

ANTI-CORRUPTION AND CORPORATE GOVERNANCE SPECIFIC PROPOSALS FOR CHANGE

*Prepared by
Corporate Governance and Transparency Working Group*

We set out below the proposals for change that arise from this discussion paper. Individually the changes are small but collectively they can give Vietnam the momentum it needs to fulfil its economic capability in the Asia-Pacific region.

These proposals do not constitute all the changes that could be made but they are a significant step in the right direction. Their implementation would be a signal of intent from both the Government and the domestic business community that Vietnam is capable of being successful while playing by the same rules as everyone else.

ANTI-CORRUPTION

PROPOSAL 1: CUSTOMS

For the Government:

- (a) Continue to simplify the customs process so that it aligns with international best practice. This includes minimising occasions on which multiple government departments are required to inspect shipments and, where inspections by multiple agencies are necessary, ensure that the procedure for such inspections is as efficient as possible (e.g. provide training to customs officials so that one official can carry out inspections on behalf of multiple agencies).
- (b) Liaise with businesses on how the e-customs system can be best implemented. Each importer and exporter should ideally have a dedicated file on the system containing a record of all goods imported and exported, a status update on any current shipments currently with customs authorities and a log of all communications from and requests made by customs officials. Importers and exporters should be able to log into the system and review their file. This should minimise the amount of face-to-face contact required with customs officials and consequently reduce the number of opportunities where officials can demand facilitation payments;
- (c) Incentivise individual customs offices to complete all necessary procedures within a timeframe dictated by international best practice;
- (d) Create a customs watchdog or ombudsman that importers and exporters can contact in the event that their shipment is delayed from clearing customs or they receive a demand for a facilitation payment – we understand that our customs working group is working with the authorities on this;
- (e) Create a fully transparent list of all customs fees
- (f) Ensure that all payments of fees are made electronically and that importers/exporters receive an e-receipt for every payment.

For businesses:

- (a) Refuse to pay any facilitation payments demanded by customs officials or brokers;
- (b) Report any such demands to the authorities; and
- (c) Offer to run workshops that educate trainee customs officials about the issue of corruption.

PROPOSAL 2: TAXATION***For the Government:***

- (a) Consolidate and streamline the existing tax regulations and processes in order to improve transparency and efficiency within the system, and reduce the current discretion afforded to tax officials;
- (b) Make information about all relevant tax rates, exemptions and allowances freely available online and provide each taxpayer with a breakdown as to how their tax liability has been calculated;
- (c) Ensure that all payments of tax are made electronically as far as possible. If taxpayers have to pay in cash then they must be issued with a receipt;
- (d) Formulate a strict and clear mechanism to punish such tax officials who have intentionally imposed incorrect decisions;
- (e) Introduce a fully computerised system allowing taxpayers to assess their tax liability online. Physical inspections should only be carried out in cases where taxpayers are identified as being high risk or suspected of tax evasion;
- (f) Ensure that all communications between officials and taxpayers are made in writing and recorded in a computerised database so that they can be verified in the event of any dispute or corruption investigation;
- (g) The Ministry of Finance or GDT should establish a hotline or hot-desk that can provide taxpayers with a transparent, open and effective channel to seek advice and/or guidance where appropriate; and
- (h) Establish a taxation watchdog or ombudsman that taxpayers can contact in the event that they believe they are being incorrectly assessed by the taxation authorities or are being subjected to corrupt practices. The watchdog or ombudsman should review the case, correct any errors in the assessment and, if evidence of corruption is discovered, alert the relevant authorities.

For businesses:

- (a) Do not pay facilitation payments to tax officials in return for them incorrectly declaring the company's tax liability; and
- (b) Report any requests for such payments to the relevant authorities.

PROPOSAL 3: LICENSING***For the Government:***

- (a) Consolidate licensing regulations to improve the ease, time and transparency of the application process. The relevant application processes should be as simple and clear as possible, with all relevant timelines and fees clearly stated and met by the licensing administrations;
- (b) Abolish the need for existing licensees to go through a further full application process when their licence expires. A simplified renewal process should be followed, reviewing the licensee's actions over the previous licence period and its intentions for the forthcoming period; and
- (c) Ensure that all communications between officials and applicants are made in writing and recorded in a computerised database so that they can be verified in the event of any dispute or corruption investigation.

PROPOSAL 4: LAND ADMINISTRATION***For the Government:***

- (a) Improve and enforce the transparency provisions already embedded in the existing legal framework, e.g. make the publication of key documents and information mandatory (such documents to include the results of land allocation decisions, land allocation prices, agreed minutes of compensation consultations etc.);
- (b) Establish a computerised national land registry with the ultimate aim for it to contain a record of every piece of land in Vietnam, detailing its owner and permitted use(s). This will take time and must be built up incrementally but registration should eventually be compulsory. Such a database should also contain information regarding any planning applications made in respect of the land. We note that the Ministry on Natural Resources and Environment has just issued Circular04/2013/TT-BTNMIT in an attempt to begin this process;
- (c) Establish greater transparency and accountability in the implementation of land procedures and processes. Timelines must be adhered to and penalties imposed for delays;
- (d) Reduce the discretion and increase the accountability of individual officials, e.g. those on compensation boards; and
- (e) List all fees and charges payable by applicants and provide all applicants with a receipt.

CORPORATE GOVERNANCE**PROPOSAL 1 – PERIOD OF NOTICE OF GENERAL MEETING**

Amendment of Article 100 of the Enterprise Law to increase the 7 day notice period for a General Meeting to 14 days, further extending to 21 days after two years and 28 days after three years.

PROPOSAL 2 – STANDARD FORM NOTICE OF GENERAL MEETING

Government to formulate/approve a standard form Notice of General Meeting, to be referenced in Article 100 of the Enterprise Law, setting out those items for which the inclusion of information in the Notice is obligatory and to which all companies must broadly adhere.

In addition to the date, time and location of the General Meeting and the other corporate necessities, the Notice should include:

- (a) a full and informative agenda;
- (b) a list of the proposed resolutions and, for each resolution, enough detail as to why the resolution is proposed and how it will benefit the Company; and
- (c) a list of attending board members and executive management.

PROPOSAL 3 – PUBLICATION OF GENERAL MEETING OUTCOME

1. Amend the Law on Enterprises to oblige companies to publish the voting records of all resolutions, including information on the votes of each director, within 24 hours of the General Meeting closing.
2. The Minutes of the General Meeting to be approved and published on the company website within seven business days of the General Meeting closing.
3. The Minutes, the final approved resolutions and all related documentation to be issued to all shareholders by post on or before the tenth day following the closing of the General Meeting.

PROPOSAL 4 – LANGUAGE OF INFORMATION PUBLICATION

For companies with any single non-Vietnamese shareholder holding more than [ten] per cent of the issued shares of the company, or registered charter capital, or any number of non-Vietnamese shareholders or members, as the case may be, holding more than [twenty] per cent in the aggregate, the Law on Enterprises to oblige companies to issue all notices and minutes and all other corporate documentation to the shareholders contemporaneously in Vietnamese and English.

PROPOSAL 5 – DISCLOSURE OF ALL RELATED PARTY TRANSACTIONS

All related party transactions to be documented prior to the General Meeting and listed in the General Meeting Notice. Subject to overwhelming confidentiality considerations, there shall be full disclosure to be given of the applicable related party transaction, including the related party, contract price, key terms and any aspects of the transaction that were not completed on an arm's length basis.

PROPOSAL 6 – TRANSPARENT DIVIDEND POLICY

A company's latest dividend policy and information on the payment of dividends for the previous three years to be on a company's website at all times. Sanctions should be imposed on directors where there is not a timely payment of dividends.

PROPOSAL 7 – TRANSPARENT AND ACCESSIBLE COMPLAINTS' MECHANISM

A positive obligation on companies to create a transparent and easily accessible complaints procedure. The procedure, including contact details of the executives responsible for the procedure, should be clearly displayed on a company's website and must include assurances for whistle-blowers that they will have all necessary support should they come forward.

PROPOSAL 8 – NATIONAL COMPANIES' REGISTER

The creation of a national or province based companies' register that includes, as a minimum, for every incorporated legal entity in Vietnam:

- (a) its name, date of incorporation and IC/BRC number;
- (b) the address of its registered/principal office;
- (c) the names and addresses of all its directors, a list of their current directorships and a list of any directorships held in the previous 5 years;
- (d) a copy of the company Charter; and
- (e) copies of the previous three years audited accounts.

PROPOSAL 9 – CORPORATE GOVERNANCE COMPLIANCE

Companies to be obliged to include a statement in their annual report that they are in full compliance with the Corporate Governance Code or, if they are unable to confirm compliance, list those areas where they are not in compliance and the reasons. Strictly enforced and strong sanctions to be administered on directors if they make an incorrect statement and/or for regular non-compliance.

PROPOSAL 10 – TIMELY ISSUE OF ANNUAL FINANCIAL STATEMENTS

Strictly enforce the release of a company’s audited financial statements within the prescribed time limits by levying and enforcing sanctions for non-compliance.

PROPOSAL 11 – BOARD RESPONSIBILITY

Every company to appoint a director responsible for corporate governance practice compliance.

PROPOSAL 12 – NON-EXECUTIVE DIRECTORS

Companies to appoint a minimum number of non-executive directors to the board of directors.

CORRUPTION

1. INTRODUCTION

In Transparency International's Corruption Perceptions Index 2012¹, 174 countries were ranked on how corrupt their public sector is perceived to be, with the least corrupt being ranked 1st. Vietnam ranked 123rd overall (down from 112th in the previous Index) and seventh out of the ten ASEAN nations. With 55% of the respondents to the survey believing that corruption was increasing in Vietnam, the country could find itself losing out on foreign investment to the likes of Cambodia, Laos and Myanmar instead of competing with Singapore, Malaysia and Thailand.

COUNTRY	RANK
Singapore	5th
Brunei Darussalam	46th
Malaysia	54th
Thailand	88th
Philippines	105th
Indonesia	118th
Vietnam	123rd
Cambodia	157th
Laos	160th
Myanmar	172nd

Figure 1: Table showing the performance of the ASEAN nations in Transparency International's Corruption Perceptions Index 2012.

This paper begins by suggesting five key elements or 'pillars' that the Government should place at the heart of its anti-corruption program. It then goes on to examine the four sectors identified by VBF members as being the most affected by corrupt practices, namely customs, taxation, licensing and land administration, and makes recommendations as to how each can be improved.

The business community realises that tackling corruption is not easy and that, on many occasions, businesses perpetuate the problem by agreeing to make illegal payments in an attempt to get things done. It will require a joint effort from both the government and businesses to engender a shift away from the current entitlement culture but this will ultimately benefit Vietnam in the long run.

¹ <http://www.transparency.org/cpi2012/results>

2. THE FIVE PILLARS OF ANTI-CORRUPTION

Below we highlight five general principles or suggestions that should be the foundation of any anti-corruption effort.

2.1 Legal Reform

The current legal regime must become more transparent, efficient and easier to negotiate. Investors who abide by the law frequently find themselves frustrated by lengthy delays resulting from the burdensome, inconsistent and contradictory legal requirements that govern the granting of permits and other similar approvals. This prevents projects from being completed on time, bankrupts investors who have to default on the loans taken out to finance the projects and encourages corruption as investors realise that they can obtain permits and approvals more quickly by making illegal payments to the appropriate officials.

Every proposed law should be subject to a rigorous impact assessment to confirm that the reforms are the simplest and most efficient way to solve the legitimate regulatory concerns that they are intended to address. The Government should use pilot schemes to identify and negate any unintended consequences before the law is implemented nationwide.

Reforms should also be financially assessed to ensure that they are as cost-efficient as possible, thereby ensuring that state resources are not wasted and so lowering the tax burden on the people.

2.2 Salary Reform

The prevalence of corruption within government authorities stems partly from the desire of officials to access a higher standard of living than is possible on their existing level of pay. Although public servants must acknowledge that their roles (i) require a sense of civic duty and (ii) will not be as remunerative as the private sector, there must not be so great a discrepancy between public and private sector salaries that officials start looking for illicit ways to supplement their income.

To enable the payment of higher salaries, tax collection must be as effective as possible with evasion targeted and offenders prosecuted. If tax receipts are maximised then the public purse will be able to afford higher salaries for officials. The government should consider implementing a system where the salaries of public officials increase in proportion to the level of tax collected.

Reform of public sector salaries was a key driver behind the reduction of corruption in other Asian nations

2.3 Independent Anti-Corruption Commission

There are currently many different government bodies with a responsibility for tackling corruption which can lead to confusion about where the responsibility for enforcement lies. We suggest that an anti-corruption commission should be established that is as independent from government as possible (e.g. only the head of the commission should be appointed by the Prime Minister or Chief Justice). The head of the commission should be responsible for ensuring that as many reported cases of corruption are prosecuted as possible.

The commission should be the body responsible for co-ordinating Vietnam's fight against corruption, with all necessary powers to investigate and prosecute those involved in corruption. It should also have a role in educating the people about the negative effects of corruption on society.

The benefits of such a commission can be seen when studying Hong Kong's Independent Commission Against Corruption, set up in 1974, which has been instrumental in ridding that city of its endemic corruption.

2.4 Protection for whistle-blowers

Individuals and companies must be incentivised to report corrupt practices to the relevant authorities. These incentives should include both appropriate financial reward and protection from those people and organisations that they report on.

The rewards and protection currently offered are not enough. By way of recent example the three whistle-blowers in the Hoai Duc General Hospital case each received awards of just VND 320,000 (USD 15) and there is no record of any protection being offered to them. This will not encourage future whistleblowing.

While these incentives are important, they must be balanced with sufficiently developed laws on defamation to protect individuals, government officials and businesses from being the subject of false accusations made by individuals hoping to claim a sizeable reward. That being said, such laws should not be so powerful as to become a shield for the corrupt and a deterrent for whistle-blowers, as has been the case in some neighbouring jurisdictions.

The aforementioned commission could put in place the necessary systems to reward and protect these whistle-blowers.

2.5 Media campaigns

The Vietnamese media is controlled by the government and as such can easily be used to educate the public about the negative effects of corruption on the Vietnamese people and the steps that individuals can take to combat it. Similar campaigns in Hong Kong and Singapore, professionally co-ordinated by the state-of-the-art international advertising agencies, have played a significant role in the reduction of corrupt practices.

3. THE VIEW FROM THE BUSINESS COMMUNITY

In October 2013 the VBF carried out a survey of businesses across Vietnam to learn how corrupt practices affect them on a daily basis and to hear their suggestions for improving the situation. The 221 respondents came from multiple sectors of the business community, with 31.2% having their headquarters in Vietnam and 68.8% having their headquarters abroad.

Foreign companies are increasingly subject to stringent anti-corruption legislation, enacted by both home and foreign jurisdictions, which criminalise the payment of bribes (and in most cases facilitation payments) to foreign officials (e.g. the UK's Bribery Act 2010 or the USA's Foreign Corrupt Practices Act). While Vietnamese companies can point to the Penal Code and Law 55 on Anti-Corruption ("**LAC**"), their relative lack of enforcement by the authorities in comparison to the aforementioned foreign legislation means that Vietnamese companies are able to get away with making corrupt payments and consequently receive advantageous treatment from the recipients. This hinders foreign businesses' ability to compete effectively, stunting their growth and by extension that of the Vietnamese economy. The overwhelming perception is that corruption is considerably more prevalent within the public sector than the private sector. Public officials make demands for bribes and facilitation payments on a daily basis and a failure to make such payments prevents businesses from functioning in their respective markets.

Businesses do not believe that corrupt practices are as common in the private sector. Companies are increasingly implementing strict internal anti-corruption policies, many of which prohibit the company from doing business with any firm involved in corrupt practices. As these policies increase in number, those private companies involved in corruption will be forced to review that involvement or will quickly find that few firms will want to deal with them, rendering their business unsustainable. Many businesses are also using "soft" measures to foster anti-corruption behaviours in their value-chain partners, e.g. encouraging customers and suppliers to adopt a zero tolerance policy to corruption or to conduct due diligence on their own business partners.

Businesses note that corrupt practices within the private sector are not yet criminalised and 60% of firms would support the introduction of legislation to change this. However the same detection and enforcement concerns discussed above would apply and so many companies would prefer the Government to concentrate on ridding the public sector of corruption as a first priority.

Respondents were also asked to identify the three sectors that the Government needs to prioritise in its anti-corruption efforts and customs (55.2%), taxation (46.2%) and land administration (39.8%) were the areas chosen. We examine these (and licensing) more closely below and recommend changes that can be made to minimise the opportunities for corruption to occur.

Finally businesses were asked whether they would reconsider future investment and expansion opportunities if corruption remains at its current level. 34% indicated that they would likely invest in a different country in the region or decide not to expand if this was the case. The current levels of corruption are also likely to dissuade other foreign companies from entering the Vietnamese market.

Businesses realise that many of the requisite laws, procedures and regulations are already in place but remain frustrated by the authorities' failure to put them into practice. This scepticism will remain, and corrupt practices will not be eradicated, until the Government proves that all offenders (whatever their standing) will be found, prosecuted and sentenced in accordance with the law. Although many of the above issues require the Government and its agencies to improve their practices, businesses are also aware that they have just as large a role to play in eradicating corruption from Vietnam. A collective agreement between businesses not to take part in corruption is one example of an action that could be taken in this regard.

4. CUSTOMS

4.1 The current situation

Facilitation payments are still being paid to expedite or bypass the relevant clearance procedures applicable to the import and export of goods and bribes are given in return for customs officers overlooking the smuggling of prohibited goods or misstating the volume and type of goods passing through their possession. The VBF notes that there is a responsibility on the minority of businesses who still pay these bribes to desist making such payments but the government must help by setting out simplified and transparent processes for the import and export of goods along with the relevant fees. Exporters and importers should know how much it will cost to clear customs and can reject requests from their various brokers and intermediaries to pay any additional facilitation monies.

The government should also reduce the number of shipments that it requires to be inspected by non-customs agencies as this creates further opportunities for officials to demand facilitation payments. Figures currently show that 40% of shipments are subject to such additional inspections compared to 10% in Malaysia and Thailand.

There is an extensive legal framework in place that attempts to tackle and minimise corruption within the customs system (outlined below) but a failure to effectively supervise officials, detect illegal practices and enforce the prescribed penalties means that its effect is limited. By way of example the General Department of Customs (**GDC**) advertises a hotline which importers and exporters can use to inform officials about a violation of customs laws. When the VBF tested this hotline our caller was promptly told that the hotline would only accept information relating to infringements by users of the customs service rather than corrupt practices carried on by customs officers.

That said the VBF are aware that the customs administration is trying to improve its performance and the customs working group applauds the authorities for their outreach over the last year. The proposed introduction of the e-customs system procedure on 1 April 2014 is a very promising development, as is the announcement that businesses will get access to the green channel if they can satisfy certain criteria.

4.2 The legislative framework

While the Criminal Code and LAC play a major part in fighting corruption, the GDC has also issued a number of rules and regulations, including:

- (a) Decision 517/TCHQ/QD/TCCB dated 17 June 2004 which aims to prevent the abusive, troublesome and negative behaviour of customs officers and staff towards members of the public;

- (b) Decision 998/QD-TCHQ dated 6 June 2006 which sets out an action plan for implementing the LAC;
- (c) Decision 2872/QD-TCHQ dated 31 December 2009 which sets out an implementation plan for the National Anti-Corruption Strategy until 2020 by Customs units;
- (d) Instruction 4590/CT-TCHQ dated 11 August 2010 on enhancing internal anti-corruption and security measures;
- (e) Decision 233/QD-TCHQ dated 31 January 2013 which sets out a further anti-corruption plan for the Customs department; and
- (f) Decision 618/QD-TCHQ dated 28 February 2013 which sets out a supervision plan for the implementation of anti-corruption measures within the Customs force.

The above documents implement several measures for dealing with corruption issues within the Customs administration, including the simplification of customs procedures (e.g. promoting the use of technology), the rotation of customs officers between different divisions, the supervision of daily operations and individual performance, and the creation of education programs for staff. We also note that a new customs law will be implemented in mid-2014, with the aim of modernising the customs system.

4.3 Recommendations

For the Government:

- (a) Continue to simplify the customs process so that it aligns with international best practice. This includes minimising occasions on which multiple government departments are required to inspect shipments and, where inspections by multiple agencies are necessary, ensure that the procedure for such inspections is as efficient as possible (e.g. provide training to customs officials so that one official can carry out inspections on behalf of multiple agencies).
- (b) Liaise with businesses on how the e-customs system can be best implemented. Each importer and exporter should ideally have a dedicated file on the system containing a record of all goods imported and exported, a status update on any current shipments currently with customs authorities and a log of all communications from and requests made by customs officials. Importers and exporters should be able to log into the system and review their file. This should minimise the amount of face-to-face contact required with customs officials and consequently reduce the number of opportunities where officials can demand facilitation payments;
- (c) Incentivise individual customs offices to complete all necessary procedures within a timeframe dictated by international best practice;
- (d) Create a customs watchdog or ombudsman that importers and exporters can contact in the event that their shipment is delayed from clearing customs or they receive a demand for a facilitation payment – we understand that our customs working group is working with the authorities on this;
- (e) Create a fully transparent list of all customs fees
- (f) Ensure that all payments of fees are made electronically and that importers/exporters receive an e-receipt for every payment.

For businesses:

- (a) Refuse to pay any facilitation payments demanded by customs officials or brokers;
- (b) Report any such demands to the authorities; and
- (c) Offer to run workshops that educate trainee customs officials about the issue of corruption.

5. TAXATION

5.1 The current situation

Companies report that they often have to pay facilitation payments in order to progress a tax decision through the system, that regulations are not uniformly enforced and that officials offer to purposefully understate a company's tax obligations in return for a bribe.

These corrupt practices are catalysed by a combination of tax officials with a high degree of discretion and a burdensome and ambiguous set of policies and procedures. Interestingly the World Bank's report suggests that those businesses encountering the most issues with corruption in this sector are those that have frequently made unofficial payments in the past.

5.2 The legislative framework

The General Department of Taxation (GDT) issued Decision 566/QD-TCT on 8 May 2006. This Decision sets out the various actions that GDT units and officials should be taking to prevent corruption within the GDT, including:

- (a) improving staff's understanding of the Law on Anti-Corruption;
- (b) reviewing, amending and supplementing existing policies and regulations in line with the Law on Anti-Corruption;
- (c) ensuring that all GDT units function in an open and transparent manner;
- (d) implementing administrative reform and modernising the tax system;
- (e) transparently declaring the assets and income of GDT staff and officials;
- (f) improving the search for, discovery of and actions against acts of corruption;
- (g) improving the GDT's code of conduct for staff and officials;
- (h) examining the giving and receiving of gifts by GDT staff and officials; and
- (i) making the head of the GDT ultimately responsible for the detection and prevention of corrupt acts.

The existing tax regulations are complicated and not applied uniformly. This in turn creates opportunities for tax officials to interpret the law at their own discretion and illegally profit from it.

5.3 Recommendations

For the Government:

- (a) Consolidate and streamline the existing tax regulations and processes in order to improve transparency and efficiency within the system, and reduce the current discretion afforded to tax officials;
- (b) Make information about all relevant tax rates, exemptions and allowances freely available online and provide each taxpayer with a breakdown as to how their tax liability has been calculated;
- (c) Ensure that all payments of tax are made electronically as far as possible. If taxpayers have to pay in cash then they must be issued with a receipt;
- (d) Formulate a strict and clear mechanism to punish such tax officials who have intentionally imposed incorrect decisions;
- (e) Introduce a fully computerised system allowing taxpayers to assess their tax liability online. Physical inspections should only be carried out in cases where taxpayers are identified as being high risk or suspected of tax evasion;
- (f) Ensure that all communications between officials and taxpayers are made in writing and recorded in a computerised database so that they can be verified in the event of any dispute or corruption investigation;
- (g) The Ministry of Finance or GDT should establish a hotline or hot-desk that can provide taxpayers with a transparent, open and effective channel to seek advice and/or guidance where appropriate; and
- (h) Establish a taxation watchdog or ombudsman that taxpayers can contact in the event that they believe they are being incorrectly assessed by the taxation authorities or are being subjected to corrupt practices. The watchdog or ombudsman should review the case, correct any errors in the assessment and, if evidence of corruption is discovered, alert the relevant authorities.

For businesses:

- (a) Do not pay facilitation payments to tax officials in return for them incorrectly declaring the company's tax liability; and
- (b) Report any requests for such payments to the relevant authorities.

6. LICENSING

6.1 The current situation

The licensing process in Vietnam is both bureaucratic and complicated, providing an environment in which corruption can flourish. Unofficial payments are frequently made to speed up the decision making process, usually at the expense of other companies seeking to abide by anti-corruption legislation. The overlap and duplication of officials' responsibilities, ineffective leadership and supervision by senior staff, and inefficient working practices all combine to ensure that corrupt activities still go undetected. The recent Public Administration reforms have reduced some of the complexity within the system but their overall impact on corruption levels has been insignificant.

6.2 The legislative framework

Article 14 of the LAC requires the management and construction of investment projects to be fully transparent. This includes any decision-making process relating to the approval, planning and implementation of the project. Article 21 makes similar requirements in the field of natural resources.

Decision 41/2005/QĐ-TTĐ dated 02 March 2005 of the Prime Minister of Vietnam relates to the grant of import licences and requires that the licensing process must be simple, transparent and objective. The licensing agencies are required to provide applicants with a concrete list of documents and information that must be included in any application dossier.

Decree 149/2004/NĐ-CP dated 27 July 2004 of the Government relates to the grant of licenses for the exploration and exploitation of water resources and requires the licensing process to be conducted properly.

Article 878.2 of the Law on Investment 2005 provides that any person who abuses his or her position or powers to obstruct investment activities, who harasses or causes troubles to investors, who fails to promptly resolve the requests of investors, or who fails to perform other official tasks stipulated by law shall, depending on the nature and seriousness of the breach, be subject to disciplinary action, administrative penalty or criminal prosecution.

Article 71.2 of Decree 108/2006/NĐ-CP dated 22 September 2006 of the Government implementing the Law on Investment 2005 provides that ministries, ministerial equivalent bodies, provincial people's committees and management boards of industrial parks and economic zones shall be responsible for providing guidelines on investment in those sectors and localities within their authority and must ensure that the investment procedures are simple, transparent and comply with the stipulated time-limits.

Directive 15/2007/CT-TTĐ dated 22 June 2007 of the Prime Minister of Vietnam detailed a number of major initiatives to promote foreign investment in Vietnam and, among other things, requires all relevant ministries and officers to:

- (a) decentralize the management of foreign investments, especially in relation to investment approval, the grant of investment certificates and the management of foreign investment projects;
- (b) effectively and promptly solve any problems arising in the process of granting and modifying investment certificates and simplify administrative

- processes and procedures relating to foreign investment and apply a one-stop shop mechanism when processing investment dossiers; and
- (c) enhance the coordination of foreign investment management between central and local agencies and between relevant ministries and branches.

6.3 Recommendations

For the Government:

- (a) Consolidate licensing regulations to improve the ease, time and transparency of the application process. The relevant application processes should be as simple and clear as possible, with all relevant timelines and fees clearly stated and met by the licensing administrations;
- (b) Abolish the need for existing licensees to go through a further full application process when their licence expires. A simplified renewal process should be followed, reviewing the licensee's actions over the previous licence period and its intentions for the forthcoming period; and
- (c) Ensure that all communications between officials and applicants are made in writing and recorded in a computerised database so that they can be verified in the event of any dispute or corruption investigation.

7. LAND ADMINISTRATION

7.1 The current situation

Bribes are often paid for access to land-related information and, given the lack of supply and potential profitability of the resource, the size of these bribes can be considerable. As with licensing above, it takes too long for businesses to navigate the land administration process and these delays provide fertile ground for corruption. Businesses also find that the same procedures are applied differently from province to province and this causes confusion and further delay.

There is also very little transparency in the process for acquisition of land by the government and the subsequent relocation of displaced citizens. Government-acquired land is treated as regulated land, the price of which is far lower than the real market price, and affected citizens therefore receive far less compensation than they should be entitled to.

7.2 The legislative framework

The general perception is that the existing legal framework is not strong enough to sufficiently reduce corruption in this area.

In addition to the Criminal Code and LAC, Articles 15, 143 and 144 of the Law on Land strictly prohibit any authorised person from abusing or exceeding their power, or acting with the objective of breaching the land administration provisions. Such behaviour, if discovered, can lead to disciplinary action and/or criminal prosecution.

The People's Committee of Cao Bang province has also issued Decision No. 466/2011/QĐ-UBND on anti-corruption regulations in the land administration and land management sectors in Cao Bang Province. The Decision requires the Government's officers and local authorities to ensure that the processes for the recovery, leasing and allocation of land, as well as the issuance of land use rights certificates, are transparent at all times.

7.3 Recommendations

For the Government:

- (a) Improve and enforce the transparency provisions already embedded in the existing legal framework, e.g. make the publication of key documents and information mandatory (such documents to include the results of land allocation decisions, land allocation prices, agreed minutes of compensation consultations etc.);
- (b) Establish a computerised national land registry with the ultimate aim for it to contain a record of every piece of land in Vietnam, detailing its owner and permitted use(s). This will take time and must be built up incrementally but registration should eventually be compulsory. Such a database should also contain information regarding any planning applications made in respect of the land. We note that the Ministry on Natural Resources and Environment has just issued Circular04/2013/TT-BTNMIT in an attempt to begin this process;
- (c) Establish greater transparency and accountability in the implementation of land procedures and processes. Timelines must be adhered to and penalties imposed for delays;
- (d) Reduce the discretion and increase the accountability of individual officials, e.g. those on compensation boards; and
- (e) List all fees and charges payable by applicants and provide all applicants with a receipt.

8. CONCLUSION

There are common themes running through all four of the sectors examined above. While the existing legislative frameworks governing each sector are not perfect, they do provide a more than suitable environment in which to tackle the corrupt practices still inherent in those sectors. That being said, all relevant processes and procedures could be simplified, clarified and made quicker, thereby reducing the opportunity for officials to profit from bribes and facilitation payments. Clearly stating the fees and timelines applicable, and ensuring that receipts are given, are just two ways in which corrupt practices could be nullified.

However this simplification of procedure must be accompanied by a robust and fully functional detection and enforcement effort. Far too few instances of corruption are being detected and, even when they are, only a small percentage are brought before the criminal courts. In the rare event that a sentence is handed down it is normally no more than a fine. The Government must prove to the business community that it is committed to the fight by prosecuting and convicting every offender brought to the relevant authorities' attention, regardless of their standing.

The authors of this paper acknowledge that this is not an easy problem to eradicate – there is no silver bullet. Only a combined and prolonged effort from the Government and the business community will see Vietnam cured of this debilitating social problem.

CORPORATE GOVERNANCE

1. INTRODUCTION

We focus in this section on some key issues of corporate governance that have been highlighted in Vietnam as needing change. This is not a paper that is dealing with non-Vietnamese investor issues. This paper is for Vietnamese and non-Vietnamese investors alike and some issues may be more relevant than others, it would be a mistake to think that this is simply the case of foreign business trying to get a more favourable deal.

We have used the following OECD five principles of corporate governance as a framework for the paper:

- (a) Shareholder rights;
- (b) Equitable treatment of shareholders;
- (c) Stakeholders' roles;
- (d) Disclosure and transparency; and
- (e) Responsibilities of management.

Studies of compliance indicate a lot of work to be done in Vietnam for the country to be recognised as an attractive destination for foreign investment. Detailed analysis by the Asian Development Bank (ADB) and ASEAN Capital Markets Forum² shows weak practices among Vietnamese public companies across the board.

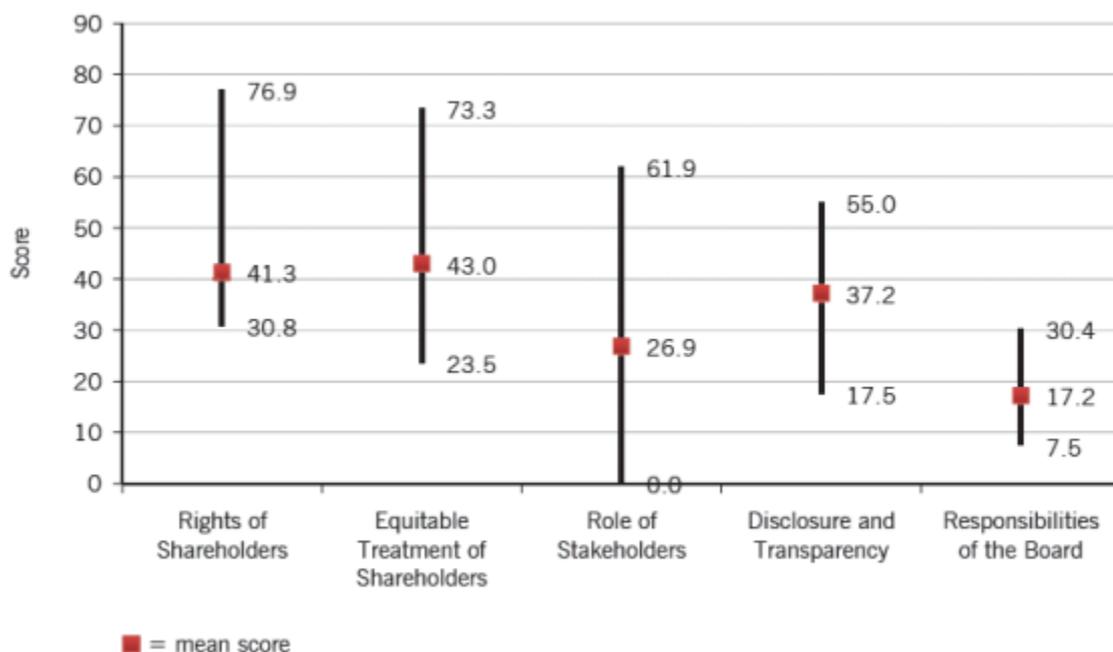


Figure 1: Asian Development Bank and ASEAN Capital Markets Forum scorecard of Vietnamese public company compliance across the five principles of corporate governance

The average score of Vietnamese public companies was 42.5%, a little way from the half way mark and far behind that of Thailand on 77% (in 2011) and the Philippines

² Their analysis is set out in the ASEAN Corporate Scorecard 2012-2013 (the **Scorecard**)

on 72% (in 2008)³. More disappointing, across the five principles, Vietnamese public company compliance declined in 2012 compared to 2011.

While a few companies are performing well, the national average does not reach 50 in any category. By comparison, the Philippines (the only other country for which we have data for each category) averaged scores of 56.0 (Vietnam 41.3), 71.4 (Vietnam 43.0), 28.0 (Vietnam 26.9), 54.3 (Vietnam 37.2) and 40.9 (Vietnam 17.2) respectively, outperforming Vietnam across the board. The Philippines is a country with which Vietnam should be shoulder to shoulder, but it is clear they are a long way behind.

The recent World Bank and the International Finance Corporation report entitled 'Doing Business in 2013' (**World Bank Report**) compares and ranks 185 countries with respect to their regulations governing, and the business conduct of, small and medium sized enterprises.

The World Bank Report looks at different categories of business than those looked at in the ADB Scorecard with the general theme being the ease of doing business. We set out Vietnam's ranking for categories applicable to this paper below, and for comparison purposes we also show the rankings of both Thailand and the Philippines.

Business category	Country ranking (1 the highest and 185 the lowest ranked country)		
	Vietnam	Thailand	Philippines
Ease of doing business (overall/general rank)	99	18	138
Starting a business	108	85	161
Protecting Investors	169	13	128

Table 1: Information extracted from The World Bank and the International Finance Corporation report entitled 'Doing Business in 2013'

The World Bank Report is a respected publication and distributed globally. Vietnam's positioning of 169 from 185 with respect to the 'Protecting Investors' category should be the spark to ignite reform, both at Government level and at business level. The Protecting Investors category was a measurement of *'the strength of minority shareholders' protection against directors' misuse of corporate assets for personal gain'*.

Three indicators were used to establish the ranking:

- (a) Approval and transparency of related party transactions;
- (b) Liability of company directors for dealing with company shares; and
- (c) Shareholders' ability to obtain corporate documents before and during litigation.

The Law on Investment includes high level investor protection, but without enforcement and without businesses making an effort to stop the illicit practices, no momentum can be gained and no changes can be made. Without guarantees of protection, investment will dry up and the economy will rely on bank loans leading to an uncompetitive and stagnant market.

³ 2011 and 2008 are the most recent years for which those countries' respective data is available to us

For improvement to be realised there needs to be a concerted effort by both the government and the business community. A combination of legislative reform and collective action by influential businesses and their management is the only way to bring about the changes that Vietnam needs.

In the following pages we highlight what the other ASEAN countries are doing well and make some proposals that may allow Vietnam to move closer to its geographic and economic neighbours. This subject is so vast, however, that we cannot include the depth of analysis or as much information as we would like. We hope, however, that there is enough information to prompt the Government into making change. The business community also has a large play by implementing a culture of self-regulation to ensure that the legislation's goal is achieved.

2. RIGHTS OF SHAREHOLDERS – THE GENERAL MEETING

The corporate governance framework should protect and facilitate the exercise of shareholders' rights

2.1 What are other ASEAN countries doing right?

Indonesia	Malaysia	Philippines	Singapore	Thailand
Shareholder approval of board members remuneration. Shareholder approval of fundamental corporate changes.	Substantial or major institutional investors, other than controlling shareholder(s), can take the lead in protecting the rights of minority shareholders. Timely disclosure of annual general meeting results.	Shareholders may participate in the transfer of all or substantially all assets, effectively resulting in the sale of the company. Shareholders may elect directors individually.	Shareholders may approve non-executive directors' remuneration. Individual resolutions disclosed when AGM outcome is announced. 28 days' notice of General Meeting.	Shareholders may elect directors individually. Outcome of General Meeting disclosed next day, including the vote allocation for each resolution. Rationale for each agenda item in the notice of General Meeting.

Table 2: Rights of shareholders - examples from other ASEAN countries

The table shows some of the rights given to shareholders by companies in neighbouring ASEAN countries, many of which are related to the timely and adequate supply of information. Such supply of information gives greater protection to shareholders through the ability to understand what management are doing.

We do not suggest that Vietnam does not have a legislative framework that deals with this or that the framework is not well drafted and has positive elements; it does. To be of value, however, the provisions need to be tighter and information must be made freely available on a timely basis to allow shareholders to exercise their

rights. Vietnam's companies and management must also respect these rights and be forthcoming in the provision of information.

2.2 Issues with the General Meeting process in Vietnam

Following on the theme of the provision of information, issues commonly arising from the surveys indicate the following weaknesses:

- (a) Pre-General Meeting: Only 7 days' notice is required under the Enterprise Law for a General Meeting and this is often not adhered to. The meeting notice often lacks information, explanation and rationale with respect to the proposed resolutions.
- (b) Conduct at General Meeting: Minutes of the General Meeting are inadequate and the time set aside for questions is often tightly stage managed.
- (c) Post-General Meeting: Resolutions are not released promptly and often not at all. Voting numbers are not released. Minutes are often unavailable when requested and lack detail with limited information on attendance of board members and key executives.

2.3 Pre-General Meeting

An investor's ability to exercise its rights is heavily dependent on the quality of information it has access to. The table at paragraph 2.1 above indicates the information provided by Vietnamese public companies is inadequate in comparison to its ASEAN neighbours.

The Enterprise Law provides that notice of a General Meeting is to be sent at least seven days prior to the opening of the meeting. This in itself is inadequate as any information given to investors will have little opportunity to be verified or digested. Preparation for and the ability to get to a General Meeting with such little warning is another topic altogether. We suggest a change to the law to allow companies a period in which to adapt to a new timing regime but at the same time allow shareholders an entitlement currently withheld.

Proposal 1 – Period of Notice of General Meeting

Amendment of Article 100 of the Enterprise Law to increase the 7 day notice period for a General Meeting to 14 days, further extending to 21 days after two years and 28 days after three years.

The Enterprise Law further provides that the general meeting's notice must include, broadly, the company's corporate details, the shareholder's details and the time and location of the meeting. There is no obligation at law for the notice to include the agenda, the documents for discussion or the draft resolutions, each an item that must in any event be prepared prior to the meeting by its convenor. Where there are non-Vietnamese shareholders, there is no obligation for General Meeting notices to be translated and published in English.

Again, we do not suggest that no Vietnamese company provides enough information to properly inform the investors of the purpose of the applicable General Meeting but the surveys suggest this is rare. The notice will too often be drafted at the discretion of the company and its management, with its form and detail varying greatly depending on the importance and sensitivity of the issues to be discussed.

Proposal 2 – Form of Notice of General Meeting

Government to formulate/approve a standard form Notice of General Meeting, to be referenced in Article 100 of the Enterprise Law, setting out those items for which the inclusion of information in the Notice is obligatory and to which all companies must broadly adhere.

In addition to the date, time and location of the General Meeting and the other corporate necessities, the Notice should include:

- (a) a full and informative agenda;
- (b) a list of the proposed resolutions and, for each resolution, enough detail as to why the resolution is proposed and how it will benefit the Company; and
- (c) a list of attending board members and executive management.

2.4 General Meeting conduct and Post- General Meeting provision of information

One of the most frequently noted inadequacies relates to the minutes that are produced at the General Meeting to record what was discussed and what agreed. Many members state that if anything is received at all, the minutes fail to adequately describe the basic issues or resolutions and almost always fail to include adequate information on the specific voting outcomes.

The legislation in this area appears to be sufficient. Article 106 of the Enterprise Law lists all those items that must be included in the minutes in order for them to be a full and accurate record of the General Meeting. The list includes attendees, an extended summary of all discussions held (particularly on the proposed resolutions), details of any questions put to the directors by shareholders (and their responses), and a complete breakdown of all votes held (i.e. how many shareholders voted for a resolution, against a resolution or abstained).

There is also the requirement, and this appears to be an obligation that is fulfilled, that the minutes of meeting be completed and approved prior to the closing of the meeting. This would appear to be self-defeating as the approval is rushed and very often leads to the minutes being incomplete and inaccurate. What this has not done, ironically, is lead to the Minutes being issued promptly. The shareholders, according to the statutory time limit, should be receiving all the information within 14 days of the General Meeting's closing but it appears that this is rarely happening.

Proposal 3 - Publication of General Meeting outcome

1. Amend the Law on Enterprises to oblige companies to publish the voting records of all resolutions, including information on the votes of each director, within 24 hours of the General Meeting closing.
2. The Minutes of the General Meeting to be approved and published on the company website within seven business days of the General Meeting closing.
3. The Minutes, the final approved resolutions and all related documentation to be issued to all shareholders by post on or before the tenth day following the closing of the General Meeting.

2.5 Documentation Language

An additional factor that hinders the information flow and potentially discourages investment from abroad is the lack of shareholder information provided in a language other than Vietnamese. Cost is recognised as an issue and we do not propose that all companies be obliged to provide all shareholder information and notices in two languages.

Proposal 4 – Language of Information Publication

For companies with any single non-Vietnamese shareholder holding more than ten per cent of the issued shares of the company, or registered charter capital, or any number of non-Vietnamese shareholders or members, as the case may be, holding more than ten per cent in the aggregate, the Law on Enterprises to oblige companies to issue all notices and minutes and all other corporate documentation to the shareholders contemporaneously in Vietnamese and English..

3. EQUITABLE TREATMENT OF SHAREHOLDERS – OTHER ISSUES

The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights, and should be protected from potential violations, including from related-party transactions and insider trading.

3.1 What are other ASEAN countries are doing right?

Indonesia	Malaysia	Philippines	Singapore	Thailand
Abstention of board members from decisions on matters where they have a conflict of interest. Infrequency of financial assistance to entities other than wholly owned subsidiaries.	No bundling of resolutions in the AGM. Availability of AGM materials in English. Declaration that related-party transactions are fair and at arm's length.	AGM notices are in English. Disclosure when conflict of interest. Companies have policies that (a) forbid director loans or (b) ensure that such transactions are conducted at arm's length.	Disclosure of voting rights attached to shares. Separate resolution for each item on the agenda. AGM notice and circulars published in English. Easy accessibility of proxy forms.	Do not bundle several items into the same agenda in the AGM notice. Provide details of auditor and dividend in the AGM notice. Have a policy on insider trading.

Table 3: Equitable treatment of shareholders - examples from other ASEAN countries

3.2 The issues in Vietnam

The following are some of the primary issues currently being experienced in Vietnam

- (a) Directors dealing in company shares are not required to report these dealings immediately – a 3 business day lag.
- (b) Policies on the review, approval and conduct of related-party transactions are weak.

- (c) Companies generally have weak mechanisms for preventing conflicts of interest in board decisions. Profiles of directors seeking election are not comprehensive.
- (d) Auditors seeking appointment or reappointment are not clearly identified.
- (e) Dividend policy is not explained and no rationale necessary.

Although this was the area in which Vietnamese companies performed best, there is still much work to be done to bring them up to the standard of their ASEAN neighbours.

We have looked at the availability of information with respect to General Meetings, but the problem does not end there. Concerns are raised in Vietnam about related party transactions. While the legislative mechanisms are in place to prevent a director voting on a related party transaction, legislation must be in place to ensure such transactions are fully disclosed to investors so that they can make an informed decision on the reasons for, and necessity of entering into, related party transactions. There should be the opportunity to question the validity of such transactions at a General Meeting and if answers are not convincing be entitled to call for a Supervisory Board enquiry.

Proposal 5 - Disclosure of all Related Party Transactions

All related party transactions to be documented prior to the General Meeting and listed in the General Meeting Notice. Subject to overwhelming confidentiality considerations, there shall be full disclosure to be given of the applicable related party transaction, including the related party, contract price, key terms and any aspects of the transaction that were not completed on an arm's length basis.

Another issue that is understood to be prevalent is that of a director dealing in his company's shares. A three day waiting period for disclosure is unnecessary. A public announcement should be made immediately, stating the number of shares bought or sold and his/her reasons for doing so. Where no disclosure is made and it is found he or a related party engaged in such conduct, there should be an immediate suspension and disqualification from acting as a director for a period of years.

Proposal 6 - Transparent Dividend Policy

A company's latest dividend policy and information on the payment of dividends for the previous three years to be on a company's website at all times. Sanctions to be imposed on directors where there is not a timely payment of dividends.

4. ROLE OF STAKEHOLDERS

The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs and the sustainability of financially sound enterprises.

4.1 What other ASEAN countries are doing right

Role of stakeholders - strengths				
Indonesia	Malaysia	Philippines	Singapore	Thailand
Social responsibility policy and programs Safety and welfare of employees Training and development Corporate responsibility in the annual report.	Corporate social responsibility or sustainability disclosure in the annual report Disclosure of policies on employees' health and safety, training and development.	Many signed an integrity pledge and include anti-corruption policies in their annual report. Corporate social responsibility programmes included annual report.	Disclosure of how creditors' rights are safeguarded. Existence of policies allowing employees to raise concerns about illegal or unethical behaviour.	Have a policy on the treatment of stakeholders. Have a separate corporate responsibility report or section in the annual report.

Table 4: Role of stakeholders - examples from other ASEAN countries

4.2 How is Vietnam fairing?

The following weaknesses have been identified in Vietnam:

- (a) Companies lack policies and practices for addressing customer health and safety, selecting suppliers, safeguarding creditor rights, and implementing anticorruption programs.
- (b) Companies generally do not give specific contact details for stakeholders to use when they need to voice concerns and complaints about violations of their rights.
- (c) Mechanisms for improving employee participation are weak.
- (d) Companies have weak policies and procedures for allowing employees to voice complaints about illegal and unethical behaviour, and generally lack whistle-blower protection policies and procedures

Performance in this category is among the weakest for Vietnamese PLCs. While corporate social responsibility is still a new concept to Vietnamese companies, they appear to be strong at interacting effectively with their local communities through programs such as human capital building, community outreach, and economic value strengthening. However significant improvement is required to improve policies and practices for addressing customer health and safety, selecting suppliers, safeguarding creditor rights and implementing anti-corruption requirements.

Stakeholders find it difficult, if not impossible, to voice concerns and complaints about these matters because of the lack of contact details provided by the Company.

Proposal 7 - Transparent And Accessible Complaints Mechanism

A positive obligation on companies to create a transparent and easily accessible complaints procedure. The procedure, including contact details of the executives responsible for the procedure, should be clearly displayed on a company's website and must include assurances for whistle-blowers that they will have all necessary support should they come forward.

Vietnamese companies' dealings with their employees must also be improved. The development of employees is frequently stunted by a lack of training and development opportunities, and employers' attention to the health, safety and welfare of their employees must also be heightened. There is also a lack of compensation policies to incentivise and reward deserving employees. Finally, company procedures relating to an employee's ability to complain about illegal and unethical behaviour are weak and very little protection is afforded to whistle-blowers, thereby discouraging the notification of company malpractice.

This requires more of a policy change than legislative reform, but perhaps incentives can be offered to companies that draw up policies and practices addressing (amongst other issues):

- (e) customer/employee health and safety;
- (f) selecting suppliers;
- (g) safeguarding creditor rights; and
- (h) anti-corruption programs.

International firms can play a role here and can provide the Vietnamese business community with copies of their own policies on these areas and provide teaching to directors (or other relevant employees) on how to implement them. Again on a policy level, companies should also be encouraged to design and implement training and development schemes for their employees to improve their skill levels and thereby ensure a smooth ladder of career progression.

5. DISCLOSURE AND TRANSPARENCY

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership and governance of the company

5.1 What other ASEAN countries are doing right

Indonesia	Malaysia	Philippines	Singapore	Thailand
Disclosure of (i) financial performance indicators and (ii) related-party transactions. Publication of (i) quarterly and annual and audited financial statements and (ii) annual reports, and business operations, on company websites.	Disclosure of the identity of (i) the beneficial owners or major shareholders and (ii) the direct and indirect shareholdings of major or substantial shareholders and directors. Disclosure of relevant details of related-party transactions and contact details for investor relations.	Disclosure of financial performance indicators in the annual report. Details of the parent or holding company, subsidiaries, associates, joint ventures and special purpose enterprises.	Disclosure of information in the annual report and company website. <ul style="list-style-type: none"> •Ownership, group structure and business operations. •Financial performance indicators and annual financial reports; audit fees. •Board meetings and attendance of individual directors. 	Disclosure of policy and details of related-party transactions. Disclosure of audit and non-audit fees. Affirmation of the annual financial statement by the board of directors. Disclosure of contact details of investor relations.

Table 5: Disclosure and transparency - examples from other ASEAN countries

5.2 How transparent are Vietnam's public companies?

Vietnamese companies have performed badly in this category compared to their ASEAN neighbours (whose commitments to disclosure and transparency are considerably more advanced) and are a long way off the acceptable standard of information disclosure required in the world's financial markets. Adherence to good practice in the areas of disclosure and transparency is essential for those companies seeking external investment. Shareholders and investors are far more likely to invest money into a company that provides easy access to up-to-date information about its structure, directors and financial performance etc. than one that does not.

Failings in this area include:

- (a) No requirement to state the dividend or whistle-blower policies in their annual reports, and no disclosure of the biographical details of directors, the training and education programme for directors, attendance at board meetings, and the remuneration of the chief executive office and board members.

- (b) No requirement to not present a statement of full compliance with the Code of Corporate Governance and no explanation required for noncompliance.
- (c) No duty to disclose the policy for the review and approval of major related-party transactions. Disclosure of audit and non-audit fees is very poor with financial statements are rarely released on time.
- (d) The use of communication media, such as analysts' briefings, press conferences and media briefings, is limited. Company websites have limited information regarding shareholder structure and other materials normally provided in briefings to analysts and media.
- (e) Often no contact details for the investor relations officer (if indeed one has been appointed).

A lot of corporate misconduct may be avoided if more information was known about the management board's members and with which other entities they have or have had an active management role. A common complaint of shareholders is that director profiles are not detailed enough and therefore there is a higher likelihood of a conflict of interest being overlooked.

This leads to perhaps the most important proposal of any suggested and one that is standard practice around the world.

Proposal 8 - National Companies' Register

The creation of a national or province based companies' register that includes, as a minimum, for every incorporated legal entity in Vietnam:

- (a) its name, date of incorporation and IC/BRC number;
- (b) the address of its registered/principal office;
- (c) the names and addresses of all its directors, a list of their current directorships and a list of any directorships held in the previous 5 years;
- (d) a copy of the company Charter; and
- (e) copies of the previous three years audited accounts.

This could be managed on a province by province basis. For new companies this would be a condition of incorporation and for existing companies there would be a moratorium for compliance after which severe penalties would be applied.

Of all VBF's proposals this is the most far reaching and the one that will no doubt be met with scepticism. It is, however, standard across the world. It allows new investors easy access to basic information rather than relying solely on the good will on the management on a given day. This would effectively revolutionise Vietnam's corporate world from one shrouded in mist and secrecy, to an open corporate regime that could stand should to shoulder with any in the world.

On a more positive note, Vietnamese companies are good at disclosing the identity of their major shareholders as well as providing information on their subsidiaries, associates, joint ventures and special purpose enterprises or vehicles. They are also good at presenting financial statements, the correctness and fairness of which have been attested to by their directors.

However Vietnamese companies are let down by their failure to disclose information relating to subjects previously covered in this paper. For example there is very little information disclosed about a company's whistle-blowing policies, biographical details of directors and remuneration of executives. More often than not, companies'

annual reports are silent on their compliance with the Code of Corporate Governance, neither stating whether they have fully complied nor, if not, highlighting explicit cases of non-compliance.

Proposal 9 – Corporate Governance Compliance

Companies to be obliged to include a statement in their annual report that they are in full compliance with the Corporate Governance Code or, if they are unable to confirm compliance, list those areas where they are not in compliance and the reasons. Strictly enforced and strong sanctions should be administered on directors if they make an incorrect statement and/or for regular non-compliance.

Even when information is disclosed, the surveys indicate that it is invariably late and this is so with the audited annual financial statements – perhaps the most important document to issue in any company’s calendar.

Proposal 10 – Timely Issue Of Annual Financial Statements

Strictly enforce the release of a company’s audited financial statements within the prescribed time limits by levying and enforcing sanctions for non-compliance.

Vietnamese companies lag behind their ASEAN rivals in the use of media outlets to disseminate key information. The use of analyst briefings, media briefings, press conferences and company websites is far too limited and these methods must be embraced by companies looking to attract investment. With the exception of direct contact they are the best way to get information across to shareholders and potential investors.

6. RESPONSIBILITIES OF THE BOARD

The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board and the board's accountability to the company and the shareholders.

6.1 What other ASEAN countries are doing right

Indonesia	Malaysia	Philippines	Singapore	Thailand
Inclusion of at least one commissioner with prior work experience in the major industry in which the company is operating. Full independence of audit committee members. Adequate disclosure of audit committee tasks, composition, number of meetings and attendance. Adequate disclosure of internal control procedures and risk management systems.	Board size of 5 to 12 directors. Separate positions of chairman and CEO. Disclosure of (i) duties and responsibilities of the board and (ii) types of decisions requiring board approval. Audit Committee responsible for appointing, reappointing or removing external auditor, and approving the appointment or removal of the head of internal audit. Disclosure of internal control procedures and risk management systems	PLCs take having an audit committee seriously and along with that, having an independent director as chair of the committee. PLCs do not neglect to compose a nomination committee in the board. All the directors or commissioners are subject to re-election at least once every three years. Most corporate secretaries have legal or accountancy training.	Disclosure of roles and responsibilities of the board and chairman. Boards with at least one-third independent members. Establishment of key committees with independent chairmen and independent members comprising the majority, including audit committee and disclosure of terms of reference. Disclosure of committee meetings and attendance by individual members. Existence of separate internal audit function.	Clear roles and responsibilities of the board. Disclosure of the company's corporate governance policy and code of conduct. Separate roles of the chair and the chief executive officer. Chair is an independent director. Good structure of board committees with at least 6 board meetings per year. Board establishment and review of the internal control and risk management system.

Table 6: Responsibilities of the board - examples from other ASEAN countries

6.2 The Vietnam experience

Vietnam's boards of management come in for some heavy criticism, and some of those criticisms are set out below:

- (a) Board responsibilities and board decisions are very often not clearly defined.
- (b) Companies often fail in setting up a code of ethics and a transparent corporate governance policy. Directors often deficient in reviewing and approving the corporate vision and mission.

- (c) Boards often lack (i) independence from the management (ii) support from functional committees and (iii) a clear diversity policy. Board meeting attendances and board decisions are rarely disclosed in annual or board reports.
- (d) New director orientation programmes and training are often omitted from board reports.
- (e) Company reports generally do not cover board appraisal and remuneration.
- (f) Many companies lack an internal audit function.
- (g) Little review of material control and risk management systems.

This is the area of corporate governance where Vietnamese companies perform worst of all. While a few legislative additions can help, this is ultimately an area that requires management to take the burden as it is their responsibility to set and monitor their company's corporate governance practices and, as this paper demonstrates, this is not yet being done to an acceptable standard.

A company must clearly define their board members' responsibilities to ensure efficient and effective management of the company. While drafting policies on these two areas would be a good start, they must be effectively implemented and overseen by the board if the company is to improve its corporate governance performance.

Proposal 11 – Board Responsibility

Every company to appoint a director responsible for corporate governance practice compliance.

Company employees must be educated about these policies and how they can ensure their compliance with them. These policies must also be reviewed on a regular basis (we suggest annually) so that companies can gauge their success and identify any areas that need to be strengthened.

Vietnamese boards of directors should also become more independent from management by appointing a greater number of non-executive directors. The non-executive directors can then also sit on the remuneration and other functional committees, reassuring shareholders that the management team are not setting their own pay etc. This has normally been the role of the company's supervisory committee but past performance has shown that this committee often fails to monitor and address corporate issues.

Proposal 12 – Non-Executive Directors

Companies to appoint a minimum number of non-executive directors to the board of directors.

Annual reports should also provide a greater amount of information on the training received by directors' throughout the year, as well as a statement from one or more of the NEDs on the performance and remuneration of the board over that period.