

# Who can be CEO in Vietnam?



By **Le Hong Phong**

It is normal practice for a foreign investor to appoint its executive officer to hold the position of general director of its Vietnam subsidiary. In Vietnam, the general director or CEO of a company is in most cases the legal representative of that company. There are numerous requirements and qualifications for this position, according to Vietnamese law. Here I discuss the qualifications that foreign investors should understand when they invest in Vietnam.

## General qualifications of a CEO

Qualifications that a CEO must possess depend on the company they represent. Generally, the CEO must be a person with full capacity for civil acts and not be prohibited from managing enterprises, as described in the Vietnam Law on Enterprises. If the CEO is also the investor of such company, he or she must own at least five percent of the company's ordinary shares (in case of a shareholding company) or ten percent of the company's charter capital (in case of two-member limited liability company). In the event that CEO is not the investor of the company, he or she must have professional qualifications and practical experience in corporate management, or in the main lines of the company's business.

## No related person

In the case of a subsidiary of the company, where the state owns more than 50 percent of its charter capital, the CEO of the subsidiary must not be related to any of the managers and the person having authority to appoint the managers of the parent company. Regarding a limited liability company, the CEO must not be related to a member of the members' council, which consists of all the investors of the company. Additionally, the CEO must not be related to the chairman of the company or the person having authority to directly appoint the authorized representative or the chairman of the company. According to the Law on Enterprises,

a related person is defined as spouse, father, adoptive father, mother, adoptive mother, child, adopted child or sibling.

## Non-concurrence

Foreign investors should remember that the CEO of a shareholding company is not allowed to act concurrently as the CEO of other companies; but it is not clear whether this limitation applies to companies established outside of Vietnam. Furthermore, the CEO of any company in Vietnam can not concurrently act as the chief of the representative office of any foreign trader in Vietnam.

With respect to some business sectors requiring a professional practicing certificate, if a CEO uses his or her professional practicing certificate to establish a company, he or she cannot use that certificate to establish another company. It is noted that, except in rare circumstances, professional practicing certificates issued by foreign authorities are not valid in Vietnam.

Moreover, the CEO or director of a 100 percent state-invested enterprise is not allowed to become the CEO of a private or foreign invested company, except and only as the person appointed to manage the state's share of capital contribution to such companies.

## Residency

If the CEO is the legal representative of the Vietnam subsidiary, such CEO must stay for his or her entire term in Vietnam and register his or her temporary residence with the Vietnam authorities. In case of absence from Vietnam for 30 consecutive days or more, the CEO must authorize others in writing to act on his or her behalf and submit the authorization letter to the Vietnam authorities at least two days before leaving.

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