

Company Charters in Vietnam: Should You Adopt A Model Charter Or Tailor Your Own?

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In Vietnam, Should You Adopt A Model Charter Or Tailor Your Own?

When establishing or investing into a company, one of the most consequential often under-discussed decisions is how to structure the internal governance document. In Vietnam, the Company Charter (Điều Lệ Công Ty) is the legally recognized constitutional document of a company. Alongside it, shareholders (especially in investment-backed or joint venture settings) may also choose to enter into a Shareholders' Agreement (SHA) to define additional rights and responsibilities among themselves.

There is no one-size-fits-all approach. For some, adopting a model charter offers speed and compliance with minimal legal overhead. For others, particularly where investor protections or bespoke governance is required, tailoring the charter becomes an important strategic decision. What matters most is aligning the choice with your business context, stakeholder dynamics, and long-term vision.

1. What is the Company Charter

The Company Charter, also commonly referred to as the Articles of Association, or Constitution, depending on the jurisdiction, plays a foundational role in defining the internal legal structure of a company and to allocate rights, obligations, and powers among its key stakeholders. Its legal status and enforceability, however, vary significantly across legal systems.

In Vietnam, although not defined in detail under the Law on Enterprises, the charter's contents and role are clearly provided. It is the primary governance instrument and is required at the point of company registration.

Rather than offering a rigid format, Vietnamese law allows companies a degree of flexibility, while ensuring certain mandatory contents to uphold legal certainty and transparency. The charter is binding on all members, the company itself, and even the courts.

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2. The Legal Weight of the Company Charter in Vietnam

Under Vietnamese law, the Company Charter is more than just a formality for incorporation. It forms the legal backbone of corporate governance and is often the first and primary reference in the event of internal disputes.

A notable illustration of the primacy of the company charter comes from a high-profile case involving Sun Wah (90%) and SATO (10%) in a joint venture. Their charter stipulated that certain key corporate decisions, including amending the charter or increasing loan limits, required unanimous consent. When Sun Wah attempted to unilaterally amend the charter using its majority ownership, SATO objected. The case climbed through several judicial levels. While the appellate court initially sided with Sun Wah, invoking default rules of majority voting, the Supreme People's Court overturned this, affirming that a charter's specific provisions take precedence over general statutory defaults.

This case demonstrates that when clearly drafted, the charter is not only enforceable but can be decisive in protecting minority shareholder rights, shaping corporate outcomes, and preventing abuse of control. However, it does not mean every company needs a heavily customized charter. In fact, many companies operate effectively with a standard or minimally adapted version, especially in straightforward ownership structures.

3. International Practice: Lessons from Common Law Jurisdictions

In common law countries such as the UK and Australia, companies may adopt either a model constitution or customize their own. While model charters provide a convenient starting point, their limitations have been acknowledged in case law.

In *Dear & Griffiths v Jackson* (2013), the UK courts held that despite the existence of a Shareholders' Agreement, the lack of mirrored provisions in the company constitution weakened enforceability. Similarly, *Lord & Others v Maven Wealth* (2021) reaffirmed that courts place primary weight on the company constitution, and SHAs alone offer limited protection unless the relevant terms are embedded into the governing charter where they relate to statutory provisions or internal operations and decisions of the company.

Notwithstanding, SHA provide a key document for the understanding between the shareholders/investors, and parties should be clear on the role that the SHA plays. A well drafted SHA will outline how the parties deal with each other, the obligations and commitments that they make, and they may also detail how the company will operate. It is at this point that careful and appropriate drafting of the charter occurs to ensure that the internal operational decisions that the SHA outlines are incorporated into the charter. A key summation is that the charter provides the internal rules of the company, whilst SHA sits above and can be seen as governing how the parties conduct themselves.

Case law reinforces a key message also true in Vietnam: SHAs are private contracts between shareholders, but only the charter is the binding document on the company itself as a legal entity.

4. The Decision at Hand: Model vs Tailored Charter

Choosing between a standard model and a tailored company charter isn't about right or wrong; it's about context. Model charters offer simplicity and agility, while tailored charters allow for precision and investor protection. Understanding each option's implications is essential.

Decision Criteria	Model Charter	Tailored Charter
Speed & Cost	Quick to adopt, minimal legal fees	More costly and time-consuming to draft
Flexibility	Easy to amend early-stage governance	May reduce adaptability if overly complex
Investor Protection	May lack safeguards specific to investor needs	Can embed veto, board rights, exit mechanisms
Disclosure Exposure	Minimal, if general	High, if commercial terms are embedded
Legal Enforceability	Only enforceable as written	Critical if tailored provisions are legally valid

Many founders and early-stage companies opt for a basic, template-style charter. This approach offers several advantages:

- **Speed and Simplicity:** A standardized charter can streamline the company formation process, especially where time to market is a priority.
- **Flexibility:** Business partners often prefer to privately negotiate a Shareholder's Agreement (SHA) that governs economic rights and decision-making. Keeping the charter general allows adaptability. SHA allows investors and founders to adjust deal terms without going through formal charter amendments.
- **Confidentiality:** Unlike the charter, which must be filed with the licensing authority and is publicly accessible, the founders/investor may retain a private document (commonly a SHA) so sensitive commercial terms, such as valuation formulas, exit triggers, or board appointment mechanics, can be kept out of the public domain.

Legally, a company is a separate juridical person, recognized by law as having its own rights and obligations, distinct from those of its shareholders. Although shareholders ultimately decide the company's continuation or dissolution, the company itself remains an independent legal subject. Again, as mentioned above, a SHA does not automatically bind the company unless its terms are expressly incorporated into, and consistent with, the company charter. In the event of conflict, the charter generally prevails.

The Company Charter serves as the primary governance instrument under Vietnamese law. While SHAs do not carry the same binding legal weight on the company as the charter, they remain a flexible and widely-used tool for managing investor relationships and commercial arrangements, especially when discretion or confidentiality is paramount.

That said, over-relying on a generic charter has limitations. A model charter may not provide adequate mechanisms to resolve deadlocks or protect minority interests. On the other hand, over-engineering the charter may reduce its future adaptability and invite regulatory scrutiny, and may limit the company's future maneuverability during capital raises or restructuring.

5. Strategic Implications for Founders and Investors in Vietnam

Founders and investors should view the charter not as a checkbox but as a strategic governance tool. To strike the right balance, founders and investors should consider:

- **Avoid over-engineering:** The goal is not to complicate unnecessarily, but to identify which protections truly matter - and ensure they are legally anchored;
- **Ensure alignment:** Aligning key shareholder arrangements (like veto rights or board composition) with both the charter and any SHA;
- **Storing and managing:** Storing the charter responsibly, with copies maintained by the company and accessible to all shareholders (as required by law);
- **Update periodically:** Updating the charter periodically to reflect changes in the ownership structure, regulatory environment, or business model;
- **Anticipate future growth:** A narrowly drafted charter may suit early-stage needs but could hinder future fundraising or restructuring. Scalability should be built in from the outset.

Recommendation

There is no single formula for how detailed a charter should be. In Vietnam, it holds significant legal weight and should be treated as a living governance document.

Whether you adopt a model charter or tailor your own, the key is to make an informed choice. Tailoring can offer precision, but only if it reflects real needs. Model charters can be effective starting points, particularly when paired with thoughtfully drafted SHAs. Ultimately, the power of the charter lies not in how much it says, but in how well it fits your company's stage, structure, and strategy.

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For any further questions you may have, please reach out to us at vietnam@alitim.com


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