

26 May 2022

VIA EMAIL**Re: Duties and Responsibilities of Statutory Positions in a One Member Limited Liability Company with Members' Council**

This memo will provide an overview of the duties and responsibilities of statutory positions under the form of a one-member limited liability company (“LLC”) having the Members’ Council.

Accordingly, we address the duties and responsibilities (including financial responsibilities, if any) of the following positions:

- (i) Legal Representative (“LR”);
- (ii) Members of the Members’ Council (“MC”);
- (iii) Chairman of the MC (“Chairman”);
- (iv) General Director (“GD”);
- (v) Inspectors; and
- (vi) Chief Accountant (“CA”).

1. Relevant Legislation and Documentation

- (a) Law on Enterprises No. 59/2020/QH14 passed by the National Assembly of Vietnam on 17 June 2020 (“LOE”); and,
- (b) Law on Accounting No. 88/2015/QH13 passed by the National Assembly of Vietnam on 20 November 2015 (“LOA”).

2. Summary of duties and responsibilities

| (i) Legal representative (LR) | |
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| Appointment | <ul style="list-style-type: none">• Under the LOE, an LLC may have multiple LRs and at least one of them must permanently reside in Vietnam. If the LLC has only one LR, such person must reside in Vietnam and must authorize in writing another person to exercise the rights and perform the obligations of the LR when the former does not reside in Vietnam. In such a case, the LR shall remain |

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| | <p>responsible for the performance of the authorized rights and obligations.¹</p> <ul style="list-style-type: none"> • The charter is allowed to specify the number, managerial positions, and rights and obligations of the LR(s).² • Unless the charter provides otherwise, the Chairman will be the LR of the company.³ |
| Removal | <ul style="list-style-type: none"> • Removal by the Owner or by the MC. • The LLC must amend the enterprise registration certificate (ERC) when an LR is removed.⁴ |
| Powers | <p>Representing the LLC to exercise the rights and perform the obligations arising out of transactions of the LLC, and representing it to act as plaintiff, defendant, or person with related interests and obligations in arbitration proceedings or courts and to exercise other rights and perform other obligations in accordance with the law.⁵ In short, an LR has the power to act on behalf of the LLC and legally bind to LLC vis-à-vis third parties.</p> |
| Contractual relationships with the company | <p>If the LR holds other positions:</p> <ul style="list-style-type: none"> • See item 2(ii) if also a Member of MC • See item 2(iii) if also the Chairman • If also the GD: <ul style="list-style-type: none"> (a) Contracts and transactions between the company and persons/entities related to persons with decision making power in the company (“Related Party Transactions”) must be considered and voted on by the MC, GD, and Inspectors, including contracts and transactions between the company and the GD. Interested parties may not vote on Related Party Transactions. (b) Related Party Transactions entered without proper corporate formality and approval, causing loss and damage to the company, are considered void, and the LR, if being the signatory of the contract, and the parties to the contract must be jointly responsible for any loss arising and return to the company any benefits gained from the performance of such contract or transaction.⁶ |

¹ Articles 12.2 and 12.3 of the LOE.

² Article 12.2 of the LOE.

³ Article 79.3 of the LOE.

⁴ Articles 30.2 and 28 of the LOE.

⁵ Article 12.1 of the LOE.

⁶ Article 86 of the LOE.

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| Conflicts of interest | <ul style="list-style-type: none"> • A LR is required to notify the LLC in a timely, complete, and accurate manner any shares that the LR or LR’s relatives hold in other enterprises.⁷ • A LR may not act concurrently as the head of any representative office or any branch of foreign traders in Vietnam.⁸ • A LR must be loyal to the interests of the LLC; not use information, know-how, or business opportunities of the LLC; not abuse his or her position and power, and not use assets of the LLC for his or her personal benefit or that of other organizations or individuals.⁹ |
| Duties | <ul style="list-style-type: none"> • To exercise the delegated rights and perform the delegated obligations honestly and prudently and to his or her best ability to assure the lawful interests of the LLC.¹⁰ • In case of dissolution, send the request for dissolution to the licensing authority within 5 working days from the date on which all debts of the company are fully paid.¹¹ |
| Liability (including financial liability, if any) | The LR is personally liable for any loss and damage to the enterprise due to a breach of any of his or her duties. ¹² |
| (ii) Members of the Members’ Council¹³ | |
| Appointment | <ul style="list-style-type: none"> • Appointed by the Owner and referred to as “authorized representative.” • All authorized representatives are members of the MC. • There may be from three to seven authorized representatives.¹⁴ • The term of an authorized representative may not exceed five years but can be re-appointed. • Chairman or other Members of the MC may concurrently act as a GD.¹⁵ |

⁷ Article 13.1(c) of the LOE.

⁸ Articles 33.6 and 33.8 of Decree 72.

⁹ Article 13.1(b) of the LOE.

¹⁰ Article 13.1 of the LOE.

¹¹ Article 209.4 of the LOE.

¹² Article 13.2 of the LOE.

¹³ A Members’ Council is roughly akin to a board of directors in other contexts. Under Vietnamese legislation, Members of the Members’ Council shall act on behalf of the Owner. They are the authorized representatives of the Owner in the company and shall have rights and obligations of the Owner as delegated.

¹⁴ Article 80.1 of the LOE.

¹⁵ Article 82.1 of the LOE.

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| | <ul style="list-style-type: none"> No requirement to reside in Vietnam unless one of them is the LR of the LLC. Please see our advice on this matter at item 2(i) – the first bullet point. |
| Removal | <ul style="list-style-type: none"> Removal by the Owner. The company must amend the ERC if the Chairman is also the LR when the Chairman is removed.¹⁶ |
| Powers | <ul style="list-style-type: none"> The MC shall, in the name of the Owner, organize the implementation of rights of the Owner, and has the right to implement rights of the company in the name of the company. The specific rights, obligations, and working relationship of the MC in respect of the Owner shall be as stipulated in the charter.¹⁷ |
| Contractual relationships with the company | <ul style="list-style-type: none"> Contracts and transactions between the company and persons/entities related to persons with decision making power in the company (“Related Party Transactions”) must be considered and voted on by the MC, GD, and Inspectors, including contracts and transactions between the company and a Member of the MC. Interested parties may not vote on Related Party Transactions. Related Party Transactions entered without proper corporate formality and approval, causing loss and damage to the company, are considered void and the signatory of the contract and the parties to the contract must be jointly responsible for any loss arising and return to the company any benefits gained from the performance of such contract or transaction.¹⁸ |
| Conflicts of interest | <ul style="list-style-type: none"> Vietnam law sets out broad fiduciary duties for a Member of the MC. He/she is required to:¹⁹ <ol style="list-style-type: none"> be loyal to the interests of the company and the company owner; not to use information, know-how, business opportunities of the company, or to abuse his/her position and power nor to use assets of the company for the personal benefit of himself/herself or other organizations or individuals; notify the company in a timely, complete, and accurate manner of the enterprises of which he/she and his/her |

¹⁶ Article 30.2 and Article 28 of the LOE.

¹⁷ Article 80 of the LOE. Also, a key power of Members is to vote on matters as the Members’ Council may be authorized to decide upon, and as may be set out in the charter.

¹⁸ Article 86 of the LOE.

¹⁹ Article 83 of the LOE.

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| | <p>related person is the owner or holds shares or a controlling share of capital contribution; and</p> <p>(c) abide by other fiduciary obligations stipulated in the charter of the company.</p> |
| Duties of the Members of the Members' Council | <ul style="list-style-type: none"> • Members of the MC are required to: <ul style="list-style-type: none"> (c) comply with the law, the charter, and decisions of the Owner in the implementation of delegated rights and duties; and (d) perform delegated rights and duties honestly, diligently, and to their best ability to ensure the maximum lawful interest of the company and the Owner. |
| Liability (including financial liability, if any) | <ul style="list-style-type: none"> • The MC shall, in the name of the Owner, organize the implementation of obligations of the Owner, and has the right to implement obligations of the company in the name of the company. • The MC shall be responsible before the law and to the Owner for the implementation of delegated rights and obligations. |
| (iii) Chairman of the MC | |
| Appointment | <ul style="list-style-type: none"> • The Chairman of the MC can be appointed by the Owner or elected by MC Members by majority voting in accordance with the procedure provided by the charter. The Chairman of the MC may concurrently act as a GD.²⁰ • The term of the Chairman of the MC may not exceed five years but can be re-appointed.²¹ |
| Removal | <ul style="list-style-type: none"> • Removal by the Owner or majority voting of the MC. • The company must amend the ERC if the Chairman is also the LR when the Chairman is removed.²² |
| Powers | <ul style="list-style-type: none"> • Unless the charter of the company states otherwise, the Chairman of the MC has the following rights:²³ <ul style="list-style-type: none"> (a) To prepare working programs and plans for the MC; (b) To prepare programs, agendas, and documents for meetings of the MC or for collecting opinions of Members; |

²⁰ Articles 80.3 and 82.1 of the LOE.

²¹ Articles 80.3 and 56.3 of the LOE.

²² Article 30.2 and Article 28 of the LOE.

²³ Article 56 of the LOE.

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| | <p>(c) To convene and preside over meetings of the Members' Council or to organize the collection of opinions of Members;</p> <p>(d) To supervise or organize the supervision of the implementation of resolutions of the MC; and</p> <p>(e) To sign resolutions of the Members' Council on its behalf.</p> |
| Contractual relationships with the company | Same as other Members of the MC. |
| Conflicts of interest | Same as other Members of the MC. |
| Duties of the Chairman | <ul style="list-style-type: none"> • Same as other Members of the MC plus powers above. • In addition, in the Chairman's absence or in the case of lack of capacity to perform his or her rights and obligations, the Chairman shall authorize a member in writing to perform the rights and obligations of the Chairman of the MC in accordance with the principles stipulated in the charter of the company. Where no member is authorized, one of the Members of the MC shall convene a meeting with all other Members to elect one person from the Members to temporarily perform the rights and obligations of the Chairman of the MC by simple majority.²⁴ |
| Liability (including financial liability, if any) | Same as other Members of the MC. |
| Are there any statutory filings like tax returns that need the Chairman to sign? | Yes, if the Chairman is the LR of the company. See item 2(i) above. |
| (iv) General Director | |
| Appointment | <ul style="list-style-type: none"> • The GD can be appointed or hired by the MC. The GD may concurrently act as the Chairman of the MC.²⁵ • The term of the GD may not exceed five years.²⁶ |

²⁴ Article 56.4 of the LOE.

²⁵ Article 82.1 of the LOE.

²⁶ Article 82.1 of the LOE.

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| Qualifications | The GD shall have professional qualifications and experience of business administration and satisfies other conditions specified in the company's charter. ²⁷ |
| Removal | <ul style="list-style-type: none"> • Removal by the MC. • The company must amend the ERC if the GD is also the LR when the GD is removed.²⁸ |
| Powers | <ul style="list-style-type: none"> • Unless the charter of the company states otherwise, the GD has the following rights:²⁹ <ol style="list-style-type: none"> (a) To organize the implementation of resolutions and decisions of the MC; (b) To decide everyday operating issues of the company; (c) To organize the implementation of the company's business plans and investment plans; (d) To issue the company's rules and regulations; (e) To designate and dismiss the company's executives, except those within the jurisdiction of the MC; (f) To enter into contracts in the company's name, except those within the jurisdiction of the Chairman of the MC; (g) To propose the company's organizational structure; (h) To submit annual financial statements to the MC; (i) To propose plans for use of profits or settlement of business losses; and (j) To recruit employees. |
| Contractual relationships with the company | <ul style="list-style-type: none"> • Contracts and transactions between the company and persons/entities related to persons with decision-making power in the company ("Related Party Transactions") must be considered and voted on by the MC, GD, and Inspectors, including contracts and transactions between the company and the GD. Interested parties may not vote on Related Party Transactions. • Related Party Transactions entered without proper corporate formality and approval, causing loss and damage to the company, are considered void and the signatory of the contract and the parties to the contract must be jointly responsible for |

²⁷ Articles 82.3 of the LOE.

²⁸ Article 30.2 and Article 28 of the LOE.

²⁹ Article 82.2 of the LOE.

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| | any loss arising and return to the company any benefits gained from the performance of such contract or transaction. ³⁰ |
| Conflicts of interest | Same as Members of the MC. |
| Duties of the GD | <ul style="list-style-type: none"> • Same as Members of the MC plus powers above. |
| Liability (including financial liability, if any) | Same as Members of the MC. |
| Are there any statutory filings like tax returns that need a GD to sign? | Yes, if the GD is the LR of the company. See item 2(i) above. |
| (v) Inspectors (aka Controller) | |
| Appointment | <ul style="list-style-type: none"> • Appointed by the Owner.³¹ The appointment of an Inspector is not mandatory.³² • There may be from one to five Inspectors. In case the Board of Inspectors only has 01 Inspector, he/she shall be the Chief Inspector and shall satisfy corresponding conditions.³³ • The Chief Inspector shall be elected by the Board of Inspectors under majority rule. • The term of the Inspector may not exceed five years but can be re-appointed. • More than half of the Inspectors shall have permanent residences in Vietnam. |
| Qualifications | <ul style="list-style-type: none"> • The Chief Inspector must have a bachelor's degree in economics, finance, accounting, audit, law, business administration, or a major that is relevant to the enterprise's business operation. • The Inspector's major is economics, finance, accounting, audit, law, business administration, or a major that is relevant to the enterprise's business operation. • The Inspector must not be a relative of any of the members of the MC, GD, and other executives of the LLC. |

³⁰ Article 86 of the LOE.

³¹ Article 76.1 of the LOE.

³² Article 79.2 of the LOE.

³³ Articles 79.2 and 65.1 of the LOE.

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| | <ul style="list-style-type: none"> • The Inspector should not be a company executive. The law does not require the Inspector to be an employee of the company.³⁴ |
| Removal | <ul style="list-style-type: none"> • Removal by the Owner. • The Chief Inspector can be removed by the Board of Inspectors by majority vote. |
| Powers | <ul style="list-style-type: none"> • Unless the charter of the company states otherwise, the Inspector has the following rights:³⁵ <ol style="list-style-type: none"> (a) To supervise the MC and the GD managing the company; (b) To inspect the rationality, legitimacy, truthfulness, and prudence in business administration; systematic organization, uniformity, and appropriateness of accounting works, statistics, and preparation of financial statements; (c) To validate the adequacy, legitimacy, and truthfulness of the income statements, annual and biannual financial statements, and reports on the performance of the MC; submit validation reports at the meeting of the MC. Review contracts and transactions with related persons subject to approval by the MC and offer recommendations; (d) To review, inspect and evaluate the effectiveness of the internal control, internal audit, risk management, and early warning systems of the company; (e) To inspect accounting books, accounting records, other documents of the company, the company's administration where necessary, under the resolution, the decision of the MC, or at the request of the Owner; (f) To propose changes or improvements to the company's organizational structure and administration to the MC; (g) To promptly submit a written notification to the MC whenever a member of the MC or the GD is found to their powers, duties, and liability and to request the violator to stop the violations and to implement remedial measures; (h) To participate in and discuss at the meeting of the MC and other meetings of the company; and (i) To employ independent counsels and the internal audit unit of the company to perform their tasks. |

³⁴ Articles 79.2, 65.2, 168.2, and 169.1 of the LOE.

³⁵ Articles 79.2, 65.3 and 170 of the LOE.

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| Contractual relationships with the company | <ul style="list-style-type: none"> • Contracts and transactions between the company and persons/entities related to persons with decision-making power in the company (“Related Party Transactions”) must be considered and voted on by the MC, GD, and Inspectors, including contracts and transactions between the company and an Inspector. Interested parties may not vote on Related Party Transactions. • Related Party Transactions entered without proper corporate formality and approval, causing loss and damage to the company, are considered void and the signatory of the contract and the parties to the contract must be jointly responsible for any loss arising and return to the company any benefits gained from the performance of such contract or transaction.³⁶ |
| Conflicts of interest | Same as other Members of the MC. |
| Duties of the Inspectors | <ul style="list-style-type: none"> • Same as other Members of the MC plus powers above. |
| Liability (including financial liability, if any) | <ul style="list-style-type: none"> • The Inspector that violates his/her duties or violates regulations regarding conflicts of interest and causes damage to the company or another person shall be personally or jointly responsible for the damage and return the benefits earned from the violation to the company. • The Inspector shall send a written notification to the Board of Inspectors of violations committed by another Inspector and request the violator to stop the violation and implement remedial measures.³⁷ |
| Are there any statutory filings like tax returns that need the Inspector to sign? | No statutory regulation on this issue. |
| (vi) Chief Accountant (CA) | |
| Appointment | Appointment or recruitment by the LR ³⁸ |
| Qualifications | <ul style="list-style-type: none"> • The CA shall have professional accounting knowledge and skills. |

³⁶ Article 86 of the LOE.

³⁷ Articles 79.2, 65.3, 173.5 and 173.6 of the LOE.

³⁸ Article 50.2 of the LOA.

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| | <ul style="list-style-type: none"> • The CA must have at least an intermediate degree in accounting. • The CA must have a certificate of training in chief accountant's techniques. • The CA with a bachelor's degree in accounting must have at least 02 years' experience of accounting works; the CA with an intermediate degree in accounting must have at least 03 years' experience of accounting works.³⁹ |
| Removal | <ul style="list-style-type: none"> • Removal by the LR. • When the CA within the accounting apparatus is changed, the former CA shall be responsible to hand over the accounting work and the accounting data to the new CA. The former CA shall be liable for the work during the period of acting as CA.⁴⁰ |
| Powers | A CA is the head of a unit's accounting apparatus and shall have the duty of organizing the implementation of accounting work. ⁴¹ |
| Contractual relationships with the company | No statutory regulation on this issue. |
| Conflicts of interest | No statutory regulation on this issue. |
| Duties | <ul style="list-style-type: none"> • A CA is entitled to his/her independent professional judgment regarding his/her professional accounting work but shall be subject to the supervision of the LR. • A CA shall be responsible:⁴² <ol style="list-style-type: none"> (a) To comply with the provisions of the laws on accounting and finance; (b) To organize and operate the accounting apparatus in accordance with the law; and (c) To prepare financial statements in accordance with accounting regimes and accounting standards. |

³⁹ Articles 54.1 and 51.1 of the LOA.

⁴⁰ Article 51.3 of the LOA.

⁴¹ Article 53.1 of the LOA.

⁴² Article 55.1 of the LOA.

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| Liability (including financial liability, if any) | The CA is responsible before the law and to the LR of the company for the implementation of his/her rights and duties. |
| Are there any statutory filings like tax returns that need a CA to sign? | <ul style="list-style-type: none"> • Yes. • The CA, along with the LR, is required to sign all enterprise financial statements and all accounting books.⁴³ • Currently, there is no law on whether the CA must sign tax turns. Most likely, they should sign because they were required to do so under prior regulations. |

We hope that the foregoing was helpful to you, and please do not hesitate to contact us if you have any further queries.

Best regards,
Dilinh Legal

⁴³ Article 24.2 of the LOA.