

By **NGUYEN M. QUAN (JUDE)**
Associate at
Herman, Henry & Dominic



SEAL OF APPROVAL: THE VITAL ROLE OF BOARD MEMBERS IN COMPANY CONTRACTS

1. Setting the Scene

Limited liability companies with multiple members are a common sight in Vietnam's dynamic commercial scene. The Board of Members, a vital force directing the ship, is at the heart of these entities. This body is more than simply a formal gathering; it is the beating core of key decision-making, particularly when it comes to certifying contracts and transactions of significant heft or those enmeshed with specific, intricate organizations.

Here's where the narrative thickens: if contracts and transactions are not approved by the Board, they risk being more than merely frowned upon. Picture this – a contract, inked yet unendorsed by the Board, dangling on the edge of legitimacy. It's a perilous situation in which the lack of a Board's approval could mean the contract doesn't fully bind the corporation or, worse, is thrown out in court. But the ripple effect doesn't stop there. The financial fallout is just the tip of the iceberg. Below the surface lurks the potential tarnish on the company's hard-earned reputation, not to mention the legal tightrope walked by those who penned the deal and the related parties.

2. The Board's Critical Role in Greenlighting Key Contracts

The law sets the beat in the delicate dance of corporate governance, especially when it comes to contracts and transactions that require the Board's approval.

Let's break this down:

The high-stakes transactions come first, as they have the potential to change the company's financial picture. We're talking about loan agreements, lending agreements, asset sales agreements, and a myriad of other contracts that are specifically included in the company's charter. The critical figure in this case is 50% - any contract involving assets worth 50% or more of the total asset value in the most recent financial statement falls into this category, which we'll refer to as "Major Value Contracts." But wait, there's a catch: the company's charter may establish a lower bar, bringing more deals under the Board's purview.

Then there's the "Contract with Related Parties." This is where the company's path crosses with those who have a seat at the decision-making table or their related persons. Think contracts and transactions involving company members, their authorized representatives, the Directors or General Directors,

and even the legal representatives of the company. It doesn't stop there. Managers of the parent company, those who have a say in appointing these managers, and their related parties also join this group.

3. The Dangerous Waters of Unapproved Contracts

a) The High Stakes of Major Value Contracts:

Let's look into Major Value Contracts that was not approved from the Board of Members. Such contracts, according to the Supreme People's Court, might lead to a legal quagmire. They are viewed as civil transactions that are not inherently binding on the corporation, especially if they are signed by a person who has stepped outside of their allowed boundary. It's a tricky scenario on the verge of legal recognition.

For instance, as highlighted in a guide of the Supreme People, credit contracts that account for more than 50% of the company's total asset value in the latest financial report are typically under the Board's jurisdiction. If a representative signs off on such a deal without the Board's go-ahead, it's deemed a civil transaction that falls outside of their purview.

However, there's a catch. Even in the absence of the Board's explicit approval, if there's concrete evidence – like the loan amount flowing into the company's coffers, being used and recorded in its books – it's akin to the company giving the contract a silent thumbs-up. This scenario actually is mentioned in the Civil Code 2015. It's a legal tightrope, where the absence of formal approval can be overshadowed by the reality of how the funds are handled, potentially binding the company to the contract.



b) The Complexities of Contracts with Related Parties

When it comes to Contracts with Related Parties, the legal landscape becomes even more complex. Under the Enterprise Law, any such contract that does not have the consent of the Board of Members is in jeopardy. If a court deems it inappropriate, the contract can be declared invalid. The consequences are severe: the individuals who signed the contract, as well as anyone associated with it, may be held liable for any damages incurred and may be required to restore any advantages gained from the deal to the corporation.

In actuality, courts do not immediately declare these contracts void. Instead, they set out on a fact-finding mission to investigate whether the Board was aware of the arrangement and whether they implicitly agreed to it by failing to oppose. This approach helps courts assess the contract's legal standing and shapes the litigation process.

4. The Balancing Act: Legal Compliance and Practical Application

The Supreme People's Court, through its judgments, has shed light on a crucial aspect of corporate law: even without the Board's explicit approval, a contract can still stand if there's evidence that the Board was in the know and chose not to object. However, in reality, demonstrating that the Board was aware and non-objecting can be a legal minefield - complex, time-consuming, and loaded with difficulties.

To avoid these legal entanglements and potential risks, both the company and its members and representatives should strictly follow the corporate law playbook. Obtaining Board clearance for essential contracts and transactions is more than a formality; it is a safeguard against legal vulnerabilities. It is about protecting not just the company's interests, but also the individuals involved - the signatories, family members, and any associated persons - from the consequences of liability, damages, and the requirement to refund gains acquired from such contracts.

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