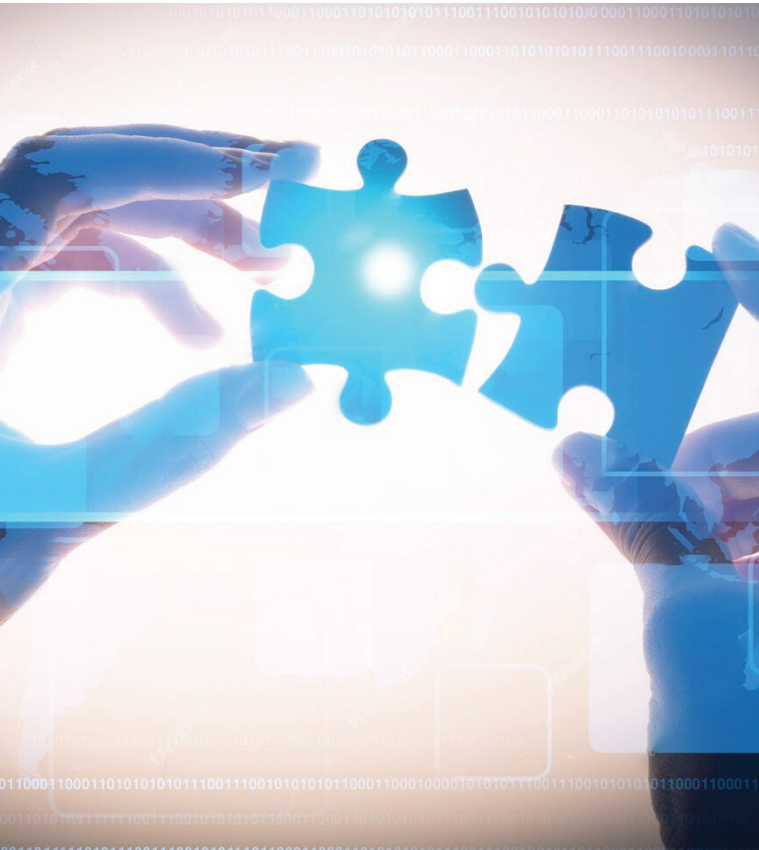


2. The Quorum Puzzle

The concept of quorum—the minimum number of members needed to validate decisions—poses a unique challenge for BOD when employing written opinions. While traditional in-person or virtual meetings have well-defined quorum requirements (at least $\frac{3}{4}$ of members present initially, and more than half for subsequent meetings), the rules for written opinions are not as clear-cut.



Under current legislation, there's no specified requirement for response rate for the BOD's written opinions. This gap in the law opens the floor to different interpretations. One perspective suggests that for a written opinion to be valid, it must be endorsed by at least $\frac{3}{4}$ of the BOD members, mirroring the quorum for a physical first meeting. For example, in a BOD with four members, three would need to submit their opinions.

On the other hand, there's a contrasting view that argues against the necessity for a quorum in written opinions, as the law does not explicitly demand it. Proponents of this view believe that a written opinion is valid if it receives a simple majority approval, with the chairperson's vote being decisive in case of a tie.

3. Key Takeaways

Because of the ambiguity surrounding the use of written opinions for BOD resolutions, businesses may find themselves in a problematic operational and legal position. To avoid any legal concerns, detailed procedures governing the collection of written opinions should be included in the company's Charter and internal policies. These internal guidelines should explicitly address the nuances of written opinion – specifying how opinions are solicited, the format of responses, and the quorum requirements for decision validity.





BOD'S WRITTEN OPINIONS: CONVENIENT AND LEGALLY SOUND



In the complex realm of corporate management, the Board of Directors (BOD) is a cornerstone in steering a joint-stock company. At its core, the Board of Directors is the company's command center, tasked with making critical decisions and upholding the company's obligations and rights.

Regular meetings are the standard for the BOD, with a quarterly assembly being the bare minimum. They can also summon extraordinary sessions for critical topics. Aside from these in gatherings, the BOD has another tool in its arsenal – resolutions passed through written opinion. This method offers a streamlined alternative to traditional meetings, critical in our fast-paced business world. However, it's not without its complexities. The legality and appropriateness of written opinions are subjects of lively legal debate. The question at the heart of this discussion is: How do we ensure that these written opinions are not just convenient but also legally sound?

1. Ambiguity in Documentation:

The Law on Enterprises in Vietnam and other related regulations provide a detailed framework for collecting written opinions at General Meetings of Shareholders (GMS). This framework encompasses everything from the format of submissions to the complexities of vote tallying and announcing results. However, when it comes to the BOD, the same law offers significantly less guidance on the nuances of written opinion ballots and vote-counting minutes.

This lack of specificity grants a certain level of flexibility in how BODs handle written opinions, but this freedom isn't without its challenges. For instance, the absence of clear guidelines on the design and content of opinion forms can lead to internal disputes. A BOD member, for example, may raise concerns about the validity of an opinion form that doesn't clearly articulate the issues at hand or neglects to set a deadline for responses.