



# Completing Law on Corporate Governance for Banks as International Practice: The Experience of Vietnam

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## ABSTRACT

In recent times, with the trend of international extensive cooperation, prestigious organizations in the world such as OECD, World Bank, and Basel Committee... as well as other countries are trying to develop regulations and principles on corporate governance for banks. Based on studying international practices and assessing the current legal situation in Vietnam, the article makes recommendations to improve the law on corporate governance for banks in Vietnam according to international practices.

**KEYWORDS:** improve the law, corporate governance in banking, international regulations.

## 1. Question

Back in the day, the COVID-19 pandemic was, above all, a serious global crisis. At the same time, the pandemic's impact on the global economy is growing exponentially, affecting business both in the short and long term (IFC, 2020). In the process of global development, the issue of corporate governance appears as an objective need when it receives great attention from policy makers, investors as well as businesses in countries around the world. In common sense, corporate governance involves a set of relationships among shareholders, the Board of Directors, and persons with related interests in the company. Corporate governance also establishes a structure that helps establish company goals, define the means to achieve those goals, and monitor their effectiveness (G20/OECD, 2015, p.6).

For the banking sector, because commercial banks have their own characteristics compared to other businesses, effective corporate governance plays an even more important role when it is an essential element to build a successful business and maintain public trust in the banking system, thereby determine the health of the banking industry as well as the entire economy in general. Studies show that corporate governance for commercial banks is much more complex than that of ordinary corporate governance due to issues such as asymmetric information, debt classification methods, financial reporting and other regulations in the banking industry are often stricter than others.

Banks perform an important role in the economy by intermediating funds from savers and depositors into activities that support businesses and help drive economic growth. Bank safety and soundness are key to financial

stability and the way they conduct their business; therefore, effective corporate governance makes commercial banks central for the health of the whole economy. In the opposite direction, poor corporate governance can lead to the collapse of banks, cause extremely serious economic and social losses due to negative effects on the deposit insurance system, as well as having a great impact on the macroeconomy. In addition, weak corporate governance may cause the market to lose confidence in the ability of banks to effectively manage assets and liabilities, including deposits. This can trigger sudden deposit withdrawals and lead to a bank solvency crisis (Basel, 2015).

Through the study and understanding of international practices on corporate governance in general and in the banking sector in particular, these will be valuable experiences for the improvement of corporate governance legislation for banks in Vietnam.

## 2. International practices on corporate governance for banks

During the past two decades, a series of practices and principles of corporate governance in general and in the banking sector in particular, have been developed to improve its efficiency. In general, these regulations are fundamentally influenced by each other, so they have certain similarities, all of which emphasize the importance of independence, transparency, and accountability (Bob Tricker, 2012, p.375) in corporate governance.

Regardless of the set of rules applied in the country, there are several standards on good corporate governance practices with an international scope such as Principles of corporate

governance of the OECD, Statement of Principles of Corporate Governance of the International Network of Corporate Governance (ICGN, 2017), Association of Corporate Governance of the Commonwealth (CACG, 1999)... Among them, the G20/OECD corporate governance principles have been widely accepted around the world as a standard framework and a standard reference in the field of corporate governance.

First published in 1999, the principles of corporate governance of the OECD has become the international standard reference document for policymakers, investors, businesses, and persons with related interests all around the world. The set of rules has also been adopted by the Financial Stability Council as the Key Standards for a Strong Financial System and is the basis for the World Bank's reports on compliance with Standards and Principles (ROSC) in the field of corporate governance. It was revised in 2004 and further refined through discussion at the G20/OECD Corporate Governance Forum in April 2015. Following that meeting, the OECD Council approved The principles on 8 July 2015. It was presented to the G20 Senior Leaders Summit on 15-16 November 2015 in Antalya and was adopted as G20/OECD Principles of Corporate Governance (G20/OECD, 2015, p.2).

In essence, the G20/OECD Principles of Corporate Governance are not mandatory and are not intended to provide detailed regulation of national legislation. The principles aim to provide a coherent yet flexible reference for policymakers and market participants to develop their framework for corporate governance. The Code of Conduct is also one of the Financial Stability Board's Key Standards for Strong Financial Systems and provides the basis for evaluating the corporate governance component of the Standard Monitoring Reports and Code of Conduct of the World Bank. The content of the Code of Conduct covers six major issues: I) Ensuring the Foundation for an Effective Corporate Governance Framework; II) Shareholders' rights, fair treatment of shareholders and basic ownership functions; III) Institutional investors, stock market and other intermediaries; IV) The role of stakeholders in corporate governance; V) Information disclosure and transparency; and VI) Responsibilities of the Board of Directors. Building on that, the Code of Conduct provides detailed guidelines that lay out the fundamentals of the principles, describe important or emerging trends, offer different approaches and useful examples when applying the Code of Conduct (G20/OECD, 2015, p.6).

Based on the OECD Code of Conduct, for the banking sector alone, the Basel Committee on Banking Supervision has also issued the Guidelines for Corporate Governance Principles for Banking Institutions over the years 1999, 2006, 2010 and 2015 (Guidelines Corporate governance principles for banks) to match the actual conditions. For example, the Basel Committee Principles of October 2010 sought to reflect key

lessons from the 2008-2009 financial crisis and strengthen the way banks self-regulate and the way supervisors close to this important area. After that period, through increased adoption of these corporate governance practices, commercial banks in fact around the world have demonstrated a better understanding of the key elements of public governance. such as monitoring the effectiveness of the Board of Directors, rigorous risk management, compliance control and other related areas. In 2015, the Guidelines on Corporate Governance Principles for Banking Institutions were revised with key objectives such as: clearly strengthening the collective supervision and risk management responsibilities of the board of directors, highlighting components of risk management such as risk culture, risk appetite and their relationship to bank risk. This revised Basel guideline also describes the specific roles of the board of directors, board risk committees, senior management, and control functions... According to the Basel Committee (2015), the main objective of corporate governance is to protect the interests of stakeholders following the public interest based on sustainable development. Among stakeholders, especially for retail banking, the interests of shareholders will be determined to be secondary to the interests of depositors. In the banking sector, corporate governance is the allocation of powers and responsibilities under which the business and affairs of the bank are carried out by the Board of Directors and senior management of the bank including: i) Setting the bank's strategy and goals; ii) Selection and supervision of personnel; iii) Managing the bank's business on a daily basis; iv) Protecting depositors' interests, response shareholder obligations and take into account the interests of other recognized stakeholders; v) Align corporate culture, operations and behavior with the expectation that the bank will operate in a safe and sound manner, with integrity and in compliance with applicable laws and regulations; and vi) setting control functions (Basel, 2015, p.3). As can be seen, this Guide has supported and guided banking supervisors to promote the application of strong corporate governance practices in banking institutions in member countries. The guideline is also a reference to help other countries strengthen their corporate governance in recognizing the recommendations from Basel.

### **3. Law on corporate governance for banks in Vietnam as the requirement of international integration**

When considering the mechanism of codifying good practices into the legal system, it can be said that the system of regulations related to corporate governance for banks includes official and unofficial regulations (Nguyen Dang Minh, 2010, p.25). In essence, the Corporate Governance Codes in general and in the banking sector in particular of international and national organizations are non-legal guidelines intended to supplement the laws and other regulations on corporate governance. Corporate governance

rules are like “soft laws” – commercial banks are not required to implement these rules, but if they do not, they must disclose them to the market. This approach allows commercial banks to be flexible in applying the Principles of Corporate Governance, thereby encouraging a fair balance in the market. All of these sets of rules are variations on the “Follow or Explain” approach to corporate governance issues that businesses and countries are working on. As a kind of rule, they are not required by law, but they are important tools to encourage commercial banks to commit to better corporate governance (SSC of Vietnam, 2016).

Vietnam became an official member of the OECD Development Center - one of the two cooperation agencies between the OECD and non-member countries on March 8, 2008, however, the silent reception of good corporate governance ratio has been demonstrated in recent times.

From 2010 onwards, the corporate governance legal framework in general in Vietnam has been formed with many relatively progressive contents. From legal documents governing corporate governance in general such as Law on Enterprises to regulatory documents on corporate governance in specialized fields such as Law on Securities, Law on Credit Institutions, legal documents under the Laws... are continuously amended and supplemented by competent authorities to meet the requirements of perfecting the law. Legal documents such as the Law on Enterprises 2014, later the Law on Enterprises 2020, the Law on Securities 2019 and guiding documents have many new regulations to meet the requirements of international integration. It is worth noting that in recent times, the State Securities Commission of Vietnam has coordinated with IFC to develop a Code of Corporate Governance in accordance with the best practices (SSC of Vietnam, IFC, 2019), this is a document with the main purpose to provide guidelines and recommendations on best practices in corporate governance for public companies. Like many countries in the world, the development of a Code of Corporate Governance is an urgent requirement in the process of globalization. This is the last missing piece to complete the overall picture of the corporate governance framework in Vietnam, which is unfinished during the past period.

In the banking sector, although Vietnam is not yet a member of the Basel Committee on banking supervision, in the past time, the legislative bodies have issued many legal documents and regulations according to Basel II guidelines including some aspects of corporate governance such as the provisions of Law on Amendments to some Articles of the Law on Credit Institutions, Circular 13/2018/TT-NHNN, Circular 40/2018/TT-NHNN stipulates the internal control system of

commercial banks, foreign bank branches... In the context of the current legal environment of Vietnam, although the Law on Credit Institutions provides basic ideas on corporate governance for banks in line with the trend in many developed countries, the difference between the Law on Enterprises 2020, the Law on Securities 2019, and the guiding documents of these two with the Law on Credit Institutions on corporate governance can be seen very clearly. This partly affects the implementation of the law on corporate governance for banks in Vietnam today.

In addition to being influenced by the Principles of Corporate governance in the world, it is easy to see that the company law in general and the corporate governance law in particular in Vietnam are increasingly affected by Anglo - American law (Ngo Huy Cuong, 2016). With the growth of the economies of countries following the Anglo - American legal tradition, developing countries including Vietnam are now actively importing Anglo - American corporate laws to create closeness, which will create opportunities for companies to easily establish economic relationships even though they do not have the same nationality. It is not difficult to see how the provisions of the Law on Enterprises of Vietnam, including regulations on the corporate governance model; conditions and standards for managers and executives; the issue of preventing conflicts of interest..., have changed in accordance with the times. Looking at the positive side, corporate governance standards in Vietnam have been perfected in a synchronous manner compared to the world, creating conditions to improve the efficiency of corporate governance in practice. However, the process of implementing legal provisions on corporate governance sometimes is considered too out of reach for socio-economic conditions in Vietnam. Although companies have also begun to be aware of the importance of corporate governance as well as have improved their corporate governance in the direction of becoming more open and transparent, mistakes still occur very commonly focusing on very basic contents such as i) Protection of shareholder rights; ii) Organization and operation of the Board of Directors; iii) The independence of the Supervisory Board; and iv) Mode of information disclosure<sup>1</sup>. These shortcomings originate not only from the existing socio-economic foundations, consciousness of companies but also from the inadequacies of the current legal regulations.

In general, the development and completion of legal regulations on corporate governance in general in Vietnam are mainly learning from other countries, meeting the integration trend. Furthermore, there is a lack of general studies, especially since it is rarely based on the theoretical

<sup>1</sup> Refer to the reviews to see that the situation of corporate governance in Vietnam is still limited in many contents:  
- ACMF - ASEAN Regional Capital Market Forum (2012, 2014, 2016), *ASEAN Corporate Governance Scorecard Report*.

- Vietstock & FiLi (2017), *Disclosure survey report on Vietnam stock market 2017*.  
- Voting for Listed Enterprises in 2018, 2019 (2020, 2021), *Corporate governance assessment report of listed companies in Vietnam*.

background of corporate governance<sup>2</sup> so the legal regulations on corporate governance in Vietnam are inconsistent and ineffective. This is reflected in the process of promulgating the Law on Enterprises in Vietnam. In just 15 years, from 2005 to 2020, there were 3 Law on Enterprises documents issued (2005, 2014, 2020) with many changes related to corporate governance.

On corporate governance in the banking sector, although the Law on Credit Institutions 2010 was amended by the Law on Amending and Supplementing the Law on Credit Institutions 2017, changes in corporate governance are not close to international practices. In fact, they mainly solve the problem of improving conditions and standards of management positions at commercial banks in order to limit subjective risks in the system. Compared with the Law on Enterprises and the Law on Securities, the difference in the provisions of the Law on Credit Institutions is very clear, showing the obvious difference in the corporate governance system of the commercial banks compared to other enterprises in the economy. The legal regulations on corporate governance for banks in Vietnam have solved the basic problem of corporate governance - the relationship between shareholders and managers, however, there are not many specific regulations related to other issues, especially the relationship with related parties. The ability to practically enforce regulations on protecting shareholders' interests, ensuring the operation of the Board of Directors as well as the independence of control agencies is still weak.

From the above arguments, the gap in the quality of corporate governance for banks in particular in Vietnam compared to the international one can be shortened only through the process of perfecting the law on corporate governance in general and the law on corporate governance for banks in Vietnam by absorbing international practices, thereby improving the competitiveness of the Vietnamese economy in the process of regional economic integration and international.

#### **4. Recommendations to improve the law on corporate governance for banks in Vietnam**

By analyzing trends and situations, the author would like to give some opinions on the improvement of the law on corporate governance for banks in Vietnam based on the adoption of the following international practices as follows: Firstly, continue to institutionalize principled issues of the OECD, Basel, and the Code of Corporate Governance in the good banking sector in the world into legal documents in Vietnam, specifically the Law on Credit Institutions. In addition, it is necessary to have detailed guidelines on

corporate governance for commercial banks in sub-law documents, specifically here at the level of the Decree, whereby the group of guiding regulations on corporate governance for banks on major topics such as: i) Shareholders' rights and the General Meeting of Shareholders; ii) Board of Directors; iii) Control and audit system; iv) Preventing conflicts of interest; v) Reporting and information disclosure regime. These are major issues that a legal document on corporate governance should focus on addressing.

Secondly, it is necessary to develop a Code of Corporate Governance soon to be applied in the banking sector. According to the common practice of developed countries, the Law on Enterprises (or the Law on Companies), and the Law on Credit Institutions only provides principled regulations on corporate governance or corporate governance for banks to ensure minimal compliance. In addition, the State Bank of Vietnam needs to coordinate with international organizations to develop a set of corporate governance principles that are implementation-oriented for commercial banks. The Code of Conduct can be developed in one of the following ways: (1) mandatory; (2) compliance or accountability; (3) voluntary. Currently, most countries in the world have built a set of principles according to model (2) or (3). In the author's opinion, it is possible to learn from the best practice Code of Corporate Governance applicable to public companies. Similarly, in the banking sector, there is also a need for a Code of Conduct with specific recommendations.

Thirdly, from issues 1 and 2, it is necessary to clearly define which contents should be legislated and which should be specified in the Code of Corporate Governance for banks. Many countries have now revised legal documents on securities, banking, as well as regulations in the banking sector to solve new problems. The contents of the Code of Corporate Governance can be institutionalized into a Law showing the importance of corporate governance, thereby forcing businesses to apply. The contents that have been included in the Law will be excluded from the Code of Corporate Governance. Due to their characteristics, commercial banks may not be able to follow the recommendations in the Code of Corporate Governance. Therefore, competent state agencies need to consider making specific provisions in the law, ensuring minimal compliance. In addition, the recommendations in the Code of Corporate Governance, if possible, need to be developed according to levels with standards at different levels to ensure flexibility as well as build trends in the future in this field.

From the above argument, in the opinion of the author, the provisions in the legal documents on corporate governance

<sup>2</sup> There are three main theories affecting the formulation and improvement of corporate governance legislation: agent theory, manager theory and stakeholder theory.

See also Ho Ngoc Hien, Phan Dang Hai (2020), *Theories on corporate governance and proposed solutions to improve the*

*law on corporate governance in Vietnam*, International Journal of Management (IJM), Vol. 11, Issue 12, December 2020, p. 12-19

for banks in the coming time should focus on: i) Improving the corporate governance model in the banking sector to ensure compliance with international practices; ii) Continue to set higher requirements on conditions and standards for the commercial bank's leadership team; iii) Strengthening the internal control mechanism of the company, perfecting regulations on preventing conflicts of interest.

It is necessary to pay attention to the interests of persons with related interests<sup>3</sup>, in particular, to put the requirements of sustainable development into the Code of Corporate Governance Principles at the initial stage, then institutionalize it with legal regulations when commercial banks have implemented compliance. The issue of sustainable development today is expressed in several individual rules such as the United Nations International Principles for Responsible Investment or the OECD Guidelines for multinational enterprises. Therefore, it is necessary to consider including the content of sustainable development of enterprises in the process of building the Code of Corporate Governance for banks to suit the requirements of practice as well as the general trend in the world.

Fourthly, in addition to the legalization as well as the development of a Code of Corporate Governance in the banking sector, the law should pay attention to stipulate the agency that supervises and enforces the law on corporate governance in the banking sector; regularly evaluate the effectiveness of the implementation of the Code of Corporate Governance to encourage commercial banks with good compliance as well as to control and support commercial banks with weak compliance.

## 5. Conclusion

It must be affirmed that: there is no one-size-fits-all model of corporate governance. It means that there will not be a final and stable model that all countries and companies can copy (R. Kraakman and partner, 2004, p.10). However, a few factors that play a fundamental role for good corporate governance have been confirmed in international corporate governance practices, which are important requirements and ideas for perfecting the national laws on corporate governance in general and in the banking sector in particular around the world. In the current legal environment of Vietnam, it can be said that the Law on Enterprises and the Law on Credit Institutions have laid out the basic principles of corporate governance in the banking sector. With the shortcomings analyzed above, the current legal framework on corporate governance for banks needs to be further developed

and perfected in a manner that is consistent with the principles of corporate governance of the OECD and Basel and the international corporate governance trend in many developed countries. This will make an important contribution to shortening the gap in the quality of corporate governance for banks in Vietnam compared to international ones, thereby improving the competitiveness of the economy in the process of integration.

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<sup>3</sup> Based on the point of view of the Stakeholder Theory: The company must be responsible to its stakeholders, including those individuals and organizations that have a certain interest or interest in the company: owners owners, employees, trade unions and external parties such as lenders, suppliers, customers, communities and society.

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