



TOPIC 2

MULTI-MEMBER LIMITED LIABILITY CREDIT INSTITUTION



Agenda

I. ORGANIZATIONAL CHARACTERISTICS

II. MANAGEMENT

III. EXECUTIVE OPERATION





ORGANIZATIONAL CHARACTERISTICS

I

CHARACTERISTICS



1.1 Member's quantity

Article 46 *Law on Enterprises 2020*

1. It must be a **legal entity**. Have **02-50** members that are organizations or individuals.



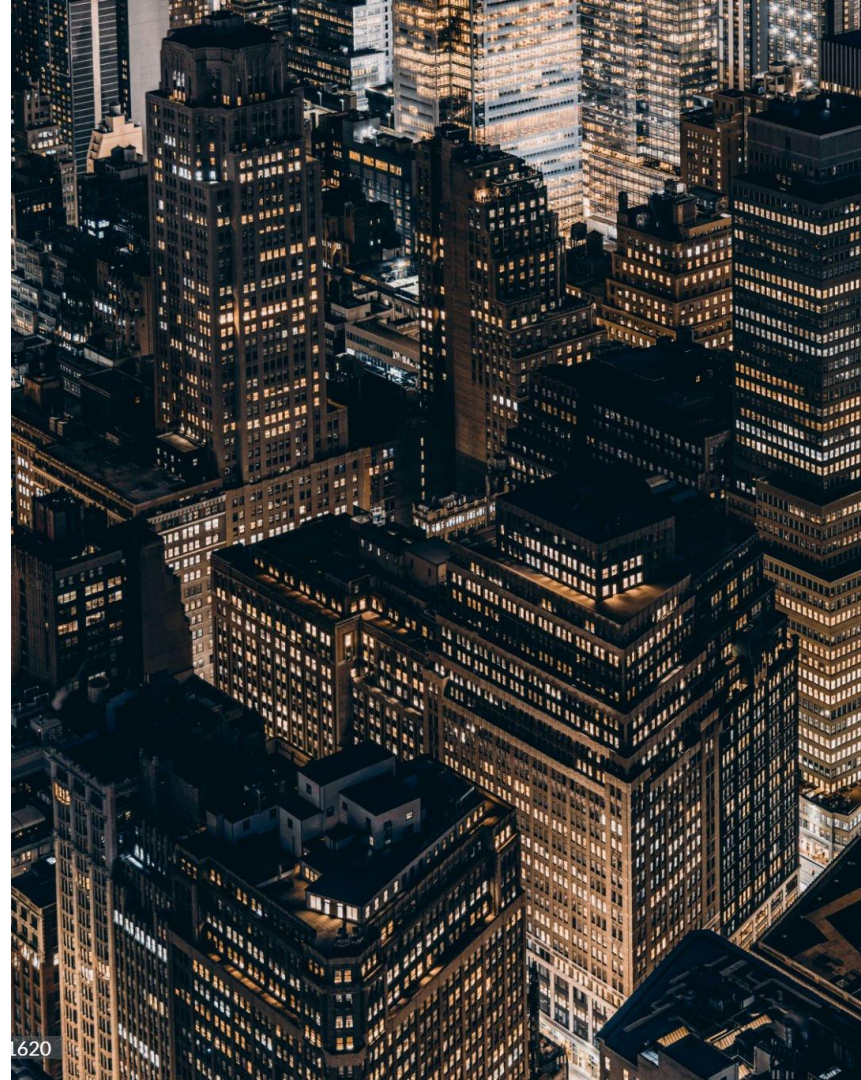
Article 70-Law on CIs:

1. The total number of members shall **not exceed five members**. The maximum ratio of ownership of any one member and its related persons shall **not exceed fifty (50) percent** of the charter capital of the credit institution.



1.2 Member's Liability

A member's **liability** for the enterprise's debts and liabilities shall **be equal** to the **amount of capital** that the member contributed to the enterprise. (**Law on Enterprises 2020**)



1.3 Member's power

Law on Enterprise (Article 49)	Law on Credit Institution (Article 70)
1. (a) To attend meetings of the Members' Council, to discuss, make recommendations and vote on the matters within the authority of the Members' Council;	(a) To appoint, remove and dismiss their representative
(b) To have the number of votes in proportion to its capital contribution portion,	(b) To be provided with information and reports on the operational status, annual financial statements and other documents and data;
(c) To have profit distributed to it in proportion to its capital contribution portion	(c) To receive distribution of profit corresponding to their capital contribution portion;
(d) To have distributed to it the remainder of the value of assets of the company in proportion to its capital contribution portion in the company upon dissolution or bankruptcy of the company;	(d) To receive distribution of the remaining assets of the credit institution corresponding to their capital contribution portion (In the case of bankruptcy)
	(dd) To make a complaint about or initiate legal action against a member of the members' council,

1.4 Rights of members regarding Capital contribution

Article 49 - Law on Enterprises 2020

(dd) To be **given priority in making additional capital contributions** to the company upon any increase of charter capital of the company;

(e) To **dispose of its capital contribution** portion by way of assignment of all or part [of its capital contribution portion], or by gift or other methods **in accordance with law and the charter of the company**.

Article 71 - Law on CIs

1. be **given priority in making additional capital contributions** when the credit institution increases its charter capital.



LEGAL REPRESENTATIVE

2. Legal representative

The legal representative of a credit institution shall be:

1. **Specified in the charter** of that credit institution:
 2. **One** of the following persons:
 - Chairman of the board of management or of the members' council;
 - General director (director).
-
- The legal representative must **reside in Vietnam**.
 - When absent from Vietnam, he/she must **authorize in writing** another person being a **manager or executive** of the credit institution **currently residing in Vietnam** to exercise the former's rights and discharge his or her obligations.

Criteria	Law on Credit Institution	Law on Enterprise
Number of legal representative	The legal representative of a credit institution shall be one of the following persons	LLCs and shareholding companies may have one or more legal representatives
Legal representative	<ul style="list-style-type: none"> Chairman of the board of management or of the Members' Council; Or the general director (director). 	<ul style="list-style-type: none"> Chairman of the Members' Council; Or the general director (director)
Comprehensiveness	Mentioned only once in the Art 12 of the Law	Mentioned several times across the Law => More comprehensive

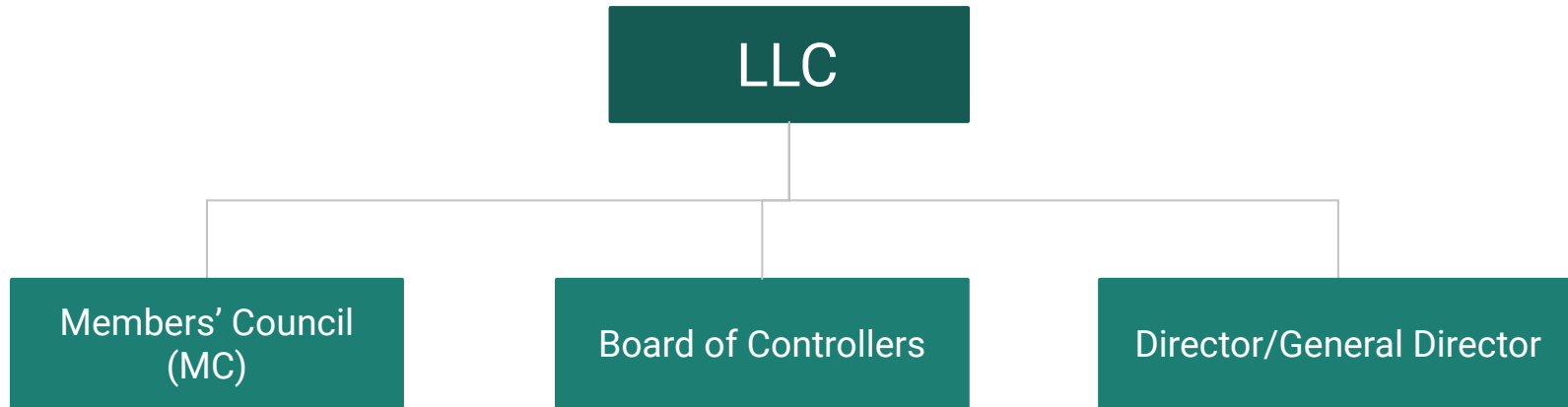
ORGANIZATIONAL STRUCTURE



3. Organizational Structure

[Law on Credit Institution] Article 32.2: Organizational and managerial structure of credit institution

The organizational and managerial structure of a credit institution established in the form of either a **single or multiple member** limited liability company shall comprise **the members' council, board of controllers and general director (director)**.



CHARTER CAPITAL CONTRIBUTION

The **total capital contributed** or **promised** by the members and shall be written in the company's charter.



4.1 Capital contribution

Law on Enterprises 2020

Article 47 Capital contribution for establishment of companies and issuance of capital contribution certificates:

1. Members must contribute capital to the company in full and in the type of assets as undertaken when registering the establishment of an enterprise

Article 50 Obligations of members of Members' Council

1. To contribute in full and on time the amount of capital as undertaken and to be liable for the debts
2. Not to withdraw its contributed capital from the company in any form
3. To comply with the charter of the company.
4. To observe resolutions and decisions of the Members' Council.

Law on CIs

Article 70 Capital contributing members and duties and powers of capital contributing members

3. Capital-contributing members have the following duties:
 - (a) Not to withdraw their contributed capital
 - (b) To comply with the charter of the credit institution;
 - (c) Other duties as stipulated in the charter of the credit institution

4.2 Redemption or transferring

Law on Enterprises 2020

Article 52 Assignment of capital contribution portions

a member of a multiple member LLC has **the right to assign a part or all of its capital contribution portion** to other persons in accordance with the following provisions:

- (a) Offering such capital contribution portion for sale to all other members in proportion to their respective capital contribution portions in the company on equal terms of offer;
- (b) Assigning to non-members on the same conditions as the offer applicable to other members when the other members of the company do not purchase or do not purchase in full within thirty (30) days from the date of the offer.

Law on CIs

Article 71 Assignment and redemption of capital contribution portion

2. The State Bank provides specific regulations on conditions for receipt of assignment of capital contribution portions by a credit institution and for redemption of capital contribution portions by the credit institution.



MANAGEMENT

II

Structure of the Management

Law on Credit Institution (Article 32.2)

Member's council

Board of controllers

General director

Law on Enterprise (Article 54.1)

Member's council

**Chairman of the
Members' Council**

General director



DEFINITION

Definition

Article 55.1 - Law on Credit Institution

The Members' Council is the **highest decision-making authority** of the company

Article 43.1 - Law on Credit Institution

In the name of the Credit institution, manage with **full authority** to make decisions and exercise the rights and discharge the obligations of the credit institution.

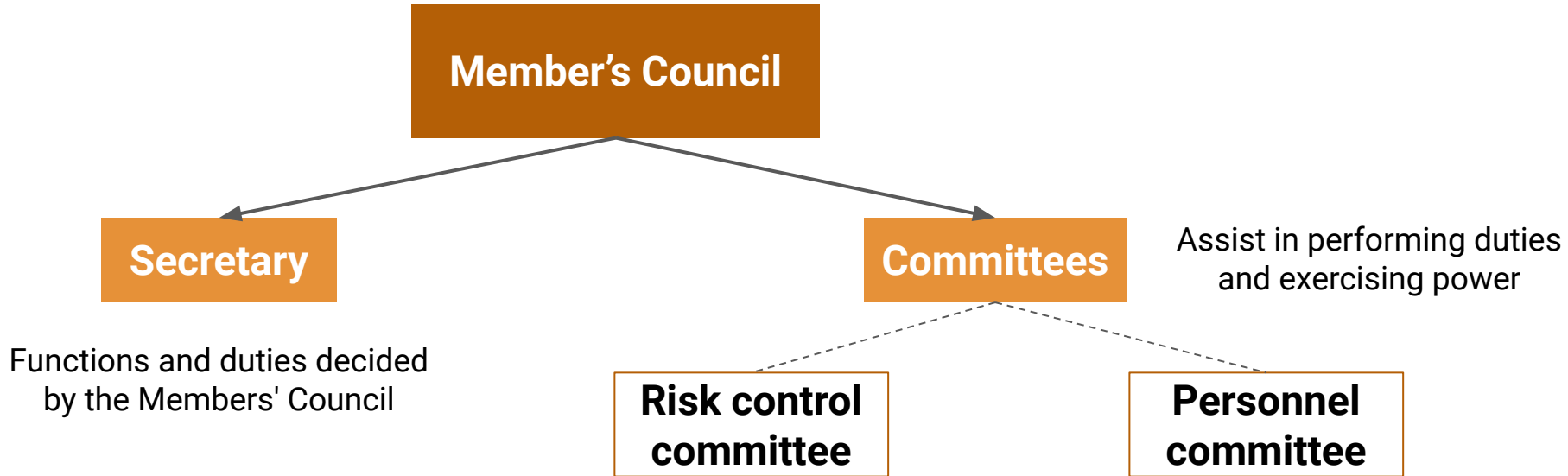
Article 43.4 - Law on Credit Institution

Use the **seal of the credit institution** to perform its duties and exercise its power



STRUCTURE OF THE MEMBER'S COUNCIL

Structure of the Members' Council (Article 43.6)





REQUIREMENT TO BECOME MEMBER

Requirement to become Member (Article 50.1)

Not belong to the category of people stipulated in Article 33.1

Having professional ethics

Having a university or post-graduate degree

Extensive experience in the field

Requirement to become Member (Article 50.1)

Not belong to people stipulated in Article 33.1

Having professional ethics

Having a university or post-graduate degree

Extensive experience in the field

1. People with **legal restrictions** due to state employee and anti-corruption laws can't be board members - Article 22.2 Law on state employee:
 - **Loss of Civil act capacity** or **limited civil act capacity**
 - Facing **criminal prosecution**, **serving** court-ordered **sentences**, or undergoing **mandatory administrative measures** like detoxification, education, or reform
2. Those involved in **bankruptcy** or **serious legal breaches** at previous enterprises are excluded.

Requirement to become Member (Article 50.1)

Not belong to people stipulated in Article 33.1

Having professional ethics

Having a university or post-graduate degree

Extensive experience in the field

3. Individuals **suspended from positions** in credit institutions or involved in license revocation incidents are not allowed.
4. **Related** persons of certain **board members** or **directors** can't hold specific positions.
5. Individuals responsible for penalties due to **administrative breaches** in the banking sector are not permitted.

Requirement to become Member (Article 50.1)

Not belong to people stipulated in Article 33.1

Having professional ethics

Having a university or post-graduate degree

Extensive experience in the field

- Honesty
- Trustworthiness
- Transparency
- Accountability
- Confidentiality
- Objectivity
- Respect
- Obedience to the law
- Loyalty

Q&A

Q&A

How can an institution measure the ethics of a member?

Requirement to become Member (Article 50.1)

Not belong to people stipulated in Article 33.1

Having professional ethics

Having a university or post-graduate degree

Extensive experience in the field

Graduate in the faculty of:

- Economics
- Business administration
- Law
- Accounting
- Auditing

Requirement to become Member (Article 50.1)

Not belong to people stipulated in Article 33.1

Having professional ethics

Having a university or post-graduate degree

Extensive experience in the field

- Serving as **manager or executive** for **at least 5 years** at a **credit institution**;
- OR Serving as **director or deputy director** for **at least 5 years** at an **enterprise** (charter equity \geq corresponding Credit Institution) + **5 years working in financial, banking, accounting or auditing sectors**;
- OR Serving **10 years in financial, banking, accounting or auditing sectors**.

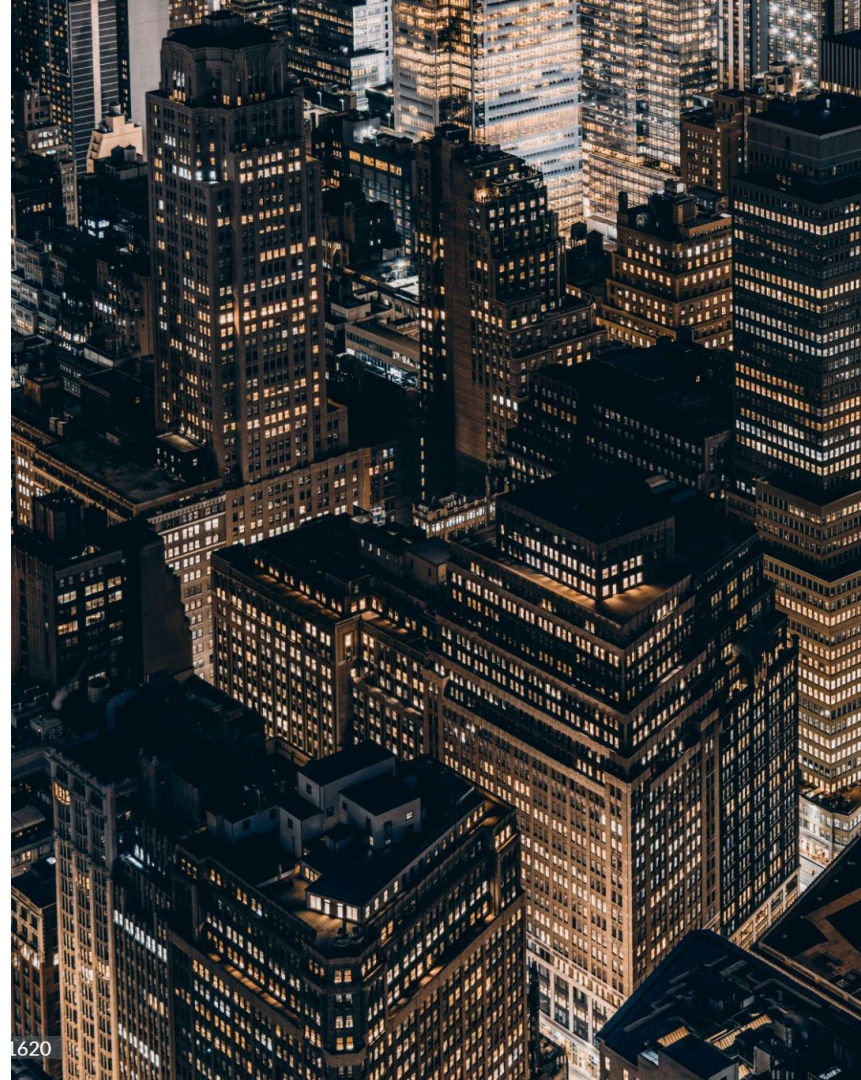


ELECTION OF THE MEMBER'S COUNCIL

Term and election

Term of office (Article 43.2)

- Board of management or members' council **not exceed five years**
- Members may be re-elected for an **UNLIMITED** number of terms
 - Member **added or replaced mid-term not serve full term duration** but the residual amount of the **current period**.
 - As new members are elected for new term, **member** of the **recently expired term** continue to **serve until new board** takes over the work



Appointment

Election

Law on Credit Institution

Appointment

Capital contributing members may **appoint** their **representatives** as a member of the members' council on the basis of the amount of **capital contribution portion** to the credit institution or **upon agreement** among capital contributing members.

(Article 70 Clause 2)

Approval

Election

Approval

Law on Credit Institution

Members proposed for the position of members' council must be **approved by the SBV**. After the appointment of persons to the position, the credit institution must notify the SBV within 10 business days.

(Article 51 Clause 1)

When number of elected members does **not have 2/3 amount required** (or the minimum stipulated in the charter of the credit institution), credit institution shall, **within 60 days, add additional members** to ensure the sufficient amount.

(Article 43 Clause 3)



DUTIES & POWERS OF THE MEMBERS' COUNCIL

Duties and powers of The Members' Council

(Article 72.1 - Law on Credit Institution)

Charter & Charter capital

Personnel

Organization

Reporting

Financial & Operation

Others

Duties and powers of The Members' Council

(Article 72.1 - Law on Credit Institution)

Charter & Charter capital

Organization

Financial & Operation

- Make decisions on the **contents** of the charter and on **amendments** and additions to the charter of the credit institution;
- Make decisions on any **increase or reduction** of charter capital and on the **timing** and **method** of raising capital;
- Make decisions on **redemption** of a **capital contribution** portion in accordance with this Law.

Duties and powers of The Members' Council

(Article 72.1 - Law on Credit Institution)

Charter & Charter capital

Organization

Financial & Operation

- Issue **internal rules** on organization, management, and operation of the credit institution in compliance with law;
- Make decisions on **establishment** of **subsidiary** companies, **branches** and **representative offices**; [and on] capital contribution for establishment of **affiliated companies**;
- Make decisions on **restructuring** the credit institution;
- Make decisions on **dissolution** or petitioning a court to **commence proceedings for bankruptcy** of the credit institution.

Duties and powers of The Members' Council

(Article 72.1 - Law on Credit Institution)

Charter & Charter capital

Organization

Financial & Operation

- Pass the annual **financial statements**, plans for **use and distribution** of **profit** or plans for dealing with losses of the credit institution;
- Make decisions on the **annual developmental strategy** and **business plan** of the credit institution;
- Make decisions on **extension of credit** in accordance with Article 128.7;
- Make decisions on solutions for **market development, marketing** and **technology transfer**.

Duties and powers of The Members' Council

(Article 72.1 - Law on Credit Institution)

Personnel

Reporting

Others

- **Elect, remove or dismiss** the chairman of the members' council;
- Make decisions on **appointment, removal** and **dismissal** of the general director, deputy general directors, chief accountant and other managers and executives;
- Make decisions on the amount of **salary, bonus**, and other **benefits** of the chairman and members of the members' council, of the head and members of the board of controllers, and of the general director.

Duties and powers of The Members' Council

(Article 72.1 - Law on Credit Institution)

Personnel

Reporting

Others

- **Consider** and **approve** annual reports;
- **Report**, upon request by a capital contributing member or the competent State agency, on the financial status and business results of the credit institution and on the performance by the members' council and its members of their delegated duties and powers.
- To **submit issues** to the Governor of the State Bank **for approval** in accordance with law

Duties and powers of The Members' Council

(Article 72.1 - Law on Credit Institution)

Personnel

Reporting

Others

- Other duties and powers as stipulated in the charter of the credit institution.



RIGHTS AND OBLIGATIONS OF THE MEMBERS' COUNCIL

Rights and obligations of The Members' Council

(Article 72.2 & 72.3 - Law on Credit Institution)

Criteria	Chairman	Members
Meetings	<ul style="list-style-type: none">• Prepare the program, agenda and data for meetings• Convene and chair meetings;• Ensure that members receive complete and objective information and have enough time to discuss issues	<ul style="list-style-type: none">• Request the chairman convene an extraordinary meeting• Attend meetings to discuss and vote• Be liable to the members' council for their decisions

Rights and obligations of The Members' Council

(Article 72.2 & 72.3 - Law on Credit Institution)

Criteria	Chairman	Members
Management	<ul style="list-style-type: none">• Prepare operational programs and plans of the members' council• Assign duties to members;• Evaluate the efficiency of each member and of committees of the members' council	X

Rights and obligations of The Members' Council

(Article 72.2 & 72.3 - Law on Credit Institution)

Criteria	Chairman	Members
Execution	<ul style="list-style-type: none">• Sign decisions of the members' council on behalf of the council	<ul style="list-style-type: none">• Implement resolutions and decisions• Exercise rights and obligations following rules and as assigned by the chairman, in the interests of the credit institution and the owner

Rights and obligations of The Members' Council

(Article 72.2 & 72.3 - Law on Credit Institution)

Criteria	Chairman	Members
Supervision	<ul style="list-style-type: none">• Supervise implementation of decisions;• Supervise members in performing their assigned duties and general rights and obligations;	<ul style="list-style-type: none">• Question an independent auditor or an internal auditor about issues related to the financial reports;• Explain performance of their assigned duties upon request;
Others	Other rights and obligations as stipulated in the charter of the credit institution	



Executive operation in Credit Institution - General provisions

Executive operation in Credit Institution - General provisions

Articles 33 to 37 collectively establish the regulatory framework governing the eligibility, concurrent roles, status loss, removal, and suspension of executive positions within credit institutions

Article 33

Identifies **who is barred from holding these positions**, covering specific categories of individuals, those bound by legal restrictions, and those with prior associations with bankrupt enterprises, as well as relatives of board members



Article 34

Places **restrictions on simultaneous roles** in credit institutions and subsidiary companies.



Article 37

Grants authority to suspend executive positions for law violations, with special controlling boards having similar powers. Suspended individuals must address outstanding issues and breaches upon request.





Board of Controllers

Board of Controllers (Article 44)

Scope

Carry out **internal audit, control and assessment of compliance**

Inspect and assess the observance of law, internal regulations, charter, resolutions and decisions.

Section

An **assisting section** and an internal audit section

Use the credit institution's **resources**

Hire outside specialists and organizations

Member

At least **3 members**

At least **two-thirds work** on a full time basis not currently holding another position

Term

5 years is maximum

Unlimited number of Terms

Expired board shall **continue to operate until** the new board takes over the work.

Criteria & Conditions

**Not belong to the category
of people stipulated in
Article 33.1**

Having professional ethics

**Having a university or
post-graduate degree**

**Not be a related person of a
manager of the credit
institution**

**Full-time members of the
board of controllers must
reside in Vietnam**



General director (director)

1. Definition of General Director

Definition

Article 48



"The board of management or members' council shall appoint one of its members as the general director (director) or shall hire a general director (director), except in the case stipulated in article 66.1(c) of this Law."

Characteristics

Article 48



"The general director (director) is the highest executive of the credit institution and is responsible before the board of management or members' council for the exercise of his or her rights and discharge of his or her obligations."

2. Rights and obligations: *according to Article 49*

Rights and Obligations

Governance and
Compliance

Financial
Management and
Reporting

Risk Management
and Emergency
Response

Communication
and Reporting

Personnel and
Meeting
Management



Compare CI Law vs Enterprise Law

Law on Credit Institution (Article 49)

Prepare, submit and be responsible for the accuracy of financial statements

Appoint, remove or dismiss managerial and executive positions

Recruit employees, and to make decisions on salaries and bonuses for employees

Make and communicate crisis decisions to higher bodies

Request extra-ordinary meetings

Report business activities to involved stakeholders

Law on Enterprise (Article 82.2)

Submit financial statements

Appoint, remove or dismiss managerial positions

Manage recruitment

Not mentioned

Not mentioned

Not mentioned

3. Conditions and criteria: *according to Article 50*

Not belong to the category of people stipulated in Article 33.1

Having professional ethics

Having a university or post-graduate degree

Having worked for at least 5 years as executive of CI and 5 in director or 10 years in financial related sectors

Must reside in Vietnam

Compare CI Law vs Enterprise Law

Law on Credit Institution (Article 50.4)

Tertiary degree or higher in economics,
business admin, or law

Having worked for at least 5 years as
executive of CI and 5 years as a director

Having professional ethics

Reside in Vietnam during term of office

Law on Enterprise (Article 82.3)

Having professional qualifications

Having experience in business
administration of the company

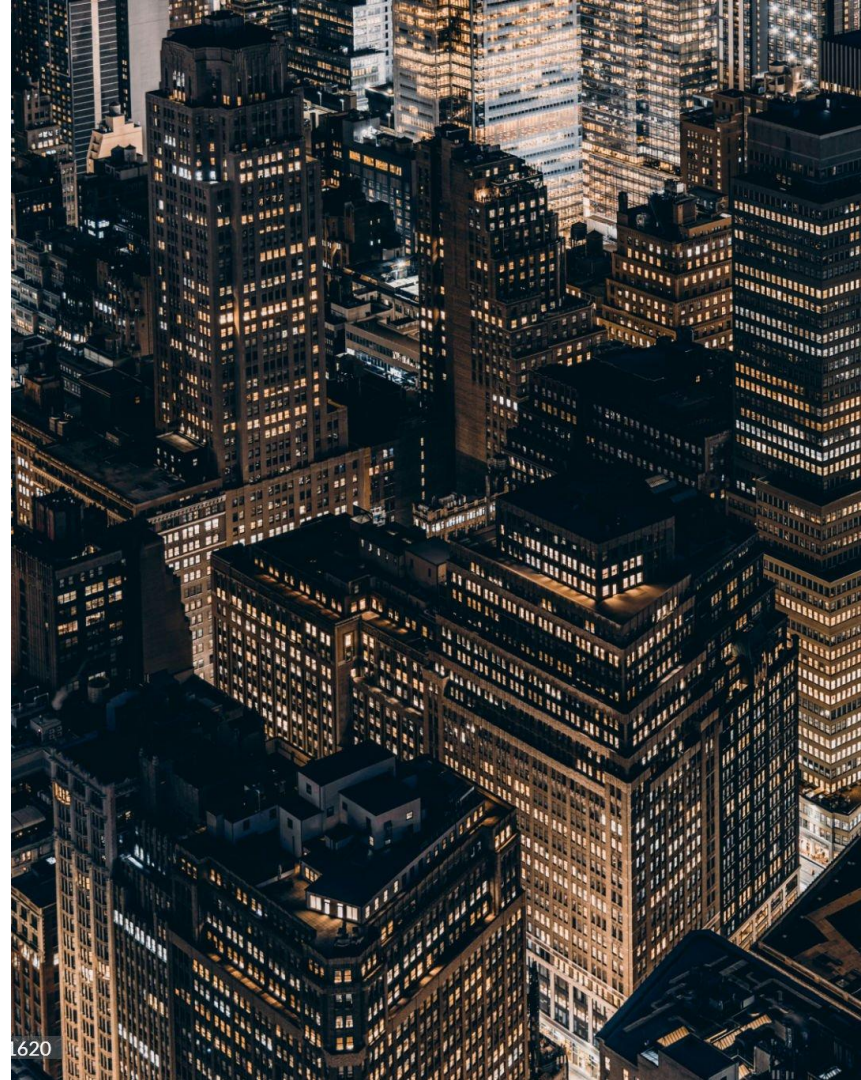
Not mentioned

Not mentioned

QnA

1. How many years of working directly in financial, banking, accounting or auditing sectors, at a minimum, are required to meet the eligibility criteria for the position of a general director of a credit institution?

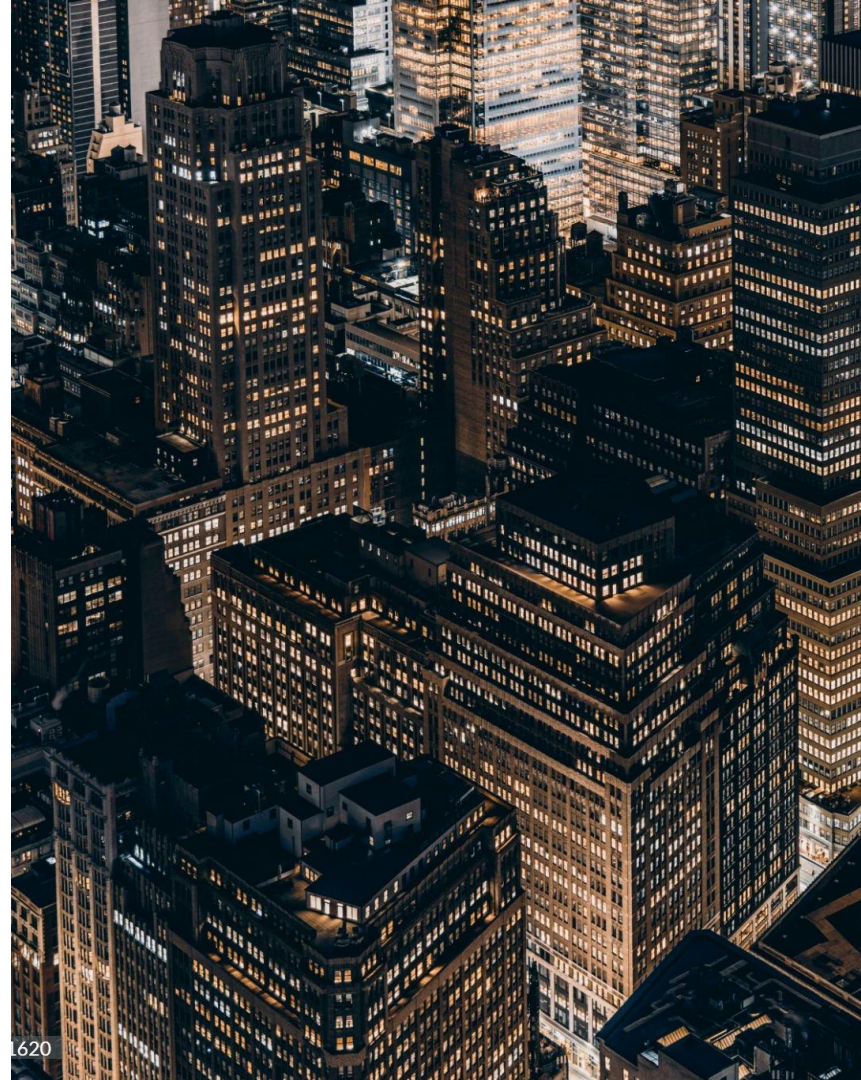
- > *At least 10 years*
- *Article 50.4d*



QnA

2. Can Nam, a senior executive with 10 years of experience in the financial sector with a bachelor degree from a prestigious technology university be considered to be a general director of a credit institution?

-> No, he need to have a university or postgraduate degree in one of the faculties of economics, business administration or law
- Article 50.4c





**THANK YOU
FOR LISTENING!**