of enterprise owners as (i) exercising all ownership rights, and (ii) undertaking investment and capital management over the assets vested in the companies. The Law and its guiding documents have defined a list of strategic state capital investment domains which include: the provision of essential public production and services to the society; national defence and security; national monopoly; and high technology. The law includes requirements on further information disclosure specific to enterprises and organisations representing state capital in SOEs. It also specifies that the Chair of the BoM or a CEO may be dismissed if they do not meet the business target in the approved business plan.

For enterprises in which 100% of charter capital is held by the State, the distribution of profits shall comply with the provisions of Article 34 of the Law No. 69/2014/QH13. For partially-owned enterprises (joint-stock companies, limited liability companies with two or more members), a representative of the state capital portion shall report and consult the owner's representative agency prior to participating and voting in the General Meeting of Shareholders, meetings of the Board of Directors, the Board of Members on the matters related to dividend payment and distribution of profits of the enterprise according to the Article 48 of the Law No. 69/2014/QH13). However, the law does not provide details about separation between ownership function and regulation of SOEs nor co-ordination mechanism between various entities exercising state ownership.

Government is currently drafting a law to amend the Law No. 69/2014/QH13 to make it more aligned with the OECD SOE Guidelines, collecting comments from various ministries and SOE stakeholders. The

Ministry of Finance is currently leading the process and is planning to submit the amended Law 69/2014/QH13 to the National Assembly by end-2023. The revised Law is expected to take effect from 1 July 2024. The OECD mission team is informed that some of the key priorities underpinning the new law will be ensuring enhanced level of autonomy for board of members and executive management in SOEs; structural separation between public policy and commercial activities of SOEs; and reducing administrative and procedural burden for SOEs that operate in manufacturing sector.

The Law 69/2014/QH13 on State Capital Use and Management, the 2020 Enterprise Law, decrees and circulars mentioned below specify other state ownership functions and important obligations of enterprise owners such as reporting, disclosure and professionalising board practices in a fragmented manner. While the legal regulatory framework for corporate governance of SOEs has made significant progress over the years, it has traditionally put more emphasis on state capital management framework, and it is only recently that the regulations have given attention to ensuring transparency and accountability of the state-owned sector. The current legal framework rather views SOEs as a tool to regulate the economy and does not recognise autonomy and self-responsibility of SOEs.

Frequent changes in the legal definition of SOEs have also been problem in the recent past. The 2005 Enterprise Law recognised majority state-owned companies as SOEs, the revised 2014 Law did not. This had created a confusion for policy makers and also delayed equitisation process as other laws (e.g. the State Capital Management Law) implied a broader scope than the 2014 Enterprise Law which had considered only 100% state-owned enterprises as SOEs (see Box 3.2).

The new Enterprise Law which went into force in early 2021 has again broadened the scope of SOEs – recognising both wholly state-owned enterprises and majority state-owned companies (more than 50% and less than 100%) as SOEs provided that their shares are owned directly by the state.<sup>2</sup> While the new law is expected to bring more clarity on SOE landscape in the country there is also a concern that the broadened definition of SOE will make joint stock companies that are partly owned by the State more eligible for preferential treatments from the State owners and state-owned banks.

At the same time, a number of laws and regulations related to the equitisation of SOEs (i.e. Law on Securities, State Capital Management Law, Law on Investment and the Law on Enterprises) overlap with each other and are also often ambiguous, which hamper the full implementation. Often, a foreign investor needs additional guidance from competent authorities when acquiring shares in an equitizing SOE. The Prime Minister has recently issued decision on state capital divestment at enterprises as a key measure to speed up the equitisation process of SOEs and enhance transparency in state management in SOEs. The details are provided below.



### Box 3.2. Changes in definition of SOE

Prior to 1995, organisation, management and operation of SOEs in Viet Nam were regulated by different legal documents issued by the Government or Ministries. In 1995, the first Law on SOEs was enacted. A state-owned enterprise was defined in the law as an economic organisation, which is capitalised, set up, organised and managed by the State. The law also classified SOEs into two categories: (i) state business enterprises which operate on a profit basis and without subsidies; and (ii) state public service enterprises which operate in accordance with social and security policies of the State and are eligible for subsidies. The 1995 Law on SOEs did not address key corporate governance elements such as transparency, disclosure and board independence. It also allowed close supervision of line ministry over its portfolio SOEs including day-to-day management.

The 1995 Law on SOEs was replaced by the 2003 Law on SOEs. The “new Law” included not only enterprises with 100% state capital, but also joint-stock and limited liability companies with dominant state share (higher than 50%) as SOEs. However, in practice, the Law on SOEs only applied to wholly state-owned enterprises and other types of SOEs that are joint stock or limited liability companies were regulated by the 1999 Law on Enterprises.

The 2005 Law on Enterprises defined SOEs as enterprises of which the State owns over 50% of charter capital. The corporate forms of SOEs included one-member limited liability company (i.e. an SOE of which its capital is 100% owned by the State); joint stock company and limited liability company with more than one member (i.e. an SOE of which majority of its share or capital is owned by the State).

The 2014 Law on Enterprises was enacted with a new definition of SOEs. It defined SOEs as those “fully owned by the State”, instead of “more than 50%” as prescribed previously. With the new definition, the scope of SOE sector in Viet Nam was narrowed down and joint stock companies that are partly owned by the State were required to operate on the same legal basis as other private companies and thus were in principle were not eligible for any preferential treatments from the State owners. The Law was again revised in 2020 with broadened definition of an SOE and more attention to treatment of minority shareholders and investors.

Source: Interview with SOE stakeholders in Viet Nam

#### 3.2.1. Other relevant legal documents that are applicable to SOEs

##### *Professionalising boards of directors*

Decree No. 97/2015/ NĐ-CP, Decree No. 106/2015/NĐ-CP, and Decree 159/2020/ND-CP.

These Decrees set out functions and mandates of BoMs and BoDs of companies in which the State holds more than 50% of share capital. They provide guidelines and regulations on the board nomination criteria and an official nomination and appointment procedure to a certain extent. According to these Decrees, membership and the structure of the BoM or BoD depends on the proportion of shares that shareholders hold in the enterprise. In SOEs, the State is the only shareholder or majority shareholder who reserves the right to assign all or the majority of members in the BoM and BoD.

All charters require that SOEs’ BoMs/BoDs, or BoCs, shall take full responsibility for the company’s performance and be granted with full autonomy to define strategies for the company in accordance with the objectives defined by the government. The Decrees also state that if a board member is found to have been unduly influenced by outside person(s) or institution(s), public authorities may implement and apply adequate disciplinary measures. The CEO of an SOE cannot serve as chair of the board at the same time.

However, in practice, the BoM/BoD has yet to be given full responsibility for and autonomy in the development of SOEs' strategies. SOEs develop and suggest their strategic development strategies and submit them to competent authorities for approval. Public authorities often exert influence on SOEs' day-to-day business through the so-called state management function.

#### *Transparency and disclosure*

**Decree No. 47/2021/ND-CP** dated 1 April 2021 of the government provides details on a number of articles in the Law on Enterprises which specifies a list of information that should be disclosed as well as forms and means of disclosure. The Decree requires that reports on information disclosure be published on the website of the enterprise, the portal or website of the agency representing the owner and the Business Portal for at least five years. Enterprises disclosing information must conserve and archive reported and announced information according to the law provisions. **Decree No.81/2015/ND-CP** dated 18 September 2015 by the government had previously stipulated requirements for information disclosure by SOEs but a number of SOEs do not publish any reports in public domain except listed SOEs.

The reports provided by listed SOEs are also of varying qualities. According to the Official Letter No. 668/BKHDT-PTDN dated 24 January 2017, issued by the Ministry of Planning and Investment, only 40% of SOEs submitted reports to the Ministry of Planning and Investment to disclose information in accordance with Decree 81 in 2016 (Phuong, 2020<sup>[41]</sup>).

#### *Equitisation process*

**Decree No. 126/2017/ND-CP** provides regulations on equitisation process of SOEs – converting SOEs and one-member limited liability companies in which the State holds 100% of share capital into joint stock companies. It specifies obligations to list securities on the UPCOM after equitisation. With the aim of addressing a number of regulatory issues and constraints in SOE equitisation, it introduced new measures. The details of the new measures are provided in the Box 3.3.

### Box 3.3. Decree No. 126/2017/NĐ-CP on equitisation process of SOEs

The Decree allows four methods for launching an IPO – auction, underwriting, private placement and book building.

According to the Decree, when preparing for IPO documents, the enterprise must at the same time prepare documents for registration at the Viet Nam Securities Depository or for stock trading if eligible. Documents for registration or stock trading on the unlisted public company market must be completed within 90 days from the IPO. This regulation aims to speed up the listing of SOEs following their IPOs and thus has a strong implication on the requirements of improving corporate governance of SOEs while they are preparing for the IPO and after being equitised.

The Decree provides three methods for equitisation, i.e. (i) keeping State capital at SOEs intact and issue shares to increase charter capital, (ii) selling part of State capital at SOEs or combine State stake sale with additional share issuance, and (iii) selling entire State stake or combine entire State stake sale with additional share issuance.

The Decree provides detailed instructions for evaluating an SOE's value, including land use right value and business advantage value. Business advantage value includes brand value and development potential value. The decree is expected to prevent cases in which its brand value was determined to be zero.

The Decree states that the State will not finance the equitisation of SOEs, including enterprises in which the State still holds more than 50% stake following equitisation.

Note: According to the Vietnamese Land Law, all land is state-owned. Private ownership of land is not permitted in the country.  
Source: Submissions from the Ministry of Finance

Decision 707QD-TTg/2017 set out details about which SOEs to be divested, the requirement of listing on the stock exchange and the establishment of the Commission for the Management of State-owned Capital (CMSC) in Enterprises to improve ownership arrangements of SOEs. No. 26/2019/QĐ-TTg of Prime Minister set equitisation deadlines for SOEs by 2020. But many SOEs missed the deadlines.

Decision No 22/2021/QĐ-TTg dated 2 July 2021, of the Prime Minister stipulates criteria for the classification of SOEs and state-invested enterprises that are subject to ownership conversion and divestment in 2021-25 period. The Ministry of Finance views that this is a step towards decentralisation of powers of the government and the Prime Minister in equitising SOEs. According to the Decision, the Prime Minister will directly approve ownership conversion and divestment plans of parent companies in groups of parent company-subsidiary companies that are single-member limited liability companies with 100% of charter capital held by the State. As for subsidiaries in groups of parent company-subsidiary companies that are single-member limited liability companies with all charter capital held by the State, their parent companies should approve their plans.

Under the decision, the Prime Minister will approve ownership conversion and divestment plans for nearly 500 “parent companies”, such as maintaining an enterprise in which the State holds 100% of charter capital, the State will hold from over 50% to under 65% of charter capital after the equitisation, or the State will hold from 65% of charter capital after equitisation.

The SOEs that are included in the list include the Vietnam Posts and Telecommunications Group (VNPT), Electricity of Vietnam, The Việt Nam Oil and Gas Group (PVN), Việt Nam National Coal and Minerals Group (Vinacomin), Việt Nam National Chemical Group (Vinachem), Military Industry-Telecoms Group (Viettel) and the State Capital Investment Corporation (SCIC).

### **3.2.2. Legal regulatory framework relevant to participation of foreign investors in equitisation and IPO of SOEs**

Foreign investors/foreign enterprises are entitled to purchase shares from equitised SOEs according to the Provisions of Clauses 1 and 2, Article 6 of Decree No. 126/2017/ND-CP dated 16 November 2017 of the government and Article 125 on Law on Enterprises. Law on Investment further stipulates the conditions that foreign investors must meet when contributing capital, buying shares or buying capital contributions from economic organisations, including conditions for market access; ensuring national defense and security; and land regulations.

The current legal regulatory framework ensures participation of foreign countries, except for some cases where conditional business lines should be controlled by the state due to national security reasons or must be consistent with criteria of international commitments to which Viet Nam is a member (e.g. WTO, EVFTA, CPTTP, Viet Nam-Japan Economic Partnership Agreement (VJEPA) and Viet Nam-Korea Free Trade Agreement (VKFTA) (e.g. insurance industry, accounting, tourism services, advertising, post and telecommunications).

OECD mission team is informed that the government is aware that foreign investors often feel hesitant to buy shares from equitised SOEs in Viet Nam because they are only minority ones, and they feel it is not meaningful for them. The government has tried to address this issue by improving regulations on foreign ownership limits (FOLs) in recent years. New Security Law which came into effect in 2019 aims to remove FOLs in most industries except for specific sectors important to national security. This allows for public companies to take steps to increase the foreign ownership to 50% or above, or to remove foreign ownership restrictions when given approval by the State Securities Commission. However, a timeline for the implementation is not clear and all banks still have FOLs of 30%. Securities Law 2019 and Article 139 of Decree No. 155/2020/ND-CP dated 31 December 2020, of the government provide provisions on the rate of foreign ownership in the Vietnamese stock market for public companies with details on how equitised enterprises shall list and register for transactions on the stock market.

The 2014 Law 69 on Management and Utilisation of State Capital provides principles and methods of transferring investment capital. The Law stipulates that the attraction of foreign investors to participate in production and business activities of enterprises during restructuring is one of the contents of capital restructuring state in business. In addition, equitised enterprises are required to publicly disclose information and list on the stock market as prescribed in Article 11 of Decree No. 126/2017/ND-CP of the government. The equitisation must be publicly announced on the Government's web portal and sent to the Ministry of Finance and the Steering Committee for Innovation and Enterprise Development for monitoring: the roadmap and progress of equitisation information about the business (including the approved land use plan, the disputed land areas that need to be further resolved – if any), financial handling issues during the process, equitisation process, valuation method and results of enterprise valuation.

Pursuant to the above-mentioned provisions, the initial public offering of shares is carried out through an open process with no statutory restriction on participation of foreign investors. However, there are some exceptions when foreign investment must meet market access conditions which often vary depending on state ownership rate and criteria for classification of SOEs announced by the Prime Minister.

The government has recently enacted the divestment portfolio in line with the Decision 26 and made it clear what enterprises should be subject to holding and how much percent of share should be available to strategic investors to ensure the transparency. As for Vinamilk and Sabeco there was a strong interest by foreign investors. For the 2021-25 period, the government aims at continuing this approach to provide investors with sufficient and clear information about the ownership percentage. The government is considering conducting a roadshow to attract more interest to widely disseminate relevant information. Research results indicate that the more stake that strategic investors hold in the enterprises, the better these enterprises will perform (Nguyen and Vo, 2022<sup>[5]</sup>).

### The land issue

In Viet Nam, all land is state owned. Individuals, enterprises, or organisations are granted “land use rights certificate” in accordance with the Land Law. Foreigners can retain the land use rights up to 50 years while locals can retain indefinitely. According to the government and various SOE stakeholders, there is no preferential treatment toward SOEs in terms of land allocation. No free land is being given to an SOE at the moment except for several cases due to national security reasons. When SOEs want to rent a portion of land from the state, they are must submit a clear and comprehensive land use plan. Government confirmed to the OECD that there is no way for a regular SOE to use the land free as they used to do in the past.

However, the current Land Law is unclear about roles and responsibilities of the State as the owner’s representative regarding land use and management. Also, it doesn’t provide detailed guidance on compensation and resettlement when the State recovers land nor comprehensive policy framework for settling land disputes. The government has recently submitted Report No. 224/TT-CP to the National Assembly Standing Committee, proposing to amend and supplement relevant policies in the Land Law. Also, as a move to tackle problems related to land use rights during equitisation process, the Ministry of Natural Resource and Environment has recently issued Circular 03/2021/TT-BTNMT (12 May 2021). However, full compliance by stakeholders remains to be seen.

**Table 3.1. Provisions related to the procedures for selling shares to foreign investors**

<b>2014 Law 69 on Management and Utilisation of State Capital</b>	Clauses 1 and 2, Article 31 of Law No. 69 on principles and methods of transferring investment capital. Clause 4, Article 36 of Law No. 69 stipulating that the attraction of foreign investors to participate in production and business activities of enterprises during restructuring is one of the contents of capital restructuring state in business.
<b>Decree No. 126/2017/ND-CP dated 16 November 2017 of the Government on Conversion from State-Owned Enterprises and Single-Member Limited Liability Companies with 100% of Charter Capital Invested by State-Owned Enterprises into Joint-Stock Companies</b>	Article 6. Requirements for purchasing shares 1. Domestic investors shall be entitled to purchase shares from equitised enterprises with unlimited quantity, unless otherwise stated in Clause 4 this Article. 2. Foreign investors shall be entitled to purchase shares from equitised enterprises in compliance with provisions of this Decree and relevant legislative documents. Foreign investors that wish to purchase shares shall open accounts at credit institutions under regulations of Vietnam law on foreign exchange. 3. Strategic investors: a) A strategic investor may be a domestic or foreign investor that: - has the status of a legal entity; - has adequate financial capacity and a profitable business in the past 2 years before the date of subscribing for shares without accumulated loss; and - has a written commitment made by a competent person when registering to become the strategic investor of the equitised enterprise that: + The primary business line(s) and brand(s) of the equitised enterprise will be maintained for at least 3 years from the date officially becoming the strategic investor
<b>Law on Enterprises</b>	Articles 123 and 125 stipulate forms of share offering (Offering shares to existing shareholders; Offering private shares; Offering shares to the public), in which: Clause 3, Article 123 stipulates: Public offering of shares, offering for sale of shares by public companies and other organisations shall comply with the law on securities. Clause 3, Article 125 stipulates that offshore investor buy shares offered for private sale in joint-stock companies that are not public companies: “Overseas investors (foreign investors) buy shares offered for sale. According to the provisions of this Article, they must carry out the procedures for buying shares in accordance with the provisions of the Law on Investment.
<b>Law on Investment</b>	Article 24 of the Investment Law 2020 stipulates the conditions that foreign investors must meet when contributing capital, buying shares or buying capital contributions from economic organisations, including: conditions for market access; ensuring national defense and security; and land regulations. Article 9 of the Investment Law 2020 stipulates market access conditions for foreign investors specified in the List of industries and trades with restricted market access for foreign investors, including: rate of ownership of charter capital of foreign investors in economic organisations; investment form; scope of investment activities; investor’s capacity; partners participating in investment activities; and other conditions as prescribed in laws and resolutions of

	<p>the National Assembly, ordinances and resolutions of the National Assembly Standing Committee, Government decrees and international treaties to which Viet Nam is a member.</p> <p>Clause 5, Article 4 of the Investment Law 2020 provides for the application of the law to contracts in which at least one party is a foreign investor: “For a contract in which at least one party is a foreign investor or economic organisations specified in Clause 1, Article 23 of the Law on Investment, the parties may agree in the contract on the application of foreign laws or international investment practices if such agreement is not contrary to the provisions of Vietnamese Law”.</p> <p>Clauses 2, 3, 4, Article 14 of the Law on Investment 2020 provide for the settlement of disputes in business investment activities involving foreign investors.</p> <p>Clause 2, Article 26 of the Investment Law 2020 stipulates investment procedures in the form of capital contribution, share purchase, purchase of contributed capital for foreign investors.</p> <p>Articles 15, 16, 17, 18 of the Government’s Decree No. 31/2021/ND-CP dated 26 March 2021 detailing and guiding the implementation of a number of articles of the Investment Law providing for subjects and principles of application of the list of industries and trades with restricted market access for foreign investors.</p> <p>Article 6 of Decree No. 126/2017/ND-CP dated 16 November 2017 and Clause 3, Article 1 of Decree No. 140/2020/ND-CP dated 30 November 2020 of the Government on the transfer of home businesses state-owned enterprises and one-member limited liability companies with 100% charter capital invested by state-owned enterprises into joint-stock companies:</p> <p>2.1 Point a, Clause 2, Article 33 stipulates “shares held by the State according to the criteria for classification of state-owned enterprises announced from time to time by the Prime Minister”.</p> <p>2.2 Article 6 provisions</p> <ul style="list-style-type: none"> <li>- Right to buy shares of foreign investors.</li> <li>- The selection of strategic investors (conditions, selection process, selling price).</li> </ul>
<b>Securities Law</b>	Article 139 of Decree No. 155/2020/ND-CP dated 31 December 2020 of the government provides provisions on the rate of foreign ownership in the Vietnamese stock market for public companies with details on how equitised enterprises shall list and register for transactions on the stock market.
<b>Decree No. 91/2015/ND-CP (amended and supplemented in Clause 16, Article 2 of Decree No. 140/2020/ND-CP)</b>	Article 29 stipulates the method of transferring investment capital out of enterprises in which 100% of charter capital is held by the State, in the case of capital transfer in a joint stock company listed or registered for trading on the stock market and in case of capital transfer at a joint stock company unlisted.

Source: Submission from the Ministry of Finance, Vietnamese Law Portal, <https://thuvienphapluat.vn>.

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## Notes

<sup>1</sup> The Law on Independent Audit does not provide any definition on “state secrets”.

<sup>2</sup> Conversely, subsidiaries of SOEs are not considered as SOEs in the terms of the Law.





# 4 Ownership and corporate governance

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Viet Nam established the Commission for the Management of State Capital at Enterprises (CMSC) in 2018 in an attempt to centralise state ownership function. This chapter describes the arrangements of state ownership and state capital management practices in Viet Nam. In particular, it looks at the role of key institutional actors in the country's SOE governance landscape. It then discusses the structure and composition of the SOE Board of Members and Boards of Directors, as applied to wholly-owned SOEs or majority-owned SOEs. It also provides an overview of the different types of financial control systems applied to SOEs, both internal and external controls.

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## 4.1. Ownership arrangements and co-ordination

The state ownership function in Viet Nam is traditionally decentralised, with recently emerged consolidation and co-ordination of state ownership function in 19 of the country's largest SOEs and state corporate groups through the Commission for the Management of State Capital at Enterprises (CMSC).

Policy framework for state ownership function in Viet Nam has gradually improved in recent years. The government established CMSC, a ministry-level entity in February 2018 under Decree No. 131/2018/ND-CP with a view to separate ownership of SOE from regulation function and enhance efficiency of sales and equitisation of SOEs. As per the Decree, state's shareholder rights in 19 SOEs and state corporate groups including the State Capital Investment Corporation have been transferred from line ministries that previously had a dual role as a regulator and a shareholder of enterprises to the CMSC (see Table 4.1). The CMSC's portfolio amounts to around 200 individual SOEs which represent two-thirds of the total state-owned equity capital in the country.

In practice, line ministries continue to have an important operational control in many of the companies that are in the portfolio of the CMSC. The Decree No. 131/2018/ND-CP also makes it clear that the CMSC should consult key line ministries including the Ministry of Planning Investment and the Ministry of Finance before making any proposal for approval to Prime Minister regarding key financial control and human resource issues of its portfolio enterprises that are established by the Prime Minister (see Box 4.1)

Especially given their extensive institutional memory and knowledge of SOEs that were previously under their portfolio, line ministries are likely to continue to be an important stakeholder in decision making process related to management as well as equitisation process of SOEs. Line ministries also often exercise undue influence over executive management and boards of SOEs through their political connections, hindering them from exercising apolitical and independent judgement on the corporate policy and management.

#### Box 4.1. Article 5 of the Decree 131/2018/ND-CP on duties and powers of the CMSC

To propose competent authorities to promulgate, amend and supplement the charters of state-owned enterprises established by decision of the Prime Minister to assign the Committee to act as the representative of the owner.

Advise and assist the Prime Minister in exercising his/her rights and responsibilities towards enterprises represented by the Commission as the owner's representative:

- Co-ordinate with the Ministry of Finance and the Ministry of Planning and Investment on decision on state capital investment for an enterprise for submission to the Prime Minister in accordance with the Law on Management and Use of State Capital.
- Co-ordinate with the Ministry of Planning and Investment, the Ministry of Finance and relevant agencies in, submitting to the Prime Minister for decision on reorganisation, ownership conversion, dissolution and bankruptcy request by enterprises established by decision of the Prime Minister.
- Co-ordinate with the Ministry of Finance in, submitting to the Prime Minister for decision on charter capital upon establishment and adjustment of charter capital of enterprises established by decision of the Prime Minister.
- Co-ordinate with the Ministry of Planning and Investment, the Ministry of Finance and relevant agencies in, submitting to the Prime Minister for approval of the development investment strategy and the production and business plan of enterprises established by decision of the Prime Minister.
- Co-ordinate with the Ministry of Home Affairs in, submitting to the Prime Minister for decision on planning, appointment, re-appointment, dismissal, acceptance of resignation, transfer, rotation, commendation, discipline and termination of employment, retirement of the Chair of the BoM of the enterprise established by decision of the Prime Minister.
- Co-ordinate with the Ministry of Home Affairs in, submitting to the Prime Minister for decision on appointment of the Chair of the BoM of enterprises established by the Prime Minister's decision after obtaining the collective consensus of the Party Personnel Committee.
- Co-ordinate with the Ministry of Home Affairs in, submitting to the Prime Minister for decision on appointment of the General Director of the State Capital Investment Corporation after obtaining the consensus of the Government's Party Personnel Committee.
- Co-ordinate with the Ministry of Home Affairs in, reporting and consulting the Government's Party Personnel Committee before obtaining written approval from? the Board of Members to appoint the General Director according to the provisions of the enterprise's charter.

- Co-ordinate with the Ministry of Planning and Investment, the Ministry of Finance and relevant agencies in, submitting to the Prime Minister for approval the enterprise establishment project decided by the Commission according to the Law on Management and Use of State Capital.
- Co-ordinate with the Ministry of Planning and Investment, the Ministry of Finance and relevant agencies in, submitting to the Prime Minister for approval a master plan on reorganisation and renewal of enterprises, represented by the Committee as the owner of the enterprise.
- Co-ordinate with relevant agencies in, submitting to the Prime Minister for decision the policy of transferring state capital in enterprises between the Committee and the owner's representative agencies, between the Commission and the enterprise.

To perform tasks and exercise the powers of enterprises in which 100% charter capital is held by the State, and assign the Committee to act as the owner's representative:

- Decide on charter capital upon establishment and adjust charter capital during the operation of enterprises, except for enterprises established by decision of the Prime Minister.
- Make additional investment in charter capital for enterprises in accordance with the Law on Management and Use of State Capital.
- Decide on the establishment, reorganisation, ownership transformation, dissolution, request for bankruptcy of the enterprise according to the provisions of law and the approved enterprise arrangement and renovation scheme.
- Promulgate charters, amend and supplement charters of enterprises, except for enterprises established by decision of the Prime Minister; • Approve five-year investment and development strategies and plans, except for enterprises established under the Prime Minister's decision; • Approve the enterprise's annual production and business plan.
- Decide on planning, appointment, re-appointment, dismissal, acceptance of resignation, transfer, rotation, reward, discipline, severance, retirement, salary, remuneration, bonus and rights other interests of the Chair of the BoM, members of the BoM, the President of the company, the Controller, the Financial Controller; Decide on the fund of annual salary and remuneration of enterprise managers and controllers, except for cases falling under the decision competence of the Prime Minister.
- Approve for the BoM or the company's president to plan, appoint, re-appoint, relieve from duty, accept resignation, transfer, rotation, commendation, discipline, resignation or retirement for with the General Director or the Director of the enterprise and other management titles as prescribed.
- Report to the Government's Party Personnel Committee before obtaining written approval for the Board of Members, the company's President to appoint the General Director according to regulations.

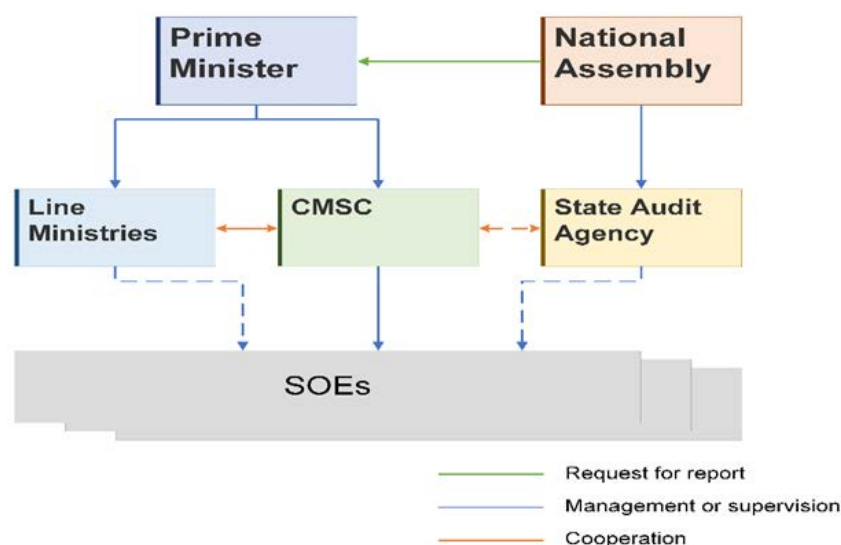
The creation of the CMSC has a dual impact on the current SOE governance landscape. On one hand, it is to facilitate the implementation of the government's concrete goal for reducing state capital through equitisation of SOEs. However, on the other hand, the establishment of CMSC could be considered as an attempt to tighten the government's grip on the equitised enterprises and enterprises that are undergoing equitisation process. It adds another stakeholder in the decision-making process regarding equitisation (Vuong, 2019<sup>[1]</sup>; Tien, 2021<sup>[2]</sup>).

According to the 2014 Law on Management and Use of State Capital invested in production and business in enterprises, "representative state owner" means an agency or organisation assigned by the government to exercise rights and responsibilities with respect to the state capital invested in joint-stock companies

and limited liability companies. As per the Law, there is no limit to participation of public sector agencies in the ownership or performance of the ownership function of SOEs.

As such, a number of state ownership entities – line ministries and government agencies still perform the function of representing owners of state capital in state-owned enterprises other than the ones in the CMSC's portfolio. These include the Ministry of Industry and Trade, the Ministry of Finance, the Ministry of National Defence, the Ministry of Transport, and the Ministry of Agriculture and Rural Development. At the subnational level ownership is typically exercised by the various regional People's Committees (see Figure 4.1 and Table 4.1). According to OECD's classification of state ownership models, characteristics of Viet Nam's ownership structure feature both those of dual model and co-ordination agency model (see Box 4.2).

**Figure 4.1. CMSC's institutional relationship with other government bodies**



Source: OECD Secretariat's elaboration based on information gathered from Vietnamese authorities.

**Table 4.1. List of state ownership representative agencies in Viet Nam**

	Name of the owner's representative agency
<b>List of representative agencies for SOEs held by central government</b>	Committee for Management of State Capital at Enterprises Ministry of Finance Ministry of Public Security Ministry of Industry and Trade Ministry of Transport Ministry of Science and Technology Ministry of Agriculture & Rural Development Ministry of Defense Ministry of Natural Resources and Environment Ministry of Information and Communications Ministry of Culture, Sports and Tourism Ministry of Construction Vietnam Television Station State Bank of Vietnam Vietnam News Agency

Note: OECD Secretariat's elaboration based on available sources.

Source: Website of the Ministry of Planning and Investment [business.gov.vn](http://business.gov.vn); information submitted from Vietnamese authorities.

### Box 4.2. Types of state ownership model structures

**Centralised model.** One government institution carries out the mission as shareholder in all companies and organisations controlled by the state (with or without exceptions). This institution can be either a specialised ownership agency or a designated government ministry. Financial targets, technical and operational issues, and the process of monitoring SOE performance are all conducted by the central body. Board members are appointed in different ways, but essential input comes from central unit.

**A co-ordinating agency/department** with non-trivial powers over SOEs formally held by other ministries (and institutions). For example, a co-ordinating department or specialised unit acting in an advisory capacity to shareholding ministries on technical and operational issues, in addition to being responsible for performance monitoring.

**Twin Track Model.** Two different government institutions exclusively exercise ownership functions on their respective portfolios of SOEs.

**Separate Track Model:** A small number of ownership agencies, holding companies, privatisation agencies or similar bodies owning portfolios of SOEs separately.

**Dual ownership.** Two ministries or other high-level public institutions jointly exercise the ownership. This would be the case where different aspects of the ownership functions are allocated to different ministers – e.g. one ministry is responsible for financial performance and another for operations, or each ministry appoints a part of the board of directors.

**Dispersed ownership.** A large number of government ministries or other high-level public institutions exercise ownership rights over SOEs (in the absence of a co-ordinating agency).

Source: OECD (2021), Ownership and Governance of State-Owned Enterprises: A Compendium of National

Practices 2021, <https://www.oecd.org/corporate/ownership-and-governance-of-state-owned-enterprises-a-compendiumof-national-practices.htm>.

Viet Nam has yet to develop a concrete and unified ownership policy. The legal and institutional framework for state ownership builds on a number of documents specifying policy priorities in the area of state ownership and management. The Government of Viet Nam has formulated policies regarding SOE ownership through promulgation of the 2020 Law on Enterprises, 2014 Law on State-Owned Capital Management, relevant laws, decrees (Decree No. 10/2019/ND-CP) guiding the implementation of laws and sectoral ministries' circulars. To varying degrees, these legal normative documents have specified the rights and responsibilities of state ownership representative bodies including the government, Prime Minister, sectoral ministries representing the owner, and the BoM/Chair/representative of state capital at SOEs.

Government entities that are responsible for developing ownership-related policies are the Ministry of Finance (MOF), Ministry of Planning and Investment (MPI), Ministry of Justice (MOJ), Ministry of Home Affairs (MOHA), and Ministry of Labour, Invalids and Social Affairs (MOLISA). According to the government, these sectoral ministries also consult stakeholders such as SOEs, associations, consumers, and general public.

Some main priorities that act as the basis for policies related to the government's ownership of SOEs include conservation and development of the owner's capital invested in enterprises; orientation of SOE development per economic, political, and social goals of the Government; strengthening of SOEs' leading role in socio-economic development, etc.

Every five years, the Prime Minister issues a Decision on criteria for the classification of SOEs as a basis for sectoral ministries, groups, and corporations to review and submit to competent authorities for approval. SOE strategies are also usually defined over a five-year period, the latest one being targeted at 2021-25 period. The approval process for strategies of SOEs is spelled out in the 2014 Law 69 on Management and Utilisation of State Capital and Decree No. 10/2019/ND-CP dated 30 January 2019 by the government, specifically as follows:

- Enterprises with 100% state capital established by decision of the Prime Minister: the Prime Minister approves the strategy.
- Enterprises with 100% state capital established by the owner's representative agency: The owner's representative agency approves the strategy in consultation with BoD and the company's CEO.
- Enterprises of which 36% or more is held by the State: The representative of the state capital portion in the enterprise shall report to the owner's representative agency before giving opinions, voting and decisions at the GMS and the meeting of the BoM.

The formulation of the enterprise's strategy is usually based on the orientations of the Party, the State and the government and the national Socio-Economic Development Strategy, as well as the planning of sectors and fields related to enterprises. SOE strategies are completed and approved by the responsible authorities after the national Socio-Economic Development Strategy is approved. The BoM of the enterprise participates in the process of formulating the development strategy of the enterprise.

#### **4.1.1. The main institutional actors**

**Prime Minister:** The Prime Minister as a state representative has an important decision-making authority over wholly state-owned parent company of SOE group. It can appoint and dismiss board of directors and CEOs of the parent company including those of CMSC and can also exercise its power on key management activities of the SOEs established by the Prime Minister based on the advice of key line ministries such as the Ministry of Finance and Ministry of Planning and Investment. The Prime Minister also has a final authority on the equitisation (See Box 4.3).

### Box 4.3. Rights and responsibilities of the Prime Minister

Article 6 of the Decree No. 10/2019/ND-CP sets out that the Prime Minister shall carry out rights and responsibilities of the state owner's representative under the provisions of the Law on management and use of state capital invested in business activities of enterprises rights and responsibilities of the Prime Minister as follows:

1. Investing state capital in establishment of wholly state-owned enterprises under the following delegated powers:
  - a) The owner's representative agency shall prepare application documentation for establishment of enterprises and submit it to the Prime Minister. The application documentation shall enclose the proposal for establishment of an enterprise under the provisions of the Law on management and use of state capital invested in business activities of enterprises and other relevant documents prescribed in applicable provisions of laws.
  - b) The Prime Minister shall issue the Decision on establishment of an enterprise after receipt of assessment opinions from the Ministry of Planning and Investment and opinions from the Ministry of Finance, the Ministry of Home Affairs, the Ministry of Justice, the Ministry of Labor, War Invalids and Social Affairs, and other sectoral ministries involved, about the proposal for establishment of an enterprise submitted by the owner's representative agency.
  - c) The Prime Minister shall appoint the Chair of the Board of Members upon the request of the owner's representative agency and assessment conducted by the Ministry of Home Affairs.
2. Making the decision on the following issues related to wholly state-owned enterprises established under the Prime Minister's decision:
  - a) Decide reorganisation and transfer of ownership and rearrangement of enterprises according to the request of the owner's representative agency and opinions of the Ministry of Planning and Investment, the Ministry of Finance, the Ministry of Home Affairs, the Ministry of Justice, the Ministry of Labour, War Invalids and Social Affairs, and sectoral ministries involved.
  - b) Decide the charter capital of an enterprise upon its establishment as provided in Clause 1 of this Article; decide to approve the adjustment to the charter capital of an enterprise during its business period according to the owner's representative agency and consenting opinions given in writing by the Ministry of Finance under the Government's regulations on investment of state capital in enterprises, management and use of capital and assets at enterprises.
  - c) Approve the business strategy and plan, and the 5-year investment and development plan of each enterprise (including the business strategy, plan and 5-year investment and development plan) according to the request of the owner's representative agency and opinions of the Ministry of Finance or relevant sectoral ministries and assessment opinions of the Ministry of Planning and Investment.
  - d) Decide personnel planning, appointment, re-appointment, acceptance of resignation, dismissal, secondment, rotation, grant of awards to, imposition of disciplinary sanctions on, sacking and retirement of the Chair or the Board of Members according to the request of the owner's representative agency and assessment opinions of the Ministry of Home Affairs. The Prime Minister shall appoint the Chair of the Board of Members after receipt of consenting opinions from the collective of the Party's Committee for Civil Affairs of the government in accordance with the enterprise's statutes.

The State Capital Management Committee operating at each enterprise shall preside over and co-operate with the Ministry of Home Affairs to appeal to the Prime Minister to appoint the General

Director of the State Capital Investment Corporation after receipt of consenting opinions from the collective of the Government's Party Civil Affairs Committee.

Make the decision on appointment, re-appointment, dismissal, resignation, secondment, rotation, grant of awards to impose disciplinary actions on and retirement of the Chair of the Parent Company – Military Industry and Telecommunications Corporation according to the request of the Ministry of National Defence and opinions of the Ministry of Home Affairs. The Prime Minister shall appoint the Chair of the Parent Company – Military Industry and Telecommunications Corporation after receipt of unanimous opinions from the collective of the Government's Party Civil Affairs Committee.

3. Approve the proposal for the general organisation and reform of enterprises that are established by the owner's representative agencies or of which management is authorised on the basis of the request of these representative agencies and opinions of the Ministry of Finance, the Ministry of Planning and Investment, the Ministry of Home Affairs, the Ministry of Labour, War Invalids and Social Affairs, the Ministry of Justice and other relevant sectoral ministries.

Authority to grant the decision on restructuring of credit institutions going into special administration shall be subject to provisions of the Law on Credit Institutions.

4. Make a decision on the policies for transfer of state capital invested at enterprises amongst the owner's representative agencies and between owner's representative agencies and enterprises specialised in state capital investment and business in accordance with laws on transfer of the right to represent the owner of state capital invested at enterprises in accordance with laws.
5. Implement other rights and responsibilities of the state owner's representatives as regulated by laws and assigned by the government, and in accordance with this Decree.

Source: Decree No. 10/2019/ND-CP, Vietnamese Law Portal, <https://thuvienphapluat.vn/>; Submission from Vietnamese authorities

**Commission for the Management of State Capital at Enterprises:** The most important recent reform in state ownership framework in Viet Nam was the establishment of the CMSC.<sup>1</sup> The government established the Commission in 2018 according to the Guidelines of the Party, the Law 69 on State Capital Management and the Decree No. 131/2018/ND-CP. They stipulate that CMSC is charged with exercising owner's rights in 19 of the country's largest state-owned groups and corporations which are found in key sectors of the economy. Its portfolio amounts to around 200 individual SOEs which adds up to a total equity capital of USD 32.5 bn., representing two-thirds of the total state-owned equity capital in the country. Data on corporate forms and subsidiaries of CMSC's key portfolio companies are provided in the Annex A.

The Commission's shareholder rights in the 19 SOEs and state corporate groups include appointment and dismissal of board members and CEOs, restructuring, revision of charter and charter capital. It is also responsible for monitoring compliance of SOEs in its portfolio with governance standards including public reporting. As for SOEs that are established by the Prime Minister, the CMSC should consult the Prime Minister for approval prior to making decisions. The CMSC can make decisions on its own regarding other SOEs.

According to CMSC companies in its portfolio and are required to fulfil key functions: (i) preserve and increase state capital; and (ii) ensure essential services. In the largest seven SOE groups the president is appointed directly by the Prime Minister; CMSC is charged with appointing the executive management. In other non-financial SOEs the board/management is appointed by CMSC or the ownership ministries. In its recent seminar with the Prime Minister and other key SOE stakeholders, the CMSC expressed its concern about the full implementation of the right of CMSC as state capital representative in enterprises. In particular, it reported that the representative's authority in approving investment projects in enterprises is not clearly defined in legal documents.



The Commission, which became operational in September 2018, is still being built up to full operational capacity. In terms of staff composition and the organisational structure, CMSC currently has more than 100 staff and nine departments. It has one chair and four vice chairs appointed by the Prime Minister. There are currently plans to add two more vice chairs. The operational departments of CMSC is divided according to sectoral lines: industry; agriculture, finance; and infrastructure. There is also a General Department which is in charge of the SCIC.

**Table 4.2. Assets and capital of the 19 state economic groups and corporations under the management of CMSC**

Enterprises		Total Asset (mill. USD)		Charter capital (mill. USD)	State ownership ratio
Energy sector		71 949		22 124	
1	Vietnam Oil and Gas Group	PVN	35 739	12 197	100%
2	Vietnam national Coal – Mineral Industries	Vinacomin	5 597	1 517	100%
3	Vietnam Electricity (EVN)	EVN	30 613	8 410	100%
Industry sector		5 703		1 386	
4	Vietnam National Chemical Group	Vinachem	2 459	515	100%
5	Vietnam National Petroleum Group	PLX	2 434	561	85%
6	Vietnam National Tobacco	Vinataba	810	310	100%
Agriculture sector		4 751		2 300	
7	Vietnam Rubber Group	VRG	3 350	1 733	97%
8	Vietnam National Coffee Corporation	Vinacafe	152	39	100%
9	Vietnam Northern Food Corporation	VNFI	604	160	100%
10	Vietnam Southern Food Corporation	VNF2	385	217	51%
11	Vietnam Forestry Corporation – Joint Stock Company	Vinafor	260	152	51%
Infrastructure sector		17 747		5 563	
12	Vietnam Post and Telecommunications	VNPT	4 224	2 672	100%
13	MobiFone Corporation	Mobifone	1 409	650	100%
14	Vietnam Airlines	VNA	3 570	615	86%
15	Airports Corporation of Vietnam – JSC	ACV	2 319	943	95%
16	Vietnam Expressway Corporation	VEC	4 179	43	100%
17	Vietnam National Shipping lines	Vinalines	1 142	505	100%
18	Vietnam Railways	VNR	903	135	100%
General Sector		2 170		1 128	
19	State Capital and Investment Corporation	SCIC	2 170	1 128	100%
Total		102 320		32 501	

Note: USD 1 = VDN 22 750 (Vietnamese Dong) on 07 October 2021.

Source: Submission from CMSC.

**Ministry of Finance (MOF):** While the MOF does not officially hold operational powers over the SOEs, it exercises wide-ranging financial controls. It can appeal to the government to promulgate regulations on finance and accounting for SOEs including regulations on transformation of wholly state-owned enterprises into joint-stock companies and regulations on financial administration of wholly state-owned enterprises. It supervises financial activities and performance of wholly state-owned enterprises. In case of detecting signs of violations, it can organise direct inspection. It is mandated to prepare the report on investment, management and use of state capital at enterprises nationwide for submission to the government so that the government may review it and present it in the year-end meeting of the National Assembly under its authority delegated by the government. The ministry manages public assets, grants, government guarantees for SOEs to borrow foreign loans. It also designs financial and accounting reporting system for

SOE groups and sets additional regulations for insurance companies. It assists the Prime Minister on all financial issues of SOEs. The ministry is currently leading the process of amending the 2014 Law 69 on Management and Utilisation of State Capital.

**Ministry of Planning and Investment (MPI):** MPI shall appeal to the government to: Promulgate regulations on disclosure of information about business operations of wholly state-owned enterprises; regulations on rules for performing tasks of comptrollers of wholly state-owned enterprises; regulations on incorporation, consolidation, acquisition, splitting, dissolution and total sale of enterprises and transformation of wholly state-owned enterprises into multiple-member limited liability companies. The Enterprise Development Agency (EDA) of the ministry is the overall planning agency charged with overseeing business sector developments. It assists Prime Minister on investment and business areas and proposes investment and innovation plans of SOEs and small and medium-sized enterprises. It identifies sectors and SOEs for equitisation and reports to the Prime Minister with the aim of increasing participation of private sector in the economic development process. It is also responsible for undertaking impact assessments through consultations with various SOE governance stakeholders before a new law governing SOE sector comes into effect. The EDA is working with Korea's Ministry of Finance with whom they have an MoU, inter alia in the context of performance management of SOEs. Benchmarking against the OECD SOE Guidelines and also Korea's SOE performance evaluation system, MPI has developed a draft of key performance indicators (KPI) and has recently circulated it to various ministries and entities that are entrusted with state ownership function including the CMSC for their feedback. Once adopted, the MPI will oversee the implementation of KPI for individual SOEs.

**Ministry of Home Affairs (MOHA):** The Ministry of Home Affairs is responsible for the general governance of the State and advising the government in administrative organisation of the central and local governments, management of state personnels and civil servants, training of state governance, management of State archives. MOHA shall appeal to the government to promulgate regulations on recruitment, appointment, re-appointment, dismissal, grant of awards to, and imposition of disciplinary actions on, managers and comptrollers of wholly state-owned enterprises, and the representatives for state capital contribution portions. Senior managers or members of SOE board used to be considered as personnels in the state apparatus, under monitor of MOHA. The Law 52/2019/QH14 on Cadres, Public servants and Officials revised to remove senior managers and board members of SOEs from cadres and civil servants. However, MOHA is still tasked with the monitoring of SOEs' Chairperson of the board of directors, vice presidents, and council members according to Decree 159/2020/ND-CP.

**Ministry of Industry and Trade:** The ministry has transferred the companies it used to control to the CMSC, which is to say the capital shares and the ownership rights. However, sectoral activities (e.g. hydrocarbons; electricity) remain under the direct control of the ministry. Matters such as energy prices and access to service are determined by government, not by the energy regulator.

**Ministry of Labour, Invalids and Social Affairs (MOLISA):** It ensures that wage growth rate of SOE groups does not exceed labour productivity. Wages and remunerations of SOEs' BODs are provided as prescribed by the government and MOLISA. MOLISA shall appeal to the government to: Promulgate regulations on the compensation, remuneration and bonus package and other benefits granted to managers and comptrollers of wholly state-owned enterprises, and the representatives for state capital contribution portions; regulations on policies for recruitment, compensation, reward package and other benefits of employees working for wholly state-owned enterprises as provided in laws on labour. In some cases, wages and remunerations of SOEs' BODs have yet to be based on assessments of their work performance.

**Viet Nam Development Bank (VNDB):** It is one of two public sector development banks in Viet Nam. It is charged with investing in development projects consistent with the state's long-term Policy Strategy, and with funnelling incoming official development assistance to the intended recipients. VNDB is one of two public institutions allowed to issue bonds – the other being the national treasury – and it funds its lending

and investments from bond issuances. The interest rates on treasury bonds and VNDB's corporate bonds are identical. According to VNDB, more than half its loan portfolio currently consists of loans to SOEs.

### *State Capital Investment Corporation*

The State Capital Investment Corporation is a state-owned holding company that was established in 2005 under Decision No. 151/2005/QĐ-TTg by Prime Minister as part of government initiatives on enhancing the efficiency of use of state capital and capital allocation in SOEs that were equitised or partially privatised. SCIC's primary objectives are to represent the state capital interest in enterprises and invest in key sectors and essential industries with a view to becoming an active shareholder in SOEs and enhancing the role of the state sector while upholding the market rules. As such SCIC is mostly active as a shareholder in equitised and partly privatised SOEs.

SCIC sold its shares in 253 companies during 2015-20 period, raising around USD 1.8 billion from the sales. It is currently managing a portfolio of 145 firms that are operating in various sectors, including finance, energy, manufacturing, telecommunications, transportation and real estate (See Table 4.2). The SCIC is a shareholder in 40 listed companies, which include Vietnam Steel Corporation (93.93%), Song Da Corporation JSC (99.79%), Vietnam Water and Environment Investment Corporation JSC (98.16%) and Foreign Trade Logistics and Forwarding JSC (99.46%) (See Annex B).

<sup>1</sup> At its launching ceremony in 2018, CMSC also signed an MOU with Singapore's Temasek Holdings to share knowledge and experiences in modern capital management while respecting market rules.

Table 4.3. Aggregate data on companies that are under the portfolio of SCIC

	Majority-owned listed entities				Minority-owned listed entities (PSOEs)				Majority owned unlisted enterprises		
	No. of enterprises	No. of employees	Value of enterprises (mill. USD)		No. of enterprises	No. of employees	Value of enterprises (mill. USD)		No. of enterprises	No. of employees	Value of enterprises (USD mill.)
			Market	Book equity			Market	Book equity			
Primary sectors	1	68	87.840	65.652	4	19475	4966.802	2460.565	8	500	8.955
Manufacturing	8	36846	488.840	782.828	14	5056	110.650	393.525	53	4112	52.457
Finance	1	1627	61.622	100.116	2	9519	349.354	2159.785	2	53	43.866
Telecoms	2	8267	294.833	209.877	2	30731	103.054	810.883	2	65	1.845
Electricity and gas	2	369	27.001	31.304	5	3060	83.335	895.092	0	0	0.000
Transportation	2	223	43.585	19.483	0	0	0.000	0.000	5	245	3.090
Real estate	0	0	0.000	0.000	1	10	0.017	0.393	16	552	102.170
Other activities	0	0	0.000	0.000	3	5039	333.160	263.242	12	2014	20.156
<b>Total</b>	<b>16</b>	<b>47400</b>	<b>1003.722</b>	<b>1209.261</b>	<b>31</b>	<b>72890</b>	<b>5946.373</b>	<b>6983.485</b>	<b>98</b>	<b>7541</b>	<b>232.538</b>

Source: submission from SCIC.

Note: VDN 1 = USD 0.0000 44 on 07 October 2021.

**Central Institute for Economic Management:** The CIEM under the Ministry of Planning and Investment is in charge of developing and overseeing the implementation of Enterprise Law which provides the main elements for corporate governance framework in all enterprises in Viet Nam. CIEM is advisory to the MPI on all matters related to the enterprise sector including SOEs. They are entrusted with preparing draft legislation for the ministry. CIEM is currently developing national corporate governance code for SOEs at the time of writing this report.

## 4.2. The governing bodies of Vietnamese SOEs

The governing bodies of SOEs in Viet Nam depend in part on the companies' corporate form. Limited liability companies (LLCs) have the so-called BoM as provided for by the Enterprise Law. A distinction is drawn between single-owner companies and limited liability companies with dispersed ownership. Only the latter are required to establish BoMs, which act as the owners' representatives and make decisions in lieu of general shareholders meeting. If no BoM is established the owner is required to appoint a President with oversight responsibilities over the executive management.

Joint stock companies (JSC) have BoD that are functionally equivalent to those of private companies. BoDs have non-executive representatives and, in JSCs without a BoC, independent board members. The Enterprise Law does not provide for two-tier boards, but in practice some SOEs have established management boards at the discretion of the CEO.

Most SOEs and their subsidiaries are moreover required to establish a BoC.

<sup>1</sup> BoCs have a supervisory role and are afforded certain rights in order to provide supervision of the BoMs/BoDs and company operations. Controllers are appointed by the owners (or through the GMS in the case of JSCs), but they are often staffed by the state owner or salaried by the company, which could potentially call into question their ability to autonomously conduct their control work.

### 4.2.1. Board of Members and Boards of Directors

#### *Structure and composition of SOE Board of Members and Boards of Directors*

The governance arrangements of an SOE varies according to the degree of state ownership in the company. SOEs most often have either a BoM or a BoD, which are together most closely related to the conception of "boards" in the SOE Guidelines. Table 4.4 provides, compares and contrasts the types of Boards across Viet Nam's forms of SOE.

**Table 4.4. Organisational structures of Vietnamese SOEs**

Governance arrangements by type of SOE

Type of SOE	Permissible organisational structures of SOEs	Size of Board of Members / Board of Directors, as applicable	Existence of Board of Controllers	Concurrent roles
<b>Wholly-owned (100%)</b>				
Single member limited liability company (owned by an 'organisation')	The state ownership representative body chooses: 1. A company with a President and CEO; OR 2. A company with a Board of Members (BoM) and CEO.	Maximum of seven	Required (for SOEs)	1. The President can hold the position of CEO. 2. The Chair or other members of the Board of Members can hold the position of CEO.

Type of SOE	Permissible organisational structures of SOEs	Size of Board of Members / Board of Directors, as applicable	Existence of Board of Controllers	Concurrent roles
<b>Majority-owned (more than 50% and less than 100%)</b>				
Multiple member limited liability company	Board of Members; Chair of the Board of Members; and CEO.	Between three and seven	Required, including for subsidiaries	The Chair of the BoM can hold the position of CEO
Joint Stock Company	Unless prescribed by the securities law, a JSC chooses between two models: 1. A JSC with a General Meeting of Shareholders, Board of Directors (BoD), Board of Controllers (BoC) (except those with fewer than 11 shareholders where shareholding organisations hold less than 50% of the total shares) and CEO; OR, 2. A JSC with a General Meeting of Shareholders, Board of Directors (with audit committee underneath) and CEO.	Between three and 11	Required for JSCs operating under model 1	The Chair of the BoD cannot hold the position of CEO

Source: Author analysis of the Enterprise Law.

Wholly-owned SOEs (one-member company LLCs) have a BoM rather than a BoD, where the BoM is considered to be the direct representative of the state owner. Though not required to have a BoM, the mission team understands that the state opts for most single-member LLCs to establish one. BoMs in single and multiple-member LLCs have a limit of seven members, while multiple-member LLCs additionally have a minimum of three. The mission team understands that it is common for SOEs to reach the threshold of seven members. The BoM is composed of representatives of the state (in the case of wholly-owned LLCs) and other authorised representatives of other shareholding organisations (in the case of majority-owned LLCs).

Table 4.5 provides information on the composition of boards in three wholly-owned SOEs. It is worth noting that only SCIC provided information on its website about the authority of appointment of the members – even research of Viet Nam’s largest SOEs did not share this information.

For JSCs, whether listed or unlisted, the BoD should have between three and 11 members on five-year terms. In unlisted JSCs, the BoD is comprised of the Chair, and employee or state representatives and may have a Deputy Chair in larger companies (as is the case for instance with SCIC).

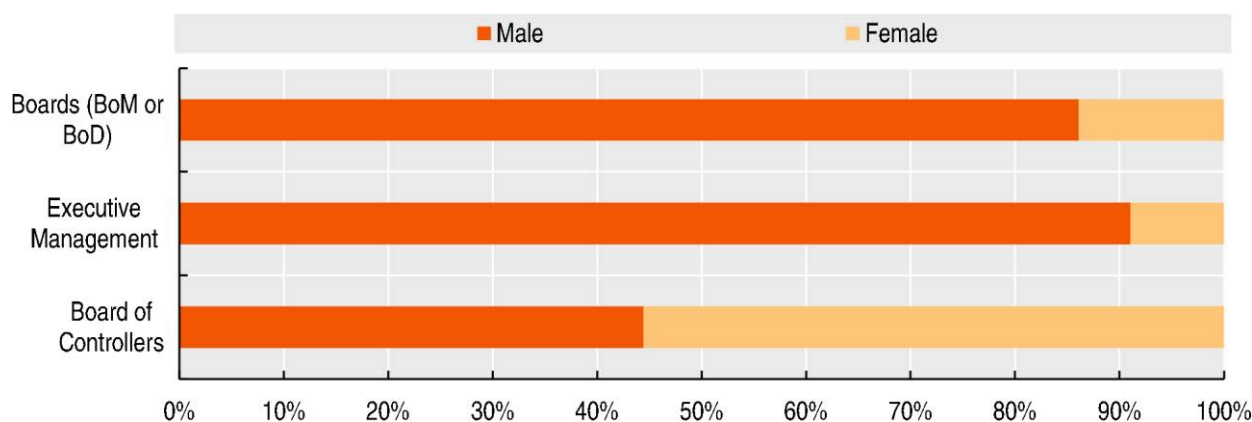
In public companies, at least one-third of the BoD should be non-executive members. Moreover, in unlisted public companies and listed public companies without a BoC (instead, having an audit committee), at least 20% of the members of the BoD shall be independent members. The Corporate Governance Code for listed companies goes further to encourage listed companies (including SOEs) to meet a minimum of one-third independent board members. Independent board members can only be elected up to two continuous terms. JSCs without a BoC must also establish an Audit Committee affiliated with the BoD. The organisational structure, functions and duties of the audit committee shall be specified in the company’s charter or the audit committee’s operating regulations promulgated by the BoD. Listed SOEs must also have between three and 11 members of the BoD, with a mix of executive, non-executive and independent board members. At least one-third of the BoD must be non-executive members.

**Table 4.5. Composition of wholly-owned SOE boards: SCIC, PVN and VNR**

State Capital Investment Corporation (SCIC)	Petrovietnam (PVN)	Vietnam Railways (VNR)
<b>Board of Members</b>	<b>Board of Members</b>	<b>Board of Members</b>
Chair, appointed by Prime Minister	Chair, cum Secretary of the Party Committee of the National Oil and Gas Group	Chair, appointed by Prime Minister (after submission from the State Management Committee at the enterprise)
CEO, appointed by Prime Minister	CEO, cum Deputy Secretary of the Party Committee (also acting as chair of management)	CEO
2 members, appointed by Minister of Finance	5 full-time members	4 full-time members, appointed by the State Management Committee at the enterprise
<b>Management</b>		
CEO, appointed by the Prime Minister		
3 Deputy CEOs, appointed by the BoM		
Chief Accountant, appointed by the BoM		

Note: Only information about the appointment of SCIC was made available on its website. Information for PVN and VNR was provided by the companies directly, and only PVN had information accessible on its website about the board.

There is very little gender diversity on SOE boards (BoD or BoM). There is even lower female representation in executive management Figure 4.2. provides the gender representation in SOE leadership positions, taking into account information for ten large SOEs (three of which are wholly-owned SOEs, seven of which are publicly listed JSCs).

**Figure 4.2. Gender representation in SOE leadership positions**

Note: Based on data for ten large SOEs – three wholly-owned and seven large listed JSCs: SCIC, PVN, EVN, Vietnam Airlines, Vinamilk, Vietnam Rubber Group, Saigon Beer-Alcohol-Beverage Corporation, PVGas, Vietcombank and BIDV.

#### *Board nomination procedures for Board of Members and Boards of Directors*

Nomination and appointment procedures are detailed in the Enterprise Law for wholly-owned SOEs (single-member LLC) and majority owned SOEs (multi-member LLCs and JSCs). Guidelines for the nominations processes are found in Decree 97/2015/NĐ-CP and Decree 106/2015/NĐ-CP.

### 4.2.2. Wholly-owned SOEs

In the case of wholly-owned SOEs, the BoM's members are designated and dismissed by the owner. The Chair of the BoM is in theory elected by majority of members of the BoM, subject to the approval of the state. The term of office of the Chair and other members of the BoM shall not exceed five years. A member of BoM may be designated again for not more than two terms in the same company unless they worked for the company for more than 15 consecutive years before the first designation.

The responsibilities for nomination, discipline and dismissal of members of the BoM resides with the competent ministry, or CMSC, and thus is dispersed across government representatives and entities. The Prime Minister fulfils this function for Chairs of economic groups. Other board members of economic groups are nominated, disciplined and dismissed by line ministries, who also fulfil this role for boards (and chair) of other SOEs in their portfolios. Likewise, provincial committees nominate, discipline and dismiss board representatives of SOEs in their sub-national portfolios.

Board positions are not advertised. State authorities propose a list of nominees to the SOE board, which then deliberates prior to accepting or rejecting the nomination. If a potential applicant is accepted by the board, this acceptance will be shared with the state authority after which the appointment will be made. There are regulations that guide the nomination process that include nomination criteria, the preparation process and the official appointment procedure (Decrees 97/2015/NĐ-CP, Decree 106/2015/NĐ-CP). All potential applicants must follow this process.

In theory, if the SOE board refuses a nomination the candidate will not be appointed. However, the mission team was not informed of such a disagreement ever occurring. While SOEs reflect on the suitability of candidates for the position, it seems they most commonly assume CMSC has done the necessary due diligence on the credibility of the applicant and their fulfilment of required criteria prior to becoming part of the pipeline or pool.

### 4.2.3. Majority-owned SOEs

In majority-owned SOEs, other shareholders, including minority shareholders and employees, suggest and authorise suitable applicants for board appointment in accordance with the proportions of capital ownership.

In the case of JSCs, the Enterprise Law establishes that the shareholder or group of shareholders holding at least 10% of the ordinary shares (or a smaller ratio specified in the company's charter) is entitled to nominate candidates for the BoD and the BoC as follows:

- The ordinary shareholders shall hold a meeting to nominate candidates for the BoD and the BoC and inform the participating shareholders before the opening of the GMS;
- The number of candidates depends on the quantity of members of the BoD and the BoC and shall be decided by the GMS. In case the number of candidates nominated is smaller than the permissible number, the remaining candidates shall be nominated by the BoD, the BoC and other shareholders.

#### *Criteria for selection of Board of Members and Boards of Directors*

Criteria for selection of members of the BoM and BoD are detailed in the Enterprise Law Article 93 pertaining specifically to SOEs and Article 155 pertaining to JSCs, respectively. The requirements are provided in Box 4.4.



#### **Box 4.4. Requirements to be satisfied by members of the Board of Members and Board of Directors: Article 93 and Article 155 of the Enterprise Law**

##### ***Requirements applicable to Board of Members found in certain single-member LLCs (wholly-owned) and in all multiple-member LLCs (majority-owned)***

1. They are not one of the persons specified in Article 17 of the Law, including 'executive officers and managers of wholly-owned SOEs and state authorities, officials and public employees, military, among others.
2. They have professional qualifications and experience of business administration or experience of the company's business lines.
3. They are not a relative of the head or deputies of the state ownership representative body; any of the members of the Board of Members, the Director/General Director, the Deputy Director/General Director, the chief accountant or Controllers of the company.
4. They are not an executive of the member enterprise.
5. A member of the Board of Members other than the President may concurrently hold the position of Director/General Director of the company or another company that is not a member enterprise under a decision of the state ownership representative body.
6. They have never been discharged from the position of President of the Board of Members, member of Board of Members, the company's President, CEO or Deputy Director/General Director of a state-owned enterprise.
7. They satisfy other requirements specified in the company's charter.

##### ***Requirements applicable to Boards of Directors in JSCs (majority-owned)***

1. They are not one of the persons specified in Article 17 of the Law, including 'executive officers and managers of wholly-owned SOEs and state authorities, officials and public employees, military, among others.
2. They have professional qualifications and experience of business administration in the company's business lines; a member is not necessarily a shareholder of the company, unless otherwise prescribed by the company's charter.
3. A person may hold the position of member of the Board of Directors of more than one company.
4. A member of the Board of Directors of a [partially-owned] SOE and subsidiary companies of partially-owned SOEs must not be a relative of the CEO or any other executive of the company, of the executive or the person having the power to designate the executive of the parent company.

##### ***Applicable to independent members of the Boards of Directors in JSCs***

Unless otherwise prescribed by securities laws, an independent member of the Board of Directors (pertaining to JSCs opting to have an Audit Committee instead of a Board of Controllers) should satisfy the following requirements:

1. They are not working for the company or its parent company or subsidiary company; did not worked for the company or its parent company or subsidiary company within the last three years or longer.
2. They are not receiving a salary from the company, except the allowances to which members of the Board of Directors are entitled as per regulations.

3. Their spouse, biological parents, adoptive parents, biological children, adopted children and siblings are not major shareholders of the company, executives of the company or its subsidiary companies.
4. They are not directly or indirectly holding 1% of the company's voting shares or more.
5. They did not hold the position of member of the Board of Directors or the Board of Controllers of the company within the last five years or longer unless they were designated in two consecutive terms.

An independent member of the Board of Directors should notify the Board of Directors if they no longer satisfy the requirements for independence and is obviously no longer an independent member from the day on which a condition is not satisfied. The Board of Directors should the disqualification if this member at the nearest GMS or convene the GMS to elect a new independent member within six months from the day on which the notification is received from the member.

Source: Vietnamese Law Portal, <https://thuvienphapluat.vn/>, submissions from Vietnamese authorities

### *Role and competencies of Boards of Members and Boards of Directors*

Single and multi-member LLCs typically have a BoM as the supreme governing body of the company. The obligations of the BoMs in limited liability companies naturally differ depending on whether the SOE is wholly or partially owned, as shown in Table 4.6 summarising the obligations of SOEs' governing bodies. In the case of a single-member LLCs (that is, wholly-owned SOEs), the BoM's role is to perform the owner's, and company's rights and obligations in the owner's name. A BoM in a multiple-member LLC (majority-owned SOE) has rights to, among other things, decide on increases or decreases in charter capital and to elect and dismiss the Chair of the BoM and other executive management members.

Joint stock companies have a BoD acting as the managerial body of the company with the right to make decisions on behalf of the company, and to perform rights and obligations of the company (except those under the responsibility of the General Shareholders' Meeting). The BoD takes decisions on matters such as long-term operational strategy, annual business plans and organisational structure. The BoD also has the responsibility of supervising SOE operations. The mission team has been informed that the BoD does not interfere in the day-to-day management of the company.

For wholly-owned SOEs, the law does not foresee specialised board committees but companies may use internal regulations to establish such committees. In practice, certain state banks have established human resource, investment and asset management committees. JSCs can choose to establish an Audit Committee attached to the BoD instead of a BoC.

MCs and BoDs are supervised and evaluated by the BoCs described in the above section in most SOEs, except JSCs opting for an Audit Committee instead of a BoC. For wholly-owned SOEs, the BoC can have between one and five members, including a Chief Controller, who can be selected and salaried by the state owner (CMSC). For majority-owned SOEs in the form of a JSC, the BoC has between three and five controllers – one of which is a Chief Controller.

**Table 4.6. Obligations of Board of Members and Boards of Directors**

Board of Members		Board of Directors
Wholly-owned SOEs (single-member LLC)	Majority-owned SOEs (multiple-member LLC)	Majority-owned SOEs (JSC)
a) Decide the matters prescribed in the Law on Management and use of State	a) Decide the company's annual business plan and development strategy;	a) Decide the company's medium-term development strategies and annual business

<p>Investment in Enterprises;  b) Decide establishment, reorganisation, dissolution of the company's branches, representative offices and dependent units;  c) Decide the company's annual business plan, policies on market development, marketing and technology;  d) Organise internal audits and decide establishment of the company's internal audit unit;  dd) Other rights and obligations prescribed by the company's charter, the LOE and relevant laws.</p>	<p>b) Decide increase or decrease in charter capital, time and method for raising more capital; issuance of bonds;  c) Decide investments in the company's development projects; solutions for market development, marketing and technology transfer;  d) Approve contracts for borrowing, lending, sale of assets and other contracts prescribed by the company's charter whose value are at least 50% of the total assets written in the latest financial statement (or a smaller ratio or value specified in the company's charter);  dd) Elect, dismiss the President of the Board of Members; designate, dismiss, sign and terminate contracts with the Director/General Director, chief accountant, controllers and other executives specified in the company's charter;  e) Decide the salaries, remunerations, bonuses and other benefits of the President of the Board of Members, Director/General Director, chief accountant, controllers and other executives specified in the company's charter;  g) Ratify annual financial statements, plans for use and distribution of profits or settlement of losses;  h) Decide the company's organisational structure;  i) Decide establishment of subsidiary companies, branches and representative offices;  k) Revise the company's charter;  l) Decide reorganisation of the company;  m) Decide dissolution or file bankruptcy of the company;  n) Other rights and obligations prescribed by Law and the company's charter.</p>	<p>plans;  b) Propose the types of authorised shares and quantity of each type;  c) Decide sale of certain types of unsold authorised shares; decide other methods of raising capital;  d) Decide selling prices for the company's shares and bonds;  dd) Decide repurchase of shares as prescribed in Clause 1 and Clause 2 Article 133 of the LOE;  e) Decide the investment plan and investment projects within its jurisdictions and limitations prescribed by law;  g) Decide solutions for market development, marketing and technology;  h) Approve sale contracts, purchase contracts, borrowing contracts, lending contracts, other contracts and transactions that are worth at least 35% of the total assets written in the latest financial statement, unless another ratio or value is specified in the company's charter; contracts and transactions within the jurisdiction of the GMS as prescribed in Point d Clause 2 Article 138, Clause 1 and Clause 3 Article 167 of the LOE.  i) Elect, dismiss the President of the Board of Directors; designate, dismiss, enter into and terminate contracts with the Director/General Director and other key executives specified in the company's charter; decide salaries, remunerations, bonuses and other benefits of these executives; designate authorised representatives to participate in the Board of Members or GMS of another company; decide their remunerations and other benefits;  k) Supervise the Director/General Director and other executives managing the company's everyday business;  l) Decide the company's organisational structure, rules and regulations; establishment of subsidiary companies, branches and representative offices; contribution of capital to and purchase of shares of other enterprises;  m) Approve the agenda and documents of the GMS; convene the GMS or carry out surveys for the GMS to ratify its resolutions;  n) Submit annual financial statements to the GMS;  o) Propose the dividends; decide the time and procedures for paying dividends or settling business losses;  p) Propose reorganisation or dissolution of the bankruptcy; file bankruptcy of the company;  q) Other rights and obligations prescribed by Law and the company's charter.</p>
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Note: Obligations for single-member LLCs are found under Enterprise Law Article 92 bearing on SOEs which supersedes the provisions for any non-state-owned single-member LLC. The obligations of multiple-member LLCs and JSCs are in accordance with Article 65 and 153 respectively.

Source: Enterprise Law.

For JSCs with an Audit Committee attached to the BoD, its organisational structure, functions and duties should be specified in the company's charter or the Audit Committee's operating regulations promulgated

by the BoD. Chapter 12 and Chapter 13 of this review sheds light on the differences between the Audit Committee and the BoC.

In majority-owned SOEs the Chair of the BoM or the BoD will most often be the legal representative of the company. Regardless of the SOE form, the company should be represented legally by the Chair of the BoM or BoD unless otherwise prescribed by the company's charter, as is most common, and/or the CEO. In the case of a JSC and if the company has more than one legal representative, both the Chair and CEO ought to be the company's legal representatives.

#### 4.2.4. Board of Controllers

SOEs and subsidiaries are required to have a BoC, for which details on the characteristics, nominations and responsibilities are provided in Table 4.7. The BoC is meant to “supervise” the BoM and BoD in LLCs and JSCs respectively, among other things, and should provide a degree of assurance for all owners on the operational and financial performance of firms. In Viet Nam this function is often referred to as the “supervisory board”, but it is not the same as those which forms part of a dual structure as found in Germany, for instance. Nor is it an Audit Committee. Many SOEs additionally have a management board that is subordinate to the BoM or BoD.

BoC sizes, sources of appointment and salary vary depending for wholly or majority-owned SOEs. In wholly-owned LLCs the state appoints the Chief Controller and controllers directly, most often being salaried employees of the CMSC. The mission team was informed that the CMSC uses the BoC as a way of assessing compliance of the firm. In turn, the CMSC evaluates wholly-owned SOE managers (the BoM, the Executive Board where existing, Controllers, and Chief Accountant) to ascertain whether there are grounds for commendation or discipline. In majority-owned LLCs, the BoM has the right to designate the Chief Controller and controllers. In majority-owned JSCs, the GMS appoints the BoC and Chief Controller.

**Table 4.7. Chief Controller and Board of Controllers**

Establishment and select responsibilities of SOEs' Board of Controllers in the three forms of SOEs

Type of SOE	Existence	Organisation	Nomination/appointment	Select responsibilities
<b>Wholly-owned</b>				
Single member limited liability company (owned by an 'organisation')	Required (for SOEs)	1- 5 Controllers (one is Chief Controller); term shall not exceed 5 years; no more than 2 consecutive terms; Chief Controller can be part of up to 4 SOE BoCs	The state owner establishes the BoC and appoints representatives of the state owner. The state may directly pay the salaries, bonuses and other benefits as prescribed by the company's charter. Salaries, bonuses and other benefits of the company's executives and Controllers shall be recorded as the company's expenses in accordance with regulations of law on corporate income tax and relevant laws and shall be placed in a separate section in the company's annual financial statements.	c) Supervise and evaluate the performance of the Board of Members and its members, the company's President and Director/General Director; d) Supervise and evaluate the compliance to the company's internal audit, risk management, reporting regulations and other rules and regulations; dd) Supervise the legitimacy, systematic organisation and honesty of accounting tasks, accounting records, financial statements, their annexes and relevant documents; e) Supervise the company's contracts and transactions with relevant parties; g) Supervise execution of major projects; sales and purchases; other large-scale contracts and transactions; unusual contracts and transactions of the company; h) Prepare and send evaluation reports and proposals of the matters specified in the Clause to the state ownership representative body and the Board of Members;

Type of SOE	Existence	Organisation	Nomination/appointment	Select responsibilities
<b>Majority-owned (more than 50% and less than 100%)</b>				
Multiple member limited liability company	Required (for SOEs)	1-5 Controllers (one if Chief Controller); term shall not exceed five years.	The Board of Members designates, dismisses, signs and terminates contracts with, and decide salaries, remunerations, bonuses and other benefits, of controllers. The Chief Controller is elected and dismissed by the BoC, under the majority rule. Appointment criteria of Chief Controller and Controllers is specified in the Enterprise Law.	Article 170: 1. Supervise the Board of Directors and the Director/General Director managing the company. 2. Inspect the rationality, legitimacy, truthfulness and prudence in business administration; systematic organisation, uniformity and appropriateness of accounting works, statistics and preparation of financial statements. 3. Validate the adequacy, legitimacy and truthfulness of the income statements, annual and biannual financial statements, reports on performance of the Board of Directors; submit validation reports at the annual GMS. Review contracts and transactions with related persons subject to approval by the Board of Directors or the GMS and offer recommendations. 4. Review, inspect and evaluate the effectiveness of the internal control, internal audit, risk management and early warning systems of the company. 5. Inspect accounting books, accounting records, other documents of the company, the company's administration where necessary, under resolutions of the GMS or at the request of the shareholder or group of shareholders specified in Clause 2 Article 115 of the LOE.
Joint Stock Company	1) Required for JSCs (except where < 11 shareholders and shareholder organisations hold less than 50% of total shares). 2) Not required for JSCs opting to instead establish an Audit Committee under the Board of at least two members (in this case the BoD must have 20% independent members)	3-5 Controllers; term shall not exceed five years.	The GMS appoints, dismisses and decides on the salary of Controllers. The Chief Controller is elected and dismissed by the BoC, under the majority rule. Appointment criteria of Chief Controller and Controllers is specified in the Enterprise Law.	

Source: Enterprise Law, 2020, Vietnamese Law Portal <https://thuvienphapluat.vn/>

The roles and obligations of the BoC appear similar on paper for wholly and majority-owned SOEs. The BoC is afforded rights needed to fulfil its obligations, including the right to access information and to examine accounting books. However, there are discreet differences in their tasks and rights and one major difference insofar as many wholly-owned BoCs are staffed by CMSC representatives.

In all SOEs, the BoC may use an independent consultant or internal auditors to support its activities (Article 165.10 of the LOE). The BoC should prepare reports on the company's performance (including that of the leadership). In wholly-owned SOEs, this report goes directly to the state owner. In the case of JSCs, the reports are presented to the GMS and will cover the company's business performance, performance of the BoD and the CEO, as well as the BoC's report on its own performance including of its controllers. Reports of the BoCs should be disclosed periodically on their websites along with information about the BoC and its activities.

### 4.3. Financial controls in the SOE sector

Both wholly and majority-owned SOEs in Viet Nam are subject to a range of internal and external financial controls. SOEs, except certain JSCs, have a BoC that is meant to supervise the BoM or BoD and financial operations among other things. SOEs are also required to establish an internal audit function. All SOEs are subject to both state audit and independent external audit. This section details these functions that together comprise the financial control environment of Vietnamese SOEs. The mission team identifies

potential overlaps, gaps and duplications between the responsibilities of the various control functions that are explored in the assessment against the Guidelines in the Chapter 12.

### **4.3.1. Company-internal financial controls and controllers**

#### *The role of the Board of Controllers*

An enterprise's BoC is assigned an important role in internal financial control. Despite slight differences in the financial control activities of the BoC according to the form of the company, BoCs are generally responsible for supervising accounting tasks and examining accounting books, financial statements and, in the case of wholly-owned SOEs, transactions. BoCs in JSCs also validate the adequacy, legitimacy and truthfulness of income statements, and annual and biannual financial statements. BoCs will share their findings via reports with the state owner (in the case of wholly-owned SOEs) and the GMS (in the case of JSCs), respectively.

According to the law, BoCs should be afforded the rights that enable them to conduct their work autonomously, including the authority to request BoMs/BoDs and members of executive management to provide reports on the company's management, investment and business operations. In wholly-owned SOEs, the BoC can request information on subsidiary companies' finance and business performance if necessary. Majority-owned SOEs are granted more generally the ability to access company documents at various company locations to conduct their financial supervision.

#### *Internal auditors*

Parent companies that are wholly or majority-owned by the state were required to have in place an internal audit unit or function as of 1 April 2021, two years after the issuance of Decree No. 05/2019/ND-CP. The Decree establishes roles and responsibilities of internal audit and related stakeholders. It has been recently supplemented with guidance to support compliance, issued by the Ministry of Finance. That includes guidance on sample internal audit regulations for corporate use (Circular No. 66/2020/TT-BTC) and the recently-issued Vietnamese Standards and Code of Ethics for Internal Auditing (Circular No. 08/2021/TT-BTC).

The law aims to provide assurance over the functioning of internal controls of an entity. More specifically, the objectives are to inspect, assess and consult in order to provide assurance: on departments' handling of operations in a way that prevents, detects and manages risks; on the efficiency and performance of management and risk management; and of fulfilment of the company's objectives, plans and missions. The Decree prescribes approaches to internal audit including audit planning processes and establishes qualifications for internal auditors. The law generally aims to support Vietnamese companies in aligning with international good practice in internal audit and enhancing corporate governance. This could prepare SOEs to better navigate a transition from Vietnamese accounting standards, currently applied, to IFRS in pursuit of the five-year roadmap that at least certain SOEs are working towards.

The Decree required companies to decide whether internal audit would manifest as a function or department and to situate it in the organisational structure. Companies should clearly define: (i) the roles and responsibilities between the BoM/BoD and BoC regarding internal audit; (ii) the reporting mechanism for internal audit to the BoM/BoD vs. the BoC; and (iii) the differences between the BoC and the internal audit function/department. Achieving such clarity is paramount to the coherent control of an SOE. In practice, it appears that such differentiations have not been made.

The Decree provides the BoM and BoD with authority to establish rules for internal audit, usually established through company-specific internal audit regulations. The Decree itself is not prescriptive and gives the governing bodies of SOEs quite a lot of leeway to establish responsibilities and activities. This is

important task, as the effectiveness of internal audit will depend, in part, on the clarity of responsibilities regarding those of the BoM /BoDs and the BoCs. This is elaborated upon in Chapter 13.

### 4.3.2. External controls

#### *The State Audit Office*

The State Audit Office (SAV) was established in 1994 as subordinate to the Executive branch of government and later became independent from government and accountable to the National Assembly. The SAV is responsible for providing assessments, confirmations, conclusions and recommendations regarding the management and use of public finance and/or assets as well as the compliance with law. Among SAV's auditees are SOEs, including large economic groups and corporations, and entities responsible for equitisation. For enterprises in which the state holds 50% of charter capital or less, audits can be conducted 'in case of necessity'.

Audits by the SAV should be carried out at least every two years according to the State Audit Law and can also be instigated at the request of the National Assembly. The SAV reportedly reduced the number of audits in 2019 in order to focus on the quality of its assessments. Indeed, the OECD team was informed that SAV audits could be conducted less frequently than every two years. The State Audit Law of 2015, which details the SAV's functions, duties and powers, appears to afford it with sufficient powers to execute its function (Articles 9-11). The SAV receives an annual budget allocation from the government, as decided by the Prime Minister, but has financial autonomy in its allocation.

The SAV's audit recommendations can be targeted to the SOE or to the state as owner regarding the need to adjust policies or address violations. The SAV can also initiate investigations or refer cases to other governmental control authorities. The OECD team understand that the SAV also undertakes non-audit activities, such as hosting trainings for BoDs (and presumably BoMs) on newly-issued legal documentation. The mission team understands from certain governmental authorities that the State Auditor's findings often tend to carry more weight than that of independent auditors, owing largely to the stature of the SAV in the country. As one SOE put it, the SAV "can audit anything [it] wants, issue sanctions and report cases to other authorities".

In its work in assessing management and use of public funds and assets, the SAV conducts different audits, evaluations and non-audit activities (e.g. trainings) vis-à-vis SOEs:

- The SAV conducts financial audits that, in the case of SOEs, comes in addition to that conducted by independent external auditors elaborated upon below. Along with the Inspectorate of the MoF, they also assess financial costs of SOEs periodically or upon request. For enterprises implementing public policies, the determination of costs must comply with norms promulgated by state agencies and be audited by the State Audit. The information is only provided to serve the requirements of state management agencies and is not made public.
- The SAV conduct compliance audits of SOE business activities with relevant laws (including sectoral legislation). For example, an SOE specialising in construction and installation and participating in an expressway project must comply with the regulations on capital construction investment issued by the government, the Ministry of Planning and Investment, the Ministry of Finance, and the Ministry of Natural Resources and Environment and will be audited by the State Audit for each bidding package.
- The SAV conducts operational audits, to determine and evaluate the economics nature, efficiency and effectiveness of management and use of public finance and assets.
- Beyond financial, compliance and operational audits, the SAV can audit other aspects of SOE and corporate groups' governance and operations, for instance evaluating in 2019 the structuring process of SOEs with a focus on financial management, equitisation and divestment; as well as

assessing financial market restructuring activities in its audits on commercial banks and credit institutions in an effort to evaluate ownership, debt control and with a view to improving credit quality.

### *Roles assigned to CMSC, MOF and GIV*

The CMSC, the Ministry of Finance and, to a lesser extent, line ministries also play a role in overseeing the finances of SOEs. Various regulations require SOEs to prepare quarterly reports, as well as six-months and annually. The Chapter 12 of the review explores the timeliness of disclosure, having ascertained that there may be concerns about delays and reliability of SOE disclosure more generally.

- As the representative of the state owner, the CMSC is assigned prime responsibility for monitoring the financial position of SOEs 100% owned by the state each six months – for the first half of the year and again for the whole year at year’s end. It is the responsibility for the SOE to submit to CMSC the reports each six months and annually pursuant to Decree No. 87/2015/ND-CP on supervision of state capital investment in enterprises, financial supervision, performance assessment and disclosure of financial information. The mission team understands that these six-monthly reports should include an evaluation of capital preservation against criteria on capital preservation as established by the MoF and should include an explanatory note where there are economic losses. The year-end assessment includes a self-evaluation and self-prescribed rating on an A-B-C scale based on the figures from the independently-audited financial report. Where there are economic losses, members of the BoM must send an explanatory report to competent ministries and the Ministry of Finance of the reason that capital was not preserved, and the countermeasures planned for the future. SOE reports deriving from periodic disclosures required in the Law on Enterprises should also be disclosed on the company website. The monitoring enables the CMSC to assume its responsibility in informing Prime Minister for decisions related to reorganisation, conversion or dissolution of SOEs and charter capital and for approval for investment strategies and business plans (Decree 131/2018/ND-CP).
- The Ministry of Finance, and the Ministry’s Corporate Finance Department in particular, promulgates regulations on finance and accounting for SOEs, and plays a role in supervising financial performance and equitisation of SOEs. In case of a potential violation, it can organise a direct inspection. Assessments are conducted every three to six months based on quarterly financial reports prepared by SOEs (pursuant to Decree 81/2015/ND-DP). It conducts this work informed, in part, by reports of the CMSC, of competent line ministries and other relevant agencies such as the SAV and the government Inspectorate. The Department prepares an annual report summarising financial supervision and performance evaluations, rating SOEs in 2018 and summarising the situation of state capital investment in enterprises in 2019 (MOF, 2020). The MoF’s Corporate Finance Department is also responsible for following-up with companies undergoing equitisation to acquire reports on progress of equitisation, restructuring or divestments, preparing monthly and quarterly reports for the ministry and quarterly reports for the Prime Minister on SOEs’ status in this regard.
- Finally, the government Inspectorate of Viet Nam (GIV) can also play a role in financial control through its inspections and investigations that may touch upon how SOEs use capital of government, engage in procurement or distribute funding to different businesses and activities. In the case of an SOB, there are usually two main areas of investigation – credit services and accounting systems – but there are special cases in which GIV could look, for instance, at an SOE within the equitisation process and activities related to their listings on the securities market.



### *Independent external auditors*

Since 2012, all SOEs are subject to external independent audit of annual financial statements, pursuant to the “Law on Independent Audit” and Decree 17/2012/ND-CP. In this way, SOEs are subject to the same standards as private firms but are additionally subject to audit by the SAV. SOEs operating in “classified” industries are exempt from the annual independent audit.

Following the issuance of Decree 61 and later 81/2015/ND-CP, SOEs must disclose annual audited financial statements on their websites before forwarding them to their line ministries and the Ministry of Planning and Investment. Audit reports themselves are excluded from disclosure.

In practice, audit recommendations are considered by the SOE and, if ‘sensible’, will be addressed the following year. According to the provisions of the Law on Independent Audit and the Law on State Audit, Directors of SOEs must have a written representation enclosed with relevant supporting documents in case the auditor provides conclusions or opinions as “inappropriate” or requests so.

SOEs are audited against Vietnamese Accounting Standards. The mission team understands that there is a five-year roadmap for the introduction of IFRS that at least certain SOEs are working towards. Many large SOEs are audited by one of the “big 4” auditing firms. Listed firms must be audited by one of the 40 pre-approved audit firms listed by the SCC.

Annual financial reports must be externally audited by an auditor qualified to audit a public interest entity working in the securities sector. External auditors should be selected through public tender and the successful candidate is reported to the relevant authorities, which is explored in more detail in the Chapter 12.

## References

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## Notes

<sup>1</sup> Board of Controllers are provided for by the Enterprise Law. They exist in private companies as well but here, unlike in the SOEs, their existence is at the discretion of the owner and not compulsory.



# 5

## Anti-corruption and integrity in SOEs

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Tackling corruption and enhancing integrity in the SOE sector is crucial, as it is more prone to corruption exposure due to its high concentration in high-risk sectors. This chapter examines Viet Nam’s anti-corruption efforts at both state and SOE level. It addresses the legal regulatory framework for promoting anti-corruption and highlights some pressing challenges in ensuring transparency in the SOE sector. The chapter further assesses anti-corruption practices applied to SOEs, including the establishment of code of conduct for office holders, conflict of interest management, and declaration of assets and income.

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### 5.1. Anti-corruption context for Vietnamese SOEs

The adoption of the Anti-Corruption Law (ACL) in 2005 was recognised by the international community as an important step to tackling the corruption issues affecting the country. It was the first of many government-wide initiatives on the subject, and the Act itself has been revised multiple times.<sup>1</sup> Since the ACL’s introduction and its establishment of the Central Anti-Corruption Steering Committee described below, Viet Nam has seen a record number of Party officials disciplined in connection with corruption. The so-called anti-corruption drive in Viet Nam is termed *Đốt Lò* (fire burning),

In 2009 the government adopted the National Anti-Corruption Strategy towards 2020 and an accompanying Action Plan. The Strategy centred around five pillars: (i) enhancing transparency of authorities and agencies; (ii) completing the economic management regime; (iii) building a fair and competitive business environment; (iv) improving supervision, surveillance, investigation and prosecutions

of corruption cases; and (v) raising society's awareness of its role in the fight against corruption. The National Anti-Corruption Strategy is meant to support the Socio-Economic Development Strategy for the period of 2011-20, which had an aim of enhancing the fight against corruption and wastefulness.

Together with the World Bank, Viet Nam launched a "Vietnam Anti-Corruption Initiative Program" series in 2011, 2013 and 2014 (VACI) (World Bank, 2013<sup>[1]</sup>). The initiative funded innovative approaches to tackling corruption. These strategies and programmes were launched at a time when corruption was still considered widespread and an impediment to socio-economic development. Around this time, Viet Nam was lagging behind fellow Asian countries on Transparency International's Corruption Perceptions Index. Civil and political freedoms were limited as was the capacity of media and civil society.

In 2018 the Anti-Corruption Law was revised and, together with the Decree on internal audit, has had implications for SOEs' company approaches to internal control and risk management as well as for their external accountability. The application of this law and relevant legislation to SOEs is explored below.

Stakeholders have indicated that the Communist Party takes corruption seriously and, at times, severely. It is conceivable that the Party's prioritisation of corruption eradication means that corruption prevention and enforcement are given weight amongst government and state-owned entities. However, such massive anti-corruption drives by governments can have chilling effects – for instance in real estate investment as said to be the case in Viet Nam.

In January 2022, the Hà Nội People's Court on Monday sentenced Vũ Huy Hoàng, 69, former Minister of Industry and Trade, to ten years in prison for "violating regulations on the management and use of State assets, causing losses and wastefulness". The sentence was made at the appeal trial for Hoàng and three other defendants in a case, which related to the ministry, Saigon Beer – Alcohol – Beverage JSC (Sabeco) and HCM City, causing a loss of over VND 2.7 trillion (USD 118.9 million) for the State during the 2007-16 period. According to the indictment, the Saigon Beer – Alcohol – Beverage JSC (Sabeco), which is under the MoIT's management, was given more than 6 000 sq.m of land at No. 2-4-6 on Hai Bà Trưng street in downtown HCM City for production and business purposes. Sabeco carried out procedures for land use rights and used capital contributions to set up Sabeco Pearl, a joint venture between the firm and a number of private enterprises, to implement a project building a six-star hotel, a trade and convention centre, and office space for lease on the land. Sabeco's stake in this project to the private enterprises in the joint venture, causing a loss of over VND 2.7 trillion for the State.<sup>2</sup>

In such systems where one party dominates, attention must always be paid to the potential for the party to overrule legislation or hamper enforcement actions that are inconvenient or indicative of weaknesses within the Party. Specifically regarding SOEs, the Party's presence and involvement in 'control' of the organisation (i) likely represents major shortcomings in the corporate control structure and (ii) may provide disincentives for other control bodies to fulfil their tasks as mandated. These and other challenges to SOE internal control and risk management are discussed in Section 11.3 and 13.10 in particular.

Despite improvements and reforms, corruption-related challenges have persisted in the country. When it comes to SOEs, Chapter 12 raises specific concerns about the confusing mix of state controls and business approaches that are both internal to the company, and its implications for the quality of internal control, the existence and meaning of risk management and disclosure and the autonomy of key roles. Indeed, a recent report prepared by the VCCI found that SOEs are particularly reliant on relationships-based appointments. Stakeholders indicated to the mission team that SOEs face corruption risks particularly with respect to public procurement. At the time of writing, the GIV was preparing a report on SOEs' compliance with anti-corruption regulations. Though certain stakeholders hinted at some of the corruption-related challenges and irregularities occurring in SOEs, almost no one provided details.

## 5.2. Legal and regulatory framework applicable to SOEs

### 5.2.1. The Anti-Corruption Law and SOEs

The main legislation bearing on SOEs with regards to anti-corruption is the ACL (No. 36/2018/QH14 in 2018). The law assigns responsibilities for anti-corruption not only to state and non-state organisations and companies but also citizens. It prohibits engagement in a broad range of acts of corruption, criminalising attempted corruption and passive or active bribery, including bribery of foreign public officials.

The Law applies to SOEs in two ways. On the organisational level, “state owned enterprises” – understood to be only wholly-owned – are categorised as “state organisations” while majority-owned SOEs are understood to be covered by provisions related to “enterprises and non-state organisations”. The ACL imposes more anti-corruption requirements on wholly-owned SOEs than majority-owned (or public companies). On the individual level, “representatives of the state in enterprises” – enterprises that are both wholly and majority owned – are categorised as “office holders” and subject to all related provisions.

The law requires wholly-owned SOEs, and in some cases particular SOE representatives, to implement select measures for preventing and, as needed, promptly acting on potential corruption, to protect the lawful rights and interest of reporting individuals and to provide information and comply with authorities. For both wholly and majority owned, there are minimum measures prescribed by the law to do with transparency and disclosure, conflict of interest and codes of conduct for office holders described below. The individual controls required in law however do not require implementation of an anti-corruption programme.

Government is mandated to adhere to directions of the Party in its governance and regulation of SOEs. Based on Party Resolutions adopted at Congresses, the government assigns sectoral ministries and committees to formulate SOE-related policies by sector or specialised area. The formulation of the enterprise’s strategy is based on the orientations of the Party, the State and the government, general socio-economic development strategy, as well as the national planning of sectors and fields related to enterprises.

Within a company, the BoC should have an important role to play insofar as they supervise SOE leadership and business operations and can, depending on the circumstance, initiate or be requested to initiate investigations, but there are major concerns about their ability to do so in practice. The head of the ‘state organisation’ – taken to refer to the CEO – should have direct responsibility for corrupt activities of the people under their management. The deputies assume prime responsibility for corruption within their fields and units and the head should bear joint responsibility (ACL, art. 72).

The ACL’s Article 7 assigns multiple actors with responsibilities for supervising and promoting anti-corruption, not only in state entities and companies but across society.

- The National Assembly and Standing Committee of the National Assembly supervises anti-corruption works nationwide. The full-time Committee, established in 2009, is chaired by the Prime Minister and has the role of guiding, co-ordinating and overseeing anti-corruption activities. Their scope covers anti-corruption efforts across all of society and would encompass that of non-governmental actors as well. An Office was established to support the work of the Committee. In 2008, Steering Committees were established at the local level and generated some controversy around independence (U4 Anti-Corruption Resource Centre, 2012<sup>[2]</sup>).
- Ethnicity Councils, committees of the National Assembly, within the scope of their duties and entitlements, shall supervise anti-corruption works under their management.
- Judicial Committee of the National Assembly, within the scope of their duties and entitlements, shall supervise discovery and taking of actions against anti-corruption acts.

- Delegates of the National Assembly, within the scope of their duties and entitlements, shall supervise anti-corruption works.
- The People's Councils, Standing Committees and boards of the People's Councils, delegates of the People's Councils, within the scope of their duties and entitlements, shall supervise anti-corruption works in their areas.

The government Inspectorate is responsible for managing corruption inspections, complaints and settlements. Created in 1956, it was given its anti-corruption mandate in the 2005 Law. It encompasses the Ombudsman function and Anti-Corruption Bureau which investigates corruption allegations, including in wholly-owned SOEs. According to the Law on Investigation, the GIV provides management over inspection work and can identify loopholes in relevant legislation and bring it to the attention of legislators. The Prime Minister can assign GIV with an investigation that involves SOEs that are not wholly-owned when the subject matter is complex or cross-cutting, in which case multiple entities may be involved. It also provides guidance to other inspectorates across government – for instance, it provides CMSC with guidance for their oversight of SOEs in the absence of the designated inspection unit – despite that CMSC can be the subject of GIV's inspections. At the same time, the government also monitors the work of GIV when they are conducting investigations – sending delegations to oversee and inspect GIV's performance. Line ministries are mandated to conduct inspections in majority-owned SOEs under their responsibilities, but it seems that such investigation pertains to ministries' regulatory authorities. They report to the GIV as well as their own hierarchy within the ministry. The GIV has also organised biennial anti-corruption dialogues, including those on specific sectors in which SOEs operate.

The State Audit Office of Viet Nam (SAV), described in Chapter 4, has responsibility for verifying the accuracy and legality of state expenditure including that of SOEs. The SAV reports to the National Assembly, who appoints the State Auditor upon recommendation of the President (confirm). In the execution of their audits, the SAV has reportedly uncovered large amounts of state budget lost to fraud. The SAV and GIV have signed an MOU to enhance collaboration and avoid overlaps. In particular, they meet to co-ordinate their annual plans that will avoid visits to SOEs at the same time. They also share information gathered through on-site visits to facilitate their respective work. The SAV has a rotating schedule for audit of SOEs, but the GIV does not.

Other entities are afforded space in the promotion of business integrity in Vietnamese companies including SOEs. The VCCI has been particularly active in promoting and conducting research on issued studies related to business integrity. Since 2014, the VCCI has been working with UNDP and the Embassy of the United Kingdom on the "Business Integrity Programme". The project partners issued in early 2021 a set of business integrity criteria for SOE and other companies' use. In 2015, VCCI conducted an assessment on corporate governance of Vietnamese companies taking into account OECD Guidelines.

#### *Code of conduct for office holders*

Representatives of the state in enterprises – including members of the BoM, the BoD and the BoC – are subject to a code of conduct (art. 20), to rules on giving and receiving gifts (art. 22) and on managing conflict of interest (art. 23).

Office holders are subject to the code of conduct that bears on their performance of duties and in their social relations. The Code compiles social norms, permissible and prohibited actions that are meant to maintain integrity, responsibility and ethics of office holders. Prohibited actions include, inter alia, harassment, establishing or participating in or holding positions in of proprietorships or companies and from illegally issuing confidential information. Members of the BoM (or BoD), company Presidents, CEOs, deputy general directors, deputy directors, chief accountants and holders of other managerial positions of wholly-owned SOEs cannot sign contracts with enterprises owned by their spouses, parents, children or siblings to bid for contracts of their enterprises; must not allow their spouses, parents, children or siblings

to hold positions of personnel management, accounting, treasurer or warehouse-keeper in their enterprises.

It also prohibits them from participating in transactions, trade of goods or services or conclusion of contract with their enterprises. As far as can be discerned, it appears that the law additionally requires that ‘heads and deputies’ of SOEs 100% owned by the state cannot contribute capital to enterprises in the same field, and nor can their aforementioned kin. However, the LOE allows for wholly-owned SOEs to engage in contracts and transactions with related parties (including those prohibited by the ACL) if approved by the BoM or the company’s President, CEO and Controllers (or BoD, or GMS, depending on the company form). As far as the mission team can deduce, limitations are applied to individuals engaging in contracts or transaction, while the company can enter into transactions if approved by the governing bodies on which they often sit.

### *Conflict of interest management*

The state expects that SOEs will manage conflicts of interest of office holders (ACL, art. 23). An individual must report if they have or know of a conflict, including of office holders. When the office holder’s manager or employer finds that their integrity, objectivity or truthfulness of the office holder can be affected by a conflict of interest they should supervise, suspend or temporarily reassign the office holder. Provisions found in this and other laws related to declarations of assets and income, related party transactions and nominations of leadership positions in an SOE cobble together a more comprehensive picture of how SOEs can go about meeting the broader requirements of the law. For instance, the ACL is supported by a Decree describing the management of titleholders, office holders and representatives of state ownership interests in enterprises (Decree No. 159/202/ND-CP). It states that care must be taken to avoid any conflict of interest in the case that manager of an SOE, a controller, or a representative of state capital at an SOE assume multiple positions at the same time. The mission team learned that it is indeed common that leaders of SOEs hold multiple positions at once.

### *Transparency and disclosure*

The ACL requires SOEs – both wholly and majority-owned – to disclose information about its organisational structure and operations, providing exceptions for “state secrets, business secrets and other information prescribed by law”. More specifically, they must disclose implementation of policies relevant to the lawful rights and interests of officials, the distribution, management and use of public funds, public assets or funds from other lawful sources. Wholly-owned SOEs are additionally required to disclose information about human resource management and the code of conduct for office holders. While the information should be accurate, clear, adequate and timely, SOEs are allowed to publish in one of a variety of formats. Should an SOE choose to post the information at the premises of the organisation, this would substantially limit the accessibility for a large swathe of stakeholders.

This requirement is included in the list of disclosures that SOEs must make pursuant to the 2020 LOE. Indeed, the LOE as well as other relevant legislation and decrees bear on the transparency (and integrity) of an SOE. The LOE requires board members, Controllers, Directors or CEO, and other managers of the company to declare their related interests, defined as: (i) the identification of enterprises that they own or in which they are shareholder as well as the ratio and time of ownership/shareholding; (ii) the identification of enterprises in which their related persons own, jointly own, or have separates shares in worth more than 10% of charter capital.

### *Declaration of assets and income*

The law requires declarations of assets and income from those in positions of “deputy managers and above” in SOEs (wholly-owned) as well as from appointed representatives of state capital in enterprises (thereby covering officials in majority-owned enterprises). They must declare land use rights, houses,

construction works, and other property attached thereto; previous metals, gemstones, cash, financial instruments and other real property that are each valued at VND 50 000 000 or more; and total income between two declarations. The mission team understands that said persons have to declare within ten days of employment and on an annual basis thereafter.

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## Notes

<sup>1</sup> The “Anti-Corruption Law” (No. 55/2005/QH11) was amended by Law No. 01/2007/QH12 in 2007, Law No. 27/2012/QH13 in 2012 and Law No. 36/2018/QH14 in 2018.

<sup>2</sup> <https://vietnamnews.vn/politics-laws/1119280/hn-peoples-court-sentences-former-minister-of-industry-and-trade-to-10-years-in-prison.html>.



# 6 Recent and ongoing reforms

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Viet Nam has taken important measures for SOE restructuring following Doi Moi reforms in 1986. SOEs restructuring is at the centre of Viet Nam's socio-economic development strategies, and a pillar for the national economy to reach its goal of reaching high-income status by 2045. This chapter provides an overview of the government's efforts made to reform SOEs and its plans to further implement SOEs equitisation goals, including through alignment with international standards such as the SOE Guidelines.

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The state-owned enterprise reform process is closely associated with the reforms process of the Vietnamese economy. Since 1992, Viet Nam has been reforming its SOE sector mainly through measures of assignment, sale, contract, lease, dissolution of enterprises and equitisation without much success. The second wave of restructuring of SOEs was from 2010 to 2015, as it was listed as one of the main pillars of the Socio-Economic Development Strategy 2011-20 and five-year Socio-Economic Development Plan 2011-15.

The third wave of SOE reforms started from 2016, notably through the establishment of the SOE governing body, CMSC, in 2018. In early 2021, the 14<sup>th</sup> Communist Party Congress adopted the Socio-Economic Development Plan (2021-25) and the Socio-economic Development Strategy (2021-30), highlighting the country's goal to reach upper middle-income status by 2030 and high-income status by 2045. These once again stressed on streamlining SOEs and also keeping essential ones such as ones related to national defense and security and sectors in which enterprises of other economic sectors do not invest.

The strategies aim to consolidate and develop a number of large-scale, efficient state-owned economic groups capable of regional and international competitiveness, ensure transparency in the restructuring of SOEs, especially with regard to equitisation and divestment of state capital in enterprises. It is set to complete the rearrangement of SOEs by 2025.

**Table 6.1. Recent developments on corporate governance of SOEs (2016-21)**

Year	
2016	Adoption of Decision No. 58/2016/QĐ/TTg on the criteria for classifying SOEs and the list of SOEs arranged in the 2016-20
2016	Adoption of Circular No. 115/2016/TT-BTC by Ministry of Finance on amending and supplementing a number of articles of Circular No. 196/2011/TT-BTC on equitisation
2017	Adoption of resolution 121-NQ/TW of the Central Committee on continuing to innovate, restructure and improve the performance of state-owned enterprises (SOEs) and the economic development strategy (2011-20)
2018	Adoption of Law on Public Debt Management and Decree No. 91/2018/ND-CP on Granting and managing Government guarantees
2018	Adoption of Law 69 on management and utilisation of state capital, and the Decree No. 131/2018/ND-CP
2018	Establishment of the Committee on Management of State Capital at Enterprises
2019	Adoption of Decision No. 6/2019/QĐ/TTg on approving the list of equitised enterprises until 2020.
2020	Adoption of Law on Enterprises No. 59/2020/QH14
2021	Adoption of Decision No. 22/2021/QĐ-TTg on criteria for classifying state-owned enterprises for ownership conversion and rearrangement during equitisation phase 2021-25
2022	Adoption of Decision No. 360/QĐ-TTg on improving competitiveness of SOEs on the basis of technology, innovation, and management capacity, phase 2021-25
2022	Adoption of Resolution No. 68/NQ-CP on the continuation to innovate, improve operational efficiency and mobilise resources of state-owned enterprises, focusing on economic groups and corporations

In 2020, Ministry of Planning and Investment initiated the project “Development of large-scale SOEs”, especially multi-owned State-owned economic groups, with aims to promote the roles of SOEs in paving the way as lead enterprises of major economic sectors, as listed in Resolution No. 18/NQ-CP dated 26 February 2020.

The project was initiated back in 2017 from resolution 12-NQ/TW of the Central Committee on continuing to innovate, restructure and improve the performance of SOEs and the economic development strategy (2011-20), which clearly affirmed the role of SOEs “as an important material force of the state economy”. The mission and objectives were set out: “Consolidate and develop a number of state-owned economic groups with large scale, effective operation, and promote regional and international competitiveness in the region”.

The Project will focus on two main priorities. First, to reform and develop a number of large-scale economic groups on the basis of enhancing links in value chains, promoting innovation using untapped SOEs resources, incorporating private sector’s resources to co-ordinate. Second, to establish mechanisms and policies to allow SOEs to participate in investment in a number of industries and fields that are paving the way and achieve the objectives of the Socio-Economic Development Strategy of the country. These areas include electricity, petroleum, and airlines. Whether or not this move will imply further preferential access to state-owned bank loans is not clear.

Since November 2021, the Ministry of Finance has been assigned as the main ministry responsible for amending Law No. 69/QH13/2014 on Management and Utilisation of State Capital Invested in Enterprises with a view to making it more aligned with the OECD SOE Guidelines. Objectives of the amendment include: improving the institutional framework; creating an enabling legislation environment for management of state capital at enterprises; enhancing the autonomy and self-accountability of enterprises; and strengthening the state’s inspection and supervision in management of the state capital at enterprises. The government plans to submit the revised Law by the end of 2023 to the National Assembly, which will then be promulgated in early 2024, if approved.

In the same vein, the Ministry of Finance issued Decision No. 246/QĐ-BTC in 2020 on its plan to supervise state capital investment in enterprises. Accordingly, the Ministry of Finance is required to supervise state capital investment in enterprises from 2021 at two ministries and branches, namely the Ministry of National Defense and the State Bank. The State Bank will indirectly supervise the additional investment in charter capital for the Bank for Agriculture and Rural Development of Vietnam from the payment of special bonds.

Following the Government’s Resolution of the 5<sup>th</sup> Conference of the Central Committee of the Communist Party of Vietnam term XIII to review the Land Use Law, the Corporate Finance Department of the Ministry of Finance is to conduct a study and submit to the National Assembly for promulgation the Law amending and supplementing the Land Use Law. In particular, the Department aims to come up with a plan to re-assess SOEs which are going through equitisation process to ensure its feasibility and suitability for regulations on enterprise valuation and land use right valuation, and to separate the value of land use from the enterprise value.

Most recently, on 12 May 2022, the government issued Resolution No. 68/NQ-CP on the continuation to innovate, improve operational efficiency and mobilise resources of SOEs, focusing on economic groups and corporations. The Resolution recognises that the performance of the SOE sector is not commensurate with the resources it holds and that there are still low-efficient SOEs and projects, with prolonged losses. The government requires ministries, ministerial-level agencies, the People’s Committees of the provinces, the Members’ Council, and the representative of the State’s capital in enterprises to implement the key targets to accelerate reforms. The Resolution also requires SOEs to implement corporate governance in line with the OECD Guidelines on Corporate Governance of State-owned Enterprises (see Box 6.1). However, the Resolution explicitly support creation of “favourable conditions” for business activities of SOEs, raising competitive neutrality concerns.

Despite ongoing efforts from the central government and line ministries, the reforms of SOEs in Viet Nam still face some challenges, mainly due to a lack of delineation of roles and responsibilities of the state owners and ambiguity in the interpretation of different legislations and regulations. How Viet Nam will prioritise the restructuring of its SOE sector remains to be seen.

**Table 6.2. Ongoing draft legislations on corporate governance of SOEs**

Ministry in charge	Proposed legislation
MOLISA	Draft Decree policies for redundant employees when changing ownership or rearranging a one-member limited liability company in which 100% of charter capital is held by the State
MOF	Draft Decree on the use of revenue from enterprise ownership conversion
MOLISA	Draft Decree on salary at State-owned enterprises
MOF	Draft Decree on criteria and lists of classification of State enterprises and enterprises with State capital, public non-business units
MOF	Decision approving the Scheme on restructuring State-owned enterprises, focusing on economic groups and State Corporations for the period of 2021-25, allowing representative agencies of owners and enterprises a basis for implementation
MOF	Amendments and supplements to Law No. 69/2014/QH13.

### Box 6.1. Resolution No. 68/NQ-CP on Continuation of State-owned Enterprises Reforms, Improving Efficiency in the operational and resources mobilisation processes

#### Targets:

1. Perfect mechanisms and policies to focus on removing difficulties and obstacles, creating favourable conditions, and increasing the initiative in production and business activities of SOEs.
2. Focus on improving the operational efficiency of the SOE sector, taking production and business efficiency, the observance of the law on investment, management and use of state capital as the main evaluation criteria. Focus on business ethics, corporate culture, resolutely reducing costs, streamlining the apparatus and improving operating capacity. Regularly foster professional qualifications, ensuring the material and spiritual life of officials, employees and employees.
3. Improve the productivity, quality, efficiency and competitiveness of enterprises through promoting digital transformation and application of science and technology, encouraging the formation of innovation centres at enterprises.
4. Consolidate and develop a number of large-scale economic groups and corporations with technological and innovation capabilities for investment and development in a number of new or important industries and fields of the economy such as energy (with priority given to renewable energy, clean energy), national infrastructure, finance, telecommunications industry, semiconductor industry and core technology.
5. By the end of 2025, aim to achieve a number of specific goals and targets as follows:
  - a. 100% of economic groups and state-owned corporations apply governance on the digital platform, implementing corporate governance in line with the OECD Guidelines on Corporate Governance of State-Owned Enterprises.
  - b. 100% of economic groups and corporations have new implementation projects, including a number of typical investment projects with leading and pervasive nature, conserving brand name of SOEs.
  - c. At least 25 SOEs with equity capital or capitalisation on the stock market reaching over USD 1 billion, of which there are at least ten enterprises with over USD 5 billion.
  - d. 100% of SOEs have orientation and implementation of investment transformation, towards investment projects, using green, clean technology and reducing carbon emissions.
  - e. The average contribution of economic groups and state corporations to the state budget in the 2021-25 period increase by 5%-10% compared to the 2016-20 period.

Source: Resolution No. 68/NQ-CP on Continuation of State-owned Enterprises Reforms, Efficiency Improving Efficiency in the operational and resources mobilisation processes, Vietnamese Law Portal, <https://thuvienphapluat.vn/en/>

# 7 Rationales for state ownership

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This chapter assesses the Vietnamese state ownership policy based on the Chapter I of the SOE Guidelines. It analyses the country's ownership accountability, disclosure of its ownership rationale, and looks at how the state defines the rationales for owning individual SOEs and subject these to recurrent review.

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## Overarching recommendation from the SOE Guidelines

The state exercises the ownership of SOEs in the interest of the general public. It should carefully evaluate and disclose the objectives that justify state ownership and subject these to a recurrent review.

### 7.1. Articulating the rationales for state ownership

*A. The ultimate purpose of state ownership of enterprises should be to maximise value for society, through an efficient allocation of resources*

Viet Nam's state ownership rationale can be gleaned from a number of documents specifying policy priorities in the area of state ownership, investment and management. The government has stated state ownership rationale and public policy objectives of SOEs through promulgation of the 2020 Law on Enterprises, 2014 Law 69 on Management and Utilization of State Capital, relevant laws, Decrees guiding the implementation of laws and sectoral ministries' circulars. Main priorities underpinning the Government's ownership of SOEs include conserving and developing state capital invested in enterprises; guiding SOE

development per economic, political, and social goals of the government; and strengthening SOEs' leading role in socio-economic development.

The State retains its ownership in key industries such as electricity, telecommunication and mining to deliver public service obligations, implement overarching industrial strategies and regulate the economy of the country. The 2014 Law 69 on Management and Utilization of State Capital stipulates the fields where 100% of the enterprise's capital is held by the State, including enterprises providing essential products and services for the society; enterprises operating in the direct auxiliary sector for the purpose of national defense and security; enterprises operating in the natural monopoly sector; hi-tech enterprises that are pioneering areas/industries considered economic spearheads; and areas/industries related to national security and defense (see Box 7.1).

Covering such a wide range of areas/industries, state ownership and the state economic sector play an extensive role in the country's socio-economic development. The State explicitly uses SOEs as a vehicle for achieving national economic development agenda, ensuring macroeconomic stability, curbing inflation, and generating revenue for the state budget. It regularly commissions SOEs to undertake major infrastructure projects. When exercising its ownership over public assets, it often acts as a project owner or developer in its economic engagements.

### Box 7.1. Provision on the scope of state investment in business establishment in the Law 69 on Management and Utilisation of State-Owned Capital

Article 10. Scope of state investment in business establishment.

1. State investment in business establishment shall be made within the following scopes:
  - a. Enterprise providing basic public products and services;
  - b. Enterprises operating in the direct auxiliary sector for the purpose of national defense and security;
  - c. Enterprises operating in the natural monopoly sector;
  - d. Hi-tech enterprises, and those making large-scale investment in and serving as the driving force behind the fast growth of different industries, sectors as well as the entire economy.
2. Government shall provide specific regulations on state investment in business establishment and order placement mechanism of the State, applicable to the enterprise that plays its significant roles in regulating the national macro-economy and maintaining the social security in accordance with provisions laid down in Clause 1 of this Article.

Source: Law 69 on Management and Utilisation of State-Owned Capital

## 7.2. The ownership policy

*B. The government should develop an ownership policy. The policy should inter alia define the overall rationales for state ownership, the state's role in the governance of SOEs, how the state will implement its ownership policy, and the respective role and responsibilities of those government offices involved in its implementation*

Viet Nam has yet to develop a concrete and unified ownership policy. The legal and institutional framework for state ownership builds on a number of documents specifying policy priorities in the area of state ownership and management. The government has formulated and implemented policies regarding SOE ownership through the promulgation of the 2020 Law on Enterprises, 2014 Law on Management and

Utilisation of State Capital, 2017 Law on Management and Use of Public Property (Law No. 15/2017/QH14), relevant laws, decrees guiding the implementation of laws and sectoral ministries' circulars. These normative legal documents have specified the rights and responsibilities of state ownership representative bodies (including the government, Prime Minister, sectoral ministries representing the owner) as well as those of Members' Council and its Chairperson at SOEs.

The National Assembly has promulgated the 2014 Law on Management and Utilization of State Capital Investment in the Enterprise's manufacturing and business activities, which specifies the cases in which the State must hold 100% of the charter capital. The Law stipulates the Government's authority to decide on investment and establishment of State capital, and the rights and responsibilities of the agencies representing state capital. According to the Law, ministries and agencies develop policies, perform management and supervision as per their functions and tasks. For example, the Ministry of Finance promulgates regulations on finance and accounting for SOEs and supervises the financial situation of SOEs. In case of detecting signs of violations, it can organise direct inspection. It manages public assets; grants government guarantees for SOEs to borrow foreign loans.

### **7.2.1. Government bodies responsible for defining the ownership policy**

Governmental agencies responsible for determining fundamental ownership policies encompassing issues such as performance management, human resource management and remuneration are the Ministry of Finance (MOF), Ministry of Planning and Investment (MPI) and other relevant ministries such as the Ministry of Justice (MOJ), Ministry of Home Affairs (MOHA), and Ministry of Labour – Invalids and Social Affairs (MOLISA). When developing ownership policies, these ministries consult stakeholders such as SOEs, associations, consumers, and general public through workshops and seminars. Government is mandated to adhere to directions of the Party in its ownership policy. Based on Party Resolutions adopted at Congresses, the government assigns sectoral ministries and committees to formulate ownership policies by sector or specialised area.

The agencies implementing the State's ownership policy are CMSC (for groups and corporations), Ministries and agencies (for enterprises with special characteristics in the field of security and national defense), and provincial People's Committees (for local enterprises). The agencies performing the state ownership function have the right to appoint and dismiss the Chairman and members of the Board of Directors, as well as to decide on other important tasks of the SOEs (reported by the members of the SOEs' Board of Directors). These agencies have set up subordinate units to advise and co-ordinate with state management agencies (Ministries) to perform the functions the owner's representative agencies.

## **7.3. Ownership policy accountability, disclosure and review**

*C. The ownership policy should be subject to appropriate procedures of political accountability and disclosed to the general public. The government should review at regular intervals its ownership policy*

Ownership policies stated in 2020 Law on Enterprises, 2014 Law 69 on Management and Utilization of State Capital, 2017 Law on Management and Use of Public Property (Law No. 15/2017/QH14) and relevant regulations are publicly disclosed on websites of the government, the owner's representative agencies including Commission for the Management of State Capital at Enterprises (CMSC), Ministries and State Capital Investment Corporation (SCIC).

The government and sectoral ministries which exercise state ownership function periodically review and assess the impact of ownership policies in practice on SOE governance stakeholders through feedback from SOEs, conferences, workshops, surveys, and periodic reports from the owner's representative agencies, SCIC, relevant ministries and functional agencies (such as the State Audit, the government Inspectorate) in order to promptly solve problems within its scope of authority or report to the National

Assembly for consideration. For some groups of SOEs with specific characteristics, the government sets up a Working Group headed by the government Leader to directly handle arising issues within a period of one month or less.

#### 7.4. Defining SOE objectives

*D. The state should define the rationales for owning individual SOEs and subject these to recurrent review. Any public policy objectives that individual SOEs, or groups of SOEs, are required to achieve should be clearly mandated by the relevant authorities and disclosed*

Every five years, the Prime Minister issues a Decision on criteria for classification of SOEs for review of sectoral ministries and state owner's representatives and submits to competent authorities for approval.

In case of making capital contribution to other enterprises, SOEs must be approved by the owner's representative agencies or higher level whereas in private enterprises, the board of directors considers and makes its own decisions. In principle, when participating in investment plans, SOEs as well as enterprises must expect, evaluate and manage risks to achieve maximum profit and be approved by the competent authority (usually the ownership entity) on the investment plan. In case of capital investment with a lower interest rate than that in the market, SOEs must clearly present the reason and must be approved by the competent authority. However, as of now, no regulations specify the mandatory minimum rate of return. Similarly, in the case of business expansion projects, SOEs must report to the owner's representative agencies for approval, carry out bidding procedures to select contractors according to the State's regulations. The policies that bind the operation of SOEs are specified in the relevant legal system including the Law on Investment and the Law on Bidding.

All public policy objectives that each SOE or SOE groups should achieve must be communicated by relevant competent authorities and publicly published. However, exceptions are made for SOEs related to national security/defense industries or industries that concern state secrets.



# 8

## The State's role as an owner

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This chapter assesses Vietnamese Government's role as an owner against the Chapter II of the SOE Guidelines. It examines to what extent the state ownership function is organised in a transparent and accountable manner. It also looks at how the state exercises its ownership rights according to the legal structure of each enterprise.

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### Overarching recommendation from the SOE Guidelines

The state should act as an informed and active owner, ensuring that the governance of SOEs is carried out in a transparent and accountable manner, with a high degree of professionalism and effectiveness

#### 8.1. Simplification of operational practices and legal form

*A. Governments should simplify and standardise the legal forms under which SOEs operate. Their operational practices should follow commonly accepted corporate norms*

SOEs can operate in the form of a limited liability company or a joint stock company. The current Law on Enterprises does not prescribe other legal forms for enterprises of other economic actors. Private companies (without state capital) reserve the right to operate under these models, so the law does not allow SOEs to operate under any exclusive model different from other companies (see Box 8.1).

### Box 8.1. Legal forms under which SOEs operate

Article 88 of the 2020 Law on Enterprises states that state-owned enterprises shall be limited liability companies or joint stock companies, including:

State-owned enterprises shall be limited liability companies or joint stock companies, including:

- a) Wholly state-owned enterprises (100% of charter capital of which is held by the State)
- b) SOEs where the State holds over 50% of charter capital or voting shares, except those prescribed in point a) above.

Wholly state-owned enterprises specified in point a Clause 1 of this Article include:

- a) Single-member limited liability companies 100% of charter capital of which is held by the State that are parent companies of state-owned corporations or parent companies in groups of parent company – subsidiary companies
- b) Independent single-member limited liability companies 100% of charter capital of which is held by the State.

SOEs where the State holds over 50% of charter capital or voting shares prescribed in point a clause 1, including:

- a) Multiple-member limited liability companies and joint stock companies over 50% of charter capital or voting shares of which is held by the State that are parent companies of state-owned corporations or parent companies in groups of parent company – subsidiary companies
- b) Independent multiple-member limited liability companies and joint stock companies over 50% of charter capital or voting shares of which is held by the State.

Source: 2020 Law on Enterprises, Vietnamese Law Portal, <https://thuvienphapluat.vn/>

Fundamentally, principles for the management of SOEs are no different from those of private companies and listed companies. In terms of organisation and operation, SOEs have to fully comply with provisions of law like other enterprises. However, in terms of management and use of state capital, SOEs have to comply with other relevant regulations. At present, Vietnamese law does not grant any exclusive rights to or unique legal status SOEs in a way that protects them, in part or in whole, from insolvency or bankruptcy. However, in practice, regarding industry-leading SOEs, government extends preferential access to government guarantees and loans to them, with a view that their bankruptcy would lead to the instability of their entire respective industry and the economy as a whole. OECD mission team is informed that it is not uncommon for some SOEs to “ask for help” from the government and/or receive support and interventions from the government. Most recently, Vietnamese Airlines received government support to tackle financial difficulties posed by the COVID-19 pandemic.

An important measure in ensuring competitive neutrality will be to avoiding bailing out lagging SOEs with state aid and putting an end to government guarantees on debt issued by SOEs. While explicit government guarantees are being disclosed thanks to a statutory ceiling that is imposed on public debt (60% of GDP for 2021-25), the government could consider disclosing contingent liabilities to state-owned enterprises (OECD, 2022<sup>[1]</sup>).

In theory, structure and composition of the Members’ Council/Board of Directors (BOD) should depend on the proportion of shares shareholders hold in enterprises. However, in SOEs, the State is often the only shareholder or majority shareholder who reserves the right to assign all or the majority of members in the Members’ Council and BOD.

Regarding labour relations, SOEs and non-SOEs must comply with provisions of the Labour Code. In principle, the legal forms of SOEs do not provide for different treatment of employees (e.g. remuneration, pension rights and job protection) compared with other types of companies. Benefits of employees in SOEs are delivered per regulations of the government and sectoral ministries while other enterprises must implement labour policies per their commitments and agreements with employees and provisions of the Labour Code.

The government has issued a number of regulations on wages and bonuses for employees and managers of SOEs. These include Decree No. 51/2016/ND-CP on labour management and wages and bonuses for workers of one-member limited companies where the State holds 100% of charter capital; Decree No. 52/2016/ND-CP on wages, remunerations, and bonuses for managers of one-member limited companies where the State holds 100% of charter capital; and Decree No. 53/2016/ND-CP on labour, wages, remunerations, and bonuses at joint stock companies where the State has a controlling interest.

## 8.2. Political intervention and operational autonomy

*B. The government should allow SOEs full operational autonomy to achieve their defined objectives and refrain from intervening in SOE management. The government as a shareholder should avoid redefining SOE objectives in a non-transparent manner*

Provisions of law on rights and obligations of the owner's representative serve as a measure to prevent the Government's intervention in SOEs' day-to-day management. Legal documents also specify the Government's rights and obligations to SOEs; and rights of SOEs in day-to-day business activities. Article 5 of the Law No. 69/2014/QH1335 clearly sets out that the state body exercising ownership rights and the regulatory bodies shall not interfere with day-to-day operations and business decisions of an SOE.

However, it is not clear if there are any safeguards in place to prevent the government from intervening in the day-to-day management of SOEs and if they are subject to any public disclosure requirements in such cases. Furthermore, the scope of supervision of the representative agency of state-owned assets is not clearly delineated and overlap with monitoring and financial control activities of the Ministry of Finance whose supervisory role extends to making decisions on investment activities, remuneration schemes, financial statements and dividends of SOEs. The responsibilities of the line ministries vis-à-vis SOEs are not clearly defined by the Law.

In relevant decrees (Decree No. 131/2018/ND-CP, Decree No. 10/2019/ND-CP) specific provisions are prescribed on the competence and responsibilities of various levels: the owner's representative agency, the Members' Council, the General Meeting of Shareholders, the Board of Directors (BOD), the Chairperson of the Members' Council, and the General Director. At the same time, these documents prescribe cases and areas that the Members' Council can decide, areas and cases that require consultation with the owner's representative agency, and areas and cases that the owner's representative agency can decide. Article 9 of Decree No. 10/2019/ND-CP sets out rights and responsibilities of the owner's representative agency regarding the charter, strategy and plan of a wholly state-owned enterprise as follows:

- a) The owner's representative agency shall adopt the charter and the revised or amended one of the enterprises upon the request of the Board of Members and the enterprise's Chairman, except the cases in which the authority to adopt the charter is delegated to the government.
- b) The owner's representative agency shall approve that charter so that the Board of Members and the enterprise's Chairman can decide the 5-year plan (including the business strategy and plan and 5-year investment and development plan) and the annual business plan of the enterprise, except the cases in which the authority to grant approval is delegated to the Prime Minister.

- c) The decision on approval of plans specified in Clause 2 of this Article must contain the following main information:
- i. Planned objectives and tasks
  - ii. Indices measuring revenues, profits, payments to the state budget and other plan-related indices
  - iii. Plan implementation solutions
  - iv. Assignment of tasks of implementation, supervision and assessment of results of implementation of these plans
  - v. Others.

OECD team finds that there is no full operational autonomy of SOEs in their decision making. In Viet Nam, the ownership entities play a more direct role in strategic management of SOEs, as well as in the appointment of the CEO and succession planning and executive remuneration and incentive schemes. According to good practice, most of these responsibilities should be exercised by the board.

To begin with the responsibilities of BoMs of wholly state-owned enterprises are not clearly delineated from those of the General Director nor from the state owner. At the same time, BoM consists of representatives of state capital. While the government does not directly provide directions to managers of SOEs, it often provides directions via the owner's representative agency to them with respect to formulation and implementation of production and business plans. Government's ownership entities (including ministries, agencies and CMSC) communicate commercial policies, strategies, regulations on SOEs' business activities to Members' Council/Chairperson/Representative of state capital at SOEs/SOE boards on a regular basis.

For instance, when an SOE wishes to invest in an infrastructure project, it often has to consult a number of stakeholders including MPI and MOF before reaching any conclusion. However, since these ministries are not professional investors, it often takes a lot of time for them to come up with a decision. At the same time, the government may appoint SOEs to perform special tasks in the field of national defence and security, etc. or to perform tasks that private enterprises do not have the conditions and resources to implement.

As per Article 5 on implementation of rights and responsibilities of the Government of Decree No. 10/2019/ND-CP, CMSC shall have the right to request competent regulatory authorities to appeal to the government to: promulgate, amend and supplement the statutes of wholly state-owned enterprises that are established under the Prime Minister's decisions and of which management is authorised to the Commission in accordance with the Government's regulations; promulgate, amend and supplement financial management regulations of the Vietnam National Oil and Gas Group, and the Vietnam Electricity Corporation.

It is also notable that Decree No. 87/2015-ND-CP on supervision of government capital enables the Ministry of Finance to perform a supervisory role with regard to investment activities, remuneration schemes, SOEs' financial statements and dividends policy.

Currently, SOEs' disclosure is mandated by 2020 Law on Enterprises (Articles 109 and 110) and its subsequent Decree No. 47/2021/ND-CP dated 1 April 2021 of the government. Furthermore, SOEs that are registered as publicly-traded joint stock companies must comply with disclosure procedures per provisions of Law on Securities.

All commercial policies and strategies are widely announced by state management agencies, representative agencies of state capital owners to enterprises, Members' Councils and Boards of Directors of SOEs and enterprises with state-contributed capital through documents, their websites, press releases, except for contents prescribed by competent authorities as state secrets. However, such information is not presented in an aggregate manner on these websites.

### 8.3. Independence of boards

*C. The state should let SOE boards exercise their responsibilities and should respect their independence*

SOE boards' degree of responsibility and autonomy to define – in accordance with the objectives defined by the government – strategies for the company. Processes through which government or its ownership unit set objectives and communicate them to SOE boards.

SOE strategies are usually defined over a five-year period (e.g., 2021-25). The approval process for strategies of SOEs is spelled out in the 2014 Law 69 on Management and Utilisation of State Capital and Decree No. 10/2019/ND-CP dated 30 January 2019 by the government, as follows:

- Enterprises with 100% state capital established by decision of the Prime Minister: the Prime Minister approves the strategy.
- Enterprises with 100% state capital established by the owner's representative agency: The owner's representative agency approves the strategy for the Board of Directors and the company's president to decide.
- Enterprises held by the State with 36% or more: The representative of the state capital portion in the enterprise shall report and seek opinions from the owner's representative agency before giving opinions, voting and deciding on the State capital at the General Meeting of Shareholders, the meeting of the Board of Directors, the Members' Council in accordance with the law and the charter of the enterprise.

The formulation of the enterprise's strategy is based on the orientations of the Party, the State and the government, general socio-economic development strategy of the whole country, as well as the national planning of sectors and fields related to enterprises. The strategy of SOEs is completed and approved by the competent authority only after the general socio-economic development strategy of the whole country is approved. The Board of Members and the Board of Directors of the enterprise are responsible for taking into account these contents when formulating the strategy of the enterprise.

At present, the Member's Council/BOD has yet to be given full responsibility and autonomy in the development of SOEs' strategies. To become a member of an SOE's BOD, one must be nominated by shareholders (the owner's representative agency) and elected by the general meeting of shareholders (GMS). In the case of a wholly state-owned company, the Chairperson and members of the Members' Council of the company are appointed by the owner's representative agency.

The responsibility and authority of the representative of the state capital in a joint-stock enterprise are specified in the 2014 Law 69 on Management and Use of State Capital, 2020 Law on Enterprises, Decree No. 10/2019/ND-CP dated 30 January 2019 of the government and other relevant normative legal documents. Accordingly, a BOD member authorised to be a representative of state capital share by the owner's representative agency must fulfil his/her rights and responsibilities under the guidance of the owner's representative agency, and report fully to the owner's representative agency on a case by case basis as prescribed. Prior to voting at the Board of Directors, a representative of the state capital portion must consult the opinion of the owner's representative agency on the voting content (see Box 8.2).

SOEs develop and suggest strategic development contents and submit them to competent authorities for approval. The Boards of Directors (BOD) of SOEs develop the directions of development for their SOEs in line with the development goals set by the government. SOEs' directions of development are adopted at general meetings of shareholders. The owner's representative agencies direct the representatives of state capital at SOEs to pass the directions of development at general meetings of shareholders. Assessment on board autonomy is extensively covered in the Chapter 13 on Responsibilities of Boards of Directors.

### Box 8.2. Rights and responsibilities of the representative of state capital share in the 2014 Law on State Capital Management

#### Article 48. Rights and responsibilities of the representative of state capital share

Ask for the advice from the owner's representative agency before raising opinions, casting votes and making decision at the Shareholders' General Council, meeting of the Board of Directors, Board of Members, on the following issues:

Scope of businesses, objectives, tasks, strategy and plan for investment and development, and plan for production and business.

Introduction and revision of the charter; increase or reduction in the charter capital; election, dismissal, discharge, commendation, reward and penalties for members of the Board of Directors, Board of Members, General Director or Director, Deputy Director General or Vice Director.

Distribution of profits and setting up of annual funds in the enterprise.

Reorganization, dissolution or bankruptcy.

- a) Other issues managed under the delegated authority of the Shareholders' General Council, Board of Directors and Board of Members.

Make on-time reports on any loss incurred by joint-stock companies or multiple-member limited liability companies during their operations, failure to ensure payment competence, to complete assigned tasks as well as other violations.

Submit the quarterly, annual and on-demand reports on manufacturing and business activities, financial status, and recommend solutions at the request of the owner's representative agency and the representative of state capital share.

Request joint-stock companies and multiple-member limited liability companies to pay in their distributable profits and dividends in proportion to the share of state capital invested in such companies to the State Budget.

Be deprived of the right to continue to act as the representative if that person does not fully exercise the delegated powers or assume the delegated responsibilities or does not meet the requirements for a representative anymore.

Bear legal responsibility for any violation causing any loss on or damage to the state capital.

Exercise the rights and assume the responsibilities in accordance with regulations laid down in the charter of joint-stock companies and multiple-member limited liability companies, the enterprise law and other relevant laws.

Source: 2014 Law on State Capital Management, Submission from Vietnamese Government, Viet Nam Law Web Portal, <https://thuvienphapluat.vn/>

## 8.4. Centralisation of the ownership function

*D. The exercise of ownership rights should be clearly identified within the state administration. The exercise of ownership rights should be centralised in a single ownership entity, or, if this is not possible, carried out by a co-ordinating body. This "ownership entity" should have the capacity and competencies to effectively carry out its duties*

According to the 2014 Law 69 on Management and Use of State Capital, “owner representative agency” means an agency or organisation assigned by the government to exercise rights and perform the duties of the representative of state ownership in the enterprise established under its decision, or to manage and accept the rights and assume the duties to a portion of the state capital invested in joint-stock companies and multiple-member limited liability companies. Under this law, there is no limit to participation of public sector agencies in the ownership or performance management of the ownership function of SOEs.

Policy framework for state ownership function in Viet Nam has gradually improved in recent years. The government has established the Commission for the Management of State Capital at Enterprises (CMSC) to perform the function of representing state ownership in 19 state-owned corporate groups and corporations (except for some specific fields such national defense, etc.). People’s Committees of provinces and cities perform the function of representing the ownership entity in enterprises in the localities.

At present, the Commission for the Management of State Capital at Enterprises (CMSC), SCIC, several Ministries, People’s Committees of Provinces and Cities perform the role of representing owners of state capital in SOEs (see Box 8.3). All representative agencies must comply with the provisions of Law 69 with respect to appointing boards and operational control. While there are many representative agencies as mentioned above, at each SOE, there is only one agency that represents the owner and is directly responsible for the said SOE. Legal regulations are regularly amended and supplemented to tackle difficulties and problems.

The CMSC was established by the government in 2018 to perform its role as the owner’s representative agency at 19 state-owned groups and corporations which operate in various sectors of economy except in the fields of national defence, security, finance, monetary, and etc. CMSC exercises the rights and responsibilities of the owner at SOEs as prescribed in provisions of 2014 Law 69 on Management of State Capital, Decree No. 131/2018/ND-CP and Decree No. 10/2019/ND-CP. CMSC is also required to adhere to provisions of law on corporate financial management and corporate finance oversight regarding SOEs to which it is the owner’s representative. According to these provisions, when exercising its rights and performing its responsibilities to represent the owner, CMSC is mandated to co-ordinate with other state management agencies with regard to financial supervision, business classification, review, appraisal of investment projects, loans, etc. CMSC and SOEs to which it is the owner’s representative must manage and utilise state capital in line with sectoral development strategies, plans, and policies approved by competent authorities. CMSC works with relevant agencies to commission or assign SOEs to undertake services of general interest or other socio-economic missions as prescribed by law.

### Box 8.3. Decree No. 10/2019/ND-CP on Implementing Rights and Responsibilities of State Owner's Representatives

#### Chapter I, Article 4. Owner's representative agency

The Committee for management of state capital at enterprises shall be the agency representing the owners of wholly state-owned enterprises and the state capital invested in enterprises in accordance with the Government's regulations.

Ministries, Ministry-level agencies, Governmental bodies (hereinafter referred to as ministry), People's Committees of provinces and centrally-affiliated cities (hereinafter referred to as provincial People's Committee) shall be the agency for owner's representative to the followings:

- a) Wholly state-owned enterprises and state capital contribution portions invested in enterprises that are established under the decisions issued, or of which management is authorised, by ministries or provincial People's Committees, and that are not transferred to the Committee for management of state capital at enterprises and the State Capital Investment Corporation in accordance with laws;
- b) Wholly state-owned enterprises and state capital contribution portions invested in enterprises that are transferred to the Committee for management of state capital at enterprises and the State Capital Investment Corporation during the period of pending transfer.

The State Capital Investment Corporation shall exercise the right of representation for the state owner at enterprises that are transferred from ministries or provincial People's Committees in accordance with laws.

Source: Submission from Vietnamese Government, Vietnamese law portal website

State Capital Investment Corporation (SCIC) is an enterprise with the function of exercising the right to represent the owner of state capital in ministries and localities. Enterprises represented by CMSC and SCIC operate in a wide range of different fields, not fixed for certain sectors of the economy. Currently, the government is prioritising the acceleration of business transfer to SCIC.

## 8.5. Accountability of the ownership entity

*E. The ownership entity should be held accountable to the relevant representative bodies and have clearly defined relationships with relevant public bodies, including the state supreme audit institutions*

Ministries are responsible for formulating or promulgating within its scope of authority regulations and policies on management for all types of enterprises in society including SOEs and submitting them to the Prime Minister. With the above provisions, these ministries and state representative agencies, based on the Government's request, must regularly report to the Government on SOEs' implementation of financial and sectoral policies and make proposals, implement feasible solutions within their management areas to improve SOEs' operational efficiency. For example, the Ministry of Finance develops policies and collects taxes from SOEs. The Ministry of Finance reports to the government and the National Assembly to adjust tax policies according to the requirements of 5-year Socio-Economic Development strategy for each period.

The State Audit is a state agency under the management of the National Assembly. The State Audit Office has the power to inspect and audit the use of state budget funds for the activities of state ownership representative agencies including CMSC; examine and audit the use of state capital in production and



business activities of enterprises represented by these agencies. As prescribed in the Article 9, 10 and 11 of 2015 Law on State Audit, the State Audit of Viet Nam provides its assessment, conclusion, and recommendation regarding the management and use of public funds and assets.

## 8.6. The state's exercise of ownership rights

*F. The state should act as an informed and active owner and should exercise its ownership rights according to the legal structure of each enterprise. Its prime responsibilities include:*

*F.1. Being represented at the general shareholders meetings and effectively exercising voting rights;*

As per 2020 Law on Enterprises, the State as a shareholder at joint stock companies in principle shares the same rights and interests as other shareholders. According to the Law, the State should simply act as a shareholder, not a superior management authority. As a shareholder, the State is involved in business and human resources decisions made at enterprise level corresponding to the share of state capital in the charter capital of an SOE.

Based on regulations of the owner's representative agency regarding rights and obligations of the representative of State capital at meetings of BOD and general meetings of shareholders, for SOEs that are joint-stock companies, the representative of the capital portion shall consult and seek approval from the representative agency of the owner (agency representing the State's ownership) before voting at the general meeting of shareholders. The relevant order and procedures as well as operational modalities of Members' Council of a wholly state-owned company are specified in the 2014 Law 69 on Management and Utilisation of State Capital, 2020 Law on Enterprises, and other relevant normative legal documents. Specifically, work regimes, conditions, and procedures for conducting meetings of the Members' Council of a wholly state-owned company follow Article 98 of the 2020 Law on Enterprises.

*F.2. [The state's prime responsibilities include:] Establishing well-structured, merit-based and transparent board nomination processes in fully- or majority-owned SOEs, actively participating in the nomination of all SOEs' boards and contributing to board diversity;*

Policy framework for ensuring transparent and rigorous board nomination process is not yet in place. The procedure for nominating a representative to BOD is performed as prescribed in the 2014 Law on Management and Utilisation of State Capital, 2020 Law on Enterprises, and Decree 159/2020/ND-CP dated 31 December 2020 of the Government on the management of titleholders, officeholders, and representatives of state capital in enterprises (see Box 8.4). The process for BOD election at SOEs should adhere to the 2020 Enterprise Law and the General Meeting's Regulations on Nomination, Self-nomination, and Election.

### Box 8.4. Requirements for designation or nomination as representatives of state ownership interests stated in Decree 159/2020/ND-CP dated 31 December 2020 of the government

#### Article 48. Documentation requirements for designation or nomination as representatives of state ownership interests

The request form for designation or nomination as the representative of state ownership interests which is signed by the head of the relevant competent agency or organisation.

The biodata completed by each of the recommended personnel by using the prescribed sample, enclosing the certification granted by the relevant competent authority and his/her 4x6 cm colour photo taken not over six months.

Self-reflection statement of performance in the last three years.

Comments and feedbacks of the leadership and the Party committee of the agency or organisation supervising the person recommended for nomination or designation as the representative of state ownership interests.

The competent Party committee's conclusion regarding political standards.

Assessment opinions on each recommended person from the Party subcommittee of the place where he/she and his/her family are residing. If his/her residence is different from his/her family's residence, the assessment opinion of the Party subcommittee of the place where he/she and his/her family are residing.

Income and asset declaration prepared by using the prescribed sample.

The copy of degree or certificate provided to meet qualification requirements for specific titles or offices. If any office or title holder-to-be possessing a degree, diploma or graduation certificate conferred by a foreign education institution, this qualification document needs to be recognised in Vietnam according to applicable regulations.

The health certificate issued by the relevant competent health care establishment less than six months ago.

The commitment to the compliance with the guidelines, resolutions and directions of the representative agency, and the implementation of roles and responsibilities and obligations of the representative of state ownership interests to the owner, which is approved by the representative agency.

Source: Decree 159/2020/ND-CP, Vietnamese Law Portal

In Viet Nam, as for wholly-owned SOEs, all potential applicants should be suggested by the SOE boards and nominated by state authorities. In shareholder meetings, applicants who are nominated by ministers should be voted to SOE board. However, when undertaking restructuring processes or there is a lack of applicants, the Prime Minister, other ministers or relevant authorities are authorised to undertake a direct appointment to the board. In reality, it is a common practice that the Chairperson and members of the Member's Council are appointed by the owner's representative agency. When state authorities nominate a public official to the SOE board, he/she shall no longer act as an official.

The electoral procedure of BOD for partially-owned SOEs is performed in the form of cumulative voting as prescribed in the 2020 Law on Enterprises and Charter of joint stock companies. At the general meeting of shareholders, shareholders with voting shares are entitled to pool their votes together when nominating BOD members. The nomination of BOD members in joint stock companies depends on the number of shares one holds in the companies as prescribed in the Charter of joint stock companies. If the State holds more shares than the minimum number of shares required, the State will have the right to nominate. If not, the State will have to convince other shareholders who participate in the nomination. The number of candidates each group may nominate depends on the number of candidates that the general meeting of shareholders determines and the proportion of shares each group of shareholders hold. There is no wide advertisement for SOE board vacancy and no use of head-hunter.

*F.3. [The state's prime responsibilities include:] Setting and monitoring the implementation of broad mandates and objectives for SOEs, including financial targets, capital structure objectives and risk tolerance levels;*

The owner's representative agency is responsible for supervising SOEs in their implementation of assigned objectives and tasks, including financial objectives and tasks. For instance, the tasks and goals assumed by a wholly state-owned enterprise are overseen by the State through its ownership representative agency.

The goals set out by the State for these companies include financial targets and capital structure targets, but the degree of risk acceptance is not provided.

As per Article 9 of Decree No. 10/2019/ND-CP, the 2014 Law on Management and Utilisation of State Capital and relevant laws, the owner's representative agency reserves the rights and responsibilities to inspect and supervise the implementation of SOE's tasks and plans. In particular, Clause 4 Article 9 of Decree No. 10/2019/ND-CP prescribes the role of the owner's representative agency in supervision and inspection of the implementation of the approved plan as follows:

- a) The owner's representative agency shall have to carry out the supervision and inspection of implementation of plans stated in Clause 2 of this Article and the assessment of results of implementation of these plans.
- b) The owner's representative agency shall instruct and encourage an enterprise to prepare and submit the mid-term and final assessment report on implementation of plans to serve the purposes of supervision and inspection, including the following main information:
  - i. Latest updates on implementation of assigned objectives, tasks and targets in the plan
  - ii. Latest updates on implementation of solutions specified in the plan
  - iii. Restrictions and causes of failure or unsuccessful implementation of the plan (if any)
  - iv. Subsequent solutions to accomplishing objectives in the plan of the following period.
- c) Sequences and time limits for submission of review reports shall be subject to the Government's regulations on the regime for supervision and inspection of implementation of strategies, plans, objectives and tasks under the delegated authority of state enterprises.

*F.4. [The state's prime responsibilities include:] Setting up reporting systems that allow the ownership entity to regularly monitor, audit and assess SOE performance, and oversee and monitor their compliance with applicable corporate governance standards;*

For ministries and agencies, supervise and manage the State capital according to sectors and fields, manage through the periodic reporting system stipulated in specific policies; the periodic examination (in co-ordination with ownership entities) on policy implementation, inspection of the performance of projects or the whole SOEs are conducted under the direction of the Government or at the request of competent authorities if there is evidence showing signs of violations.

Currently, an ownership entity's supervision of SOEs' operation and external reporting of SOEs is being implemented per provisions of the 2014 Law on Management and Utilisation of State Capital, 2020 Law on Enterprises, and other relevant normative legal documents. Supervisory activities of an ownership entity can be performed via a Board of Control established by the owner's representative agency; periodical/ad hoc reports; periodical/ad hoc inspection and examination; and other forms as prescribed by the law.

Regarding SOEs that are publicly-traded joint stock companies, their reporting practice must also comply with provisions of Law on Securities. Entities that an SOE frequently reports to include the owner's representative agency, Ministry of Planning and Investment (MPI), Ministry of Finance (MOF) and Ministry of Labor – Invalids and Social Affairs (MOLISA). As for SOEs that are in CMSC's portfolio, they must report all matters that it is obligated to report to CMSC as prescribed by law. CMSC exercises corporate finance oversight over SOEs in its portfolio.

In addition to the reports generally applicable to enterprises (e.g. tax reports, labour reports, implementation of social insurance, etc.), SOEs are mandated to have to submit periodic reports on financial statements and the use of state capital to the ownership entities; statistical and specific reports at the request of ministries and sectoral management agencies. For instance, public debt reports on the use of government-guaranteed bonds and reports on government-guaranteed foreign loans should be submitted to the Ministry of Finance.

Furthermore, depending on the specific industry and business line, enterprises must also report to relevant specialised management authorities per specialised written legal documents. For instance, a wholly state-owned enterprises Mobifone which is in CMSC's portfolio reports to Vietnam Telecommunications Authority – Ministry of Information and Communications (MIC) per the 2009 Law on Telecommunications. It also reports to the State Bank of Vietnam (SBV) on matters related to the provision of intermediary payment services and reports to the Authority of Broadcasting and Electronic Information on matters related to the provision of information services.

However, OECD mission team has not been informed to what extent processes and methods used by owner's representative agency and ministries to monitor SOEs performance are benchmarked against the absolute targets or against private enterprises.

*F.5. [The state's prime responsibilities include:] Developing a disclosure policy for SOEs that identifies what information should be publicly disclosed, the appropriate channels for disclosure, and mechanisms for ensuring quality of information;*

The Government's instructions on publication and disclosure of SOEs' information are prescribed in the 2020 Law on Enterprises, Decree No. 47/2021/ND-CP dated 1 April 2021 of the Government on detailing a number of articles in the Law on Enterprises and other relevant legal documents. The Decree No. 47/2021/ND-CP specifies what should be disclosed, principles of disclosure as well as forms and means of disclosure. Furthermore, as for SOEs that are publicly-traded joint stock companies, their disclosure must also comply with the Law on Securities.

The Ministry of Planning and Investment (MPI) is responsible for managing disclosure for 100% state-owned enterprises and SCIC is responsible for managing disclosure for publicly traded enterprises.

SOEs are mandated to send quarterly financial statements including financial expenses to tax authorities and ownership entities in accordance with the provisions of the Law on Tax Administration, the 2014 Law 69 on Management of State Capital and related guiding documents. In recent years, the Ministry of Finance has been studying and promulgating many regulations on the application of accounting standards in the operations of enterprises.

Accordingly, general norms are applied in line with the international accounting regime, reasonability and validity of financial costs. In addition, the competent authorities, namely the State Audit and the Inspectorate of the Ministry of Finance are mandated to review and assess financial costs of SOEs on a periodic basis or make appropriate recommendations for relevant entities (enterprises, the owner representatives, tax authorities, etc.).

In general, the disclosure of information of SOEs has been regulated according to each legal policy and for relevant agencies (ministries, agencies, ownership entities) but the information is not systematically publicly available through mass media and through enterprises' own website.

*F.6. [The state's prime responsibilities include:] When appropriate and permitted by the legal system and the state's level of ownership, maintaining continuous dialogue with external auditors and specific state control organs;*

Dialogue between external auditors and the State is stipulated in laws such as the Law on Accounting, the 2020 Law on Enterprises and 2014 Law 69 on Management of State Capital. According to these laws and regulations, external auditors are responsible for periodically auditing SOEs, thereby objectively and fairly assessing the financial position of enterprises, making recommendations to the Board of Directors and the ownership entities on SOEs' activities. The State Audit is mandatory and conducted at least every two years as prescribed in the Law on State Audit and policies promulgated by ministries, agencies. As such, the State Audit has the right to make recommendations to the government, Ministries, agencies, ownership entities on proposals to amend policies and address legal violations of SOEs.

*F.7. [The state's prime responsibilities include:] Establishing a clear remuneration policy for SOE boards that fosters the long- and medium-term interest of the enterprise and can attract and motivate qualified professionals.*

Wages and remunerations of SOEs' BODs and Members' Council are provided as prescribed by the government and MOLISA. As per provisions of law on remuneration management in the Government's Decree No. 53/2016/ND-CP dated 13 June 2016, the payment and remuneration scheme for BOD members of enterprises where the State has a controlling interest is developed on an annual basis based on the targets of state capital preservation (profit), classification of SOEs, SOE leadership positions and SOE performance results and are publicly sent to relevant agencies. In general, wages and remunerations of SOEs' BODs are lower than those of the private enterprise of the same size or of the same business sector.

Performance of its BOD gets evaluated by an owner's representative based on results of performance evaluation of SOEs and financial reports. In principle, such BOD evaluation results should be reflected in the payments, remunerations, and bonuses for BOD members.

However, OECD mission team has learned that in practice, wages and remunerations of SOEs' BODs are yet to be based on assessments by a state ownership representative on their work performance and tied to the KPIs of the enterprise (productivity, profit, etc.), indicating an insufficient level of accountability for BOD in governing the enterprise. In general, wages and remunerations of SOEs' BODs are lower than those of the private sector.

## References

OECD (2022), *OECD Economic Surveys: Viet Nam 2022*, OECD Publishing, Paris, [1]  
<https://doi.org/10.1787/8f2a6ecb-en>.



# 9 State-owned enterprises in the marketplace

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This chapter reviews Viet Nam’s practices against the Chapter III of the SOE Guidelines, by assessing to what extent the state has separated its functions as an owner and as a regulator. It further looks at degree of comprehensiveness of mechanism for identifying costs of public policy objectives and funding of public policy objectives.

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## Overarching recommendation from the SOE Guidelines

Consistent with the rationale for state ownership, the legal and regulatory framework for SOEs should ensure a level playing field when SOEs undertake economic activities

### 9.1. Separation of functions

*A. There should be a clear separation between the state’s ownership functions and other state functions that may influence the conditions for state-owned enterprises, particularly with regard to market regulations*

Viet Nam’s legal regulatory framework does not ensure full separation of responsibilities for ownership and market regulation within the general government. Regulations on management and use of state capital invested in production and business in enterprises (Law No. 69/2014/QH13; Decree No. 91/2015/ND-CP; Decree No. 32/2018/ ND-CP; Decree No. 140/2020/ND-CP and guiding circulars) have only mandated a

partial distinction between production and business activities of SOEs and official/administrative activities of the state.

CMSC is the representative agency of the owner and the state capital at enterprises where the State holds 100% charter capital as prescribed by the government. Ministries, ministerial agencies, and governmental agencies (hereinafter collectively referred to as 'Ministries') and People's Committees of Provinces and centrally affiliated cities (hereinafter collectively referred to as 'provincial PPCs') are the owner's representative agencies at enterprises where the State holds 100% of charter capital established under the decisions of or assigned to Ministries or provincial PPCs and not handed over to CMSC or SCIC for management.

Prime Minister, line ministries, CMSC, SCIC and People's Committees of provinces and cities supervise SOEs per their power and many times SOEs are required to obtain opinions from these government entities on their tasks as well as plans according to the regulations on organisation and operation.

While the establishment of CMSC to represent the owner at 19 state-owned groups and corporations is an attempt to keep the state management function and the owner representation function at enterprises separate, the government still can decide on mechanisms and regulations for SOEs to the extent permitted by law to carry out specific plans/projects for industrial development purposes. Currently, the government explicitly uses some SOEs in sectors such as textile, railways, energy and food for the implementation of the State's sectoral and industrial policies.

For instance, the State's ownership function with regard to Viet Nam Expressway Corporation (VEC), a one-member limited company wholly owned by the State, goes hand in hand with the responsibility for implementing policies to expand the network of expressways. The role of VEC is mainly drawing domestic and international commercial loans to fulfil its mandate of implementing highway projects assigned by the government in its project approval decisions.

In the case of large-scale plan/projects with no cash flow to repay the debt, at the proposal of SOE and related agencies, the government may allow postponement of tax payment obligation to the period when the project successfully enters operation and has a stable cash flow. In case of risks rising from external causes (natural disasters, changes in government policies), the government can issue regulations to adjust policies according to the provisions of law and the urgency of the work.

Ministry of Finance, Ministry of Planning and Investment and other key ministries that share responsibilities on state ownership functions informed the OECD Secretariat that structural separation between responsibilities for ownership and market regulation within the general government is one of the key priorities that would be addressed when amending the Law No. 69/2014/QH13. The revised law is scheduled to be submitted to the National Assembly by end-2023. Based on the amended Law the government and the Ministries will amend Decrees and guiding Circulars.

## 9.2. Stakeholder rights

*B. Stakeholders and other interested parties, including creditors and competitors, should have access to efficient redress through unbiased legal or arbitration processes when they consider that their rights have been violated*

### 9.2.1. Legal and arbitral mechanisms for redress available to the stakeholders of SOEs

Vietnamese legislation generally allows no distinction between SOEs and other corporate entities with regard to stakeholder rights and legal and arbitration mechanisms. Stakeholders and other interested parties such as creditors, employees and competitors are free to seek legal redress if they consider that



their rights have been violated. Legislative bodies have promulgated a system of regulations on dispute settlement at courts at all levels or at economic arbitration bodies.

The rights of creditors, consumers and business partners are stated in various laws including Labour Code, Civil Code, Law on Protection of Consumers Rights (No.59/2020/QH12) and Article 317 of the Commercial Law (No. 36/2005/QH11). Depending on the nature of the incident (civil/labour/commercial disputes, etc.), regulations of relevant laws and agreements between the parties will decide the mechanism used for settling their disputes. Measures for handling commercial disputes applicable to both SOEs and non-SOEs include negotiation (as prescribed by the Civil Code and Commercial Law), mediation (as prescribed by Decree 22/2017/ND-CP), arbitration (as prescribed by the 2010 Law on Commercial Arbitration), and Court proceedings (as prescribed by the 2015 Civil Procedure Code or the 2015 Criminal Procedure Code in criminal cases). Also, Clause 1 Article 5 of the 2020 Law on Enterprises states: “The State recognises the long-term existence and development of the types of enterprises prescribed in this Law; ensures equality of enterprises before the law regardless of their types of business and economic sector.”

The Arbitration’s awards and the Court’s sentences and decisions are legally binding and shall be implemented as prescribed by the mentioned laws and the Law on Enforcement of Civil Judgments. In principle, SOEs must fully follow these laws and shall follow and implement the Arbitration’s awards and the Court’s sentences and decisions that are legally effective.

According to these regulations, the handling and settlement of disputes must be conducted on an equal basis, respect and ensure the rights and interests of all parties. As such, SOEs are required to ensure and take responsibility equally as other entities, and there is no preference or difference for SOEs over other entities. In case SOEs have to compensate or face property loss, they must comply with the judgment of the Court and the Economic Arbitration. If SOEs find that the Arbitration’s awards and the Court’s sentences and decisions show signs of violations of the law, threaten or affect their legitimate rights and benefits, they reserve the right to appeal and request competent agencies to appeal and review such awards, sentences, and decisions as prescribed by law (procedures for appeals, cassations, reopening trial rulings or cancellations of arbitral awards).

Finally, Article 3.5 of Decree No. 75/2019/ND-CP on Sanctioning of Administrative Violations in Competition sets out that the National Competition Commission (NCC) can request a halt to anti-competitive behaviours of state agencies, impose remedial and compensatory measures. However, the OECD Mission team is informed that competition enforcement actions against anti-competitive behaviours of SOEs remain very limited. So far, the Viet Nam Competition Authority has confirmed only two relevant enforcement cases (OECD, 2021<sup>[1]</sup>).

### 9.3. Identifying the costs of public policy objectives

*C. Where SOEs combine economic activities and public policy objectives, high standards of transparency and disclosure regarding their cost and revenue structures must be maintained, allowing for an attribution to main activity areas*

According to the current accounting and corporate governance regulations, structural separation between public policy and commercial activities of SOEs are not systematically achieved and there is no regular practice in place for separation of accounts between these two activities. For instance, while many SOEs are mandated to conduct activities of public interest as prescribed by the State, structural separation of activities of public interests from business activities in these SOEs faces difficulties due to the lack of government instructions.

VEC offers a better example in this regard. While VEC is mandated by the government to expand national network of expressways, the business operations of VEC including toll collection for payback and delivery of services along the expressways to which it is the project owner are required to adhere to accounting

and auditing standards that are similar to other industries in private sector. The entire toll collection amount must be monitored in a separate account supervised by a bank and representatives of the authorities. However, concerns with respect to competitive neutrality still remain as VEC is an arm of government policy on road expansion. As for other regular activities of SOEs (such as working as a construction contractor), it is not subject to inspection and supervision by relevant agencies.

#### 9.4. Funding of public policy objectives

*D. Costs related to public policy objectives should be funded by the state and disclosed*

There is no obligation, in the Vietnamese legislation, for costs related to SOEs' public policy objectives to be funded by the state budget. For SOEs involved in the implementation of public policy objectives, relevant costs are identified, disclosed, and financed as prescribed by the law on accounting, taxation, disclosure, etc. The process of determining costs must comply with norms promulgated by state agencies and audited by the State Audit. However, these cost data of SOEs are currently only provided to serve the requirements of state management agencies. At present, as for an SOE that participates in activities of public interest, fees for such activities are yet to be calculated separately and are currently calculated in combination with its business activities.

At the same time SOEs often suffer from procedures that are complex with multiple levels of approval and prolonged duration of implementation, which prevents SOEs from taking charge, remaining flexible, and make quick decisions like private enterprises. For instance, when it comes to expressway development, enterprises (state-owned or private) are under the management of a number of competent authorities in the areas of finance, taxes, labour and wages, toll collection, quality standards, etc. For instance, VEC must comply with the regulations on capital construction investment issued by the government, the Ministry of Planning and Investment, the Ministry of Finance, and the Ministry of Natural Resources and Environment; and be audited by the State Audit for each bidding package as well as work component. Ensuring transparency and simplifying approval process for implementation of projects and separation between public policy activities and commercial activities of SOEs should continue to be the goal and direction of management agencies in the future.

#### 9.5. General application of laws and regulations

*E. As a guiding principle, SOEs undertaking economic activities should not be exempt from the application of general laws, tax codes and regulations. Laws and regulations should not unduly favour SOEs over their market competitors. SOE's legal form should allow creditors to press their claims and to initiate insolvency procedures*

On the issue of competitive neutrality, there is no explicit statutory discrimination. Competition Law explicitly forbids discrimination with no exception made for state owned entities. The Article 5 of the Law No.69 indicates that state investments should be limited to sectors in which private market participants are insufficiently investing or to sectors that are considered important for the country's development. A government directive is also in place according to which SOEs "should operate according to market principles and conform with international standards." However, the OECD mission team finds that these principles are often not adhered to in practice (OECD, 2021<sup>[1]</sup>).

To manage the risk of guaranteeing corporate loans, the government executes Article 41 of the Law on Public Debt Management and Decree No. 91/2018/ND-CP, which specify eligibility criteria and the credit line of government guarantee. To be guaranteed by the government, an enterprise must be profitable in the last three consecutive years, not have any overdue debt, and have its financial plan reviewed by the Ministry of Finance (MOF) and approved by the Prime Minister as prescribed, have at least 20% of the total capex of the project covered by its equity, and meet other specific requirements, with a ceiling of 60%

to 70% of the total capex. The government provides guarantees for SOEs' loans per Decree No. 15/2011/ND-CP on Granting and managing government guarantees. It has issued Decrees and Circulars to provide guidance on the procedures and reporting scheme to supervise and manage SOEs' loan usage.

**Table 9.1. Laws and regulations to ensure competitive neutrality**

<b>Competition Law (No. 23/2018/QH14)</b>	Article 2 states that its scope includes: "business organisations and individuals, including enterprises that produce and provide public-utility products and services, enterprises that operate in state-monopolised sectors/domains [and] public sector entities." Article 8 states that state agencies must not discriminate between enterprises and should not impose or request enterprises or individuals to source (or provide or sell) services and products from (or to) specific enterprises, except for services and products under state monopoly. Article 28 sets out that the state can exercise control over enterprises operating in state-monopolised sectors, but that if the same undertaking has activities outside the monopoly, these activities must remain subject to competition law.
<b>Law on Management and Utilisation of State Capital</b>	Article 5 indicates that state investments should be limited to sectors in which private market participants are insufficiently investing or to sectors that are considered important for the country's development
<b>Law on Public Debt Management</b>	Article 41 specifies eligibility criteria and the credit line of government guarantee
<b>Decree No. 75/2019/ND-CP on Sanctioning of Administrative Violations in Competition</b>	The Decree states that the National Competition Commission (NCC) can request a halt to anti-competitive behaviours of state agencies, impose remedial measures and compensate for damages.

Source: OECD (2021<sup>[1]</sup>), OECD Competitive Neutrality Reviews: Small-Package Delivery Services in Viet Nam, <https://www.oecd.org/competition/fostering-competition-in-asean.htm>.

However, the proximity of SOEs to policy makers, continued conflation of the exercise of ownership rights, the government's explicit use of SOEs as a main vehicle for the implementation of the State's industrial or sectoral policies, policy formulation and regulatory responsibilities within the same government ministries/agencies have led to a perception of discrimination and discrepancy. While Vietnamese law does not confer legal privilege to SOEs, or board members OECD mission team is informed that SOEs are treated "favourably" in all aspects by the government. Sectoral ministries and local governments give their affiliated SOEs privileges such as access to capital, natural resources, land, and human resources. The new OECD Product Market Regulation (PMR) sub-indicator on public ownership control confirms these findings (OECD, 2022<sup>[2]</sup>).

## 9.6. Market consistent financing conditions

*F. SOEs' economic activities should face market consistent conditions regarding access to debt and equity finance. In particular: SOEs' relations with all financial institutions, as well as non-financial SOEs, should be based on purely commercial grounds;*

### 9.6.1. Law on Public Debt Management and Decree No. 91/2018/ND-CP on Granting and managing Government guarantees

The government does provide guarantees for SOEs' loans, but such guarantees are declining. The government grants loan guarantees to enterprises to facilitate their mobilisation of large capital sources, for which the Government's guarantees are sometimes required by credit institutions. The government has issued certain regulations regarding loan guarantees for SOEs, such as the Law on Public Debt Management and Decree No. 91/2018/ND-CP on Granting and managing Government guarantees. According to the provisions of the Law on Public Debt Management, based on the requirements of

socio-economic development, the government can provide state guarantees for enterprises in general (not only SOEs) to borrow foreign loans.

The government has promulgated a list of projects eligible for guarantees, the order and procedures for consideration and grant of guarantees, regulations on consideration and appraisal of enterprises for granting guarantees, regulations on supervision and disbursement of foreign loans, regulations on auditing. However, a comprehensive framework for preventing moral hazard in consequence of managerial over-confidence is not yet in place.

The primary lenders to SOEs are domestic and foreign commercial banks and financial institutions. Also, state-controlled financial institutions can act as lenders to SOEs. Although there are no explicit provisions in the Vietnamese law that indicate SOEs are entitled to preferential lending rates, in practice, a state enterprise that has higher operational costs than its private competitors can benefit from lower borrowing costs resulting from implicit government guarantees. According to Viet Nam Development Bank (VNDB), more than half of its loan portfolio currently consists of loans to SOEs. In principle SOE's creditor – borrower relations should be implemented based on loan contracts/agreements and regulated by specialised laws. While there is no comprehensive mechanism in place to ensure that the creditor/debtor relationship is conducted at arm's length and free from undue influence by government officials, the 2015 Civil Code has explicitly prescribed measures to secure the performance of civil obligations, which are also realised in lending activities of credit institutions.

Annually, the state ownership representative body is mandated to issue decisions on assigning annual production/business plans to SOEs, which include expected return on equity (ROE). Although SOEs should be categorised based on these plans, this is done on an ad-hoc basis in practice. There is no legal regulatory framework in place to ensure market consistent costs of equity financing from the state and capital injections from the state are not subject to a minimum expected rate-of-return on equity. Capital injections from the state depends on the degree of investment required by each sector. The Government's investments are exercised on the basis of capital preservation. According to regulations on management of the State capital and regulations on SOE finance, SOEs' leadership must be responsible for preserving the State capital, and the State capital must be used effectively.

*F.2. [SOE's economic activities should face market consistent conditions regarding access to debt and equity finance. In particular] SOEs' economic activities should not benefit from any indirect financial support that confers an advantage over private competitors, such as preferential financing, tax arrears or preferential trade credits from other SOEs. SOEs' economic activities should not receive inputs (such as energy, water or land) at prices or conditions more favourable than those available to private competitors;*

Criteria for the government's decision on providing an SOE with new equity is elaborated in several legal documents including Law No. 69/2014/QH13 (from Article 10 to Article 21), Decree No. 91/2015/ND-CP (from Article 5 to Article 18), Decree No. 32/2018/ND-CP (from Clauses 2 to 5, Article 1), Decree No. 140/2020/ND-CP (clauses 3 to 10, Article 2; Clause 2, Article 6), Decree No. 121/2020/ND-CP and guiding circulars. The owner representative agencies can decide on providing new or additional equity to public utility companies (i.e. airports, seaports, railways) with an approval from the Prime Minister. The decision should be in line with Prime Minister's direction with regard to national development strategy.

Both SOEs and private enterprises must comply with the Enterprise Law and the Corporate Income Tax Law (CIT Law). Outstanding loans between SOES (if any) are handled as prescribed by law similar to how they are handled between private enterprises or between an SOE and a private enterprise. The Vietnamese Government promulgates tax laws that apply equally to all businesses across the country. SOEs are required to perform the same or equivalent tax obligations as those of joint stock companies as prescribed by the law on taxation. According to the Vietnamese Government, the SOE sector implements tax obligations more strictly than the private enterprise sector. In some cases, to meet the spending needs, state economic groups may prepay part of or most of the payable tax amount of the following period or the following year.

Major SOEs have reported to the OECD that commercial credit is a key financing source for enterprises' operation and trade credit from one SOE to another is not the primary source of finance for SOEs. However, OECD finds that with SOE's current position and prestige, the credit relationship with SOEs seems to be less risky than with private enterprises.

*F.3. [SOE's economic activities should face market consistent conditions regarding access to debt and equity finance. In particular] SOEs' economic activities should be required to earn rates of return that are, taking into account their operational conditions, consistent with those obtained by competing private enterprises.*

In principle, when participating in investment plans, SOEs as well as enterprises must expect, evaluate and manage risks to achieve maximum profit and be approved by the competent authority (usually the ownership entity) on the investment plan. In case of capital investment with a lower interest rate than that in the market, SOEs must clearly present the reason and must be approved by the competent authority.

As of now, no regulations specify the mandatory minimum rate of return. Regardless, SOEs shall be responsible for their own business regulations to ensure efficient investment and use of capital. Annually, the owner's representative agency sets a profit plan including ROE based on previous years' results. However, it is not necessarily equal to or higher than that of private enterprises in the same industry because SOEs are expected to undertake public policy obligations including job creation in the locality.

SOEs that borrow must make sure that: the ratio of the total loan that an SOE takes out for production and business operations (inclusive of loans taken out by subsidiary companies of a state-owned parent company guaranteed by the State in accordance with clause 1 Article 189 of the 2014 Enterprise Law) to equity does not exceed three times the equity as specified in the SOE's latest quarterly or annual financial statement available at the time of borrowing.

The government has emphasised that in recent years, SOEs have actively innovated their management methods, focused on developing effective business fields to ensure higher profits, thereby improving workers' lives and SOE leaders' income. In fact, in Viet Nam, there are many SOEs with large capital scale and the profit rate that is higher than that of the private sector in the same industry. However, there are also many SOEs with low profits, even prolonged losses.

Dividend payout of wholly state-owned enterprises should comply with the Law on State capital management. For dividend payout of other SOEs, the State with a controlling interest can decide the dividend payout ratio. The transfer of capital from one SOE to another shall be decided by competent state agencies and can be exercised in different ways, such as direct investment or withdrawal of profits back to the State budget before investing in other enterprises. The dividend policy of joint stock SOEs will be passed by the general meeting of shareholders. The owner's representative agencies direct their representatives for state capital at SOEs to cast their votes and pass the dividend policy every year at the general meeting of shareholders.

Capital structure of an SOE may change in cases of changes in charter capital, merger, and financial restructuring, all of which must be approved and decided by competent state authorities in writing and disclosed in compliance with the provisions on divestment of Law on Enterprises, Law on Securities, Law on State Capital Management, and other relevant laws.

## 9.7. Public procurement procedures

*G. When SOEs engage in public procurement, whether as bidder or procurer, the procedures involved should be competitive, non-discriminatory and safeguarded by appropriate standards of transparency*

### 9.7.1. Procurement rules and procedures for SOEs

Procurement in SOEs must comply with the provisions of the Law on Bidding, the Law on Management and Use of Public Property, the Law on Construction and related guiding documents. The Law on Bidding prescribes procurement procedures for development investment projects of SOEs and those that the State invests in. SOEs where the State has a controlling interest are required to comply with the provisions of the Law on Bidding in any of their procurements. This is a universal principle that SOEs must practice independent of the size or trajectory of their business. The governing scope of the Law on Bidding does not discriminate between SOEs and private enterprises. Any procurements (or tenders) where 30% of state capital or more is used are required to comply with the Law on Bidding (see Box 9.1). Parties to the procurement share equal rights, interests, obligations, and responsibilities.

According to the government, procurement rules, processes and procedures are stricter for SOEs than for private enterprises. At SOEs, in order to ensure transparency, almost all asset procurement must be conducted through bidding on the basis of the procurement plan approved at the end of the previous year.

The government has issued, guided and required SOEs to conduct procurement in a public and transparent manner to avoid waste and profiteering through the processes of notifying and receiving bidding dossiers, setting up appraisal team, bid evaluation and selection conducted in a public manner. However, audits and inspections find that due to limitations on procurement budgets, many SOEs often fail to procure modern assets with latest technology, leaving procurement in SOEs inefficient.

#### Box 9.1. Procurement regulations for SOEs specified in Law on Bidding

Vietnamese laws and regulations state that when SOEs participate in public procurement and tendering, whether as bidders or bid solicitors, relevant procedures must be competitive without discrimination and secured by appropriate standards on transparency. Procurement regulations and procedures that SOEs must comply with upon participating in bidding are in the governing scope of the Law on Bidding, specifically:

Point b clause Article 1 of the 2013 Law on Bidding prescribes that the selection of providers of advisory services, non-advisory services, goods, construction services, and installation services for SOEs' development/investment projects is under the governing scope of the Law on Bidding.

The determination of whether an enterprise is an SOE or not needs to be based on regulations on enterprises (in the mentioned Law on Enterprises). In cases where enterprises are not SOEs, they are not under the governing scope of the abovementioned Law on Bidding.

Pursuant to point c clause 1 Article 1 of the Law on Bidding, development/investment projects other than cases defined in points a and b of this Clause which are financed by the State or SOEs with 30% or more or less than 30% but more than VND 500 billion of their total capital are under the governing scope of the Law on Bidding.

Furthermore, clause 2 Article 3 of the Law on Bidding also prescribes that in cases where the selection of providers for the provision of raw materials, fuel, materials, supplies, advisory services, and non-advisory services, enterprises must issue regulations on the selection of providers, which will be applied consistently enterprise-wide, and ensure equality, transparency and economic performance.

Source: Law on Bidding, Vietnamese Law Portal, <https://thuvienphapluat.vn/>

Bidding operations are governed by the Law on Tendering and its guiding documents. As far as investments in expressway construction is concerned, Clause 5, Article 29 of the Law on Public-private partnership (PPP) No. 64/2020/QH reads: "To bid, an enterprise wholly owned by the State must enter into

a joint venture with a private investor.” Clause 3, Article 2 of Decree 25/2020/ND-CP prescribes that: “A competent state authority or a bid solicitor must not hold more than 49% of the shares or charter capital at the bidder. In case the bidder is a joint venture, the holding of the competent authority or the bid solicitor in the joint venture shall be equal to the sigma sum of the holding of the competent authority times the holding of each member of the joint venture.

## References

- OECD (2022), *OECD Economic Surveys: Viet Nam 2022*, OECD Publishing, Paris, [2]  
<https://doi.org/10.1787/8f2a6ecb-en>.
- OECD (2021), *OECD Competitive Neutrality Reviews: Small-Package Delivery Services in Viet Nam*, <https://www.oecd.org/competition/fostering-competition-in-asean.htm>. [1]





# 10

## Equitable treatment of shareholders and other investors

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This chapter examines the country's practices related to the Chapter IV of the SOE Guidelines on equitable treatment of shareholders and other investors. It looks at policy of communication and consultation with non-state shareholders, participation of minority shareholders in shareholder meetings and SOEs' engagement in co-operative projects such as joint ventures and public private partnerships.

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### Overarching recommendation from the SOE Guidelines

Where SOEs are listed or otherwise include non-state investors among their owners, the state and the enterprises should recognise the rights of all shareholders and ensure shareholders' equitable treatment and equal access to corporate information.

#### 10.1. Ensuring equitable treatment of shareholders

*The state should strive toward full implementation of the OECD Principles of Corporate Governance when it is not the sole owner of SOEs, and of all relevant sections when it is the sole owner of SOEs. Concerning shareholder protection this includes: A1. The state and SOEs should ensure that all shareholders are treated equitably;*

According to the Law on Securities and the Law on Enterprises, non-state shareholders in SOEs have the same legal rights and interests as shareholders in other companies, and as the State with regard to voting rights, questioning and dividend rate.

Per 2020 Enterprise Law, should an SOE offer preferred shares, the rights and obligations associated with them must be passed by the general meeting of shareholders and fully disclosed to all shareholders. The Law prescribes that non-state shareholders should be given full access to information disclosed by the SOE and that they are entitled to request resolutions or decisions of the general meeting of shareholders or the BOD to be suspended or rescinded.

The 2020 Law on Enterprises, which took effect from 1 January 2021, has a measure in place to empower small shareholders in joint stock companies. The Enterprise Law 2014 previously required shareholders or groups of shareholders to hold at least 10% of shares in at least six months to be entitled to intervene in corporate governance and oversight. Shareholders or groups of shareholders were required to hold at least 1% of shares in at least 06 months to file a lawsuit against BOD members, Directors or the CEO on their own or the enterprise's behalf.

However, the 2020 Law on Enterprises Enterprise Law 2020 has lowered the said rate of ownership from 10% to 5% to allow shareholders to review, look up, and obtain important data or materials of the enterprise, to request the Board of Control (BOC) to examine corporate operations, or to summon a general meeting of shareholders.

The exclusive right to nominate members of the BOD and the BOC remains with shareholders and shareholder groups holding at least 10% of total shares. Shareholders holding at least 1% of total shares are allowed to file a lawsuit against the leadership. However, the latest Enterprise Law no longer requires these shareholders to hold their shares in at least six months. The repeal of this requirement has brought a positive change to small shareholders as it enables them to raise their voice right upon developing an interest in the company rather than having to wait for six months during which many events could take place.

To comply with relevant laws, there are regulations in the organisation and operation charter of SOEs to encourage small shareholders to make questions and present opinions to SOEs' management and ownership entity. The Law No.69 on Management and Use of State Capital Invested in Production and Business in Enterprises does not provide for holding voting preference shares when equitizing enterprises.

However, in SOEs, state shareholder accounts for a large proportion of over 50% on average, so it plays a dominant role in the decisions of the general meeting of shareholders. The OECD mission team was informed that in practice there are no specific protections for minority investors in equitised companies; all material decisions are made by the General Meeting of Shareholders (GMS) by simple majority vote. At the same time, the state can use priority shares (e.g. "golden shares") according to the Article 116 of the 2020 Law on Enterprises on so-called "preferred voting shares" with a larger number of votes attached to them than the common stock. The relevant clauses are the following:

- Clause 1 Article 116: Only organisations authorised by the government and founding shareholders may hold preferred voting shares. The preferred voting powers of founding shareholders shall be effective for three years from the issuance date of the Enterprise Registration Certificate. The right to vote and voting preference period of preferred voting shares held by organisations authorised by the government shall be specified in the Company's Charter. After this period expires, preferred voting shares shall become common shares.
- Clause 3, Article 116: Holders of preferred voting shares must not transfer these shares to other persons unless it is demanded by an effective court judgment or decision or transferred in accordance with inheritance laws.

OECD mission team has been informed that while the government acknowledges that this golden share rule can prevent essential SOEs of national interest from being sold to investors beyond the state control,

in reality it is not yet enforced. All the Ministries, government entities that the OECD has interacted with confirmed that they are not aware of any cases where the State holds golden share in a company. The Chapter 12 of this report on assessment on SOE disclosure and transparency also indicates that SOEs do not disclose any information about golden shares or power of veto over corporate decisions in their periodical reports on the company's business management.

### Box 10.1. General provisions of the 2020 Law on Enterprises on protecting the rights and interests of minority shareholders

The 2020 Law on Enterprises prescribing general provisions on joint stock companies (with or without a State shareholder owning more than 50% of the charter capital) includes a number of articles protecting the rights and interests of minority shareholders as follows.

Interests regarding assets:

- Clause 1 of Article 115 and Clause 1 of Article 124: shareholders are given priority to purchase additional shares in proportion to their holding of common shares in the company.
- Clause 1 of Article 115: Transfer their shares to other persons except for the cases specified in clause 3 Article 120 and clause 1 Article 127 of the Law, and other relevant laws.
- Article 132: Shareholders are entitled to request the company to repurchase their shares.

Interests regarding corporate governance:

- Clause 2 of Article 115: Shareholders or shareholder groups holding at least 5% of total common shares or less permitted by the Company's Charter shall have the rights to: Review and extract the minutes of meetings, resolutions, and decisions of the BoD, mid-year and annual financial statements, reports of the BOC, contracts, transactions subject to approval by the BOD, and other documents except those that involve the company's business secrets; demand the convention of a GMS; request the BOC to investigate into specific matters related to the company's management and operation where necessary; other rights prescribed by the Law and the Company's Charter.
- Clause 5 of Article 115: shareholders or shareholder groups holding at least 10% of total voting shares or less permitted by the Company's Charter may nominate members to the BOD and BOC.
- Interests regarding information: Joint stock companies shall disclose information per Article 164.

Interests regarding the recovery of rights:

- Shareholders or shareholder groups holding at least 5% of total common shares or less permitted by the Company's Charter shall be entitled to request the Court or an arbitral tribunal to consider invalidating the BOD's resolution in part or in full should the procedures for convening the GMS and decision issuance of the GMS prescribed in the Law and the Company's Charter be contravened or should the resolution's content violate the law or the Company's Charter (Article 151).
- Article 166: Shareholders or shareholder groups holding at least 1% of total common shares may, in their own names or in the company's name, file lawsuit against a member of the BOD or the Director/CEO to claim the interests or damages for the company or other persons.

Source: Submissions from the Ministry of Finance and State Capital Investment Corporation of Viet Nam

### **10.1.1. Rules and procedures for transactions among SOEs**

There are no special regulations regarding transactions between SOEs. In addition, the selection of contractors providing consultancy services, goods, and construction and installation services for development investment projects where the State or an SOE makes up at least 30% of the capex shall adhere to the provisions of the Law on Bidding. Investment projects using land for the construction of commercial residential properties; commercial and service properties; or multi-purpose or multi-functional complexes for business purposes and PPP projects shall comply with provisions on bidder selection under the Law on Bidding.

The Government's Decree No. 132/2020/ND-CP dated 5 November 2020 on tax management of enterprises engaging in related party transactions specifies its applicability and how an actor is determined to have engaged in related transactions. The Decree No. 132/2020/ND-CP applies to entities manufacturing and trading products and services which are corporate income tax (CIP) payers and engage in transactions with their related parties.

### **10.1.2. Options for redress that minority shareholders have when they consider their rights violated**

When detecting signs of violation of common interests and their own interests, small shareholders can send petitions to SOE boards, ownership entities, line ministries, and the government in accordance with regulations prescribed in the Law on Enterprises, the Law on Securities and the Law on Complaints and Denunciations. Minority shareholders are entitled to request the Court or an arbitral tribunal to consider invalidating the BOD's resolution in part or in full as prescribed by Article 151 of the 2020 Law on Enterprises. Also, as per the 2020 Law on Enterprises, shareholders or shareholder groups holding at least 1% of total common shares may file a civil lawsuit against members of the BOD, the Board of Management (BOM), or the CEO on their own or the company's behalf in certain cases prescribed in the Law.

*A.2. [Concerning shareholder protection this includes:] SOEs should observe a high degree of transparency, including as a general rule equal and simultaneous disclosure of information, towards all shareholders;*

Shareholders or shareholder groups holding at least 5% of total common shares are entitled to review and obtain meeting minutes, resolutions, and decisions of the BOD, demand the convention of a GMS, and request the BOC to investigate specific management and operation matters.

As per the 2020 Law on Enterprises, all shareholders of SOEs have the rights to access information via the disclosure of the joint stock company (Article 164). They can access financial statements, periodic evaluation of business activities and procurement of SOEs, comments and votes on the future operation and procurement plan at the GSM and obtain resolutions of the BOD, or designate representatives to participate in the BOD and BOC (Article 115). All shareholders of SOEs can access this information to make investment decisions, propose recommendations to SOE BoDs and competent authorities.

*A.3. [Concerning shareholder protection this includes:] SOEs should develop an active policy of communication and consultation with all shareholders;*

Standards for SOEs' communication and consultation with all shareholders have been partially reflected in specific legal policies. For example, the 2014 Law No.69 stipulates that state capital representatives are obliged to evaluate and report the business performance of SOEs on a quarterly basis to the ownership entities. SOEs are required to report the business performance to the ownership entities and the Ministry of Finance summarises the results and reports them to the government. SOEs should also send reports on changes in charter capital to the Ministry of Finance. SOEs are subject to the supervision of the National Assembly, the inspection of the government, and the inspection of the ministries and agencies on the operational situation.

As per Law on Enterprises and Law on Securities. SOEs are subject to the same provisions under applicable laws as joint stock companies. Matters under the authority of the GMS (General Meeting of Shareholders) shall be published on mass media and their documents shall be sent to shareholders at least 21 days prior to the meeting with shareholders' inputs collected in writing. The BOD of an SOE is able to identify non-State shareholders through the shareholder register (developed and kept by the enterprise) or the Vietnam Securities Depository and Clearing Corporation (VSDC) (if the enterprise has registered securities with VSDC). Regardless, all shareholders shall fairly receive information according to the Laws.

*A.4. [Concerning shareholder protection this includes:] The participation of minority shareholders in shareholder meetings should be facilitated so they can take part in fundamental corporate decisions such as board election;*

Articles 15, 141, 143, and 144 of the 2020 Law on Enterprises clearly stipulates the right to participate in the GMS of all shareholders (including non-State shareholders). Non-state shareholders may vote in absentia and/or authorise others to attend and vote on their behalf in accordance with the Company's Charter and the Law on Enterprises. Article 144 of the 2020 Law on Enterprises allows alternative forms of voting for shareholders not physically present at the GMS.

Shareholders may nominate members to the BOD per clause 5 Article 115 of the Law on Enterprises. Per Articles 115 and 166, joint stock companies (including those with State capital) allow the use cumulative voting to protect the rights of minority shareholders. The GMS and/or the BOD may consult experts before making decisions regarding highly technical issues in certain cases.

Non-state shareholders are equal to state shareholders in the nomination of BOD members, which depends on their proportion of shares one holds in an SOE. As prescribed by the Law on Enterprises, shareholders or shareholder groups holding at least 10% of total common shares or less permitted by the Company Regulations may nominate BOD members. Cumulative voting is the process used to elect BOD members. It means that the total number of votes each shareholder is given equals the total number of shares he/she holds times the total number of BOD candidates, and the shareholder may put all or part of their votes in one candidate or more.

### Box 10.2 Article 15 of the 2020 Law on Enterprises on responsibilities of authorised representatives of the owner/members/partners/shareholders

Authorised representatives of the owner/members/partners/shareholders shall exercise and perform their rights and obligations in accordance with this Law. All limits imposed by the owner/members/partners/shareholders to the authorised representatives' performance at the Board of Members/Partners or General Meeting of Shareholders shall not apply to any third party.

Authorised representatives have the responsibility to attend all meetings of the Board of Members/Partners or General Meeting of Shareholders; exercise and perform the authorised rights and obligations in an honest and prudent manner to protect lawful interest of the owner/members/partners/shareholders that designated them.

Authorised representatives shall be responsible to the owner, members/partners/shareholders for fulfillment of the responsibilities specified in this Article. The owner, members/partners/shareholders that designate these authorised representatives shall be responsible to third parties for performance of these authorised representative.

Source: 2020 Law on Enterprises, Vietnamese Law Portal, <https://thuvienphapluat.vn/>

*A.5. [Concerning shareholder protection this includes:] Transactions between the state and SOEs, and between SOEs, should take place on market consistent terms;*

Pursuant to the legal regulations, the organisation and operation charter of many SOEs stipulate transaction limits of SOEs with other organisations, based on the ratio of transaction value/charter capital of SOEs, valuation and appraisal of customers, authority to decide transaction values at SOEs to ensure risk management in business, avoid manipulation of interests and protect the interests of small shareholders.

In addition, the selection of contractors providing consultancy services, goods, and construction and installation services for development investment projects where the State or an SOE makes up at least 30% of the capex shall adhere to the provisions of the Law on Bidding. Investment projects using land for the construction of commercial residential properties; commercial and service properties; or multi-purpose or multi-functional complexes for business purposes and PPP projects shall comply with provisions on bidder selection under the Law on Bidding.

Mechanisms to ensure that transactions between the state and SOEs take place on market consistent terms are partially stated in a fragmented manner in the Law on Enterprises, the Law on Management and Use of State Capital, and relevant laws (The Civil Code, Taxation Law, etc.).

According to the provisions of law, the co-operation relationship between the State and SOEs should be an equal, voluntary relationship that ensures the interests of both parties. In the event that there are incidents (such as changes in raw material prices) affecting the quality of work, SOEs can submit recommendations to the ownership entities, the government for consideration and decision. On the basis of the provisions of the law and the correct identification of the objective conditions related to the work, the state agency may have a solution to adjust the contract within its scope of authority or submit to the competent authority for consideration and decision.

## 10.2. Adherence to corporate governance code

*B. National corporate governance codes should be adhered to by all listed and, where appropriate, unlisted SOEs*

The first Corporate Governance Code of Best Practices was launched in August 2019, but it has not been applied to unequivalised SOEs. There is no separate regulation available on corporate governance for SOEs, including unlisted SOEs. Corporate governance requirements that SOEs shall comply with are provided in a fragmented manner in the Law on Enterprises; the Law on Management and Use of State Capital; regulations on corporate governance of public companies, etc. SOEs that are publicly-traded companies will follow regulations on the governance of publicly-traded companies as promulgated by the Ministry of Finance.

## 10.3. Disclosure of public policy objectives

*C. Where SOEs are required to pursue public policy objectives, adequate information about these should be available to non-state shareholders at all times*

According to the provisions of the Law on State Enterprises and the Law on Securities, in case SOEs are required to implement public policies at the request of the State, SOEs must fully notify non-State shareholders, except for the fields that the relevant law does not allow. If an SOE is a joint stock company, it must comply with the disclosure provisions in Article 164 of the 2020 Law on Enterprises.

## 10.4. Joint ventures and public private partnerships

*D. When SOEs engage in co-operative projects such as joint ventures and public-private partnerships, the contracting party should ensure that contractual rights are upheld and that disputes are addressed in a timely and objective manner*

When SOEs engage in co-operative projects, SOEs often participate in the form of public-private partnership (PPP) and joint venture in the form of establishing a new company that is a subsidiary of SOEs (with separate legal status). In case of difficulties or disputes, the competent authorities should in principle evaluate and make decisions on the basis of the operation of this new legal entity taking into account rights of SOE shareholders and other shareholders to the extent that it does not affect the SOEs' existing business activities.

At present, the Law on Public Investment, the Law on Investment, and the Law on PPP have been promulgated to regulate and control forms of joint venture of all types of enterprises, including SOEs. Both SOEs and private enterprises operate in compliance with the provisions of the Enterprise and other relevant laws. In all joint ventures, investment co-operations, and PPP, all enterprises, including SOEs, are treated equally on the basis of agreements/contracts between parties. The laws protect the agreements made in the contracts (if not in contravention of the laws). In all joint venture, investment co-operation or PPP contracts, there are provisions on procedures of dispute settlement agreed upon by contract parties such as mediation, arbitration, and court. This is the common practice for contracts between enterprises to make sure that contract disputes are settled in a fair manner before the law.





# 11 Stakeholder relations and responsible business conduct

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Responsible business conduct sets out an expectation that all businesses – regardless of their legal status, size, ownership or sector – avoid and address negative impacts of their operations while contributing to sustainable development in the countries where they operate. This chapter reviews against the Chapter V of the SOE Guidelines. It studies the Vietnamese SOE sector’s adoption of the RBC principles and standards, particularly with regard to stakeholders’ rights, internal control, ethics and compliance programmes.

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## Overarching recommendation from the SOE Guidelines

The state ownership policy should fully recognise SOEs’ responsibilities towards stakeholders and request that SOEs report on their relations with stakeholders. It should make clear any expectations the state has in respect of responsible business conduct by SOEs.

### 11.1. Recognising and respecting stakeholders’ rights

*A. Governments, the state ownership entities and SOEs themselves should recognise and respect stakeholders’ rights established by law or through mutual agreements*

The rights and obligations of employees, representative organisations of employees, and employers are implemented in accordance with labour regulations – namely, the labour Code (2019, effective 2021) and supporting regulations (Decree No. 145/2020/ND-CP) that detail a number of articles in the Labour Code related to working conditions and labour relations. There are two supporting decrees for each wholly-owned single-member LLCs and partially-owned SOEs:

- Decree No. 51/2016/ND-CP, providing labour management, wages and bonuses for employees of wholly state-owned one-member limited liability companies.
- Decree No. 53/2016/ND-CP on management of employees, labour, remuneration and bonuses at JSCs where the State has a controlling interest has explicitly regulated on the wage and bonus regime for employees, leaders, representatives of State capital, and non-representatives of State capital.

The labour code enables employees to, inter alia, establish, join or participate in activities of workers' representative organisations, and to 'perform' employment contracts, collective bargaining agreements or similar. These collective bargaining agreements, as well as labour regulations internal to SOEs, should also work in support of the labour code.

Trade unions appear to be common. They can be consulted on a range of matters including for instance on wage regulations, as is the case with the VNR Trade Union – a socio-political organisation established by law to protect the legitimate rights and interests of employees as its third party. Vinacomin has also entered into a collective bargaining agreement with the trade union.

Rights of employees do not appear to extend to participation on the board or in shareholder meetings in the case of partially-owned SOEs. The rights of creditors, consumers and business partners are also prescribed in various laws.

The rights of creditors are prescribed in the Civil Code and the Law on State Enterprises. They are mainly framed in terms of the responsibilities that companies – here, SOEs – have for informing creditors on relevant pieces of information, for instance regarding debt repayment obligations in case of dissolution or settlement of repurchased shares.

The rights of consumers are outlined in the Law on Protection of Consumers Rights (No.59/2020/QH12). Rights afforded to consumers include being provided accurate and complete information about organisations or individuals trading goods or services, contents of transactions; being entitled to offer suggestions to organisations or individuals trading goods and/or services on a range or related matters, being entitled to complaint, denunciation or pursuit of lawsuits.

Rights of those engaging in commercial contracts are found in the Civil Code and the Commercial Law (No. 36/2005/QH11), which establishes the basic terms of any commercial contract, including the rights and obligations of involved parties.

The OECD mission team does not have a clear understanding of the application of these laws in practice – that is, whether SOEs dutifully fulfil their responsibilities owed to employees, consumer, creditors and business partners. At minimum, the OECD team's concerns about the disclosure of information to the broader public, which is discussed in the following Chapter on transparency and disclosure, suggests that at least certain rights concerning stakeholders' access to information are not adhered to in full.

## 11.2. Reporting on stakeholder relations

*B. Listed or large SOEs should report on stakeholder relations, including where relevant and feasible with regard to labour, creditors and affected communities*

Companies listed on either of Viet Nam's two national stock exchanges<sup>1</sup> are required to disclose information about “corporate environment, society and community sustainability”,<sup>2</sup> aligned with the Guidance on Environmental, Social and Governance (ESG) Disclosure published by the Hanoi Stock Exchange market authority. Law on Securities (No. 62/2010/QH12), SOEs listed on the stock exchange are required to disclose information.

While listed SOEs in Viet Nam are aligned with this provision of the SOE Guidelines, it appears that large SOEs – whether single or multiple member LLCs or JSCs – are not. Joint-stock SOEs and those with 100% charter capital held by the State are not required to report on stakeholder relations, nor to issue social and environmental disclosures, and there are no international standards encouraged in this regard. Single-member LLCs are required to periodically report on their websites, on the “performance of public duties that are assigned or bid for (if any) and other social responsibilities”, as per the Enterprise Law (and supported by Decree No. 47). JSCs and multi-member LLCs are free from this particular disclosure requirement. It is possible that such disclosures would entail information that touches upon stakeholder relations, but none of the SOEs participating in the questionnaire or fact-finding missions could point to such disclosures even if voluntary.

As per the Law on Enterprises, the board and members of executive management of wholly-owned SOEs have a responsibility to notify the company of shares or stakes that they or their related persons own, and the company should disclose this information, as well as that about contracts and transactions between it and related persons.

### 11.3. Internal controls, ethics and compliance programmes

*C. The boards of SOEs should develop, implement, monitor and communicate internal controls, ethics and compliance programmes or measures, including those which contribute to preventing fraud and corruption. They should be based on country norms, in conformity with international commitments and apply to the SOE and its subsidiaries*

Wholly-owned SOEs in Viet Nam are not required to establish specific control, ethics and compliance programmes or measures. SOEs – both joint-stock and wholly-owned – report that they have established anti-corruption and anti-waste programmes, but this is not clear in the law. It is instead understood that SOEs are referring to existence of requirements on internal audit, and the Anti-Corruption Law (ACL) rules for transparency and ethical behaviour. However, SOEs, or in certain cases the state officials therein, are subject to certain rules that acts as controls that should, when well-functioning, contribute to the prevention of corruption and fraud.

The Law on Anti-Corruption, described for its application to SOEs in Chapter 5, requires state representatives in SOEs – considered “office holders” – to abide by a public sector code of conduct (Art. 20). It subjects a wholly-owned enterprise (not just office holders) to policies on gifts and management of conflict of interest. Partially-owned SOEs to establish their own “codes of conduct and control mechanism for prevention of conflict of interest, inhibition of corrupt activities; develop a healthy and incorruptible business culture” (Art. 79, ACL). Thus, multi-member LLCs and JSCs will have a Code of Conduct that applies to the entire company, rather than limiting it to individuals in the company as is the case for wholly-owned SOEs.

Any state officials, whether in wholly or partially-owned SOEs, as well as deputy managers and above in wholly-owned companies are required to declare assets and income. Additionally, expectations for ethical behaviour of board members can also be taken from the LOE's obligations of board members that are, inter alia, to carry out its functions in an honest, careful and best manner to ensure the legitimate interests of maximum corporate law, be loyal to the interests of the company and not abuse position nor use information, know-how, business opportunities and other assets of the company for self-interest or to serve the interests of other organisations and individuals. Annual evaluations of boards, and accompanying

ratings of individuals, include criteria on political quality, ethics and lifestyle. More information on board evaluations is found in Chapter 13.

Thus, the legal and regulatory framework requires SOEs or at least SOE representatives to abide by anti-corruption related measures and controls. Together with the new requirement for all SOEs to establish internal audit, there are elements of international good practice woven throughout the legislation. However, there are substantial challenges to the effectiveness of individual internal controls in practice because they are meant to be embedded in a highly complex and confusing corporate control structure that tries to blend state controls and business practices.

There emerge three main reasons for the ineffectiveness of the overall (internal) control structure and thus of anti-corruption and anti-fraud measures. First, there are multiple bodies involved in “control” in SOEs that makes Vietnamese SOE control structures highly unique and complex. The BoC appears to provide control over the entire company and its management, the “Internal Control Board” provides control over SOE operations (internal control function) and the “Party Organisation” can do a mix of both. In addition, there are external controllers. Second, there are concerns about the implementation of existing laws because of the informal relationships and power structures at play in practice. Third, there seems to be a degree of confusion about the roles and responsibilities of the various control bodies/units regarding internal control. When asked about the requirements around the broader risk management and control structure of SOEs more generally, stakeholders at both the state and company level point first and sometimes only to internal audit.

Internal audit is discussed more in the Chapter 12, but it is worth here noting that the division of responsibilities for internal control, ethics and compliance in SOEs between SOE Boards of Members or Boards of Directors (BoD), BoCs, “Internal Control Boards” and internal auditors is unclear not only in legislation but also in practice. These challenges are elaborated upon below:

**The Board of Controllers (BoC)** – also known as the “Controllers of the Corporation” – is composed of officials and civil servants appointed by CMSC and under its management to supervise an SOEs’ BoM (Decree No. 10/2019/ND-CP, Art. 10, Clause 2). While legally ‘equivalent’ to the board, and with the responsibility for overseeing the board, certain stakeholders were sceptical about the BoC’s effectiveness in practice, which may be in part because the BoC’s CMSC-appointed civil servants are meant to oversee powerful member of the board which can include the CEO and Party members. According to one stakeholder, if the BoC detects mistakes or suspects irregularities “they are not the ones to blow the whistle”, instead taking their cues from BoMs, and likely the Party Organisation (see below), in practice.

Wholly-owned SOEs have an **internal control body** that is said to be in charge of internal control within an SOE. It goes by many names: “Audit and Inspection Committee”, “Internal Control Board or Committee”, “Internal Audit Committee” and the “Internal Audit and Financial Supervision Department” among others, (hereafter referred to as “Internal Control Board” for simplicity). Though its name may be misleading, this body is subordinate to the BoM. Members are hired and fired by the BoM. In most cases, it appears that the head of internal audit, where existing, sits on the “Internal Control Board”. Good practice would hold that the heads of internal audit units or departments have direct access to the BoM (to protect its autonomy). While the internal auditors appear to have this access through the Internal Control Board, it appears that the Internal Control Board plays more of a subservient role than would be afforded, say, by an independent Audit Committee and thus calls into question the autonomy of internal audit.

A 2019 report published by VCCI and the UK Government, *Companies’ Use of Internal Control and Codes of conduct in Vietnam*, found that internal control boards are often staffed based on power structures, and that some members were from a holding company and lacking knowledge of the company’s operations. It also found that inspections conducted by the body were compromised, with inspectors and those being inspected agreeing on what to report. Indeed, a stakeholder informed OECD that Internal Control Boards are often subject to instructions or special guidance from members of the BoM, leading to a destruction of

standard internal control and audit procedures. They reiterated that strengthening internal audit and internal control in practice is a big challenge.

Joint-Stock Companies can opt to establish an Audit Committee instead of having a CMSC-appointed BoC (above), which some stakeholders said translated to a higher degree of assurance over the internal control activities of the company – one of the reasons for which is that the control structure becomes simplified and allows for clearer reporting lines internally.

It appears that most if not all SOEs have a **Party Organisation/Committee/Cell**. It is not uncommon for a CEO or Chair of the board to be a Party member, but the “Party Organisation” can also be represented in different corporate functions and roles. The presence of Communist Party members in SOEs is said by multiple stakeholders to provide a fairly effective “check and balance” within the company, including over the board or executive management – though this is plausibly limited when Party members are filling the positions of Chair and/or CEO.

In the words of the PVN, its “the Party Committee of the Vietnam National Oil and Gas Group” sits directly under the Party Committee of the central business bloc. It regularly provides direction to prevent waste and corruption in accordance with the provisions of the Anti-Corruption Law. It documents actions on the prevention of wasteful corruption, often propagating, disseminating and educating the Party’s lines and policies and laws of the Party. It strengthens behavioural reform, regularly improving internal processes and regulations in handling work in a strict direction, complying with the provisions of the law in order to prevent wasteful corruption, especially in management and in procurement of goods, services and in supplier selection.

Putting aside the substantial concern of political interference in SOE operations, it appears that the Party function is either filling a gap in the risk and control architecture, as well as in driving ethical behaviour, or giving reason for the BoM/BoD, BoCs, Internal Control Board or internal audit to give up at least part of a typical role to internal political forces. Good practice holds that boards and management take responsibility for risk management and control and the independent audit function or unit provides oversight and assurance, reporting to independent members of the board. In Viet Nam, all measures have substantial drawbacks that likely hinder the ability for an SOE to manage (corruption and other) risks to the SOEs objectives.

There is broader accountability system in place for oversight of SOEs, including **independent external audit, state audit, and the State Inspectorate**. Independent external auditors do not, by virtue of their mandate, look for corruption, but could play a more prominent role in flagging issues that arise in the carryout of their function. The state auditor (SAV) has in the past raised irregularities that were further explored by appropriate authorities – for instance the State Inspectorate, which is in turn responsible for oversight of SOEs. Typically, SOEs are not subject to a same degree of scrutiny as can be found in other countries, but there are cases where media has given attention to certain cases of corruption or irregularity in SOEs.

Vietnamese SOEs, and those involved in exercise of state ownership, would benefit from an evolved understanding of the concepts of internal audit, internal control and risk management – and the relations between them. Many stakeholders spoke only of internal audit when asked about internal control more broadly and very few stakeholders could provide details on risk management – to a degree that even suggested a total absence of risk management practices.

Relatedly, the OECD was informed that corruption risks remain higher for SOEs than private firms in Viet Nam, owing in part to the lack of risk management and control and knowledge and capacity at the board level – with recent cases of corruption providing evidence for the claim. Part of the challenge stems from the lack of ability of SOE boards to manage risks in its decision-making in the best interest of the company, is because of their limited capacity to take autonomous decisions – with many decisions arbitrarily being subject to multiple layers of decision-making of (often) multiple state authorities. This is discussed in more

detail in Chapter 13. Without the authority to sign off or make key decisions at the board level, discretion is left to representatives of the state, which may have competing or personal interests in decisions, and this has led in some cases to siphoning of funds from SOEs for personal or related-party illicit enrichment. Stakeholders suggested that risk management in SOEs is better in joint-stock SOEs and particularly in listed SOEs, being additionally subject to the securities law.

#### 11.4. Responsible business conduct

*D. SOEs should observe high standards of responsible business conduct. Expectations established by the government in this regard should be publicly disclosed and mechanisms for their implementation be clearly established*

Wholly-owned SOEs are required to periodically disclosure information about their public duties (taken to mean policy objectives) as well as ‘social responsibilities’. This does not apply to partially-owned LLCs or JSCs. The Decree on Information Disclosure of State-Owned Enterprises (No. 81/2015/ND-CP), that precedes the revised Law on Enterprises, provides details on the nature of this reporting:

- “Enterprises must develop a report on the implementation results of public duties and social responsibilities (if any) as stipulated under provisions in Annex VI attached to this Decree.
- Enterprises shall make a disclosure on enterprises’ electronic portal or website of the report on the implementation results of public duties and social responsibilities (if any) and send the report to representative bodies of State ownership and the Ministry of Planning and Investment for disclosure as stipulated.
- Deadlines for disclosure and sending of the report to representative bodies of State ownership and the Ministry of Planning and Investment must be no later than 20 June of the year following the reporting year.
- Representative bodies of State ownership shall make a disclosure of the report on the implementation results of public duties and social responsibilities (if any) on the agencies’ electronic portal or website within five working days from the date of receiving enterprises’ report.”
- The Ministry of Planning and Investment shall make a disclosure of the report on the implementation results of public duties and social responsibilities (if any) on the Ministry’s business information portal (<http://www.business.gov.vn>) within five working days from the date of receiving enterprises’ report.”

Social responsibilities including SOEs’ responsibility for: environmental protection; contributions to society and towards suppliers; ensuring the benefits and safety of consumers; maintaining good relations with employees; and ensuring the benefits of their shareholders and employees. Some of these responsibilities speak to the above-mentioned legislations on the rights of consumers, employees and creditors.

The OECD understands that SOEs pursuing these objectives and owning these responsibilities are disclosing the ‘report’ either integrated into the annual report or as a separate annual “RBC report by business”. However, one stakeholder reported that the “RBC report by business was in fact voluntary. The requirement’s reference to “if any” provides a carve-out of SOEs that do not purport to have any public duties or social responsibilities.

The OECD team understands that there are no explicit expectations set by the state owner concerning responsible business conduct. That is, SOEs must report if they undertake public policy objectives or have ‘other social responsibilities’ – but it is unclear to the mission team whether those “other” responsibilities are part of the overall SOE objectives or rather voluntary pursuits. Only listed SOEs are required to make ESG-related disclosures, as was mentioned above.<sup>3</sup>

SOEs participating in the review process pointed to a longstanding and implicit expectation or ‘understanding’ that SOEs contribute to the “social welfare fund”. One interviewed stakeholder informed the OECD that, in his view SOEs do not pursue responsible business activities “because they are pressured, but because it’s just what they do”. MPI informed the OECD that SOEs have a long-term tradition of helping the vulnerable on an annual basis. For its part, the national railway company VNR has company-specific regulations to support activities in remote, border and island areas – taken to be established as public policy objectives – as well as to support those in need (for instance, flood victims). The MPI marked an evolution in the contributions of SOEs to society through the COVID-19 pandemic, which has seen SOEs make significant contributions to government functions and services.

Multiple stakeholders referred to the promise of the restructuring ‘Master Plan’ and the opportunity for the seven SOEs involved to play a role as a leader and inspire other economic actors, thereby contributing to a stronger economy. The OECD was informed that this could involve, as one example, working with SMEs to become partners for innovation, which is seen as a ‘social responsibility’.

Viet Nam stands to benefit from the formalisation of and greater consistency in SOE contributions to RBC, as a means for attracting investment. At the time of writing, there are limitations owing to the lack of explicit requirements from the state owner and loopholes in the disclosure requirements. The disclosure requirements (i) provide carve-outs for SOEs that do not identify as having public objectives or “other social responsibilities” and (ii) do not apply to multi-member LLCs or JSCs. Thus, the mission team deduces that SOE applicable of responsible business conduct is well intentioned where existing but piecemeal at best. There is room for greater consistency across SOEs, which might send positive signals to investors.

## 11.5. Financing political activities

*E. SOEs should not be used as vehicles for financing political activities. SOEs themselves should not make political campaign contributions*

There is no reference in legislation regarding the financing of political activities as the Communist Party is funded directly by the state budget (as are activities of its officials). There are virtually no political campaigns or fundraising activities. As funding comes from the state budget, the law does not recognise contributions of individuals or organisations. Despite this, SOEs reported that in practice they are not used as vehicles for financing political activities. However, the presence of the “Party Organisation” in SOEs represents an intertwined relationship between SOEs and the Party that goes well beyond the limits that political party financing regulations usually aim to establish between the political arena and SOEs. The formulation of the enterprise’s strategy and governance is usually based on the orientations of the Party, the State and the government.

## Notes

<sup>1</sup> The Ho Chi Minh Stock Exchange (HOSE) and the Hanoi Stock Exchange (HNX). The Unlisted Public Company Market (UPCoM) is folded into the HNX and is the preferred and primarily listing segment for SOEs that have been recently equitised in order to participate in the securities market, with the common intention of preparing to later transfer to the HOSE or HNSX.

<sup>2</sup> Circular 155/2015/TT-BTC (dated 06 October 2015) on guidelines for information disclosure on securities market.

<sup>3</sup> Listed SOEs are required to disclose information about “corporate environment, society and community sustainability” in line with the Hanoi Stock Exchange’s guidance on Environment, Social and Governance (ESG) disclosure.





# 12 Disclosure and transparency

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This chapter analyses the disclosure and transparency practices of SOEs against the Chapter VI of the SOE Guidelines. The chapter assesses the country's policy framework to ensure transparency in the SOE sector, including auditing standards and aggregate reporting practices.

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## Overarching recommendation from the SOE Guidelines

State-owned enterprises should observe high standards of transparency and be subject to the same high quality accounting, disclosure, compliance and auditing standards as listed companies.

### 12.1. Disclosure standards and practices

*A. SOEs should report material financial and non-financial information on the enterprise in line with high quality internationally recognised standards of corporate disclosure and including areas of significant concern for the state as an owner and the general public. This includes in particular SOE activities that are carried out in the public interest*

The requirements for SOE disclosure in Viet Nam are primarily found in three pieces of legislation – the Law on Enterprises (Articles 73, 109, 110, 164 and 176), Decree 47/2021/ND-CP which elaborates articles of the Law on Enterprises, and Decree 87/2015/ND-CP on Financial Supervision, Performance Assessment and Disclosure of Financial Information of State-Owned and State-Invested Enterprises. Table 12.1 demonstrates how the various disclosures are applied to different SOE forms in Viet Nam, noting that listed SOEs are separately subject to disclosures contained in the Securities Law.

**Table 12.1. Periodic and ad-hoc disclosure requirements for all Vietnamese SOEs – state Enterprise Law**

Application of disclosure requirements in the Enterprise Law, complemented by Decree 47/2021/ND-CP and Decree 87/2015/ND-CP for unlisted SOEs (and the Securities Law for listed SOEs).

	Wholly-owned single-member LLCs	Partially-owned multi-member LLCs	Partially-owned JSCs
<b>Periodic disclosures, posted on website and shared with the state ownership representative body (Art. 109, Clause 1):</b>			
a) Basic information about the company and the company's charter;	X	X	X
b) Overall objectives, specific objectives and targets of the annual business plan approved by the state ownership representative body; this information shall be disclosed before 31 March of the execution year (elaboration from Decree 47)	X		
c) The annual financial statements and summaries thereof audited by an independent audit organisation, including the financial statement of the parent company and the consolidated financial statement (if any) as prescribed by regulations of law on corporate accounting; this information shall be disclosed within 150 days from the end of the fiscal year (elaboration from Decree 47, Art. 23, 1.h) <sup>2</sup> .	X	X (only specified in Decree 47, not LOE)	X <sup>1</sup>
d) The mid-year financial statement audited by an independent audit organisation and its summary (including the financial statement of the parent company and the consolidated financial statement (if any); these documents must be disclosed before July 31 <sup>2</sup> ;	X	X (only specified in LOE, not required per Decree 47)	
dd) Reports on implementation of annual business plans; shall be disclosed before 30 June of the year preceding the succeeding year; (elaboration from Decree 47, Article 23, 1.c)	X	X	X
e) Reports on performance of public duties that are assigned or bid for (if any) and other social responsibilities;	X		
g) The report on the company's management and organisational structure, including: - 6-month report on administration and organisational structure of the enterprise; this information shall be disclosed before 31 July every year (details from Decree 47, Art. 23, 1.dd) - Annual report on administration and organisational structure of the enterprise according; this information shall be disclosed before 30 June of the execution year (details from Decree 47, Art. 23, 1.e). The report on the company's management and organisational structure shall contain the following information (Art. 109, Clause 2): a) Information about the state ownership representative body, its head and deputies; b) Information about the company's executives, their qualifications and experience, managerial position previously held, how they are designated, their managerial tasks; their salaries, bonuses, benefits and payment method, their related persons and interests; c) Relevant decisions of the state ownership representative body; resolutions and decisions of the Board of Members of the company's President; d) Information about the Board of Controllers, Controllers and their activities; e) Verdicts of inspecting authorities (if any) and reports of the Controllers and the Board of Controllers; f) Information about the company's related persons; contracts and transactions between the company and its related persons; g) Other information prescribed by the company's charter.	X	X	X
The following information of <b>joint stock company</b> should be published on their website (Art. 176, Clause 2): a) Company charter b) Curriculum vitae (CV), qualifications, professional experience of members of the Board of Directors, Controllers, Director/General Director of the company; c) Annual reports on performance of the Board of Directors and the Board of Controllers.			X

	Wholly-owned single-member LLCs	Partially-owned multi-member LLCs	Partially-owned JSCs
<p>Within ten days after having their annual financial statements audited, <b>public companies</b> shall disclose periodical information on such annual financial statements according to the provisions of Clauses 1 and 2, Article 16 of this Law.</p> <p>2. A public company shall disclose extraordinary information within 20 four hours after the occurrence of one of the following events: a/ Its bank account is frozen or is permitted to resume after a freezing period; b/ It temporarily ceases its business operation; c/ It has its business registration certificate or its establishment and operation license or its operation license revoked; d/ Its shareholders' general assembly's decisions as specified in Article 104 of the Enterprise Law are adopted; e/ Its Board of Directors makes decisions on redemption of its own stocks or resale of bought stocks, on the date of exercise of the right to buy stocks by owners of warranted bonds or the date of conversion of convertible bonds into stocks, and decisions related to the offering according to the provisions of Clause 2, Article 108 of the Enterprise Law; f/ There are decisions to initiate lawsuits against members of its Board of Directors, director or general director, deputy director or deputy general director, or chief accountant; there are court judgments or rulings concerning its operation; there are conclusions of tax offices on its violations of the tax law.</p>			X (listed JSCs)
<b>Irregular or ad-hoc disclosures (Art. 110) – disclosed on website within 36 hours of event</b>			
<p>1. Information shall be posted the company's website and printed matters (if any) and displayed at the company's headquarters and business locations within 36 hours from the occurrence of any of the following events:</p> <p>a) The company's account is frozen or unfrozen;</p> <p>b) All or part of the company's business activities are suspended; the certificate of enterprise registration, establishment license, establishment and operation license, operation license or another license relevant to the company's operation is revoked;</p> <p>c) The certificate of enterprise registration, establishment license, establishment and operation license, operation license or another license relevant to the company's operation is revised;</p> <p>d) There is a change of members of the Board of Members, the company's President, Director/General Director, Deputy Directors/General Directors, chief accountant, accounting – finance department manager, Controllers or Chief Controller;</p> <p>dd) An executive of the company is disciplined or charged under a decision; the court issues a decision that involves an executive of the company;</p> <p>e) An inspecting authority or tax authority announces a verdict on the enterprise's violations of law;</p> <p>g) There is a decision that the independent audit organisation is changed or not permitted to audit the financial statement;</p> <p>h) There is a decision on establishment, dissolution, consolidation, acquisition or conversion of a subsidiary company, branch or representative office; investment in, decrease or withdrawal of investment in other companies.</p>	X	X	X

Notes: <sup>1</sup> Decree 47 specifies that a JSC “shall send its ratified [by the General Meeting of Shareholders] annual financial statements to competent authorities prescribed by accounting laws and relevant laws”.

<sup>2</sup> Decree 87 adds that 6-month and annual financial reports (audited) include: Balance sheet; income statement; cash flow statement; note on financial statement in accordance with accounting legislation. As for enterprises operating according to the parent – subsidiary company model, upon disclosing annual financial reports (audited), enterprises must carry out the disclosure of annual financial report of parent companies and annual consolidated financial report.

Disclosure requirements for wholly-owned single-member LLCs found in Article 109 of LOE, and elaborated by Article 23, clause 1, of Decree 47. Disclosure requirements for partially-owned multi-member LLCs found in Article 73 of LOE, referencing applicable requirements of Article 109 for wholly-owned single-member LLCs, and elaborated by Article 23, Clause 2, of Decree 47. Disclosure requirements for JSCs, and listed SOEs, found in Article 176 of LOE (referencing applicable requirements of Article 109 for wholly-owned single-member LLCs) and elaborated by Article 23, Clause 2, of Decree 47.

Source: Law on Enterprises Decree 47.

Both periodic and irregular information should be disclosed on company websites and in the “Business Information Portal” (more below). Information is meant to be fully disclosed in an accurate and timely manner, by the SOE's legal representative or the person authorised to disclose information. The legal

representative shall be responsible for the adequacy, punctuality and accuracy of the information disclosed. At the same time, the SOE should send a report to its competent ministry or oversight agency, which then has five working days from receipt of the report to publish on their portal or website “information that must be periodically announced”. The owner’s representative agency “shall review, evaluate and decide to restrict the disclosure of important information related to or affecting secrets and national security or business secrets of the enterprise, and at the same time notify the Ministry of Planning and Investment for monitoring and supervision” (Article 25, Decree 47/2021/ND-CP).

Multiple state bodies have responsibilities for monitoring SOEs’ financial and non-financial disclosure. The following list highlights key agency responsibilities:

- Representative agencies should work together with the MoF to carry out financial supervision and performance evaluation of business activities of parent companies, and single-member LLCs under their authority. This requires the agency to develop the monitoring processes in order to oversee financial disclosure (including setting up the necessary IT system) and set the parameters for financial supervision including the “criteria” and “plan” for each enterprise (subject to the opinions of other state agencies). They are also responsible for flagging when an entity is faced with financial insecurity based on the results of its financial supervision. The representative agency prepares and submits reports on results of financial supervision on a 6-month or annual basis to the MoF. Where there are suspected inaccuracies, the representative agency can require SOEs to hire independent audit to review the financial data (presumably in addition to the previous audit of financial statements, which is required by law). The ownership representative agency is responsible to the Prime minister for “failure to supervise and inspect information disclosure by enterprises in accordance with this Decree (47), and failure to publicly and punctually upload the information disclosed by enterprises under its management to its website”.
- Similarly, the Ministry of Finance should carry out financial supervision of parent companies and single-member LLCs under its authority, in collaboration with the representative agency. From a more whole-of-government perspective, the MoF is additionally responsible for synthesising and reporting to the government and the Prime Minister every six months and annually on the management and use of state capital in enterprises, operational efficiency and financial status of the enterprises (Decree 87/2015/ND-CP, Art. 12, Clause 2). It is also responsible for flagging and issuing warnings when there are signs of SOEs’ financial insecurity, or for seeking clarification and resolution when the SOE and the competent ministry have different opinions from the MoF, as well as for proposing remedy and action in cases of non-compliance. The MoF also consults ownership entities on their classification of SOEs. It prepares a report on the operational efficiency and classification of SOEs, the performance of public objectives, to be presented to the government before 31 July of each year.
- The Agency for Enterprise Development (AED) of the MPI launched in December 2021 the aforementioned “Business Information Portal<sup>1</sup>”, in collaboration with the German Corporation for International Co-operation (GIZ). The portal is meant to improve transparency around companies, while allowing access to market information and potential business partners to suit the growing business needs of Vietnamese SOEs. It is accessible in English and Vietnamese. The MPI is generally responsible for overseeing the use of the “Business Information Portal” or non-compliance by SOEs. For instance, it should inform the Prime Minister and notify the owner’s representative agency of the cases where SOEs have not disclosed information on the Portal in order for those competent ministries to handle the violations accordingly (Decree 47/2021/ND-CP). In addition, MPI is responsible for training and providing guidance on information disclosure and use of the new system (Article 32, Decree 47).

Notwithstanding the responsibilities mentioned above, there are additional responsibilities of those institutions as well as others that make for a rather complex constellation of reporting requirements and

monitors. Viet Nam would benefit from a document outlining all relevant roles and responsibilities of relevant institutions in place. Indeed, one SOE confirmed that it shares various reports with the MoF, MPI, MoIT and other line ministries regarding areas they are managing and submits oversight and performance to CMSC. The dispersion of roles across the administration with regards to monitoring SOE disclosure appears may leave gaps in oversight in practice and help to explain why certain stakeholders informed the OECD that there is a lack of compliance in disclosure and, relatedly, weak accountability. The reports submitted by SOEs were considered by one stakeholder to be quite general in nature. A 2010 comparative report on SOE disclosure prepared by CIEM, albeit outdated, found that equitised SOEs performed better in terms of meeting disclosure requirements. The OECD would expect this to be the case given the additional application of Securities Law requirements for at least listed SOEs.

Vietnamese SOEs would benefit from a disclosure policy that aggregates and elaborates on disclosure requirements in one place. Disclosure requirements, and the responsibilities of entities and agencies regarding monitoring and taking action on disclosure, is dispersed across various pieces of legislation. While they are mostly consistent, it is not easy to follow, and the OECD detected at least a couple of inconsistencies – for instance in the application of particular content disclosures to multi-member LLCs.

Certain stakeholders raised concerns about the implementation of disclosure requirements in practice. This is confirmed in a 2020 report prepared by the ADBI and the UK Government, which found that “most SOEs have not strictly implemented the regulations on information disclosure and have not yet built their own information disclosure section (on their website)”. Moreover, it found that disclosure is not stringently regulated, which was another perception of stakeholders in Viet Nam.

SOEs’ financial statements are supposed to be prepared, and audited, in line with the Vietnamese Accounting Standards issued by the MOF. The same standard is used for all SOEs, including listed companies. SOEs participating in this review reported no discrepancies between accounting standards of unlisted and listed companies. The mission team understands that there is a five-year roadmap for the introduction of IFRS that at least certain SOEs are working towards, but this is not yet in place. Many large SOEs are already audited by one of the “big 4” auditing firms. Listed firms must be audited by one of the 40 pre-approved audit firms listed by the SCC. SOEs are additionally subject to the audit of the State Audit Agency (SAV).

*A1. [Examples of such information include:] A clear statement to the public of enterprise objectives and their fulfilment (for fully-owned SOEs this would include any mandate elaborated by the state ownership entity);*

For wholly-owned SOEs, the Prime Minister approves the 5-year development investment strategy and plan and the 5-year production and business plan on the basis of the proposal of the competent ministry (for instance, Ministry of Transport in the case of VNR). The Committee for Management of State Capital at Enterprises approves the below contents. MPI annually summarises and reports to the government (that is, the Prime Minister) on the implementation of the objectives, tasks and business lines of wholly-owned SOEs:

- Capital contributions, increase or decrease in contributed capital, transfer of investment capital of SOE to invest in joint stock companies or limited liability companies with two or more members.
- Financial statements; distribution of profits, setting up annual funds of SOEs.

The Law on Enterprises requires these SOEs 100% owned by the state to disclose “overall objectives, specific objectives and targets of the annual business plan approved by the state ownership representative body” (LOE, Art. 109, 1.b). The information should be disclosed before 31 March of the execution year. The contents is prescribed in the Appendix II of Decree 47. This information should be disclosed on wholly-owned SOE websites, the “Business Information Portal” and in reports shared with the representative agency. In theory it should be publicly available, but it would require more work to understand whether at least the largest SOEs are disclosing this information in a meaningful way. This information is only required of wholly-owned single-member LLCs, not of multi-member LLCs nor JSCs. One partially-owned SOEs

participating in this study indicated that that “The business plans and financial reports of SOEs are discussed and adopted at their annual general meetings of shareholders”, considering this to be disclosure, though not public.

Though not all SOEs are required to disclose objectives, all SOEs are required to disclose “Reports on implementation of annual business plans... disclosed before 30 June of the year preceding the succeeding year” (LOE, Art. 109, 1.dd., and Decree 47, Art. 23, 1.c)”. These too should be disclosed on websites, the “Business Information Portal” and in reports shared with the representative agency.

*A2. [Examples of such information include:] Enterprise financial and operating results, including where relevant the costs and funding arrangements pertaining to public policy objectives;*

SOEs are required to disclose information about financial and operating results (see Table 12.2, which offers an abbreviated version of Table 12.1). All SOEs are subject to the same requirements for reporting on performance, with two exceptions. First, partially-owned SOEs are exempt from reporting on “performance of public duties... and other social responsibilities”. The Ministry of Finance confirmed that these disclosures are not accompanied with information about relevant costs and funding arrangements. Second, JSCs must additionally disclose on their website an annual report about performance of the Board of Directors and the Board of Controllers, which LLCs (whether single or multi-member) do not.

**Table 12.2 Disclosures on financial and operating results**

	Wholly-owned single-member LLCs	Partially-owned multi-member LLCs	Partially-owned JSCs
<b>Periodic disclosures, posted on website and shared with the state ownership representative body (Art. 109, Clause 1):</b>			
c) The annual financial statements and summaries thereof audited by an independent audit organisation, including the financial statement of the parent company and the consolidated financial statement (if any) as prescribed by regulations of law on corporate accounting; this information shall be disclosed within 150 days from the end of the fiscal year (elaboration from Decree 47, Art. 23, 1.h) <sup>1</sup> .	X	X (only specified in Decree 47, not LOE)	X <sup>1</sup>
d) The mid-year financial statement audited by an independent audit organisation and its summary (including the financial statement of the parent company and the consolidated financial statement (if any); these documents must be disclosed before July 31 <sup>2</sup>	X	X (only specified in LOE, not required per Decree 47)	*listed firms report quarterly
dd) Reports on implementation of annual business plans; shall be disclosed before 30 June of the year preceding the succeeding year; (elaboration from Decree 47, Article 23, 1.c)	X	X	X
e) Reports on performance of public duties that are assigned or bid for (if any) and other social responsibilities	X		
<b>The following information of joint stock company should be published on their website (Art. 176, Clause 2)</b>			
c) Annual reports on performance of the Board of Directors and the Board of Controllers			X

Note: 1. Decree 87 adds that 6-month and annual financial reports (audited) include: Balance sheet; income statement; cash flow statement; note on financial statement in accordance with accounting legislation. As for enterprises operating according to the parent – subsidiary company model, upon disclosing annual financial reports (audited), enterprises must carry out the disclosure of annual financial report of parent companies and annual consolidated financial report.

Source: LOE Art. 109, Decree 47/2021/ND-CP, Art. 23, Decree 87/2015/ND-CP.

The state disposes of another tool to understand and assess SOE performance established in the Law on Financial Supervision of SOEs (Decree 87/2015/ND-CP) – the “performance assessment and enterprise rating”. The SOE applies a rating based on a self-assessment and shares with the representative agency for approval and eventual transmission from the Ministry of Finance to the Prime Minister. It appears that this report is not made public. The legislation is not clear as to which corporate form of SOE it pertains to. Viet Nam might consider making performance ratings publicly available in order to incentivise improvement

in corporate governance practices and overall performance, as in done in a number of countries. Insofar as the company and individual ratings remain internal to the government, the OECD speculates that there could be a risk of the process being used namely as a way to inform Party leadership about the performance of its members, for reward or reprimand, as opposed to serving a broader goal of informing the government about the performance of individual firms, and across SOE portfolios.

A3. *[Examples of such information include:] The governance, ownership and voting structure of the enterprise, including the content of any corporate governance code or policy and implementation processes;*

All SOEs – single and multi-member LLCs and JSCs – are required to periodically report on the company's management and organisational structure. It should be done half-yearly (disclosed before 31 July each year), and annually (before 30 June of the execution year). Reports do not contain information about golden shares or power of veto over corporate decisions, nor are SOEs required to disclose information about compliance with corporate governance standards. The report on the company's management and organisational structure is limited to the following information (Art. 109, Clause 2):

- Information about the state ownership representative body, its head and deputies
- Information about the company's executives, their qualifications and experience, managerial position previously held, how they are designated, their managerial tasks; their salaries, bonuses, benefits and payment method, their related persons and interests
- Relevant decisions of the state ownership representative body; resolutions and decisions of the Board of Members of the company's President
- Information about the Board of Controllers, Controllers and their activities
- Verdicts of inspecting authorities (if any) and reports of the Controllers and the Board of Controllers
- Information about the company's related persons; contracts and transactions between the company and its related persons
- Other information prescribed by the company's charter.

Publicly-listed SOEs are required to disclose any change in the number of voting shares, according to listed SOEs, as well as resolutions of the Annual Shareholders' Meetings, and decisions of management boards on the reacquisition or resale of shares of the company (Law No. 62/2010/QH12, amending the Law on Securities). It appears that there are no regulations on golden shares or vetoes in any SOE-relevant legislation.

A4. *[Examples of such information include:] The remuneration of board members and key executives;*

SOEs (in the form of single and multi-member LLCs and JSCs) are required to disclose "Information about the company's executives, their salaries, bonuses, benefits and payment method, their related persons and interests" pursuant to the LOE. SOEs participating in the review confirmed it is compulsory to disclose wages of the members of the Members' Council and Board of Directors where relevant, the Chief Accountant and/or other managers as prescribed. However, SOEs pointed to Decree 47/2021/ND-CP as the reference document where this requirement does not appear. Rather, the requirement is explicit in the LOE.

The LOE also prescribes that multi-member LLCs should record remunerations, bonuses and other benefits for the President of the Board of Members, the CEO (Director/General Director) and other executives as operating costs and "placed in a separate section in the company's annual financial statements". This requirement is not applied to other forms of SOE. The LOE's secondary legislation, Decree 47/2021/ND-CP, requires a similar approach for the accounting of the "salaries, remunerations, bonuses, working conditions, costs of business trip and other operating costs of the Board of Controllers and Controllers". They "shall be decided by the state ownership representative body, at least equal to those of the Board of Members or Deputy General Director/Deputy Director of the enterprise; will be included in

the enterprise's business costs and presented in a separate section in the enterprise's annual financial statement" (Art. 8.2).

A5. [Examples of such information include:] Board member qualifications, selection process, including board diversity policies, roles on other company boards and whether they are considered as independent by the SOE board;

Pursuant to the LOE, all SOEs must disclose a report on the company's management and organisational structure, which includes: "information about the company's executives, their qualifications and experience, managerial position previously held, how they are designated, their managerial tasks; their salaries, bonuses, benefits and payment method, their related persons and interests" (Art. 109, Clause 2). These reports are published on SOE websites, and/or on the "Business Information Portal" and shared with the representative agency, on a half-yearly and annual basis. While this is required for all forms of SOEs, those participating in the study had contradicting responses about this disclosure.

All SOEs are required to disclose, as part of the report on the organisation of the company: (b) information about the company's executives...how they are designated... and their related persons and interests; and (c) relevant decisions of the state ownership representative body, resolutions and decisions of the Board of Members of the company's President. Such disclosures should include information about the selection process. However, an assessment of ten of Vietnam's largest SOEs (listed and unlisted, partially and wholly-owned) show that many SOEs are not compliant with this requirement. See Table 12.3.

**Table 12.3. Board-related disclosures in ten large SOEs**

Tabulated from websites of 10 large SOEs (6 of the top 10 largest listed SOEs, 1 listed, and 3 wholly-owned by the state)

	Board of Directors (JSC) /Members (LLC)	Management	BoC	Names	Photos	Information on appointments	Information on roles in other companies	Background information on individual	Independent representation explicit?
<b>Top 10 large listed SOE</b>									
Commercial Bank for foreign trade of VN JSC – Vietcombank	x	x	x	x	x			x	
PetroVietnam Gas JSC (Pvgas)	x	x	x	x				x	
Viet Nam Dairy Products JSC	x	x		x	x		x		x
Bank for Investment and Development of Viet Nam JSC (BIDV)	x	x	x	x	x			x	x
Vietnam Rubber Group	x	x		x	x				
Saigon Beer-Alcohol-	x	x	x	x	x				



	Board of Directors (JSC) /Members (LLC)	Management	BoC	Names	Photos	Information on appointments	Information on roles in other companies	Background information on individual	Independent representation explicit?
Beverage Corporation									
<b>Listed</b>									
Vietnam Airlines	x	x	x	x				x	
<b>100% owned by State</b>									
State Capital Investment Corporation (SCIC)		x	x	x	x	x		x	
Petrovietnam (PVN)		x	x	x	x				
Vietnam Electricity (EVN)		x		x	x				

Source: Author's research of SOE websites.

The assessment of large SOE websites also showed a serious dearth in the gender diversity of boards. As shown in Chapter 4, Boards (BoD or BoM) and of executive management are dominated by males. Only the BoCs have more equal representation. There are no diversity requirements for boards in Vietnamese SOEs, which could go a ways to improving the diversity and thus overall professionalism and effectiveness of SOEs' leadership. The gender representation of ten large (listed and unlisted, wholly-owned) SOEs is as follows:

- Board of Directors / Board of Members: 85% male; 14% female
- Executive Management: 91% male; 9% female
- Boards of Controllers: 44% male; 56% female.

Most information about how the nominations process unfolds in reality was uncovered almost exclusively through informational interviews. Theoretically, information about board members roles on other boards (which is apparently common) should come up as part of the report on related persons and interests, but this information was only provided on one or ten company websites.

A6. *[Examples of such information include:] Any material foreseeable risk factors and measures taken to manage such risks;*

SOEs are not explicitly required to disclose material foreseeable risk factors and measures taken to mitigate those risks. However, all forms of SOEs are required to disclose events that could have a material impact on the company. The following pieces of information must be disclosed on the company's website and printed or display at the company's headquarters and business locations within 36 hours from the occurrence of any of the following events:

- The company's account is frozen or unfrozen.
- All or part of the company's business activities are suspended; the certificate of enterprise registration, establishment license, establishment and operation license, operation license or another license relevant to the company's operation is revoked.
- The certificate of enterprise registration, establishment license, establishment and operation license, operation license or another license relevant to the company's operation is revised.

- There is a change of members of the Board of Members, the company's President, Director/General Director, Deputy Directors/General Directors, chief accountant, accounting – finance department manager, Controllers or Chief Controller.
- An executive of the company is disciplined or charged under a decision; the court issues a decision that involves an executive of the company.
- An inspecting authority or tax authority announces a verdict on the enterprise's violations of law.
- There is a decision that the independent audit organisation is changed or not permitted to audit the financial statement.
- There is a decision on establishment, dissolution, consolidation, acquisition or conversion of a subsidiary company, branch or representative office; investment in, decrease or withdrawal of investment in other companies.

While SOE Boards of Members (or the President of the enterprise, where this form is opted for) are required to take preventive measures against risks to the management of capital and assets in SOEs with, there is no evidence that SOEs must disclose such preventative or actionable measures to limit identified risks.

All SOEs shall carry out disclosure of 6-month and annual financial reports that include the balance sheet, income statement, cash flow statement, and a note on financial statement in accordance with accounting legislation (Decree 87/2015/ND-CP). The Vietnamese Accounting Standards (VAS), applicable to all SOEs, requires SOEs to disclose contingent liabilities (relevant to the balance sheet date) (VAS, 18, Art. 81), unless an “outflow of resources embodying economic benefits has occurred”. The VAS states “if it becomes probable that an outflow of future economic benefits will be required for an item previously dealt with as a contingent liability, a provision is recognised in the financial statements of the period in which the change in probability occurs (except in the extremely rare circumstances where no reliable estimate can be made).” The Standards are clearer on the need for SOEs to disclose off-balance contingent assets in the notes: “contingent assets are assessed continually to ensure that developments are appropriately reflected in the note to financial statements. If it has become virtually certain that an inflow of economic benefits will arise, the asset and the related income are recognised in the financial statements of the period in which such inflow of economic benefits is probable” (VAS, 18, Art. 31).

The VAS makes explicit reference to “off balance sheet contingencies and commitments” only in the Chapter specific to banks and similar financial institutions (22).<sup>2</sup> SCIC confirmed this to be the case. They must recognise in the notes to the financial statements, disclosed half-yearly and annually, the following “off balance sheet” items:

- the nature and amount of commitments to extend credit that are irrevocable because they cannot be withdrawn at the discretion of the bank without the risk of incurring significant penalty or expense.
- the nature and amount of contingent liabilities and commitments arising from off balance sheet items including those relating to:
  - credit substitutes including general guarantees of indebtedness, bank acceptance guarantees and standby letters of credit serving as financial guarantees for loans and securities
  - certain transaction-related contingent liabilities including performance bonds, bid bonds, other warranties and standby letters of credit related to particular (special) transactions
  - short-term contingent liabilities arising from the movement of goods, such as documentary credits where the underlying shipment is used as security.
- other commitments, note issuance facilities.

A7. *[Examples of such information include:] Any financial assistance, including guarantees, received from the state and commitments made on behalf of the SOE, including contractual commitments and liabilities arising from public-private partnerships;*

CMSC informed the OECD that reporting requirements around financial assistance or subsidies to SOEs include: the form, dates and duration and any other time limits attached to it; the eligibility requirements; the total amount or the annual amount budgeted for the financial assistance/subsidy; and any other relevant information relating to the financial assistance/subsidy that might be relevant. However, the OECD could not identify where this information should be channelled, with no reference to such details in legislation and standards on accounting or disclosure.

SOEs informed the mission team that they are not required to disclose information about financial assistance received from the state unless regulated by the preparation and disclosure of financial statements. One SOE said this information is only provided “to competent agencies”. The VAS require that notes to SOEs’ financial statements include “contingencies, commitments and other financial disclosures”. Items classified could, in theory, be broad enough to include liabilities that would transpire within the balance sheet year owing to contractual commitments or liabilities arising from public-private partnerships (PPPs), but in practice the OECD understands that information about liabilities arising from commitments and deriving from state assistance are only shared with competent agencies.

The only explicit reference to disclosure of guarantees relates, as discussed above, to banks and other financial institutions, which must disclose the nature and amount of contingent liabilities and commitments arising from off balance sheet items. This includes those related to credit substitutes including general guarantees of indebtedness, bank acceptance guarantees and standby letters of credit serving as financial guarantees for loans and securities (VAS, 22).

At least wholly-owned SOEs do not engage in PPPs. MPI suggested that contractual arrangements owing to procurement and bidding should be disclosed, except where business secrecy exemptions can apply. Most stakeholders were adamant that SOEs do not receive exemptions from general laws or regulations. Indeed, SOEs or BOD members do not receive any legal privilege and competition law explicitly forbids discrimination. However, the OECD mission team was informed by others that SOEs are in fact treated “favourably” in all aspects including by the government and including with regards to access to capital, natural resources, land and human resources. Such privileges are not formalised and thus not disclosed.

The government does provide guarantees for SOEs’ loans per Decree No. 15/2011/ND-CP on Granting and managing government guarantees. The government has issued Decrees and Circulars to provide guidance on the procedures and reporting scheme to supervise and manage SOEs’ loan usage.

*A8. [Examples of such information include:] Any material transactions with the state and other related entities;*

The Enterprise Law (Art. 4, Clause 23) establishes “related parties” as stakeholders are deemed to have a direct or indirect relationship with the enterprise:

- a) The parent company, managers and legal representatives of the parent company, and the people with the authority to appoint a manager for the parent company
- b) Subsidiaries, managers, and legal representatives of subsidiaries
- c) Individuals or entities or groups thereof having control over the enterprise including as owners, shareholders, capital contributors, or decision-makers
- d) The managers, legal representatives, and controllers of the enterprise
- e) Spouses, biological parents, adoptive parents, parents-in-law, biological children, adopted children, children-in-law, siblings, brothers-in-law, and sisters-in-law of the enterprise’s managers, legal representatives, controllers, controlling shareholders, or capital contributors
- f) Individuals who are authorised representatives of enterprises or entities prescribed in points a, b, and c of this clause
- g) Enterprises where individuals or entities prescribed in points a, b, c, d, dd, and e of this clause have a controlling interest that influences decision-making.

All SOEs – LLCs and JSCs – are required to disclose, online and to the owner, the half-yearly and annual report on the company’s management and organisational structure, which includes information about company executives’ salaries, bonuses, benefits and payment method and their related persons and interests (b); the company’s related persons, contracts and transactions between the company and its related persons (f) (LOE).

Mechanisms to prevent abusive transactions are found in the LOE, as well as company charters and internal regulations. Contracts and transactions between the single-member LLCs and related persons are regulated by Article 86 of the LOE, which allows for contracts and transactions to proceed subject to the approval of the BoM or the CEO (e.g. contracts between the SOE and the owner or owner’s related persons, members of the BoM and CEO or their related persons, as well as executives of the owners and/or persons with the power to appoint them and their relations. Approval should be based on certain criteria being met, and should be “recorded in separate documents of the company”. In multi-member LLCs, approval can only be granted by the BoM (though CEOs often sit on BoMs).

The law also prescribes that publicly-traded SOEs (Securities Law) disclose individual decisions of their General Meetings of Shareholders or BODs to adopt contracts or transactions between the SOEs and their insiders, someone related to the insiders, or someone related to the publicly-traded SOEs.

*A9. [Examples of such information include:] Any relevant issues relating to employees and other stakeholders.*

Periodic disclosure requirements for unlisted SOEs could theoretically be broad enough to encompass reporting on issues related to employees and other stakeholders that might materially impact the financial (and/or non-financial) performance of the company, but it is not explicitly required, nor does it seem to be common. Unlisted SOE participating in the review process did not respond to the relevant question let alone point to any concrete examples. However SOEs must provide information within 10 days of: (i) a change of members of the BoM (or President instead), or the CEO (Director/General Director) or its Deputies, Chief accountant or financing department manager and the Controllers or Chief Controller (understood to be the head of internal audit); and (ii) if or when an executive of the company is disciplined or charged under a decision / the court issues a decision that involves an executive of the company.

As discussed in Section 11.3, unlisted SOEs are not required to report on stakeholder relations, nor to issue social and environmental disclosures, and there are no international standards encouraged in this regard. Single-member LLCs are required to periodically report on their websites, on the “performance of public duties that are assigned or bid for (if any) and other social responsibilities”, as per the Enterprise Law (and supported by Decree No. 47). JSCs and multi-member LLCs are free from this particular disclosure requirement. It is possible that such disclosures would entail information that touches upon stakeholder relations, but none of the SOEs participating in the questionnaire or fact-finding missions could point to such disclosures even if voluntary. For their part, listed SOEs are required to periodically disclose information about “corporate environment, society and community sustainability”, aligned with the Guidance on Environmental, Social and Governance (ESG) Disclosure published by the Hanoi Stock Exchange market authority.

## 12.2. External audit of financial statements

*B. SOEs’ annual financial statements should be subject to an annual independent external audit based on high-quality standards. Specific state control procedures do not substitute for an independent external audit*

Since 2012, all SOEs are subject to external independent audit of annual financial statements, pursuant to the “Law on Independent Audit” and Decree 17/2012/ND-CP. In this way, SOEs are subject to the same standards as private firms but are additionally subject to audit by the SAV. SOEs operating in “classified” industries are exempt from the annual independent audit. Following the issuance of Decree 61 and later 81/2015/ND-CP and the revised LOE, SOEs must disclose annual audited financial statements on their

websites before forwarding them to their line ministries and the Ministry of Planning and Investment. Audit reports themselves are excluded from disclosure.

In practice, audit recommendations are considered by the SOE and, if 'sensible', will be addressed the following year. According to the provisions of the Law on Independent Audit and the Law on State Audit, Directors of SOEs must have a written representation enclosed with relevant supporting documents in case the auditor provides conclusions or opinions as "inappropriate" or requests so. According to the SAV, most recommendations deriving from audit reports have been seriously followed by SOEs: 85-90% of recommendations have been implemented. The SAV reported that non-implementation is usually due to SOEs needing more time (for instance for a restructuring). Where it reflects an emerging problem, they will forward this to the responsible authorities for action. The mission team was not able to verify this reportedly high level of implementation nor to obtain the figure for implementation of independent audit recommendations.

SOEs are audited against Vietnamese Accounting Standards. The mission team understands that there is a five-year roadmap for the introduction of IFRS that at least certain SOEs are working towards. Many large SOEs are audited by one of the "big 4" auditing firms. Listed firms must be audited by one of the 40 pre-approved audit firms listed by the SCC.

Enterprises with 100% charter capital held by the state have their auditors appointed, re-appointed and dismissed by the owner's representative agency and competent authorities (Article 45, Decree No. 69/2014/QH13). JSCs have the "right to recruit" the independent external auditor, with many large companies working with 'the Big 4'. The OECD was informed that the auditor is selected through a transparent and public tender process, and the successful candidate is reported to the relevant state authorities, however the OECD could not identify the according legal provisions. For those that undertake competitive processes, it should be done in accordance with the bidding regulations in the Law on Bidding No. 43/2013/QH13 and Decree No. 63/2014/ND-CP. The OECD could not determine however whether this practice is actually put in place, and how transparent and open the process is at least for firms that are not using well-known audit firms.

According to a few SOEs, mechanisms to ensure independence of external auditors are effective. In JSCs that opt to establish an Audit Committee (as opposed to a BoC), the Audit Committee is responsible for proposing the independent auditor to the General Meeting of Shareholders, as well as for monitoring and evaluating their independence and objectivity particularly when the company uses non-audit services (LOE). In wholly-owned SOEs however, the "Internal Control Board" (see Section 11.3) acts as the focal point for external auditors and apparently the SAV. Good practice in protecting the independence of the external auditor is that their interaction is limited to the Audit Committee that are part of, not serving, the BoM and, critically, that such a committee independent member that are non-state and non-executive. This is not the case for wholly-owned SOEs in Viet Nam, as the focal point can be staffed by executive management whose operations are the subject of external audit.

State audit does not substitute for independent external audit, but their audits and opinions are often considered to have more weight than those of independent auditors. The SAV audit work is generally geared towards safeguarding the value of state assets, focusing mostly on periodic compliance audits (every three to five years) in unlisted firms, and most commonly those 100% owned by the state. Some SOEs indicated that the SAV "can audit whatever it wants" and has the authority to sanction SOEs or work with relevant authorities (including GIV) as needed. The OECD understand that audits requested by the state and the parliament are always accommodated. In addition, and unusual compared to the global norm, the military and local authorities can also request audits, though the OECD understands this is subject to resources and capacity of the SAV in a given year. The International Organisation of Supreme Audit Institutions considers it good practice for an SAI to disclose all audits, but it appears that many SAV audits are only posted at the SAV headquarters. It may be worth noting that one stakeholder suggested the state

audit may in fact substitute for appropriate controls at the company level (see Section 11.3 on challenges in the roles and responsibilities of company-internal control actors).

External and internal auditors are permitted to consult, but this does not happen often in practice. One stakeholder informed the OECD that the independent external auditor is not the one who raises issues in SOEs and, in the case of corruption or related irregularities, it is usually the state auditor or the government inspectorate (GIV).

### 12.3. Aggregate annual reporting on SOEs

*C. The ownership entity should develop consistent reporting on SOEs and publish annually an aggregate report on SOEs. Good practice calls for the use of web-based communications to facilitate access by the general public*

The Ministry of Planning and Investment (MPI) prepares a report annually at the Prime Minister's instruction. The report is based on data from various sources, including the six-month and annual audited financial reports of each SOE. Data is both quantitative and qualitative in nature.

In the aggregate report, MPI generally focuses on assessing and analysing SOE business operations and governance. It does not cover all SOEs. The report includes information on the following: SOE contributions to the economy (line structure, export-import turnover, national budget collection), financial performance and value of SOE sector, SOE business scale, employment and salary and SOE board remuneration. It does not provide financial information about individual SOEs. There could be an opportunity to do so given that SOEs are required to disclose audited financial statements on their websites at the six-month mark and annually, meaning that the information should already be publicly available. MPI recognised that the introduction of the “Business Information Portal” which the entity oversees, and which will aggregate SOE-specific financial and non-financial information, would allow for extraction of more SOE-specific information. This could be integrated into the annual report, but political would be needed to bring the MPI report in closer alignment with the type of annual aggregate reporting that appears in the SOE Guidelines. Stakeholders suggested that such aggregate reporting could help to give perspectives regarding corporate governance “on those [companies] not directly controlled [by the government]” but neglected to apply the same reflection to wholly-owned SOEs.

The Asian Development Bank Institute issued a report in 2020 on SOE reform progress and challenges, therein assessing the level of disclosure of SOEs and of state-level reporting. It reads: “Currently, reports on SOE performance are carried out by many authorities. However, because of the fragmentation of the focal points, the compilation of a national assessment of SOE performance has not yet been implemented fully and professionally and is not adhered to seriously. The best synthesis reports are the reports from the Ministry of Finance and the Ministry of Planning and Investment; however, they do not adequately list all of the SOEs. Important messages are missing and excluded, such as the comparison of SOE efficiency with similar enterprises in the same industry, statistics on the SOE debt situation related to state budget deficit and government debt” (ADBI, 2020<sup>[1]</sup>).

In Viet Nam the aggregate report is submit to the Prime Minister and the cabinet member. The Prime Minister has to present the report to Parliament at the mid-year conferences. The report is not translated into other languages and made available owing to “sensitivity issues”. The state does not have in place a dedicated website which published information on individual SOEs, but the state suggests that by preparing the report and disclosing it in period meetings and conferences that they are making publicly available information about SOE's financial and non-financial performance.

## References

ADBI (2020), *State-Owned Enterprise Reform in Viet Nam: Progress and Challenges*, [1]  
<https://www.adb.org/sites/default/files/publication/562061/adbi-wp1071.pdf>.

## Notes

<sup>1</sup> <https://business.gov.vn>

<sup>2</sup> Pursuant to Vietnamese Accounting Standards, Chapter 22: Disclosures in Financial Statements of Banks and Similar Financial Institutions (Issued in pursuance of the Minister of Finance Decision No. 12/2005/QD-BTC).





# 13 The responsibilities of the boards of state-owned enterprises

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This chapter reviews the responsibilities of the boards of SOEs, against the Chapter VII of the SOE Guidelines. It examines SOE board appointment and nomination framework and also looks at to what extent SOE boards are empowered to exercise objective and independent judgment in the best interest of the company.

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## Overarching recommendation from the SOE Guidelines

The boards of SOEs should have the necessary authority, competencies and objectivity to carry out their functions of strategic guidance and monitoring of management. They should act with integrity and be held accountable for their actions.

### 13.1. Board mandate and responsibility for enterprise performance

*A. The boards of SOEs should be assigned a clear mandate and ultimate responsibility for the enterprise's performance. The role of SOE boards should be clearly defined in legislation, preferably according to company law. The board should be fully accountable to the owners, act in the best interest of the enterprise and treat all shareholders equitably*

The mandate of SOE boards differs by the type of SOE – whether wholly-owned, in which case opting for a Board of Members (BoM) or partially-owned, in which case having a Board of Directors (BoD). The tasks, responsibilities and powers of both the BoM (also referred to as the “members council”) and BoD are prescribed in the Law on Enterprises.

The BoM (or President, where single-member LLCs opt for no BoM) “shall be vested with the right to manage and control the enterprise in accordance with laws and decisions made by the owner’s representative agency”. The Law enable the BoM/President to “grant their decisions after obtaining the consent from the owner’s representative agency on, *inter alia*, the appointment re-appointment, dismissal, commendation, reward [and] penalties of the General Director or Director (CEO)”. They must request from the state (Prime Minister or ownership entity) to decide on these aspects for the Chair and other BoM members. They can decide without the state’s approval on the remuneration of the CEO and deputies, and the appointment and dismissal of CEO deputies. It also makes the BoM legally responsible for any violation causing any loss on or damage to the capital and assets of the enterprise (Art. 44). Additional responsibilities of the BoM of single-member LLCs are provided in Table 13.1.

On paper, the law assigns the BoM, and the BoD in the case of JSCs, a clear mandate and the right to manage and control the enterprise. In practice, the need to request state approval for key decisions ends up taking intended authority away from the BoM and renders the decision-making process inefficient.

The BoM is comprised of representatives of state capital. While formally, they are not considered civil or public servants, suggesting a degree of separation between the owner and the business activities of the company, the board is in fact comprised in its entirety of state representatives or former employees of the organisation. Each SOE applies different procedures for sign-off project or investment plans, with the CEO and BoM deciding whether it can be managed within the company.

It is often the case that representatives of state capital on the BoM decide to raise sign-off to the level of the CMSC, who in turn most often opts to share the decision with other ministries – namely MPI and MOF. Indeed, in many countries large decisions on an SOE can be overseen by the state owner, but the flexibility and ad-hoc nature of allowing BoMs to decide raises questions about consistency of governance practices and room for state representative to influence business operations in their role as state representative as opposed to what is in the best interest of the firm.

While the common practice not only adds layers of bureaucracy to decision-making within the company, it also signals a lack of clear division of responsibilities between the CEO and their management team with the BOM and, in turn, between the company and the state owner. It also signals a high degree of discretion within each SOE and board as to the application of responsibilities, not to mention integral controls.

For partially-owned joint stock SOEs, the responsibilities are clearer. These SOEs seem to report, in practice, to the annual shareholder meeting. However, the mission team still has concerns about the autonomy of BoDs and SOE operational governance, given the blurred lines and channels of reporting between representatives of state capital on boards and the state owner. The table below provide an overview of the responsibilities of both BoMs and BoDs.

There is no formal concept of “shadow directors” in Viet Nam. The Enterprise Law (Clause 4, Article 56) elaborates the process for temporary appointment when the Chair of the board is incapacitated or otherwise unable to fulfil their function. This role is usually filled by the CEO/General Director. An individual of the BoM is mandated to convene a meeting to elect one of the existing members of the BoM to temporarily act as a Chair, subsequent to agreement by the other members. This remains “until there is a new decision taken by the [BoM]”. Such stipulations should also be reflected in the company charter. As far as could be discerned, there is no predetermined period of time or limit on the acting Chair. The law does not provide procedures for non-Chair members of the board.

Table 13.1. Obligations of Boards of Members (LLCs) and Boards of Directors (JSCs)

Board of Members		Board of Directors
Wholly-owned SOEs (single-member LLC)	Majority-owned SOEs (multiple-member LLC)	Majority-owned SOEs (JSC)
<p>a) Decide the matters prescribed in the Law on Management and use of State Investment in Enterprises;</p> <p>b) Decide establishment, reorganisation, dissolution of the company's branches, representative offices and dependent units;</p> <p>c) Decide the company's annual business plan, policies on market development, marketing and technology;</p> <p>d) Organise internal audits and decide establishment of the company's internal audit unit;</p> <p>dd) Other rights and obligations prescribed by the company's charter, the LOE and relevant laws.</p>	<p>a) Decide the company's annual business plan and development strategy;</p> <p>b) Decide increase or decrease in charter capital, time and method for raising more capital; issuance of bonds;</p> <p>c) Decide investments in the company's development projects; solutions for market development, marketing and technology transfer;</p> <p>d) Approve contracts for borrowing, lending, sale of assets and other contracts prescribed by the company's charter whose value are at least 50% of the total assets written in the latest financial statement (or a smaller ratio or value specified in the company's charter);</p> <p>dd) Elect, dismiss the President of the Board of Members; designate, dismiss, sign and terminate contracts with the Director/General Director, chief accountant, controllers and other executives specified in the company's charter;</p> <p>e) Decide the salaries, remunerations, bonuses and other benefits of the President of the Board of Members, Director/General Director, chief accountant, controllers and other executives specified in the company's charter;</p> <p>g) Ratify annual financial statements, plans for use and distribution of profits or settlement of losses;</p> <p>h) Decide the company's organisational structure;</p> <p>i) Decide establishment of subsidiary companies, branches and representative offices;</p> <p>k) Revise the company's charter;</p> <p>l) Decide reorganisation of the company;</p> <p>m) Decide dissolution or file bankruptcy of the company;</p> <p>n) Other rights and obligations prescribed by Law and the company's charter.</p>	<p>a) Decide the company's medium-term development strategies and annual business plans;</p> <p>b) Propose the types of authorised shares and quantity of each type;</p> <p>c) Decide sale of certain types of unsold authorised shares; decide other methods of raising capital;</p> <p>d) Decide selling prices for the company's shares and bonds;</p> <p>dd) Decide repurchase of shares as prescribed in Clause 1 and Clause 2 Article 133 of the LOE;</p> <p>e) Decide the investment plan and investment projects within its jurisdictions and limitations prescribed by law;</p> <p>g) Decide solutions for market development, marketing and technology;</p> <p>h) Approve sale contracts, purchase contracts, borrowing contracts, lending contracts, other contracts and transactions that are worth at least 35% of the total assets written in the latest financial statement, unless another ratio or value is specified in the company's charter; contracts and transactions within the jurisdiction of the GMS as prescribed in Point d Clause 2 Article 138, Clause 1 and Clause 3 Article 167 of the LOE.</p> <p>i) Elect, dismiss the President of the Board of Directors; designate, dismiss, enter into and terminate contracts with the Director/General Director and other key executives specified in the company's charter; decide salaries, remunerations, bonuses and other benefits of these executives; designate authorised representatives to participate in the Board of Members or GMS of another company; decide their remunerations and other benefits;</p> <p>k) Supervise the Director/General Director and other executives managing the company's everyday business;</p> <p>l) Decide the company's organisational structure, rules and regulations; establishment of subsidiary companies, branches and representative offices; contribution of capital to and purchase of shares of other enterprises;</p> <p>m) Approve the agenda and documents of the GMS; convene the GMS or carry out surveys for the GMS to ratify its resolutions;</p> <p>n) Submit annual financial statements to the GMS;</p> <p>o) Propose the dividends; decide the time and procedures for paying dividends or settling business losses;</p> <p>p) Propose reorganisation or dissolution of the bankruptcy; file bankruptcy of the company;</p> <p>q) Other rights and obligations prescribed by Law and the company's charter.</p>

Source: Law on Enterprises.

Evaluations of BoMs are typically top-down – that is, driven by the competent ministry that is responsible for the nomination of the board. In the words of one Vietnamese stakeholder, “whoever nominates has to evaluate”. However, the agency bases the assessment in part on a self-evaluation done by the board in accordance with Decree 159. The mission team understands that board evaluations are pro-forma or, in other words, not leading to meaningful evaluation. The mission team suspects that this could be, in part,

because BoM members know that this informs the competent ministry's assessment that is used in turn to set remuneration for the following year.

## 13.2. Setting strategy and supervising management

*B. SOE boards should effectively carry out their functions of setting strategy and supervising management, based on broad mandates and objectives set by the government. They should have the power to appoint and remove the CEO. They should set executive remuneration levels that are in the long-term interest of the enterprise*

The overall challenge for governance of SOEs would appear to lie in the fact that the legislation is currently established in a way that affords the state, at least in the case of wholly-owned SOEs, ultimate decision-making power about board composition and representation. Various representatives of the state together manage the pool of candidates, modify within reason the criteria required for each position, assess fulfilment with the criteria, nominate board members in consultation with management of the company and eventually appoint (sometimes done by the Prime Minister). Moreover, while civil servants were banned through the 2015 legislation from serving on boards – both BoMs and BoDs – the state still appoints “group representatives of the state capital” to the board.

Vietnamese authorities suggest that state owners exercise their rights, responsibilities and obligations in compliance with the provisions of law, including the Law on Enterprises, the Law on management and use of state capital invested in production and business in Vietnam. Individual company charters are also meant to afford SOEs business autonomy and ‘self-responsibility’, suggesting that the state owner is responsible for strictly complying with the provisions of company charters. Multiple stakeholders reiterated that interference in the business activities of SOEs would be considered illegal.

There does seem to be a process for escalating decision-making from CEO to the BoM or BoD, to the CMSC (and other ministries) depending on the nature of the decision. However, as was mentioned above, the thresholds or indicators for when decisions need to be taken at which level is not made clear in legislation, though it may be found more clearly in a company charter. It can be different depending on the company. It appears that representatives of state capital, certainly on BoMs and potentially BoDs, exercise considerable influence in the operational decisions of the company, keeping close contact with their entity of origin (whether CMSC or SCIC).

BoMs in wholly owned companies are, in theory, overseen by Boards of Controllers (BoC). In reality, while the BOC is assigned equal authority to the BoM, the BoC cannot wield any authority over the BoM. A more effective ‘check and balance’ on both the BoM and executive management is the “Party Organisations” or representatives of the Communist Party that sit within each SOE. Usually, the Party Organisation is represented in leadership positions – CEO and/or the Chair of the board – but not only. They act independently within the company and can be quite effective in holding management and Boards accountable, notably around corruption or related irregularities, which are a big focus of the Communist Party.

While the activities of the Party Organisation, the SAV, and the inspectorate are said to be effective in holding SOEs accountable, the mission team remains sceptical that they are held accountable for decisions that are in the good of the company only, as it would appear that decisions of BoMs in wholly owned firms are in fact expected, in addition or instead, to be in the good of the state.

In the case of joint-stock SOEs, the BoDs are entitled to recruit and enter into a labour contract with their CEO, subject to the approval of the state owner. CEOs of wholly-owned SOEs are, according to the law, appointed by the BoM subject to approval or following the request of the owner's representative agency (the competent ministry). In practice it may be reversed – that is, the proposals and nominations are initially made by the competent ministry based on the pool of candidates, and BoMs are consulted. In the case of

company groups, the Chair and CEO/General Director positions are considered to be “high-level personnel” and thus subject to appointment by the Prime Minister, regardless of whether the company group is at the central or provincial level. In both LLCs and JSCs, it appears that the BoM and BoD contribute to the annual evaluations of the CEO – the results for which are then communicated to the Party Committee of the company and to competent authorities upon request. They factor into the BoM’s considerations regarding re-appointments, pay raises and rewards of the executive management.

Personnel matters of SOEs are overseen by competent ministries. Guidelines on personnel management are set by the MOHA, which provides an advisor role for competent ministries about the legislation and on specific personnel issues. The mission team has the impression that together, the MOHA and competent ministry, takes on a lead role in overseeing SOE management, notably in wholly-owned SOEs.

Despite a role in overseeing management, the state is highly influential in the same, not least owing to the fact that the state and Party represents the majority of boards (100% owned by state). The OECD learned that Ministries can and do consult CEOs directly without having to go through the BoM, including for their input on drafting legislation, which raises concerns about both SOE leadership acting in the best interest of the firm as well as the state adequately separating its regulatory and ownership functions.

### 13.3. Board composition and exercise of objective and independent judgment

*C. SOE board composition should allow the exercise of objective and independent judgment. All board members, including any public officials, should be nominated based on qualifications and have equivalent legal responsibilities*

The legislation sets parameters on the composition of either type of board through a minimum and maximum of allowable members on boards: a maximum of seven for wholly-owned LLCs; between three and seven for partially-owned LLCs, and; between three and 11 for partially-owned SOEs in the form of JSCs.

There are no requirements in the legislation for the composition of LLCs (single and multi-member). In public companies, at least one-third of the BoD should be non-executive. The composition for LLCs is dictated by the criteria set at the central level and tailored by the competent ministry to individual positions and companies. It appears that BoMs of wholly owned SOEs are comprised either of “representatives of state capital”<sup>1</sup> – being representatives of either CMSC or of SCIC – or Party officials, and former employees of the company.

Moreover, in unlisted public companies and listed public companies without a BoC (instead, opting to establish an audit committee), at least 20% of the members of the BoD should be independent members. It was not possible to verify adherence to this requirement by assessing SOE websites. The Corporate Governance Code for listed companies goes further to encourage listed companies (including SOEs) to meet a minimum of one-third independent board members.

It appears that representatives of state capital come from CMSC or SCIC and are not deemed civil servants or public officials, thereby permitting their membership on boards without conflicting with the otherwise seemingly good-practice policy of not having ‘civil servants’ on boards. Party members also serve on Boards, for instance as in 100% owned PVN. It has a total of seven board members, including: Chair (cum Secretary of the Party Committee of the National Oil and Gas Group); Member (cum Deputy Secretary of the Party Committee); CEO/General Director of PVN; five full-time members.

The BoM may also have company-internal staff that have been put through a career pipeline, as described below. In this case, it appears that employees then lose their status as employee of the company and become full time members of the board. It is considered a promotion. BoMs can accept external candidates, but this appears to be a second-best option, occurring usually when no decent internal candidates are present or when the company is in dire financial trouble. The mission team understands

that there are currently no independent external board members – that is, external to the company or to the state. The lack of details on this subject reflects the difficulty in accessing information about board composition and a general lack of transparency about SOE boards. Where information about boards is available online, the mission team sees a heavy predominance of male board members in Vietnamese SOEs.

For JSCs, whether listed or unlisted, the BoD should have between three and 11 members on five-year terms. In unlisted JSCs, the BoD is comprised of the Chair, and employee or state representatives and may have a Deputy Chair in larger companies (as is the case for instance with SCIC). In listed SOEs, at least one-third of the BoD should be non-executive members. Moreover, in unlisted public companies and listed public companies without a BoC (instead, having an audit committee), at least 20% of the members of the BoD shall be independent members. The Corporate Governance Code for listed companies goes further to encourage listed companies (including SOEs) to meet a minimum of one-third independent board members. Independent board members can only be elected up to two continuous terms.

Table 13.2 provides an overview of the information found on the websites of ten large SOE websites about the Board, demonstrating that SOEs provide very little information about their boards on their websites – particularly but not only those of SOEs 100% owned by the state – that indicates non-compliance with the disclosure requirements mentioned here and outlined in Section 12.1. Based on the information provided on company websites, it could be verified only for Vietnam Dairy that its Board of Directors adheres to the good practice established in the Corporate Governance Code of having 30% independent members (including those that sit on the Audit Committee), with the rest being comprised of non-executive members (40%) and executive members (30%). It is not to say that the other listed firms do not adhere, but the information is not available on their websites. Vietnam Dairy's Board of Directors has foreign representation – which was not explicit but was verifiable for Vietcombank, Saigon Beer-Alcohol-Beverage Corporation and Vietnam Airlines (all listed).

**Table 13.2. Board-related disclosures in ten large SOEs**

Tabulated from websites of 10 large SOEs (6 of the top 10 largest listed SOEs, 1 listed, and 3 wholly-owned by the state)

	Board of Directors (JSC) /Members (LLC)	Management	BoC	Names	Photos	Information on appointments	Information on roles in other companies	Background information on individual	Independent representation explicit?
<b>Top 10 large, listed SOE</b>									
Commercial Bank for foreign trade of VN JSC – Vietcombank	x	x	x	x	x			x	
PetroVietnam Gas JSC (Pvgas)	x	x	x	x				x	
Viet Nam Dairy Products JSC	x	x		x	x		x		x
Bank for Investment and Development of Viet Nam JSC (BIDV)	x	x	x	x	x			x	x

	Board of Directors (JSC) /Members (LLC)	Management	BoC	Names	Photos	Information on appointments	Information on roles in other companies	Background information on individual	Independent representation explicit?
Vietnam Rubber Group	x	x		x	x				
Saigon Beer-Alcohol-Beverage Corporation	x	x	x	x	x				
<b>Listed</b>									
Vietnam Airlines	x	x	x	x				x	
<b>100% owned by State</b>									
State Capital Investment Corporation (SCIC)		x	x	x	x	x		x	
Petrovietnam (PVN)		x	x	x	x				
Vietnam Electricity (EVN)		x		x	x				

Source: Author research from SOE websites.

As discussed in previous chapters, the state owner is not only responsible for nominating board members of single-member wholly owned SOEs, but also the appointing, reprimanding, awarding, dismissing and sanctioning them. The state moreover appoints the CEO and the Controllers. The Prime Minister appoints the Chair of the board for economic group. For instance, Members of BoM of EVN (a wholly owned economic group) are appointed by the owner's representative agency (CMSC). The Chair of EVN's board is appointed by the Prime Minister per CMSC's request, following a review by MOHA given their role in managing high-level positions of the state. Similarly, the Chair of the BoM of VNR is nominated by the CMSC to the Prime Minister for appointment, re-appointment, dismissal, commendation and discipline in accordance with law. Other members of its board are appointed, re-appointed, dismissed, rewarded and disciplined by CMSC.

State authorities propose a list of nominees to the SOE board, which then deliberates prior to accepting or rejecting the nomination. If a potential applicant is accepted by the board, this acceptance will be shared with the state authority after which the appointment will be made. There are regulations that guide the nomination process that include nomination criteria, the preparation process and the official appointment procedure (Decrees 97/2015/NĐ-CP, Decree 106/2015/NĐ-CP). All potential applicants must follow this process.

Nominations are meant to be guided by the general criteria for appointments that are found in Decree No. 159/2020/ND-CP dated 31 December 2020, of the Government on management of title holders, positions and representatives of state capital in Vietnam. The criteria are established at the central level (Decree 159), by MOHA in co-operation with CMSC and MPI and is applicable to all SOEs at the central and provincial levels. They should be translated into company charters. Competent ministries reserve the right to adjust criteria depending on the positions within the company, under the condition that they are not in conflict with the Decree 159 as established by the MOHA in co-ordination with CMSC. This suggest a degree of flexibility that is warranted for tailoring criteria to individual positions, sectors and expertise. Specifications may be laid out in the Company Charter, but the mission team understands that the criteria can be further tailored beyond what appears in the company Charter. Given the lack of transparency of

the process and lack of public posting of positions, it would be difficult to determine whether criteria were manipulated to favour one individual or group of individuals over another. In case of being a Party member, there are additional criteria and conditions according to the Party's regulations.

The state uses an elaborate process of preparing individuals through a career pipeline. The mission team understands this process applies largely to employees of companies, but it may also apply to those in the public sector demonstrating potential, in the eyes of the state or the Party, for promotion. Thus some, if not all, board appointments in wholly-owned SOEs are made based on a pool of candidates that have been sought out or recruited and prepared in advance of a potential appointment.

Individuals need to be subject to a “master plan” in order to be “promoted”. They are subject to evaluations on performance and can be planted in pool and subjected to training for promotion in the future. Such a promotional track gives rise to concern about the allegiance that individuals have to the process and the state for their career track, and its implications for their acting in the best interest of the firm. At the same time, the mission team was informed about the need for training of board members at least in wholly-owned firms.

Coupled with a commentary about room for improvement in the professionalism of BoMs, the mission team believes that there may be a current dearth of skills and expertise needed at the board level. This may be because other criteria is weighted differently – for instance, position within or loyalty to the Party. Viet Nam may wish to amend its criteria or process of applying criteria or look further afield for the candidate pool for those with relevant experience as well as knowledge – a mix of soft and hard skills needed – in order to professionalise BoMs.

In theory, if the SOE board refuses a nomination the candidate will not be appointed. However, the mission team was not informed of such a disagreement ever occurring. According to one SOE, it strictly assesses the nomination documents for positions in the BoM and management team, to ensure compliance with the system of regulations – that is, regulations of both the Party and the State on personnel issues/work. More often however, it would appear that SOEs accept the state's nominations, particularly considering that many come from the pre-determined pool of candidates.

It is worth noting that the mission team was informed of the intentions to establish new guidelines on nominations processes. In the perspective of one stakeholder, the idea is for SOEs to be able to attract higher quality candidates into the SOE governance structure to improve performance and operations. They suggested that at the moment this cannot be achieved for many reasons, not least that nomination processes “are burdensome and very complicated”. Beyond this, interviewed ministries were not able (or willing) to elaborate on what that would look like and what the changes would be.

As mentioned, the Vietnamese legislation disqualifies civil servants and public officials from serving on boards. Prior to 2015, this was common practice to have representatives of various ministries present on boards. Currently, the state is represented on boards through “representatives of state capital” that come from CMSC or SCIC and potentially others, where their employees are not considered public officials or civil servants. Thus, while the legislation suggests, on paper, absence of state presence on boards, the state is very much present.

As mentioned, the rights and obligations of BoMs and BoDs is elaborated in the Enterprise Law, as well as Decree No 159/2020/ND-CP (on personnel) and company charters. The members of the board of directors and the management of SOEs must take individual responsibilities for the damages caused to the SOEs due to their decisions and direction according to the extent of damages determined by the competent agency/individual after excluding objective influencing factors (while in private companies, the owners or shareholders are affected by their own decisions). The determination of compensation and/or criminal liability of SOE leadership members is based on the will and behaviour (intentionally violating the regulations or neglect in management) as evaluated, determined, and concluded by the judicial authorities.



According to CIEM, there have been quite a few cases where BoM members were removed from their position, particularly in the context of the fight against corruption. Law 69 and Decree 159, elaborates on the cases where chair of board can be dismissed. In two consecutive years if they fail to fulfil, they will be dismissed (violation laws, corruption), and in reality, there have been many cases and members of board.

The mission team learned from one SOE about the concern that specialised board committees raises regarding the understanding of collective liability and individual responsibility of members of the BoD. More importantly, this perception suggests that the default culture of a unitary direction of a board – without dissenting opinion or with diversified tasks – could be considered to pose an issue for the efficacy of the boards. Otherwise, clarification on responsibilities of specialised committees, and their implications for the collective liability and responsibility of the rest of the board, could be important for mitigating resistance to the good practice of having strong board committees that can serve to improve the professionalism of boards.

### 13.4. Independent board members

*D. Independent board members, where applicable, should be free of any interests or relationships with the enterprise, its management, other major shareholders and the ownership entity that could jeopardise their exercise of objective judgment*

As mentioned, there exist very few written requirements regarding the ideal composition of boards of wholly-owned SOEs. While it appears that the law theoretically allows the state to add independent members to its pool of candidates, the mission team understands that there are no externals (that is, external from the company and from the state) sitting on boards of wholly-owned companies.

The Enterprise Law establishes that board members must not be a current employee of the company or its subsidiaries, but the mission team has learned that many board appointments in wholly-owned companies come from within. Presumably, once an individual is promoted from within, they lose their status as an employee of the company. While the law technically prohibits civil servants and other public officials from sitting on boards, but the state is represented instead by “group of representatives of the state capital”, which the OECD would indeed consider as state officials.

In public companies, as was mentioned, at least one-third of the BoD should be non-executive members. Moreover, in unlisted public companies and listed public companies without a BoC (instead, having an audit committee), at least 20% of the members of the BoD shall be independent members. The Corporate Governance Code for listed companies goes further to encourage listed companies (including SOEs) to meet a minimum of one-third independent board members. Independent board members can only be elected up to two continuous terms.

### 13.5. Mechanisms to prevent conflicts of interest

*E. Mechanisms should be implemented to avoid conflicts of interest preventing board members from objectively carrying out their board duties and to limit political interference in board processes*

The 2018 Law on Anti-Corruption of Vietnam provides an official legal definition of a conflict of interest, according to which: “Conflict of interest is a situation in which the interests of a person holding a position of authority or authority their relatives affect or will improperly influence the performance of their duties or public duties” (Clause 8 Article 3). Persons holding “a position of authority” include representative of the state capital share in the enterprise, and persons holding managerial titles or positions in enterprises or organisations, along with civil servants, soldiers and defence workers, among others.

The Law outlines what constitutes cases of conflicts of interest (Article 29). These include when an aforementioned person of authority is determined to have a conflict of interest following clear signs that such person belongs to or will fall into one of the following cases:

- Receive money, property or other benefits from agencies, organisations, units and individuals related to the work they handle or under their management
- Establish and participate in the management and administration of private enterprises, limited liability companies, joint-stock companies, partnerships and co-operatives, unless otherwise provided for by law
- Advising other domestic and foreign enterprises, organisations and individuals on jobs related to state secrets, work secrets or jobs falling within their competence or participating in settlement
- Using information obtained through their positions and powers for personal gain or to serve the interests of other organisations or individuals
- Arrange their spouse, father, mother, child, brother, sister or younger brother to hold the position of manager in personnel organisation, accounting, treasurer, storekeeper in the agency, organisation or application. position or transact, purchase and sell goods and services, sign contracts for agencies, organisations or units of which he is the head or the deputy of the head
- Contributing capital to enterprises operating within the lines of business that they directly perform the state management of or letting their spouses, parents and children do business within the lines of business directly performed by them. performing the state management
- Sign contracts with enterprises owned by spouses, fathers, mothers, children, brothers, sisters, or to have enterprises owned by spouses, fathers, mothers, children, brothers and sisters, younger siblings participate in bidding packages of their agencies, organisations or units when assigned to perform transactions, purchase and sell goods and services, sign contracts for that agency, organisation or unit
- Having a spouse, father, mother, child, brother, sister or younger brother who has rights and interests directly related to the performance of his or her duties and public duties
- Interfering with or improperly influencing the activities of competent agencies, organisations, units and individuals for self-seeking purposes”.

The monitoring mechanisms and approaches to managing conflict of interest differ depending on the company form or the individual position. The MOHA asserts that “target personnel” (for instance, board chair and CEO) are subject to the aforementioned anti-corruption regulations that make prescriptions on asset declaration and management both before appointments are made and throughout incumbency. In the case of joint-stock SOEs, a monitoring mechanism should be established as follows:

- Declare all existing or potential conflicts of interest before engaging in a transaction, activity, or relationship which leads to reporting requirements.
- Declare existing or potential conflicts of interest during recruitment.
- Require all employees of the enterprise who frequently engage in contracts regarding sales, services, raw materials, assets, or products to declare any existing or potential conflict of interest on an annual basis.
- Refrain from joining the BOD of any customer, supplier, or competitor.
- Consult the compliance team on how to address a conflict of interest instead of relying on their own interpretations, which may be inconsistent case by case.

A further mechanism to manage conflict of interest is the disclosure of related benefits, required for partially-owned joint-stock companies is covered in Box 13.1. This mechanism however is not required of single or multi-member LLCs. It appears, notably based on the challenges raised to autonomy of internal

audit and of the board, that Vietnamese SOEs in the form of LLCs would benefit from more comprehensive requirements on managing conflict of interest.

### Box 13.1. Disclosure of related benefits for SOEs in the form of joint-stock companies

Per Article 164 of the 2020 Law on Enterprises: Disclosure of related benefits.

Unless more stringent requirements are prescribed by the Company's Charter, the company's related benefits and persons shall be disclosed as follows:

1. The company shall compile and update a list of its related persons in accordance with Clause 23, Article 4 of this Law, their contracts, and transactions with the company.
2. Board members, Controllers, Director or CEO, and other managers of the company shall declare their related interests, including the following information:
  - a) Names, enterprise identification numbers, headquarters addresses, and business lines of the enterprises they own or have shares/stakes in; the ratio and time of owning or holding the shares/stakes
  - b) Names, enterprise identification numbers, headquarters addresses, and business lines of the enterprises their related persons own, jointly own, or have separate shares/stakes that are worth more than 10% of the charter capital.
3. The information specified in Clause 2 of this Article shall be declared within seven working days from the day on which the related interests are brought about; any amendment or supplement shall be notified to the company within seven working days from its date of occurrence.
4. The list of related persons and interests mentioned in Clauses 1 and 2 of this Article shall be archived, disclosed, reviewed, extracted, and copied as follows:
  - a) The company shall announce the list of related persons and interests at the annual GMS.
  - b) The list shall be archived at the company's headquarters; the list may be archived in part or in full at the company's branches where necessary.
  - c) Shareholders, their authorised representatives, members of the BOD, BOC, the Director or CEO, and other managers shall reserve the right to review, extract, and make copies of the list in part or in full.
  - d) The company shall enable the persons specified in Point c of this Clause to access, review, extract, and make copies of the list and must not obstruct them in the process. Procedures for reviewing, extracting, and copying the list shall be specified in the Company's Charter.
5. When members of the BOD, the Director or CEO do business within the company's business lines in their own names or others', they shall explain the nature and contents of such business to the BOD and BOC and may only proceed if it is accepted by the majority of the remaining members of the BOD. Otherwise, all incomes from such business shall go to the company.

Such regulations should be combined with requirements for fulfilment of responsibilities by management and board members that are detailed in legislation (Law on Enterprises, and Decree 159/2020/ND-CP) as well as company charters. For instance, EVN's Charter prescribes obligations of the Members' Council of EVN, including regulations against abusing one's position and power to use EVN's capital and assets for personal gains or other people's gains.

The Law assigns the line manager the responsibility of supervising the performance of the duties and public official duties of an individual, when there are grounds to believe that a person has a conflict of interest that does not guarantee the correctness, objectivity and honesty in the performance of tasks and

official duties. They do so by monitoring performance among other things. When it comes to monitoring the conflict of interest of board members, the accountability is less clear.

According to the state audit office (SAV), Vietnamese legislation on conflict of interest, notably the Anti-Corruption Law, is clear in terms of publicising, inviting and determining who is in charge of managing individuals when conflicts are detected, the need to report, how to invite a review and when sanctions are called for.

The SAV reiterated the difficulty of detecting conflict of interest. It informed the mission team that there have been cases of conflict of interest that arose in the course of an audit, for instance, when it detected that a CEO signed a contract with an enterprise to which it had family relations. The SAV asked the person in charge to deal with the situation, revisit the contract to ensure and confirm the conflict, and to suspend the contract. They described this as an irregular event. A key part of conflict of interest management is the ability to effectively manage and address conflicts, while being transparent about the ramifications. It appears that line managers or other individuals responsible for their colleague in conflict have substantial discretion in dealing with the conflict. It is unclear how those in charge are themselves accountable for accurate dealing with conflict of interest situations in their company or on the board.

The potential for conflict of interest writ large as regards the state's role as an economic actor raises concerns about their presence on boards. The exclusion of civil servants and public officials from line ministries may help to address this issue, but the fact remains that the state is represented through the CMSC and/or the SCIC. Indeed, for wholly-owned SOEs, the "Members Council [BoM] is the direct representative of the owner".

Legislation regarding conflict of interest in Vietnamese SOEs focuses on the conflicts of individuals, and notably on conflicts they have related to their kin, at least for wholly-owned SOEs. It does not refer to the conflict of interest that a representative of the state might bring in prioritising interests of the state over the company. In other words, the concept of conflict of interest does not apply to the conflict that can arise between the regulatory and business management functions of government more broadly. In this regard, the OECD and other international observers such as the World Bank have in the past pointed to problems related to conflict of interest specifically with regards to the state's role as owner of SOEs and as policy makers. Stakeholders have pointed to actual and perceived conflicts of interest as an impediment to investment by private entities thereby reinforcing the dominance of SOEs in the market (OECD, 2018<sup>[1]</sup>). Perceptions of conflict of interest can be damaging, and the lack of separation between state functions appears to remain a complicating factor for investment in Vietnamese SOEs.

## 13.6. Role and responsibilities of the Chair

*F. The Chair should assume responsibilities for boardroom efficiency, and when necessary, in co-ordination with other board members, act as the liaison for communications with the state ownership entity. Good practice calls for the Chair to be separate from the CEO*

The term of office of the Chair (and other members of the BoM) shall not exceed five years. According to the Enterprise Law, the Chair of the BoM of a one-member LLC cannot concurrently act as the Director and the CEO (Art. 93). Likewise, it also prohibits the Chair of a publicly traded BoD or an enterprise where the State holds over 50% of charter capital or voting shares cannot act as the CEO (Art. 156). Indeed, as provided by Mobiphone (100% state-owned), "the Members' Council Chairperson cannot hold the position of General Director at the same time as prescribed in Decree No. 159/2020/ND-CP". The Party members may fill the position of Chair and in addition of CEO, with each SOE having a "Party Organisation", "Cell" or "committee" that can be represented in other or additional functions within the SOE. While aligned with good practice, keeping the positions separate may have the added benefit for the Party insofar as it can

allow for multiple Party members or state representatives to fill important and influential posts in SOEs at one time.

In wholly-owned SOEs the representative of state capital at the enterprise level is the point of contact between the ownership entity and the BOD. This could be the BoM Chair, given that the position is often filled by the representative of state capital (and/or a Party member). In the case of company groups, the Chair and CEO positions are considered to be “high-level personnel” and thus subject to appointment by the Prime Minister. Thus, while the Chair should assume responsibilities for boardroom efficiency and act as a liaison with the state ownership entity, it appears that this will depend in practice on who is filling the position of Chair at a given time in a given SOE.

### 13.7. Employee representation

*G. If employee representation on the board is mandated, mechanisms should be developed to guarantee that this representation is exercised effectively and contributes to the enhancement of the board skills, information and independence*

Employee representation on boards, for both wholly-owned and partly-owned SOEs is not mandated. In practice, employee representatives do not hold positions within boards. As mentioned, it is common that BoMs are comprised of individuals that worked previously within the company, but member positions are not reserved for employees as is seen elsewhere. These individuals, as part of the pool of candidates viable for eventual board positions, apparently will have received training as part of the career path. In the case of JSCs, employee representatives may become members of the BoD if they are voted in as part of the shareholder’s meeting. If BoD members cannot attend meetings themselves, they can authorise someone else to attend on their behalf to speak, but it is unclear whether employees are allowed. Such representation is prescribed in Articles 138, 141, and 142 of the Civil Code.

### 13.8. Board committees

*H. SOE boards should consider setting up specialised committees, composed of independent and qualified members, to support the full board in performing its functions, particularly in respect to audit, risk management and remuneration. The establishment of specialised committees should improve boardroom efficiency and should not detract from the responsibility of the full board*

Specialised board committees are not required for limited liability SOEs (understood to be the case for both single or multi-member). Joint-stock SOEs can either opt for the establishment of a Board of Control or an Audit Committee – the latter of which tracks closely in terms of function as an audit committee outlined in international standards (Box 13.2)

### Box 13.2. Audit Committees of select joint-stock SOEs

#### The following applies to joint-stock SOEs that opt to establish an Audit Committee (as opposed to having a Board of Controllers)

An Auditing Committee shall comprise two or more members. The Chairperson of the Auditing Committee must be an independent board member. Other members of the Auditing Committee must be non-executive board members.

The Auditing Committee shall ratify resolutions, make decisions by voting at the meeting, and collect inputs in writing or other forms prescribed by the Company's Charter or its operating regulation. Each member of the Auditing Committee shall be entitled to one vote. Unless a higher ratio is prescribed by the Company's Charter or the operating regulation of the Auditing Committee, the decision of the Auditing Committee shall be ratified if it is approved by the majority of the attending members. In case of a tie in the number of votes, the one that the Chairperson of the Auditing Committee sides with will prevail.

The Auditing Committee has the following rights and obligations:

- a) Inspect the accuracy of the company's financial statements and make official announcements about the company's finance
- b) Review the internal control and risk management system
- c) Review transactions with related persons subject to the approval by the BOD or the GMS; offer recommendations on these transactions
- d) Supervise the company's internal auditing unit
- e) dd) Propose independent auditing company, payment, and terms in the contract with the auditing company to the BOD before it is submitted to the annual GMS for approval
- f) Monitor and evaluate the independence and objectivity of the auditing company and effectiveness of the audit, especially when the company uses non-audit services of the auditing company
- g) Supervise the company's compliance with law, requests of the authorities, and other internal regulations of the company.

Source: Law on Enterprises.

The BoD (of JSCs) may establish its subcommittees to take charge of development, human resources, remuneration, internal audit, and risk management policies. The number of members per subcommittee is determined by the BOD to consist at least three members including BOD members and external members. Independent BOD members or non-executive BOD members should constitute the majority of subcommittee members, one of whom should be appointed as the chair of the subcommittee per Decisions made by the BOD. The operations of the subcommittees must adhere to the regulations prescribed by the BOD. The resolutions of the subcommittees shall only be effective should the majority of their members attend and cast their votes at the subcommittee meetings. The establishment and operation of BOD subcommittees are prescribed in International Regulations on corporate governance of a publicly traded enterprise.

As mentioned previously, one joint stock SOE raised concern that the presence of specialised committees actually creates confusion around the collective liability of the board and of individual responsibilities of board members. Though beyond the scope of this review, this could be reflected upon in order to ensure that specialised board committees can be leveraged to improve the capacity of the board and the quality

of board decision-making. The market should be provided with a complete and clear picture of their objectives, tasks, and composition. The mission team was informed that such information is especially important in cases where the BoD opts to establish the Audit Committee. Other committees under the BOD often include the nomination committee and the remuneration committee. The responsibilities of other BOD members and the BOD as a whole should be specified as well.

In LLCs, there are multiple units or departments that support the functioning of the BoM. Some SOEs refer to these as Board committees, but these are not the same as specialised board committees established by international standards, as they are comprised of individuals that are under the management of the General Director or other member of executive management. The most common supporting department is the “Inspection and Audit Committee” (or similarly called). Companies may establish others on a needs-basis, as Viet Nam Airlines has done for its committee for strategies and for human resources or the EVN has done with its General Affairs Department and Development Strategy Department. As these are not specialised board committees, their working procedures are not defined nor disclosed.

### 13.9. Annual performance evaluation

*1. SOE boards should, under the Chair’s oversight, carry out an annual, well-structured evaluation to appraise their performance and efficiency*

Limited liability companies may conduct self-evaluations on what appears to be a voluntary basis. Indeed, certain SOEs confirmed that they conduct a self-evaluation on an annual basis, evaluating their performance and sending this to the line ministers that was responsible for their appointment (the line ministry). Line ministers consider and decide on the final result of evaluation. Line ministries uses self-evaluations, to the extent they are submitted, to prepare annual evaluations of individual SOE boards – as a whole as well as of members including the Chair – that informs considerations on remuneration, discipline, nomination and dismissal. Evaluations are said to be qualitative and mechanistic in nature but lacking in quantitative information according to CMSC. Moreover, evaluation of boards is a challenge insofar as boards’ self-evaluations are not systematic. The approach is VIMC and is detailed in Box 13.3.

### Box 13.3. Board evaluations in joint-stock companies: the case of VIMC

Vietnam National Shipping Lines rebranded in 2020 when it became a joint-stock company, known thereafter as Vietnam Maritime Corporation (VIMC). It evaluates both the executive board and board of Directors (BoD) proceeds on an annual basis. The VIMC BoD currently has three members, all of whom are male.

#### **The Board of Management (Executive Board) of VIMC is evaluated on an annual basis following the steps below:**

- Step 1: In preparation for the evaluation of Party members, at the end of the year, the Executive Board of VIMC has a meeting to discuss, provide inputs, and conduct a (temporary) evaluation on its members based on the estimated business performance in the year.
- Step 2: After the audited financial report is available, the Director General and Deputy Directors write their self-reflection on the performance achieved given the tasks assigned and rate themselves (based on the figures from the audited financial report and evaluation criteria prescribed in the Government's Decree No. 159/2020/ND-CP).
- Step 3: The Executive Board holds a discussion to provide inputs and propose the rating for each of its members. Afterwards, it submits a report on the discussion outcomes to the BOD of VIMC.
- Step 4: The BOD of VIMC: (i) evaluates the Director General and (ii) evaluates the Deputy Directors based on the inputs provided by the Director General.
- Step 5: The evaluation/rating results are documented and communicated with each member of the Executive Board and the Party Committee of VIMC as well as competent regulators (upon request). Such results provide the rationale for VIMC to consider its appointment, pay raise, and reward towards members of the Executive Board.

#### **The BOD of VIMC is evaluated on an annual basis following the steps below:**

- Step 1: In preparation for the evaluation of Party members, at the end of the year, the BOD of VIMC has a meeting to discuss, provide inputs, and conduct a (temporary) evaluation on its members based on the estimated business performance in the year.
- Step 2: After the audited financial report is available, BOD members write their self-reflection on the performance achieved given the tasks assigned and rate themselves (based on the figures from the audited financial report and evaluation criteria prescribed in the Government's Decree No. 159/2020/ND-CP).
- Step 3: VIMC reports the self-reflection results in writing to CMSC, which will then evaluate and rate each member of the BOD. The evaluation/rating results are documented and communicated with each BOD member and prove the rationale for VIMC to consider its appointment, pay raise, and reward towards BOD members.

Source: VIMC responses to the OECD questionnaire.

In practice, the mission team was informed during the fact-finding missions that in effect, there is very little accountability for board performance, particularly for LLCs compared to JSCs and private firms. Moreover, the predominance of representatives of state capital on boards could give rise to incentive for board members to underreport or for line ministries to avoid a high degree of scrutiny in assessing the board.

There are other mechanisms at play meant to ensure performance and efficiency of boards, namely the BoC, the Party Organisation within the company (which can manifest in the Chair and CEO positions), but



also internal audits and external audits by the SAV or third-party external auditors, as well as the government inspectorate. In reality, the BoC is not sufficiently placed in the hierarchy nor sufficiently independent to provide such oversight. As posited above, the BoC can be in practice subsumed to the BoM (its relationship to a JSC's BoD, where existing, is less clear) despite being assigned an equal authority in the Law and in company Charters. In effect, it is the Party Organisation that might be most effective in directly monitoring the behaviour and action of boards – particularly through Party members that are not fulfilling the Chair or CEO position (CEOs are most often members of the boards) and that are otherwise “somehow independent” within the company. However, as raised already in this chapter, the mission team is not confident that such monitoring also takes into account prioritisation of performance over other state-interested criteria for board decisions.

### 13.10. Internal audit

*J. SOEs should develop efficient internal audit procedures and establish an internal audit function that is monitored by and reports directly to the board and to the audit committee or the equivalent corporate organ*

As previously explained, parent companies that are wholly or majority-owned by the state are required to have in place an internal audit unit or function (as of 1 April 2021, two years after the issuance of Decree No. 05/2019/ND-CP). The Decree establishes roles and responsibilities of internal audit and related stakeholders. It has been recently supplemented with guidance to support compliance, issued by the Ministry of Finance. That includes guidance on sample internal audit regulations for corporate use (Circular No. 66/2020/TT-BTC) and the recently-issued Vietnamese Standards and Code of Ethics for Internal Auditing (Circular No. 08/2021/TT-BTC).

The law aims to provide assurance over the functioning of internal controls of an entity and assigns objectives, details on audit planning processes and requires establishment for qualifications of internal auditors, making much of the law appear to fall to be in line with international standards. Indeed, the mission team was informed that the law generally aims to support Vietnamese companies in aligning with international good practice in internal audit and enhancing corporate governance. This could prepare SOEs to better navigate a transition from Vietnamese accounting standards, currently applied, to IFRS in pursuit of the five-year roadmap that at least certain SOEs are working towards.

The Decree requires companies to decide whether internal audit would manifest as a function or department and to situate it in the organisational structure. Companies are meant to clearly define: (i) the roles and responsibilities between the BoM/BoD and BoC regarding internal audit; (ii) the reporting mechanism for internal audit to the BoM/BoD vs. the BoC; and (iii) the differences between the BoC and the internal audit function/department. The Decree provides the BoM and BoD with authority to establish rules for internal audit – including responsibilities and activities of internal audit. They should be established through company-specific internal audit regulations.

The Ministry of Finance provided an example of the way in which a BoM might situate the internal audit unit within the company:

- The internal audit department is established by an SOEs' Board of Directors (for JSCs)/Board of Members (for LLCs)/President (for certain one-member LLCs). The Board of Directors/Board of Members/President of the company directly manages the internal audit department (or through the Audit Committee (JSC) or body authorised by the Board of Directors/Board of members/President of the company).
- The person in charge of internal audit will report professional issues to the Board of Directors/Board of Members/President of the company (or through the Audit Committee / authorised body).

- The person in charge of internal audit will report daily administrative work (for example, notifying the audit schedule, travel problems, or business trip expenses) directly to the General Director/Director or person authorised by the General Director/Director.
- The person in charge of internal audit has the right to report and discuss directly with the Board of Directors/Board of Members/President of the company when necessary.
- The person in charge of internal audit will periodically report to the Board of Directors/Board of Members/President of the company (or through the Audit Committee or authorised body) regarding the purpose, authority and responsibility, as well as the performance of the internal audit department in relation to its plans. The report also includes significant risk and control issues, fraud risks, governance issues and other matters as necessary or as required by the Board of Directors and the Board of Directors/Board of Members/President (or the Audit Committee or authorised body).

A more concrete example comes from wholly-owned Electricity Company (EVN), the BoM issued regulations on internal audit, financial supervision and control prior to the issuance of the 2019 Decree (Decision No. 44/QD-EVN of February 2018). Internal auditors report to team leaders and the Head of the “Internal Audit and Financial Supervision Department” (presumed to be the same as the “Internal Control Board” discussed in 5.3). Audit results are first approved by designated “members of the BoM in charge of this [Internal Audit and Financial Supervision] Department before being submitted to the BoM. Moreover, Regulation 44 prescribes the reporting procedures for each stakeholder within EVN (internal auditors and controllers) and in its audit and supervisory system more broadly that includes companies under other corporate forms.

These approaches reflect certain elements of good international practice – namely insofar as the head of internal audit appears to report functionally to the BoD/BoM and administratively to executive management, but there are multiple concerns about the autonomy of internal audit and thus the ability for it to effectively carry out its role of assurance, as elaborated below:

- Many SOEs opt to have the internal auditor report to – and potentially sit as a member on – the Internal Control Board (see Chapter 5). This body “serves” the BoM, which gives the Internal Auditor access to the BoM. However, it also raises questions about the subservience of internal audit to the BoM/BoD and the autonomy it is afforded in practice. At least wholly-owned BoMs are comprised of state and Party officials, and often the CEO. One SOE said that its “internal auditing system was developed to enable the Members’ Council [BoM] to directly perform its role as the owner’s representative in the conservation and development of State capital and assist the General Director [CEO] and [executive] leaders in implementing specific goals of protecting its assets, thus ensuring information credibility, legal compliance, and operational performance”. The focus of this particular company is first and foremost on supporting the state’s conservation of capital, not supporting the company in the achievement of its objectives. While potentially subtle, it highlights the general impression the OECD has that the informal relationships between different control bodies hinders the autonomy of internal audit. Insofar as some JSCs, or certainly listed firms, have more diverse boards, internal audit reporting lines may be left more autonomous.
- The OECD was informed that, at least in certain cases for wholly-owned SOEs, CEOs have been known to hire and fire the internal auditor. This is directly in conflict with the good international practice of having such decisions be left to the board so as to protect the internal audit function from repercussions of auditing the management of the company.
- Each SOE currently has the discretion to establish rules to protect the autonomy of SOEs. This means that protections for internal auditors vary by company, or that they are even non-existent (as was suggested during an interview). On paper, the expectations for internal auditors are standard: they are responsible for complying with standards relating to individual objectivity, professional proficiency, professional prudence, and standards relating to the discharge of their job

responsibilities. The head of internal audit also has additional responsibility for the overall compliance of the audit activities in accordance with internal audit standards and must report directly to the highest level of management. However, in order for internal audit to be able to meet these standards in the execution of their functions, it is critical to have responsibilities clearly delineated and reporting lines that support autonomy – and these are called into question in Viet Nam (see also Section 12.3).

Moreover, the mission team has been informed that many SOEs still lack the capacity and resources to effectively implement the new legal provisions. In some cases, internal audit in large SOEs can serve as a narrower “cross checking” function of the accounting department despite a broad set of objectives. While some SOEs are permitted to outsource internal audit entirely, others seem to do so on an ad-hoc basis for certain audit subjects.

Where the internal audit function exists, auditors are allowed to maintain a “rapport” with independent external audit (Article 20). In the case of VIMC, it is the “Internal Auditing Board” (also known as the “Internal Control Board” referred to above) that works in consultation with the external auditors – whereas in many other countries this role would be reserved for the Audit Committee donning the appropriate Committee status. However, it appears that for most companies such engagement rarely happens in practice, and internal auditors’ engagement with external audit is limited to following the latter’s work during the execution of the annual audit of financial statements.

## References

OECD (2018), *OECD Investment Policy Reviews: Viet Nam 2018*, OECD Investment Policy Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/9789264282957-en>. [1]

## Notes

<sup>1</sup> Clause 6, Article 3 of Law No. 69/2014/QH13 dated 26 November 2014, of the National Assembly stipulates “.. 6. Representative of state capital invested in joint-stock companies, limited liability companies’ term of two or more members (hereinafter referred to as the representative of the state capital portion) who are individuals authorised in writing by the owner’s representative agency to exercise the rights and responsibilities of the state owner’s representative for the state capital invested in joint-stock companies or limited liability companies with two or more members”.



# 14 Conclusions and recommendations

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The Government of Viet Nam has made progress in recent years to improve its frameworks for the ownership and corporate governance of its state-owned enterprises (SOEs). This chapter puts forward policy recommendations to help the Vietnamese authorities address remaining challenges and further professionalise the state ownership function.

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The Government of Viet Nam has made progress in recent years to improve its frameworks for ownership and corporate governance of SOEs. In particular, it established CMSC – a ministry-level entity – in 2018, with a view to enhancing efficiency, facilitating equitisation and separating ownership of the country's largest 19 SOEs and state corporate groups from the state's regulatory function. It has enacted a new Enterprise Law, subsequent Decrees and circulars to guide the streamlining of the SOE sector. The government has developed and implemented a form of regular aggregate reporting for the information of the Prime Minister and cabinet members. Furthermore, the number of SOEs has been reduced from 12 000 in 1990s to around 2 100 today thanks to the government's extensive divestment and equitisation programmes. In terms of next steps, the government recently announced its plan to revise the Law No. 69/2014/QH13 69 on Management and Utilisation of State Capital to make it more aligned with the OECD SOE Guidelines as well as a five-year roadmap to adopt IFRS.

However, important challenges remain. Viet Nam has yet to develop a concrete and unified ownership policy. The legal and institutional framework for state ownership builds on a number of documents specifying policy priorities in the area of state ownership and management. To varying degrees, these normative documents have delineated the rights and responsibilities of state ownership across government representatives including Prime Minister, sectoral ministries representing the owner, and the BoM/Chair/representative of state capital at SOEs.

The powers of the new state ownership entity CMSC place it, in OECD vernacular, somewhere in between being a state ownership agency or a state co-ordination agency. It has a co-ordination power over SOEs

in its portfolio, but a number of important decisions can be taken only in concert with other government bodies. Also, it does not have a comprehensive data collection and reporting mechanism which allows for having a comprehensive view over key financial and non-financial data of companies in its portfolio. Moreover, due to the CMSC's relatively limited resourcing and lack of in-depth sectoral knowledge across its portfolio of SOEs, line ministries in practice continue to play an important role in the control of the companies that are in the portfolio of the CMSC. In some cases, the CMSC may even be seen by SOEs as adding just another bureaucratic, including when they are involved in equitisation or large investment projects.

For this and other reasons, state ownership and market regulatory functions are in practice still exercised in concert in many cases. In addition to the institutional placement of oversight roles, a second complication arises from regulations on the management and use of state capital vested with SOEs. These are often so closely aligned with the government's public policy objectives that they allow only a limited distinction between production and business activities of SOEs and the state's exercise of political powers.

On the issue of competitive neutrality, no formal statutory discrimination between SOEs and private firms is detected. However, the proximity of SOEs to policy makers, continued conflation of the exercise of ownership rights, the government's explicit use of SOEs as a main vehicle for the implementation of the State's industrial or sectoral policies, policy formulation and regulatory responsibilities within the same government ministries/agencies have led to a perception of discrimination and discrepancy while distorting the playing field.

The degree of disclosure and quality of information (both financial and non-financial) vary depending on the responsible line ministry or controlling stakeholder, with many SOE websites appearing non-compliant. SOEs' compliance with the requirements to populate the new publicly-available "Business Information Portal" on a six-month and annual basis should provide greater transparency on the finances of all SOEs, but its success will require greater monitoring of compliance than is provided currently.

The state ownership representative body is mandated to issue decisions on assigning annual production/business plans to SOEs, which include expected return on equity (ROE). However, this is done on an ad-hoc basis in practice. There is no legal regulatory framework in place to ensure market consistent costs of equity financing from the state and capital injections from the state are subject to a minimum expected rate-of-return on equity. These same deficiencies apply with regard to equity investments made by SOEs.

While the government submits the aggregate report to the Prime Minister and the cabinet member, the state does not have in place a dedicated website which publishes the information contained therein and on individual SOEs. The state suggests that by preparing the report and disclosing it in period meetings and conferences that they are making publicly available information about SOE's financial and non-financial performance.

More remains to be done to assure a strong, autonomous role for SOE boards of directors. The top management is often closely linked to the national executive powers, and in some cases important corporate decisions are made directly by the government bypassing the corporate decision chain. At a minimum, the state approves the appointment of CEOs in all SOEs – including JSCs or directly appoints the CEO in the case of company groups (by the Prime Minister directly).

The existing mix of in-company state and Party control procedures with business practices aspiring to meet international standards creates substantial challenges to effective internal control of SOEs – particularly but not only in those 100% owned by the state. The roles and responsibilities for internal control are formally and informally dispersed between the SOE Board of Members/Directors, the Board of Controllers, the Party Organisation or Committee sitting in the company, the "Internal Control Board" reporting to the Board and the internal audit function which reports in turn to the Internal Control Board. In practice it appears that one of the most effective corporate 'checks and balances' is the Party Committee, which may

be providing disincentive for the true adoption of international practices in internal audit and corruption-risk management.

Finally, and perhaps most importantly, a key concern remains the implementation of existent rules. Viet Nam has put in place legal, regulatory and institutional structures that in principle compare favourably with many other countries, including OECD members, but the problem is that formal procedures are often not adhered to. The existence of power structures based on personal connections as well as Party affiliation in practice mean that high-level ministerial and SOE officials may feel at liberty to act autonomously with impunity. As this feature of the political landscape is unlikely to go away in the foreseeable future, the strongest options for ensuring a better governance of SOEs involve a further strengthening and professionalisation of the ownership function and a higher degree of disclosure and transparency around corporate and ministerial actions.

## Recommendations

### Professionalising state ownership function

- **Professionalise CMSC.** Vietnamese authorities should empower and resource the new state ownership entity CMSC so that it can perform its function as a professional and independent body. To mitigate concerns that the CMSC is *de facto* acting at par with traditional line ministries for its portfolio SOEs, adding another bureaucratic layer to the operation of SOEs, CMSC's management and staff should be recruited through an open and competitive recruitment procedure. It can be staffed with professionals who have an extensive knowledge on business management and/or state ownership function. Government should also allocate necessary financial and human resources to the Commission to effectively undertake its various functions as the owner's representative agency with regard to overseeing performance of its portfolio of SOEs. CMSC can also considerably benefit from having a comprehensive data collection and reporting mechanism that will enable the entity to have a comprehensive view over financial and non-financial performance of SOEs.
- **Further centralise the state ownership function.** Despite the establishment of the CMSC which oversees portfolio of up to 200 individual SOEs that account for two-thirds of the state-owned equity, there is still a room for the government to further centralise its current ownership arrangements – in which 14 ministries and agencies oversee the rest of the country's central SOE portfolio consisting of 1 909 companies. CMSC or SCIC can broaden their portfolio to include all central SOEs which can enable a larger degree of separation of ownership and regulatory functions. This can inter alia facilitate exercising state ownership rights on a whole of government basis.
- **Corporate governance arrangements of SOEs should further evolve so that respective roles of the ownership entity, SOE boards of directors and executive management are clarified and clearly delineated.** The owner's representative agencies including the CMSC should act as an informed and active owner, ensuring that the governance of SOEs is carried out in a transparent and accountable manner. They should allow SOEs in their portfolio full operational autonomy to achieve their defined objectives and refrain from intervening in SOE management. In particular, they should enable SOE boards to exercise their responsibilities and should respect their independence. The exercise of ownership rights should be clearly identified within the state administration.

### Ensuring a level playing field with private companies

- **Establish an encompassing policy framework for ensuring competitive neutrality.** When SOEs access debt financing from the marketplace, Vietnamese authorities could consider put in place mechanisms to ensure market consistency of financing terms or to neutralise preferential financing. This should include ensuring that state-owned financial institutions charge SOEs market-based interest rates on loans. It could also adopt accounting separation between commercial and non-commercial activities of SOEs and align rate-of-return requirements with those achieved by competing private enterprises. The government is also recommended to include information on debt obligations and contingent liabilities of SOEs and financial assistance including guarantees, grants, subsidised loans and equity in each SOE's individual audit as well as in the aggregate report on SOEs.
- **Empower competition authority.** Competition Authority should be empowered by the government to effectively undertake enforcement actions against anti-competitive behaviours of SOEs. These powers should concern not only traditional powers to curb abuse of market



powers and collusive behaviour; they should extend to overseeing “competitive neutrality” between SOEs and private companies in like circumstances.

### Enhancing transparency and disclosure

- **Develop and implement a comprehensive and unified disclosure policy for SOEs.** To enhance clarity over supervision and accountability in corporate governance of SOEs, enforcement of SOE disclosure is paramount. Vietnamese SOEs, and those involved in exercise of state ownership, would benefit from developing a unified disclosure policy that aggregates and elaborates on disclosure requirements in one place, outlining all relevant roles and responsibilities of relevant institutions across the administration with regards to monitoring and overseeing SOE disclosure and performance. Additionally, new requirements concerning the role of audit committees in SOEs, clarifications regarding the role of the state in selecting audit firms could be considered.
- **Improve the quality of aggregate report for SOEs.** The state should make its aggregate report to the Prime Minister and the cabinet member available on a dedicated website for public access. The coverage of the report should be extended to fully or majority-owned at the central level of government. It should include information of individual SOEs’ implementation or non-implementation of applicable rules.

### Adhering to international practice in internal control and risk management

- **Improve internal control and risk management in SOEs.** The state should ensure that SOEs adopt integrated internal control and risk management systems. This would involve streamlining the roles and responsibilities of different state and corporate bodies involved in the control of an SOE, and introducing a system for risk management, for which roles within the company are also clearly delineated.
- **Provide greater protection for the autonomy of internal audit.** The state should provide more guidance to SOEs on mechanisms to protect the independence of internal audit units, including at minimum ensuring that they report administratively to executive management and functionally to the Board and, particularly, to independent board members whenever possible. Confidential reporting channels should be offered to representatives of SOEs and employees including internal auditors to report concerns about irregular activities within the company to a body external to the SOE (for instance, the State Audit Office or Government Inspectorate; and provide education around this option).

### Improving board independence and autonomy

- **Ensure professional boards.** Board composition framework should ensure that SOE boards are able to exercise independent and apolitical judgement in the interest of the enterprise and its shareholders. This entails establishing clear rules for the inclusion of state representatives, other individuals charged with pursuing the public interest, and independent directors. It is recommended to solicit greater involvement of independent directors. Qualification criteria for board members could relate to candidates’ professional experience and skills. Board composition can be further balanced by limitations on the number of board appointments/directorships and/or affirmative action targeting gender and minority groups. Requiring disclosure of information on the identity and the number of boards candidates on all websites of major SOEs, and/or requiring disclosure of AGM voting percentage results can enhance transparency around board practices.
- **Establish clear rules and procedure for the competitive nomination and appointment of boards.** Competence-based board nomination rules applicable to both wholly owned and

majority-owned SOEs should be established. The ownership function could manage a “directors’ pool” of candidates pre-selected according to a formal evaluation and can serve as a kind of clearing house for applications to SOE boards. The recruiting methods could include public advertisement of recruitment and/or head-hunter agencies. The Ministry of Home Affairs, which is in charge of regulating board nomination and composition process, could develop and implement performance indicators on board nomination and composition for evaluation of state representative agencies including CMSC, to incentivise them to mobilise more external experts into boards and executive management of SOEs. Compliance to performance indicators by state representatives can be supervised by a state function on a whole-of-government basis.

## Annex A. Corporate form and size of subsidiary companies of major SOEs in the CMSC portfolio

The data in this table is based on submissions from individual companies through the CMSC. The range of available information varies among the companies. Note that as of 7 October 2021, 1 USD = VND 22 750.

**Table A A.1. Corporate form and size of subsidiary companies of Electricity Viet Nam (EVN)**

Name of the SOE and its subsidiaries	Main sector of operation	Corporate form	Asset value (mill. USD)	Book equity (mill. USD)	Annual turnover (mill. USD)	No. of employees	Share of the enterprise owned by the state
<b>Electricity Viet Nam (EVN)</b>							
Vietnam Electricity	Generation, transmission and distribution	statutory corporation	510 338	216 684	332 030	4 974	100.00%
Power Generation Corporation No.1	Generation	statutory corporation	97 739	26 091	39 769	3 280	100.00%
Power Generation Corporation No.2	Generation	Listed company	51 045	22 561	26 348	3 029	99.80% (IPO in 2021)
Power Generation Corporation No.3	Generation	Listed company	72 900	14 964	40 367	2 778	99.19% (IPO in 2018)
ThuDuc Thermal Power Company	Generation	statutory corporation	366	122	111	136	100.00%
National Power Transmission	Transmission	statutory corporation	85 298	25 220	18 021	7 114	100.00%
Northern Power Corporation	Distribution	statutory corporation	77 096	22 345	131 092	26 416	100.00%
Central Power Corporation	Distribution	statutory corporation	34 150	10 785	36 484	11 432	100.00%
Southern Power Corporation	Distribution	statutory corporation	41 828	17 529	134 644	21 710	100.00%
Hanoi Power Corporation	Distribution	statutory corporation	32 484	10 701	41 126	7 459	100.00%
HoChiMinh City Power Corporation	Distribution	statutory corporation	26 628	12 809	54 392	6 585	100.00%
Power Engineering	Power Engineering	listed company	1 602	280	632	674	54.34%

Name of the SOE and its subsidiaries	Main sector of operation	Corporate form	Asset value (mill. USD)	Book equity (mill. USD)	Annual turnover (mill. USD)	No. of employees	Share of the enterprise owned by the state
Consulting No.1							
Power Engineering Consulting No.2	Power Engineering	listed company	3 336	1 167	3 346	963	51.33%
Power Engineering Consulting No.3	Power Engineering	listed company	319	116	404	469	48.78%
Power Engineering Consulting No.4	Power Engineering	listed company	336	186	251	426	71.59%
Dong Anh Electrical Equipment Corporation Joint Stock Company	Electrical Equipment manufacturing	Listed company	1 443	608	2 422	748	46.49%

**Table A A.2. Corporate form and size of subsidiary companies of PetroVietnam (PVN)**

Name of subsidiaries	Corporate form	Asset value (mill. USD)	Book equity (mill. USD)	Market capitalisation (mill. USD)	Annual turnover (mill. USD)	Share of the enterprise owned by the state
PVEP	Unlisted company	4 263	2 674		859	100.00%
PVOIL	Listed Company	957	458	689	2 168	80.52%
PVGAS	Listed Company	2 739	2 144	7 621	2 779	95.76%
PVD	Listed Company	904	608	422	227	50.40%
PVTrans	Unlisted company	481	272		320	51.00%
PTSC	Listed company	1 139	558	619	874	51.38%
PVFCCo	Listed company	475	352	387	315	59.58%
PVPower		2 342	1 355	1 248	1 288	79.74%
PVC	Unlisted company	346	54		68	54.47%
PVCombank		7 860	455		486	52.00%
PVI	Listed company	965	312	405	395	24.95%
Petrosetco	Listed company	274	72	23	549	25.10%
PVChems	Listed company	73	36	24		36.00%
PVCFC	Listed company	378	274	467	334	75.56%
BSR	Listed company	2 422	1 346	2 821	2 511	92.13%
VN Poly	Unlisted company	184	162		4	74.01%
DQS	Unlisted	256	53		17	
PVMR	Unlisted	21	14		22	41.00%
PAP	Unlisted	55	48		1	31.82%
PVFI	Listed Company	13	8			

Name of subsidiaries	Corporate form	Asset value (mill. USD)	Book equity (mill. USD)	Market capitalisation (mill. USD)	Annual turnover (mill. USD)	Share of the enterprise owned by the state
GID	Unlisted company	9	9			36.90%
NSRP		8 380	510		3 210	25.10%
Petro Cam Ranh	Unlisted company	64	64		1	25.00%
Vietsopetro	Unlisted company	4 660	3 170		1 300	51.00%
Rusvietpetro	Unlisted company	1 000	650		640	49.00%

**Table A A.3. Corporate form and size of subsidiary companies of Vietnam Posts and Telecommunications Group (VNPT)**

Name of the SOE and its subsidiaries	Corporate form	Asset value (mill. USD)	Book equity (mill. USD)	Market capitalisation (mill. USD)	Annual turnover (mill. USD)	No. of employees	Share of the enterprise owned by the state
Vietnam Posts and Telecommunications Group (VNPT)	Single member limited liability company	3 758	2 873		1 758	22842	100% by state
VNPT-Media	Single member limited liability company	119	79		154	693	100% by VNPT
VNPT- Vinaphone	Single member limited liability company	400	143		1 822	12664	100% by VNPT
VNPT Technology	Unlisted joint stock company	80	21		74	819	83.41%
CT-IN	Companies listed on HOSE	93	30	26	68	413	14.49%
Postef	Listed on HNX	91	14	12	47	402	29.60%
Cokyvina	listed on HNX	7	21	2	19	72	4.14%
Stream Net Company Limited	Unlisted JSC	11	14		1	132	71.66%
GDS	Unlisted JSC	9	8		6	45	35.87%
SMJ	Unlisted JSC	4	4		1	33	68.17%
KASATI	Listed on HNX	7	3	3	10	104	14.85%
PCM	Listed on Upcom	4	3	1	4	106	30.65%
PTP	Listed on Upcom	14	6	3	5	173	23.81%
Potmasco	Listed on Upcom	4	2	2	5	42	18.88%
Telvina	Listed on Upcom	5	16	1	8	96	6.57%
Vina-ofc	Unlisted joint stock	5	4		7	66	47.70%

Name of the SOE and its subsidiaries	Corporate form	Asset value (mill. USD)	Book equity (mill. USD)	Market capitalisation (mill. USD)	Annual turnover (mill. USD)	No. of employees	Share of the enterprise owned by the state
	company						
VNPT Land	Listed on Upcom	6	5		0	42	112.13%
ANSV	Limited company	30	9		62	183	22.85%
Telecommunications Equipment (TELEQ)	Limited company	5	8		5	50	19.97%
VINECO	Unlisted joint stock company	6	5		7	157	32.54%
VNYP	Unlisted joint stock company	3	2		20	77	12.34%
Danang Telecommunication and Informatic Design JSC	Unlisted joint stock company	2	1		2	74	3.02%
Hanoi Post & Telecommunication Development Investment JSC	Unlisted joint stock company	0.6	0.2		0.8	24	25.49%
Bac Mien Trung Telecommunication Development JSC	Unlisted joint stock company	0.5	0.3		0	14	23.48%
Vung Tau Post and Telecommunications Construction Investment JSC	Unlisted joint stock company	0.3	0.3		0.3	24	32.09%

**Table A A.4. Corporate form and size of subsidiary companies of Vietnam Maritime Corporation (VIMC)**

Name of its subsidiaries	Corporate form	Asset value (mill. USD)	Book equity (mill. USD)	Market capitalisation (mill. USD)	Annual turnover (mill. USD)	No. of employees	Share of the enterprise owned by the state
Hau Giang Maritime Service One Member Co., Ltd	Limited Company	32	17		2	49	100.00%
East Sea Transportation Company Limited	Limited Company	20	147		44	187	100.00%
Can Tho Port Joint Stock Company	UPCOM	16	11		5	171	99.01%
Hai Phong Port Joint Stock Company	HNX	252	202	225	95	1 436	92.56%
Vinalines Nha Trang Joint Stock Company	Not eligible public company	0	0		0	5	91.79%

Name of its subsidiaries	Corporate form	Asset value (mill. USD)	Book equity (mill. USD)	Market capitalisation (mill. USD)	Annual turnover (mill. USD)	No. of employees	Share of the enterprise owned by the state
Cam Ranh Port Joint Stock Company	UPCOM	14	12	13	6	188	80.90%
Quy Nhon Port Joint Stock Company	Not listed/registered for trading	32	27		37	826	75.01%
Da Nang Port Joint Stock Company	HNX	75	61	116	41	690	75.00%
Saigon Port Joint Stock Company	UPCOM	212	98	112	45	942	65.45%
Vietnam Container Exploitation Co., Ltd	Limited Company	3	2		5	122	60.00%
VIMC Logistics Vietnam Joint Stock Company	UPCOM	12	7	2	12	157	56.72%
Cai Lan Port Investment Joint Stock Company	UPCOM	2	1		2	45	56.58%
Hi-tech Goods Transport Co., Ltd	Limited Company	2	1		1	105	56.00%
Nghe Tinh Port Joint Stock Company	HNX	12	10	13	9	449	51.00%
Vinalines – Dinh Vu Port Joint Stock Company	Not eligible public company	21	10		0	25	51.00%
Vietnam Shipping Joint Stock Company	HOSE	122	23	0	59	630	51.00%
Vinaship Shipping Joint Stock Company	UPCOM	2	3	0	25	561	51.00%
Vietnam Shipping Agency Joint Stock Company	HNX	27	16	10	45	543	51.05%
Maritime Development Joint Stock Company	HNX	12	7	4	10	165	51.00%

Note: Vietnam Maritime Corporation (VIMC), a state-controlled maritime services and logistics supplier changed its company name from Vietnam National Shipping Lines (Vinalines) on 1 September 2021 when it officially started operations as a joint-stock company (JSC).

**Table A A.5. Corporate form and size of subsidiary companies of Airport Corporation of Viet Nam (ACV)**

Name of the SOE and its subsidiaries	Corporate form	Asset value (mill. USD)	Book equity (mill. USD)	Market capitalisation (mill. USD)	Annual turnover (mill. USD)	No. of employees	Share of the enterprise owned by the state
Airport Coporation of Vietnam (ACV)	Listed company	2 470	1 631	7 656	435	9 776	95.40%
Noibai Aviation Fuel Service Joint Stock Company (NAFSC)	Unlisted joint stock company	6	5		2	140	60.00%
Southern Airport Transportation Joint Stock Company (SATSCO)	Unlisted joint stock company	10	2		44	342	30.00%
Southern Airports Aircraft Maintenance Services Limited Company (SAAM)	Limited company	3	3		3	119	51.00%
Hanoi Ground Services Joint Stock Company (HGS)	Unlisted joint stock company	18	14		17	922	20.00%
Southern Airport Transportation Joint Stock Company (SATCO)	Unlisted joint stock company	1	1		1	77	29.53%
Southern Airports Services Joint Stock Company (SASCO)	Listed company	78	66	168	50	969	49.07%
Air cargo Services of Vietnam (ACSV)	Unlisted joint stock company	28	25		21	418	20.00%
Saigon Ground Services Joint Stock Company (SGN)	Listed company	39	33	103	30	1 980	48.03%

**Table A A.6. Corporate form and size of subsidiary companies of Mobifone**

Name of the SOE and its subsidiaries	Asset value (mill. USD)	Book equity (mill. USD)	Market capitalisation (mill. USD)	Annual turnover (mill. USD)	No. of employees	Share of the enterprise owned by the state
MobiFone Corporation	1 370	955		1 335	3 821	100.00%
MobiFone Global	21	10		38	1 109	69.42%
MobiFone Service	13	8	9	31	1 229	31.26%
MobiFone Plus	9	7		26	1 658	96.23%



Table A A.7. Corporate form and size of subsidiary companies of Petrolimex

Name of the SOE and its subsidiaries	Corporate form	Asset value (mill. USD)	Book equity (mill. USD)	Market capitalisation (mill. USD)	Annual turnover (mill. USD)	No. of employees	Share of the enterprise owned by the state
Petrolimex Ha Giang	Unlisted	4	1		35	159	100.00%
Petrolimex Cao Bang	Unlisted	3	1		23	136	100.00%
Petrolimex Lai Chau	Unlisted	3	1		19	135	100.00%
Petrolimex Lao Cai	Unlisted	6	2		36	187	100.00%
Petrolimex Dien Bien	Unlisted	7	2		26	184	100.00%
Petrolimex Tuyen Quang	Unlisted	7	2		29	167	100.00%
Petrolimex Yen Bai	Unlisted	5	1		22	144	100.00%
Petrolimex Bac Thai	Unlisted	13	3		81	460	100.00%
Petrolimex Ha Bac	Unlisted	6	2		55	354	100.00%
Petrolimex Phu Tho	Unlisted	9	3		74	355	100.00%
Petrolimex Ha Noi	Unlisted	35	12		488	1 569	100.00%
Petrolimex Ha Son Binh	Unlisted	13	4		167	758	100.00%
Petrolimex Hai Phong	Unlisted	16	4		100	645	100.00%
Petrolimex Thai Binh	Unlisted	2	1		35	159	100.00%
Petrolimex Nam Ninh	Unlisted	13	4		113	682	100.00%
Petrolimex Quang Ninh	Unlisted	72	38		376	1 640	100.00%
Petrolimex Thanh Hoa	Unlisted	16	5		72	378	100.00%
Petrolimex Nghe An	Unlisted	21	6		141	602	100.00%
Petrolimex Ha Tinh	Unlisted	14	3		67	394	100.00%
Petrolimex Quang Binh	Unlisted	7	2		42	279	100.00%
Petrolimex Quang Tri	Unlisted	7	2		45	258	100.00%
Petrolimex Thua Thien Hue	Unlisted	7	3		69	374	100.00%
Petrolimex Da Nang	Unlisted	24	13		167	676	100.00%
Petrolimex Gia Lai	Unlisted	17	5		103	412	100.00%
Petrolimex Quang Ngai	Unlisted	4	2		80	324	100.00%
Petrolimex Binh Dinh	Unlisted	9	4		72	361	100.00%

Name of the SOE and its subsidiaries	Corporate form	Asset value (mill. USD)	Book equity (mill. USD)	Market capitalisation (mill. USD)	Annual turnover (mill. USD)	No. of employees	Share of the enterprise owned by the state
Petrolimex Dak Lak	Unlisted	10	3		90	367	100.00%
Petrolimex Khanh Hoa	Unlisted	24	5		161	630	100.00%
Petrolimex Lam Dong	Unlisted	7	2		68	242	100.00%
Petrolimex Tay Ninh	Unlisted	5	2		56	282	100.00%
Petrolimex Song Be	Unlisted	4	2		56	270	100.00%
Petrolimex Ba Ria Vung Tau	Unlisted	18	7		114	402	100.00%
Petrolimex Dong Nai	Unlisted	6	2		67	244	100.00%
Petrolimex Sai Gong	Unlisted	82	37		498	1 629	100.00%
Petrolimex Long An	Unlisted	9	5		68	330	100.00%
Petrolimex Tien Giang	Unlisted	8	3		58	272	100.00%
Petrolimex Dong Thap	Unlisted	2	1		27	191	100.00%
Petrolimex An Giang	Unlisted	6	2		41	251	100.00%
Petrolimex Vinh Long	Unlisted	11	5		38	224	100.00%
Petrolimex Ben Tre	Unlisted	4	2		40	230	100.00%
Petrolimex Can Tho	Unlisted	25	7		141	535	100.00%
Petrolimex Tra Vinh	Unlisted	3	1		24	149	100.00%
Petrolimex Ca Mau	Unlisted	9	4		34	200	100.00%
Petrolimex Tanker Corporation (PGT)	Unlisted	216	140		154	1 835	100.00%
Petrolimex Transportation Services Corporation (PTC)	Unlisted	57	28		147	2 026	100.00%
Petrolimex Group Construction And Trading Corporation JSC (PGCC)	Unlisted	51	28		74	651	100.00%
Petrolimex Singapore Pte Ltd (PLS)	Unlisted	119	15		1 004	16	100.00%
Petrolimex Laos Sole Co.,Ltd (PLL)	Unlisted	28	2		49	85	100.00%

Name of the SOE and its subsidiaries	Corporate form	Asset value (mill. USD)	Book equity (mill. USD)	Market capitalisation (mill. USD)	Annual turnover (mill. USD)	No. of employees	Share of the enterprise owned by the state
Petrolimex Aviation Fuel JSC (PA)	Unlisted	99	44		267	450	51.00%
Petrolimex Petrochemical Joint Stock Corporation (PLC)	Listed	204	54		247	700	79.00%
Petrolimex Gas Corporation JSC (PGC)	Listed	85	34		125	940	51.00%
Vanphong Bonded Petroleum Terminal Joint Venture Company Limited (VPT)	Unlisted	65	44		19	123	85.00%

**Table A A.8. Corporate form and size of subsidiary companies of Viet Nam National Coal and Mineral Industries Group (TKV)**

Name of the SOE and its subsidiaries	Main sector of operation	Corporate form	Asset value (mill. USD)	Book equity (mill. USD)	Market capitalisation (mill. USD)	Annual turnover (mill. USD)	No. of employees	Share of the enterprise owned by the state
Vietnam National Coal and Mineral Industries Group	Coal, mine, electricity, industrial explosives	One-member limited liability company	5 509	1 787	0	4 658	96 640	84.89%
Mining Chemical Industrial Corporation	Industrial explosives	One-member limited liability company	176	56	0	290	3 627	99.97%
Pilot One-member Company Limited	Maritime navigation services	One-member limited liability company	2	1	0	3	84	88.88%
Environment One-member Company Limited	Environment protection	One-member limited liability company	72	12	0	49	1 159	98.48%
Lam Dong Aluminum One-member Company Limited	Bauxite-aluminum	One-member limited liability company	36	12	0	120	1 398	100.00%
Vietnam Coal and Mineral College	Training	Non-business entity	33	1	0	19	944	0.00%
Institute of Mining Science and Technology	Scientific research	Non-business entity	9	2	0	10	331	83.75%

Name of the SOE and its subsidiaries	Main sector of operation	Corporate form	Asset value (mill. USD)	Book equity (mill. USD)	Market capitalisation (mill. USD)	Annual turnover (mill. USD)	No. of employees	Share of the enterprise owned by the state
Institute of Energy and Mining Mechanical Engineering	Scientific research	Non-business entity	10	2	0	11	246	32.39%
Coal and Mineral Hospital	Health examination and treatment	Non-business entity	4	1	0	5	263	0.00%
Nui Beo Coal JSC.	Coal production	Joint stock company	154	21	24	95	3 088	48.86%
Coc Sau Coal JSC.	Coal production	Joint stock company	74	14	10	135	2 324	58.24%
Deo Nai Coal JSC.	Coal production	Joint stock company	60	17	14	131	1 927	45.29%
Cao Son Coal JSC.	Coal production	Joint stock company	165	32	25	138	3 670	37.13%
Ha Tu Coal JSC.	Coal production	Joint stock company	77	15	12	125	1 832	43.53%
Ha Lam Coal JSC.	Coal production	Joint stock company	153	14	12	118	3 156	59.76%
Mong Duong Coal JSC.	Coal production	Joint stock company	64	11	9	108	3 341	55.73%
Vang Danh Coal JSC.	Coal production	Joint stock company	116	22	20	195	5 431	58.25%
Machinery JSC.	Mechanics	Joint stock company	24	3	2	65	796	31.36%
Motor Industry JSC.	Mechanics	Joint stock company	7	2	1	15	317	27.96%
Uong bi Electric Mechanical JSC.	Mechanics	Joint stock company	3	1	3	8	202	30.32%
Mao Khe Mechanical JSC.	Mechanics	Joint stock company	7	1	0	9	296	26.02%
Northern Coal Trading JSC.	Coal trading	Joint stock company	111	11	10	476	665	26.14%
Cam Pha Coal Trading JSC.	Coal trading	Joint stock company	43	3	0	101	370	56.96%
Coal Import Export JSC.	Coal trading	Joint stock company	52	8	13	324	165	31.50%
Transportation and Miner Commuting Service JSC,	Transportation services for workers and goods	Joint stock company	7	2	3	11	733	84.19%
Informatics, Technology, Environment JSC.	Consultation	Joint stock company	7	1	0	9	148	31.80%
Industry Investment Consulting JSC.	Consultation	Joint stock company	11	1	1	10	301	42.64%
Quacontrol JSC.	Coal assessment	Joint stock company	5	4	3	7	485	20.35%

Name of the SOE and its subsidiaries	Main sector of operation	Corporate form	Asset value (mill. USD)	Book equity (mill. USD)	Market capitalisation (mill. USD)	Annual turnover (mill. USD)	No. of employees	Share of the enterprise owned by the state
Geology and Mineral Resources JSC.	Geological survey and exploration	Joint stock company	3	1	0	3	116	61.39%
Thanh Hoa Co Dinh Chromite JSC.	Mineral exploitation	Joint stock company	20	6	0	11	70	273.01%
Ta Phoi Copper JSC.	Mineral exploitation	Joint stock company	62	10	0	15	230	131.01%
Thach Khe Iron JSC.	Mineral exploitation	Joint stock company	96	78	0	3	72	62.69%
Materials Trading JSC.	Lubricant production, transportation, trading of materials	Joint stock company	39	8	9	140	769	43.66%
Minerals Holding Corporation	Mineral exploitation	Joint stock company	371	106	289	267	4 167	80.10%
Viet Bac Mining Industry Holding Corporation	Production of coal and construction materials	Joint stock company	162	80	93	211	3 672	55.91%
Mining Geology JSC.	Geological survey and exploration	Joint stock company	15	5	3	17	741	82.24%
Power Holding Corporation	Power generation	Joint stock company	870	319	348	553	2 055	92.00%
Viet Bac Geology JSC.	Geological survey and exploration	Joint stock company	9	4	2	10	374	87.08%

**Table A A.9. Corporate form and size of subsidiary companies of Vietnam Expressway Corporation (VEC)**

Name of the SOE and its subsidiaries	Main sector of operation	Corporate form	Asset value (mill. USD)	Book equity (mill. USD)	Market capitalisation (mill. USD)	Annual turnover (mill. USD)	No. of employees	Share of the enterprise owned by the state
Vietnam Expressway Corporation	Expressway development and operation	Single-shareholder limited company	3 986	484	N/A	183	220	100.00%
VEC Operation and Management	Expressway operation	Unlisted Joint stock company	4	1	N/A	6	758	81.30%
Vietnam Expressway Service Engineering	Expressway operation	Unlisted Joint stock company	5	3	N/A	5	340	51.00%
VEC Service	Expressway operation	Unlisted Joint stock company	6	4	N/A	3	341	22.30%

Table A A.10. Corporate form and size of subsidiary companies of Vinacafe

Name of the SOE and its subsidiaries	Main sector of operation	Corporate form	Asset value (mill. USD)	Book equity (mill. USD)	Market capitalisation (mill. USD)	Annual turnover (mill. USD)	No. of employees	Share of the enterprise owned by the state
Vinacafe	Growing coffee	One-member limited liability company	79	33	N/A	44	>500	100.00%
Vinacafe Viet Duc	Growing coffee	One-member limited liability company	8	0.2	N/A	3	>500	100.00%
Vinacafe 716	Growing coffee	One-member limited liability company	2	0.5	N/A	2	>500	100.00%
Vinacafe 720	Growing coffee	One-member limited liability company	2	0.8	N/A	0.5	>500	100.00%
Vinacafe 721	Growing coffee	One-member limited liability company	2	0.8	N/A	2	>500	100.00%
Vinacafe 52	Growing coffee	One-member limited liability company	3	0.8	N/A	0.3	>500	100.00%
Vinacafe 715A	Growing coffee	One-member limited liability company	2	0.4	N/A	0.6	>500	100.00%
Vinacafe 715B	Growing coffee	One-member limited liability company	1	0.5	N/A	0.4	>500	100.00%
Ca phe 715C	Growing coffee	One-member limited liability company	1	0.2	N/A	0.2	>500	100.00%
Vinacafe 49	Growing coffee	One-member limited liability company	5	2	N/A	1	>500	100.00%
Vinacafe Viet Thang	Growing coffee	One-member limited liability company	79	33	N/A	44	>500	100.00%
Vinacafe Ea Sim	Growing coffee	One-member limited liability company	7	3	N/A	0.9	>500	100.00%
Vinacafe Ea Tieu	Growing coffee	One-member limited liability company	2	1	N/A	0.9	>500	100.00%
Vinacafe Ea H'Nin	Growing coffee	One-member limited liability company	2	0.4	N/A	0.0	>500	100.00%
Vinacafe Ea K'Tur	Growing coffee	One-member limited liability company	1	0.6	N/A	0.1	>500	100.00%
Vinacafe Chur Quynh	Growing coffee	One-member limited liability company	1	0.7	N/A	0.1	>500	100.00%
Vinacafe D'Rao	Growing coffee	One-member limited liability company	4	1	N/A	0.9	>500	100.00%
Vinacafe Ea	Growing	One-member	4	0.7	N/A	0.1	>500	100.00%

Name of the SOE and its subsidiaries	Main sector of operation	Corporate form	Asset value (mill. USD)	Book equity (mill. USD)	Market capitalisation (mill. USD)	Annual turnover (mill. USD)	No. of employees	Share of the enterprise owned by the state
Tul	coffee	limited liability company						
Vinacafe IA GRAI	Growing coffee	One-member limited liability company	9	2	N/A	4	>500	100.00%
Vinacafe IABLAN	Growing coffee	One-member limited liability company	3	0	N/A	2	>500	100.00%
Vinacafe IA CHAM	Growing coffee	One-member limited liability company	3	1	N/A	2	>500	100.00%
Vinacafe 705	Growing coffee	One-member limited liability company	3	0.3	N/A	1	>500	100.00%
Vinacafe 704	Growing coffee	One-member limited liability company	4	1	N/A	2	>500	100.00%
Vinacafe 731	Growing coffee	One-member limited liability company	1	0.2	N/A	2	>500	100.00%
Vinacafe 734	Growing coffee	One-member limited liability company	5	0.7	N/A	2	>500	100.00%
Vinacafe Dak Nong	Growing coffee	One-member limited liability company	3	0.5	N/A	0.2	>500	100.00%
Vinacafe Mien Bac	Growing coffee	One-member limited liability company	2	1	N/A	0.2	>500	99.00%
Vinacafe Da Lat	Growing coffee	One-member limited liability company	3	0.4	N/A	1	>500	65.67%
Vinacafe Son Thanh	Growing coffee	One-member limited liability company	0.6	0.4	N/A	0.5	>500	69.00%





## Annex B. Listed companies with State Capital Investment Corporation ownership of no less than 10%

**Table A B.1. Listed companies with State Capital Investment Corporation (SCIC) ownership of no less than 10%**

Company name	Main sector of operation	Market value of company (mill. USD)	No. of employees	Share of the enterprise owned by SCIC
Vietnam Dairy Products JSC	Essential consumer goods	2 966	9 361	36.00%
Saigon Beer – Alcohol – Beverage JSC	Essential consumer goods	1 957	8 100	36.00%
FPT Telecom JSC	Electronics and Telecommunication	277	8 191	50.17%
Hau Giang Pharmaceutical JSC	Other	256	3 000	43.31%
Vietnam Steel Corporation	Industry	233	6 613	93.93%
Military Commercial Joint Stock Bank	Finance	303	9 418	10.94%
Vietnam Textile Corporation	Industry	120	29 235	53.49%
Song Da Corporation – JSC	Industry	117	129	99.79%
Vietnam Seafood Corporation – JSC (Seaprodex)	Essential consumer goods	88	68	63.38%
Bao Minh Joint Stock Corporation	Finance	62	1 627	50.70%
Tien Phong Plastic JSC	Industry	57	1 400	37.10%
TRAPHACO JSC	Other	46	780	35.67%
Vietnam National Reinsurance Joint Stock Corporation	Finance	46	101	40.36%
Vietnam Vegetable Oil Industry Joint Stock Corporation	Essential consumer goods	42	108	36.30%
DOMESCO Medical Import-Export JSC	Other	31	1 259	34.71%
An Giang Port JSC	Carriage	27	130	52.98%
Quang Ninh Thermal Power JSC	Electricity, water and gas	26	866	11.42%
Vietnam Water and Environment Investment Corporation – JSC	Electricity, water and gas	19	280	98.16%

Company name	Main sector of operation	Market value of company (mill. USD)	No. of employees	Share of the enterprise owned by SCIC
Construction Materials Corporation No. 1 – JSC	Industry	18	61	40.08%
Lam Dong Water Supply and Sewerage JSC	Electricity, water and gas	18	373	39.99%
Vietnam Electronics and Informatics Joint Stock Corporation	Electronics and Telecommunication	18	76	87.97%
Foreign Trade Logistics and Forwarding JSC	Carriage	16	93	99.46%
Vietnam Construction Consulting Corporation – JSC	Industry	13	454	87.32%
Ha Giang Mechanical and Hotel JSC	Industry	9	150	46.64%
Licogi Corporation	Industry	9	141	40.71%
Bac Lieu Water Supply JSC	Electricity, water and gas	8	89	98.65%
Vietnam Plastic JSC	Industry	5	25	65.85%
Vinacontrol Group JSC	Industry	4	982	30.00%
Vietnam Book JSC	Industry	4	35	10.00%
Thang Long Corporation	Industry	3	64	25.05%
An Giang Import Export JSC	Industry	3	338	28.17%
Vietnam Irrigation Construction Consulting Corporation	Industry	2	274	49.00%
Gia Lai Water Supply JSC	Electricity, water and gas	2	120	46.78%
Quang Nam Transport Construction JSC	Industry	1	90	53.80%
Ben Tre Construction Materials JSC	Industry	1	50	49.76%
JSC Management and Maintenance of Inland Waterways No. 10	Industry	0.3	120	51.00%
PVTech IT, VT and automation JSC	Electronics and Telecommunication	0.2	80	13.60%
Inland Waterway Management JSC No. 4	Industry	0.2	180	51.00%
TRAENCO JSC	Industry	0.1	93	19.37%
Science and Technology Printing JSC	Industry	0.1	46	16.02%

Note: VND 1 = USD 0.000 044 on 7 October 2021.

## Annex C. Listed companies with a consolidated public sector ownership of no less than 10%

Table A C.1. Listed companies with a consolidated public sector ownership of no less than 10%

Company name	Main sector of operation	Stock exchange(s) of listing	Stock code	Market capitalisation (mill. USD)	No. of employees	Share of the enterprise owned by the state	State shareholder
Viet Nam Engine and Agricultural Machinery Corporation	production and trading of dynamic machines and agricultural machines	UPCOM	VEA	2 581	965	88.47%	Ministry of Industry and Trade
Machines and Industrial Equipment Corporation	manufacturing and manufacturing mechanical products	UPCOM	MIE	66	732	99.57%	Ministry of Industry and Trade
Hanoi Beer Alcohol and Beverage Joint Stock Corporation	production and trading of beer, wine and beverages	HOSE	BHN	614	634	81.79%	Ministry of Industry and Trade
Airports Corporation of Vietnam	Transportation, warehousing and transportation support	UPCOM	ACV	7 886	9 618	95.40%	CMSC
Hanoi Construction Corporation – JSC	Construction, building materials	UPCOM	HAN	91	380	98.83%	Ministry of Construction
Construction Machinery Corporation – JSC	Mechanical, machine building, shipbuilding	UPCOM	TCK	4	154	98.76%	Ministry of Construction
Vietnam National Shipping Lines	Maritime, seaports, logistics	UPCOM	MVN	1 586	1 201	99.47%	CMSC
Song Hong Joint Stock Corporation	Build	UPCOM	SHG	4	44	49.04%	Ministry of Construction
Vietnam Airlines JSC	Transport	HOSE	HVN	2 243	5 979	86.19%	CMSC
Viet Nam Machinery Installation Corporation – JSC	Construction, real estate	UPCOM	LLM	61	632	97.88%	Ministry of Construction
Viglacera Corporation – JSC	Business, building materials	HOSE	VGC	1 044	9 656	38.58%	Ministry of Construction

Company name	Main sector of operation	Stock exchange(s) of listing	Stock code	Market capitalisation (mill. USD)	No. of employees	Share of the enterprise owned by the state	State shareholder
Vietnam Rubber Group – Joint Stock Company	Planting, caring, exploiting, processing latex sea and rubber trading	HOSE	GVR	6 466	43 614	96.77%	CMSC
Vietnam Southern Food Corporation – JSC	Food production and trading	UPCOM	VSF	171	2 109	51.43%	Ministry of Agriculture and Rural Development
Navetco National Veterinary Joint Stock Company	Production and trading of veterinary medicines, chemicals in veterinary and aquatic veterinary, national reserves for veterinary and aquatic veterinary	UPCOM	VET	58	322	65.14%	Ministry of Agriculture and Rural Development
VETVACO National Veterinary Joint Stock Company	Production, trading, import and export of veterinary medicines	UPCOM	VXP	3	239	65.00%	Ministry of Agriculture and Rural Development
Vietnam Forestry Corporation – JSC	Reforestation and logging production	HNX	VIF	1	761	51.00%	CMSC
Vietnam Pharmaceutical Corporation – JSC	Pharmaceutical business	UPCOM	DVN	264	54	65.00%	Ministry of Health
Vietnam Exhibition Fair Centre JSC	Trade promotion and introduction organisations	UPCOM	VEF	1 624	86	10.00%	Ministry of Culture, Sport and Travel
Viet Nam National Petroleum Group	Trading in warehouses, petroleum ports, surveying, designing and installing petroleum and civil works, importing and exporting and trading petroleum, petrochemical products, supplies and equipment for the petroleum industry and other industries, hotel services and tourism services	HOSE	PLX	2 996	24 009	75.87%	CMSC
Bao Viet Holdings	Financial investment	HOSE	BVH	1 819	6 573	67.98%	Ministry of Finance
Viet Nam Dairy Products Joint Stock	Essential consumer goods	HOSE	VNM	7 900	6 244	36.00%	SCIC

Company name	Main sector of operation	Stock exchange(s) of listing	Stock code	Market capitalisation (mill. USD)	No. of employees	Share of the enterprise owned by the state	State shareholder
Company							
Saigon Beer – Alcohol – Beverage Corporation	Essential consumer goods	HOSE	SAB	4 236	8 017	36.00%	Ministry of Industry and Trade
FPT Telecom Joint Stock Company	Electronics and Telecommunication	UPCOM	FOX	1 060	7 883	50.17%	SCIC
DHG Pharmaceutical Joint Stock Company	Other	HOSE	DHG	646	2 944	43.31%	SCIC
Vietnam Steel Corporation	Industry	UPCOM	TVN	495	147	93.93%	SCIC
Military Commercial Joint Stock Bank	Finance	HOSE	MBB	4 777	15 691	9.34%	SCIC
Vietnam National Textile & Garment Group	Industry	UPCOM	VGT	588	85 979	53.49%	SCIC
Song Da Corporation – JSC	Industry	UPCOM	SJG	443	8 652	99.79%	SCIC
Vietnam Seaproducts Joint Stock Corporation	Essential consumer goods	UPCOM	SEA	230	78	63.38%	SCIC
Bao Minh Insurance Corporation	Finance	HOSE	BMI	209	1 687	50.70%	SCIC
Tien Phong Plastic Joint Stock Company	Industry	HNX	NTP	309	1 352	37.10%	SCIC
TRAPHACO JSC	Other	HOSE	TRA	165	728	35.67%	SCIC
Vietnam National Reinsurance Corporation	Finance	HNX	VNR	208	100	40.36%	SCIC
Vietnam Vegetable Oils Industry Corporation	Essential consumer goods	UPCOM	VOC	163	112	36.30%	SCIC
Domesco Medical Import Export Joint Stock Corporation	Other	HOSE	DMC	80	1 188	34.71%	SCIC
An Giang Port Joint Stock Company	Carriage	HNX	CAG	14	145	52.98%	SCIC

Company name	Main sector of operation	Stock exchange(s) of listing	Stock code	Market capitalisation (mill. USD)	No. of employees	Share of the enterprise owned by the state	State shareholder
Quang Ninh Thermal Power Joint Stock Company	Electricity, water and gas	UPCOM	QTP	374	905	11.42%	SCIC
Vietnam Water & Environment Investment Corporation JSC	Electricity, water and gas	UPCOM	VIW	47	306	98.16%	Ministry of Construction
Construction Corporation No. 1 Joint Stock Company	Industry	UPCOM	CC1	158	10 420	40.53%	Ministry of Construction
Lam Dong Water Supply and Sewerage JSC	Electricity, water and gas	UPCOM	LDW	45	386	39.99%	SCIC
Vietnam Electronics and Informatics Joint Stock Corporation	Electronics and Telecommunication	UPCOM	VEC	33	85	87.97%	SCIC
Foreign Trade Logistics and Forwarding JSC	Carriage			16	93	99.46%	
VietNam National Construction Consultants Corporation – JSC	Industry	UPCOM	VGW	22	413	87.32%	Ministry of Construction
Ha Giang Mechanical and Hotel JSC	Industry	HNX	HGM	18	149	47.00%	SCIC
LICOGI Corporation – JSC	Industry	UPCOM	LIC	262	212	40.71%	SCIC
BacLieu Water Supply JSC	Electricity, water and gas	UPCOM	BLW	8	93	98.65%	SCIC
Viet Nam Plastic Corporation	Industry	UPCOM	VNP	22	27	65.85%	SCIC
Vinacontrol Group Corporation	Industry	HNX	VNC	16	853	30.00%	SCIC
Viet Nam Books JSC	Industry	UPCOM	VNB	68	63	10.00%	Ministry of Culture, Sports and Tourism
Thang Long Joint Stock Corporation	Industry	HNX	TTL	25	63	25.05%	SCIC
An Giang Import – Export Company	Industry	HOSE	AGM	29	309	28.17%	SCIC

Company name	Main sector of operation	Stock exchange(s) of listing	Stock code	Market capitalisation (mill. USD)	No. of employees	Share of the enterprise owned by the state	State shareholder
VietNam Hydraulic Engineering Consultants Corporation – JSC	Industry	UPCOM	HEJ	9	315	49.00%	SCIC
Gia Lai Water Supply Sewerage JSC	Electricity, water and gas	UPCOM	GLW	3	113	46.78%	SCIC
Quang Nam Transportation Construction JSC	Industry	HNX	QTC	2	93	53.80%	SCIC
Ben Tre Construction Material Joint Stock Company	Industry	HNX	VXB	2	65	49.76%	SCIC
Inland Waterway Management Maintenance Joint Stock Company No.10	Industry	UPCOM	QLT	2	113	51.00%	SCIC
Petroleum Information Technology Telecom and Automation JSC	Electronics and Telecommunication	UPCOM	PAI	2	76	13.60%	SCIC
Inland Waterways Management and Maintenance Joint Stock Company No. 4	Industry	UPCOM	DT4	0	138	51.00%	SCIC
TRAENCO JSC	Industry	UPCOM	TEC	1	115	19.37%	SCIC

Note: VND 1 = USD 0.000 044 on 31 December 2021.

## Corporate Governance

# OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam

The Government of Viet Nam has made progress in recent years to improve its frameworks for the ownership and corporate governance of its state-owned enterprises (SOEs). This review assesses the corporate governance framework of the Viet Nam state-owned sector relative to the OECD Guidelines on Corporate Governance of State-owned Enterprises (SOE Guidelines). It then puts forward recommendations to help the Vietnamese authorities address remaining challenges and further professionalise the state ownership function.



주오이시디 대한민국 대표부  
Permanent Delegation of the  
Republic of Korea to the OECD



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