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Improving Company Law in Vietnam: Practice and Needs for Change²

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Abstract

The history of laws regulating types of companies in Vietnam was born later than in other countries, only when Vietnam implemented the “DOI MOI” (renewal) process according to the market economy in 1986. The laws have been supplemented over time to promote and encourage investors to contribute capital to establish various business organisations. However, increasingly diverse and rich economic relations pose urgent needs for the law, on the one hand, to recognise and expand the freedom of business of its subjects, and on the other hand, to anticipate, recognise, and protect new associations that create unregulated types of business entities. Only then can the law regulating types of companies in Vietnam establish a legal basis to promote deep integration into current international economic activities. This article analyses, evaluates, and recommends theoretical and practical issues on the laws regulating the types of companies in Vietnam.

Keywords: companies, types of companies, corporate law, Vietnam.

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Poprawa prawa spółek w Wietnamie: praktyka i potrzeba zmian³

Streszczenie

Historia przepisów regulujących rodzaje spółek w Wietnamie narodziła się później niż w innych krajach, dopiero gdy w 1986 roku Wietnam wdrożył proces „DOI MOI” (odnowienie) zgodnie z gospodarką rynkową. Ustawy zostały uzupełnione, aby promować i zachęcać inwestorów do inwestowania wnieść kapitał do założenia różnych organizacji biznesowych. Jednakże coraz bardziej zróżnicowane i bogate powiązania gospodarcze stwarzają pilne potrzeby prawne, z jednej strony uznające i rozszerzające swobodę prowadzenia działalności gospodarczej podmiotów, a z drugiej strony antycypujące, uznające i chroniące nowe zrzeszenia tworzące nieuregulowane rodzaje podmiotów gospodarczych. Tylko wtedy prawo regulujące rodzaje spółek w Wietnamie będzie mogło stworzyć podstawę prawną do promowania głębokiej integracji i bieżącej międzynarodowej działalności gospodarczej. W artykule dokonano analizy, oceny i rekomendacji zagadnień teoretycznych i praktycznych z zakresu prawa regulującego rodzaje spółek w Wietnamie.

Słowa kluczowe: spółki, rodzaje spółek, prawo korporacyjne, Wietnam.

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Introduction

Legal institutions governing various types of enterprises are considered central in any economic legal system. In general, in national legal systems, “Company law is judicial. Its development is associated with commercial development.”⁴ The types of enterprises stipulated in the law in Vietnam today have partly met the diverse needs of practical forms of business life. The diversity and abundance of types of business entities give investors many opportunities to choose the appropriate form, enabling them to exercise their business freedom well. Choosing a business model “is an essential and meaningful job for investors. What business model to follow, whether that organizational model is suitable or not, etc. are issues that investors must always pay attention to research to make the most suitable answer and choice.”⁵

In Vietnam, the Enterprise Law’s development and streamlining are increasingly meeting practical life’s needs. However, regulations restricting the types of business entities is not in line with the ‘perfection-oriented’ trend of the law on expanding business freedom and not in line with the reality of economic development. Up to now, the need for legislation regulating current business entities needs to continue to be streamlined in the direction of expansion of the freedom of citizens to do business following the rules and integration of the market economy.⁶

Therefore, the study and evaluation of issues posed to the law on various types of companies in Vietnam is necessary to recognise the need to improve the law in the upcoming period of law and the Vietnamese economy.

Literature review

The basis of the formation and development of various types of companies is the exercise of the freedoms of business and freedom of the will of investors. In particular, the freedom to do business is concretised through several rights such as the freedom to

⁴ N.T.T. Van, *Some corporate issues and perfecting corporate legislation in Vietnam today*, National Political Publishing House 2008, p. 22.

⁵ T.T. Trung, *Principles of formulation and implementation of enterprise reorganization regulations by the Law on Enterprise*, “VNU Journal of Science: Jurisprudence” 2012, 28(1), pp. 63–68.

⁶ N.V. Lam, *The Law on Business Subjects of the Federal Republic of Germany and Some Suggestions for Vietnam*, “Journal of European Studies” 2023, 268(1), pp. 76–83.

establish a business, choose business lines, access to the market, equal rights, freedom to compete fair, and the right to be guaranteed to own assets of the enterprise. To date, there has been a great deal of research on theoretical and practical issues, as well as the content of freedom of enterprise as the basis for the formation of different types of companies enshrined in national legislation. Along with that, the research on the theoretical background and legal nature of companies focuses on explaining and analysing a lot of domestic and foreign projects, which can be seen in some works, such as:

Andreas Cahn and David C. Donald,⁷ defined the English term „company law” or „corporate law” in legal documents as a set of laws that allow the creation of an entity with five core structural characteristics: 1. Legal status, 2. Limited Liability, 3. Transferable shares, 4. Centralized management follows the structure of the board, and 5. Share ownership of capital contributors. Similarly, authors John Armour, Henry Hansmann, and Reinier Kraakman *et al.*,⁸ explain that there are five core characteristics of business organisations that meet the needs of investors and that corporate legislation serves as a legal basis for their activities.

Authors Robert Hamilton and Richard D. Freer⁹ analyse the factors affecting investors’ decisions to choose the type of business, such as (i) Procedures and costs for establishing and operating a business; (ii) Legal status and responsibilities of the business owner; (iii) The number of business owners; (iv) The organisational and management structure of the enterprise; (v) The ability to raise capital; (vi) The company’s manager’s obligation to disclose information; (vii) Corporate income tax. These interesting factors are explored by investors when choosing to establish a business.

Author Rahul Kumar Singh¹⁰ argues that the essence of a company is an association of people who collectively contribute capital and assets according to a contract and use that association in commercial business to share the benefits and risks incurred. Similarly, E.P.M Vermeulen¹¹ analyses the types based on the birth of companies as legal entity doctrines, and company doctrine as contracts.

In Vietnam, author Ngo Huy Cuong has published a research work on “company establishment contract in Vietnam,”¹² which has given the theoretical and practical

⁷ A. Cahn, D.C. Donald, *Comparative Company Law: Text and Cases on the Laws Governing Corporations in Germany, the UK and the USA*, Cambridge 2010.

⁸ J. Armour, H. Hansmann, R. Kraakman *et al.*, *The Anatomy of Corporate Law: A Comparative and Functional Approach*, Oxford 2009.

⁹ R. Hamilton, R.D. Freer, *The Law of Corporations in a Nutshell*, 6th ed., West Publishers 2011, pp. 1–4.

¹⁰ R.K. Singh, *Origin and Evolution of the Modern Company Law*. Available from: www.legalserviceindia.com/artycles/eocindia.htm (access: 1.06.2023).

¹¹ E.P.M. Vermeulen, *The Evolution of Legal Business Form in Europe and the United States: Venture Capital, Joint Venture, and Partnership Structures*, Kluwer Law International 2003.

¹² N.H. Cuong, *Company establishment contract in Vietnam*, Ph.D. Thesis at the Institute of State and Law, 2004.

basis of the law on company establishment contracts. The author also makes recommendations to improve the law on company establishment contracts in Vietnam. Other works of the author also refer to the company theory as a contract, such as the “philosophical basis of the contract of the establishment of the company”¹³ and some contents of the contract of the establishment of the company.¹⁴ According to the author, while most countries stipulate that a company is a contract, in Vietnam until now, the company has been considered a new contract only from a legal point of view. Author Nguyen Manh Bach¹⁵ had a different opinion when he said that the company’s charter is a contract between its founders. Because the charter must comply with the general rules of the contract regarding conditions of content, conditions of form, and sanctions for violations of these conditions.

In his research, author Nguyen Ngoc Bich¹⁶ analyses the experiences of developed countries in the world and states that the formation of new types of businesses is based on three factors: facilities, management, and responsibility. If changes revolve around these three factors, different types of new businesses will emerge. By law, the State has further recognised other types of combinations to create other types to help the economy develop.

Author Le Thi Kim Thanh¹⁷ researches and explains that the establishment, existence, and development of various types of companies stems from the objective needs of the economy and is the result of implementing the principles of freedom of business, freedom to enter into contracts, and freedom of association. According to the author, one of the factors affecting the diversity of types of enterprises is the will of the legislator expressed by the provisions of the law governing the types.

In addition, authors Ngo Huy Cuong and Pham Vu Thang Long¹⁸ argue that the situation in Vietnam is that the law creates or rather allows some form of company to exist in reality. This is a consequence of the centrally planned economy that for many years has abolished corporate forms that used to exist in the old regimes in the country. Meanwhile, the laws of countries usually only legally confirm the

¹³ Idem, *Philosophical basis of the company establishment contract*, “VNU Journal of Science: Economics, and Law” 2003, 19(4), pp. 1–8.

¹⁴ Idem, *Some contents of the company establishment contract*, “VNU Journal of Science, Economics, and Law” 2004, 20(1), pp. 12–23.

¹⁵ N.M. Bach, *Trading Companies*, Dong Nai General Publishing House 2006.

¹⁶ N.N. Bich, *Enterprise Law: Capital and Management in Joint Stock Company*, Young Publishing House 1999; N.N. Bich, N.D. Cung, *Company: Capital, Management, and Disputes under the Enterprise Law 2005*, Knowledge Publishing House 2009.

¹⁷ L.T.K. Thanh, *Textbook of Economic Law*, Finance Publishing House 2008.

¹⁸ N.H. Cuong, P.V.T. Long, *Company: Legal nature, types and building of a system of relevant legal documents*, “Journal of Legislative Studies” 2001, 3, pp. 32–44.

forms of a company already in practice. Under the Vietnamese law, investors lack the types that may arise due to the needs of society.

When considering the role of law on the right to freedom of business, it appears that the Vietnam Chamber of Commerce and Industry¹⁹ stated that the freedom to do business is considered a core indicator, a decisive factor in both the content and method of adjustment of the legal system on the economy in a market economy. In this sense, the legal system in a market economy serves as a framework by which freedom to do business is concretised, protected, and limited in cases necessary to ensure sustainable development and minimise the impact on the freedom to do business of different actors. Because, “the purpose of the law, after all, is to guide the development of society”.²⁰

Commenting on the types of companies in Vietnam, author Nguyen Nhu Phat²¹ said: Each type of business has different economic, legal, and business risk characteristics, sometimes opposites. Therefore, to reflect the practical needs of business problems, corporate law needs to recognise and protect some forms of business legality.

Author Bui Xuan Hai²² outlined two practical needs for laws governing types of enterprises: First, the law must “design” more diverse types of enterprises so that investors have the freedom to choose. Second, the law “recognises” the types of businesses that arise in the practice of business life. The task of the law is to recognise these types and provide a legal mechanism to protect investors and related third parties. Sharing the same opinion, author Nguyen Thi Thu Van²³ said that the diversity of types of enterprises also contributes to the legal protection of the interests of traders when they put capital into production and business activities.

Methodologies

The article uses methods of systematisation, analysis, interpretation, qualitative and quantitative methods, etc., which are common in social science research and legal research to analyse the current situation of cases of theoretical and practical issues on business freedom rights and types of companies in Vietnamese law.

¹⁹ Vietnam Chamber of Commerce and Industry (VCCI), *Research report on Building a business legal system to encourage market economy development*, Hanoi 2002.

²⁰ D.A. Son (project leader), *Assessment of freedom to do business in Vietnam*, Scientific research at grassroots level Vietnam National University Ho Chi Minh City, 2006.

²¹ N.N. Phat, *The Freedom to Establish a Business under the Constitution*, “Journal of State and Law” 2016, 10(342), pp. 28–32.

²² B.X. Hai, *Corporate issues and laws governing various types of enterprises in Vietnam*, “Journal of Legal Science” 2001, 3, pp. 11–17.

²³ N.T.T. Van, op. cit.

Simultaneously, the article also uses the method of comparative jurisprudence to draw on legal experiences to propose improvements in the company law existing in Vietnam.

Results and discussion

Freedom to do business and develop various types of companies under Vietnamese law

Business freedom and limits thereto

The basis of the formation and development of various types of enterprises is the exercise of the rights of freedom of will, freedom of law and association, and freedom of business of citizens. These three rights fall under the realm of natural law. In particular, the freedom to do business is considered an important part of the freedoms of citizens, because “freedom to do business is a system of interconnected rights that the law must recognise.”²⁴

Freedom of enterprise is understood as “the ability of the subject to carry out business activities in certain forms to achieve the purpose of seeking profit.”²⁵ If analysed in a broad sense, then freedom of enterprise can be understood “as the ability of organizations and individuals to do what they want, to choose, to decide all matters related to business activities for profit.”²⁶ In a narrow sense, freedom of business is “the right of individuals to establish and operate enterprises free from interference, obstruction or interference by the State.”²⁷ In practice, each state has different levels and manifestations of recognition and guarantee of freedom of enterprise expressed through the provisions of law.

The content of the freedom of enterprise includes a system of rights associated with business entities, which are primarily and first expressed through rights such as: “i). The right to guaranteed ownership of the property; ii). The freedom to establish an enterprise (which implies the freedom to choose business lines, business locations, and business models); iii). Freedom of contract; iv). The right to freedom of competition under law; v). The right to self-determination in the field of dispute

²⁴ B.N. Cuong, *Some issues of freedom of business in current Vietnamese law*, National Political Publishing House 2004, p. 16.

²⁵ *Ibidem*, p. 43.

²⁶ B.X. Hai (ed.), *Legal textbook on business subjects*, Hong Duc Publishing House – Lawyers’ Association 2016, p. 68.

²⁷ T. Miller, B.K. Anthony, *Defining Economic Freedom, 2010, Index of Economic Freedom*, The Heritage Foundation & “The Wall Street Journal” 2010, p. 59.

resolution.”²⁸ The State is not only necessary to recognize but also to protect and ensure the freedom to do business of citizens effectively in practical life. Each country’s legal system is important in recognizing, serving as “a framework for freedom of enterprise to materialize, protect and be limited where necessary to ensure sustainable development, consistent with public interests and minimising the impact on freedom of enterprise of other subjects.”²⁹

From a legal perspective, business freedom is the right of investors to choose the field of business to invest capital, freedom to establish enterprises, freedom to choose the type of enterprise, freedom to determine the type of assets contributed to the enterprise, freedom to organise the operating system and manage businesses... to conduct business. Therefore, freedom to do business is one of the fundamental rights of citizens stipulated in the Constitution and detailed in the provisions of relevant special laws. However, “the freedom to do business is always limited by the freedom of others and so the law (the State) must intervene. The State shall interfere with the right to freedom of enterprise when necessary: “(i) Safeguarding public order; (ii) Protection of the competitive environment; (iii) Consumer protection; (iv) Environmental protection; (...)”³⁰

State interference with the freedom of business can be explained by considering such implications as State intervention to ensure the effectiveness of the law for the needs of business life; equality and fairness among business entities of different economic sectors. Each state aims to protect core values, protect public order, and the legitimate interests of social actors.

In Vietnam, the 2013 Constitution determines that people have the right to freely do business in industries not prohibited by law. This regulation “demonstrates the openness and encouragement of the State with regard to business activities of people and enterprises. This is also an important premise to change state management thinking for business activities.”³¹ Along with the Constitution, two important documents, Enterprise Law 2020 and Investment Law 2020, have increasingly guaranteed and expanded the freedom to do business with investors.

Proceeding from the nature of the company as a result of the legal acts of the founding subjects, the task set for lawmakers when formulating regulations on the company, it is necessary to “focus on the interpretation of the will of the litigants, when they do not express their will or express their will unclearly so that they can

²⁸ B.N. Cuong, op. cit., p. 23.

²⁹ Vietnam Chamber of Commerce and Industry (VCCI), *Research report on Building a business legal system to encourage market economy development*, Hanoi 2002.

³⁰ N.A. Hieu, *The rationality of law in limiting citizens’ freedom to do business*, “Journal of Democracy and Law” 2017, 303(6), pp. 6–10.

³¹ Vietnam Chamber of Commerce and Industry (VCCI), World Bank, *Review report: Business conditions and freedom to do business in Vietnam*, 2017, p. 1, Vietnam.

find solutions to future disputes.”³² Legal regulations must recognise and create conditions for the basic principles of the market economy to develop to meet practical needs. Company law “is the legal foundation for the process of incorporation, organisation, and operation of companies. Therefore, the laws of countries around the world recognize many business organisation models, especially many types of companies for investors to choose from.”³³ Therefore, “the law on business entities in economic law has an important position as for the legal provisions on natural persons in civil law.”³⁴ Especially when Vietnam’s economy is strongly integrated with the world economy, investors want to promote all their resources to contribute to building a developed economy.

Table 1. The Evolution of Freedom of Doing Business in Vietnamese Law

Text	Article	Content	Explain
Companies Law 1990	Article 1	Within the framework of the law, the company has the freedom to do business and take initiative in all business activities.	In the Companies Law, only 2 types are stipulated: LLCs, and JSCs.
Law on Sole Proprietorship 1990 (revised 1994)	Article 3	Within the legal framework, sole proprietorship owners have the right to freely do business and be proactive in all business activities.	This type of business is owned by an individual who is responsible with all his or her assets for all activities of the business.
Constitution 1992	Article 57	Citizens have the right to freedom of business by the law	This is the first explicit provision in the Constitution that recognises the freedom to do business of Vietnamese citizens.
Civil Code 1995	Article 46	The individual’s freedom to do business is respected and protected by law	New recognition of the individual’s freedom to do business.
Constitution 2013	Article 33	People have the freedom to do business in professions not prohibited by law	The freedom to do business is given to everyone including Vietnamese; foreign individuals and organisations.

Source: own elaboration.

³² N.H. Cuong, *Textbook of Commercial Law: general section and traders*, Hanoi 2013, p. 172.

³³ B.X. Hai (ed.), *op. cit.*, 2016, p. 19.

³⁴ N.V. Giau, N.V. Phuc, N.D. Cung, *Economic legal institutions in some countries in the world*, Center for Information and Documentation (CIEM), 2016, p. 41.

Development of company types under Vietnamese law

Types of companies are formed based on the basic factors of responsibility regime, relations between members, capital mobilisation, legal status, and ownership. This is evidenced by the history of the establishment and birth of different types of companies in countries around the world.

During the French colonial period (from 1874 when France imposed colonial rule in Southern Vietnam with the surrender of the Nguyen Dynasty, until 19 August 1945, when France withdrew from the Vietnamese court), the French introduced to Vietnam the law on companies formed based on the practical activities of traders. French Commercial Law is applied in different territories of Vietnam. Corporate forms such as those in French Commercial Law have appeared in French colonial laws such as the Civil Law enforced in the courts of the North and South of 1931 and the Middle Term Civil Code, the Middle Period Commercial Code of 1942. The company regulations in Vietnam during this period are considered “copies of French company law.”³⁵ However, the types of companies that have not been able to take root in the economic activities and habits of Vietnamese people are interrupted when Vietnam is divided into two regions, with two different legal systems. The North began the process of socialist construction after 1954, starting to build a centralised subsidised bureaucratic economy. The South followed the Republic of Vietnam regime.

After the liberation of Vietnam in 1975, the whole country built an economy in which the State controlled all factors of production and retained the right to decide on the use of factors of production as well as the distribution of income. In a centralised economy, planning consists of two main economic sectors: the state and the collective. “Only socialist economic organisations (state-owned, collective) are allowed to do business, while other economic sectors are restricted and prohibited.”³⁶ In the legal system, there is no law governing companies and in practice, there are types of companies participating in economic activities, but only the collective economy and the state-owned economy.

In 1986, at the Sixth National Congress of the Communist Party, Vietnam began to implement renovation, bringing the country into a new stage of development. Accordingly, “building a multi-component commodity economy under the state-regulated market mechanism has created conditions for companies to be born.”³⁷ In 1987, Vietnam promulgated the Law on Foreign Investment in Vietnam to expand its economy

³⁵ B.X. Hai, W. Gordon, *Transitional Adjustment Problems in Contemporary Vietnamese Company Law*, “Journal of International Banking, Law and Regulation” 2005, 20 (11), pp. 567–568.

³⁶ B.N. Cuong, *op. cit.*, p. 13.

³⁷ Faculty of Law – VNU, *Vietnam Economic Law Textbook*, 3rd ed., Hanoi 2001, p. 160.

with foreign countries, develop the national economy, and boost exports based on the efficient exploitation of resources, labour, and other potentials of the country.³⁸ By 1990 and 1992, it amended and supplemented some articles of the Law on Foreign Investment in Vietnam, which was replaced by the Law on Foreign Investment in Vietnam of 1996.

The promulgated Company Law of 1990 stipulates two types of companies: LLC and JSC with 46 articles, accordingly: "A LLC and JSC, collectively referred to as a company, is an enterprise in which members contribute capital, share profits, bear losses corresponding to the contributed capital and are only responsible for public debts to the extent of his share of capital contributed to the company."³⁹ In addition, the National Assembly of Vietnam also promulgated the Law on Sole Proprietorship in 1990 and amended it in 1994. Accordingly, it stipulates: "A sole proprietorship is a business unit with a capital level not lower than the legal capital, owned by an individual, who is responsible for all enterprise activities with all their assets."⁴⁰

In parallel with the Company Law and the Law on Private Enterprises, Vietnamese citizens who are 18 years old have the right to contribute investment capital or participate in establishing LLCs, JSCs, or sole proprietorships. The State also promulgates the Law on State Enterprises regulating "economic organisations with invested capital, established and managed by the State, conducting business or public utility activities, to pursue the socio-economic objectives assigned by the State."⁴¹ This law was replaced by the Law on State Enterprises in 2003.

The Enterprise Law of 1999 replaced the Company Law of 1990 and the Law on Sole Proprietorship of 1990. The law distinguishes the following types: single-member LLCs, Multi-member LLCs, JSCs, partnerships, and sole proprietorships. However, according to regulations, a single-member LLC can only be established by an organisations; individuals are not allowed to establish single-member LLCs.

The Enterprise Law 2005 consolidates, adjusts, and applies uniformly to all types of enterprises, regardless of whether economic sectors are state-owned or privately owned or foreign-invested enterprises (replacing the Enterprise Law 1999; Law on State Enterprises 2003; The Law on Foreign Investment in Vietnam in 1996 and the Law amending and supplementing several articles of the Law on Foreign Investment in Vietnam in 2000). All types of state, private, and foreign investment have established types of enterprises governed by the Enterprise Law

³⁸ Law on Foreign Investment in Vietnam 1987.

³⁹ Article 2 of the Companies Law 1990.

⁴⁰ Law on Sole Proprietorship 1990.

⁴¹ Law on State Enterprises 1995.

2005 including single-member LLCs, multi-member LLCs, JSCs, partnerships, and sole proprietorships. Thus, all types of companies are regulated by common, unified regulations, creating equality in legal status. In addition, the law also allows single-member LLCs to allow individuals and organizations the right to establish and regulates that partnerships do not have legal status. In particular, allowing a single-member LLC allows individuals and organizations to have the right to establish and stipulate that the partnership does not have legal status.

The Enterprise Law of 2014 is promulgated in an open direction when the law only stipulates the most general, oriented (even suggestive) issues on the establishment, management organisation, reorganisation, dissolution, and related activities of enterprises, in detail, ceding to free enterprises, voluntary, committed and agreed upon by the provisions of law, such as: Allowing LLCs or JSC to have one or more legal representatives; allowing JSC to choose one of the two organizational and management models specified in the Enterprise Law. At the same time, it stipulates that “the partnership has legal status from the date of issuance of the Certificate of Business Registration.”⁴²

Up to now, the current Enterprise Law issued in 2020 has had many outstanding new points, creating favourable conditions for businesses at the stage of market entry and the process of investment and business. Regarding the types of enterprises, the types of enterprises remain the same as under the Enterprise Law 2014.

It can be said that the legal regulations governing all types of enterprises in Vietnam have undergone change and improvements to meet practical needs, contributing to the development of all types of enterprises in Vietnam after implementing the national renovation. Therefore, the law must recognise business organisation models, especially many types of companies for investors to choose from. The purpose is to “create conditions and encourage investors to invest in business, thereby, promoting the development of the economy.”⁴³ Choosing the right type of company to establish is very important for investors, greatly affecting the operation and development of the company after its establishment.

According to data from the national database on business registration as of 31 December 2022, the country has 895,876 operating enterprises, an increase of 4.5% compared to the same period in 2021.⁴⁴

⁴² Clause 2, Article 172 of the Enterprise Law 2014.

⁴³ N.V. Giau, N.V. Phuc, N.D. Cung, *op. cit.*, p. 277.

⁴⁴ Ministry of Planning and Investment Vietnam, *Vietnam Business White Paper 2023*, Statistics Publishing House, Hanoi 2023, p. 21.

Table 2. Number of enterprises in Vietnam in the period from 2017–2022

Years	2017	2018	2019	2020	2021	2022
Number of Enterprises	654,633	714,755	758,610	811,538	857,551	895,876

Source: Vietnam Business White Paper, 2023.

The practice of legal regulations governing the types of companies in Vietnam

In recent years, the better legal regulations process on various types of enterprises has made possible significant achievements for Vietnam's socio-economy. Enterprise Law has been improved to meet the needs of practical life. Currently, the types of enterprises in Vietnam include: Single-member LLCs, Multi-member LLCs, JSCs, Partnerships, and Sole Proprietorship.

Yet, according to the current law, to establish an enterprise, investors need to comply with business registration procedures required by the law. Business registration agencies and civil servants operate on the principle of „only doing what the law prescribes.“ If there is no provision by law, there is no basis to issue the establishment permit. Thus, in cases where there is no provision for a form of enterprise, citizens still have the right to establish one. There are no regulations on not allowing citizens to choose a type of business that is not specified in the current Enterprise Law. In reality, there are many different interpretations of the principles of law implementation to ensure the freedom to do business with investors.

Along with building a legal environment for production and business activities, market institutions in Vietnam have also been gradually formed. Building and streamlining the legal system must be “synchronous, unified, feasible, open and transparent, focusing on perfecting socialist-oriented market economy institutions.”⁴⁵

In the context of international integration, the law must create a legal corridor of a market economy in which the legal system protects and enforces the freedom of will and freedom of business of all investors. It can be seen that, in order to mobilise maximum investment resources of all sectors of society, the State needs to recognise and add types of companies popular in the world to the Enterprise Law, which will diversify the types of businesses that investors can choose to start their business activities.

⁴⁵ Politburo Vietnam, *Resolution 48-NQ/TW dated May 24, 2005, on the Strategy for building and improving the legal system of Vietnam to 2010, orientation to 2020*, 2005, Section I.1, Hanoi, Vietnam.

Table 3. Types of enterprises as prescribed by the Enterprise Law of 2020

Number	Type	Character	Number of articles
1	Multi-member LLCs	<ul style="list-style-type: none"> ■ From 2 to 50 members are organisations and individuals ■ Members are responsible for the company's debts to the extent of the contributed capital and are entitled to transfer the contributed capital by the provisions of law ■ Have legal status ■ Not to issue shares or bonds by law 	From articles 46 to 73
2	Single-member LLC	<ul style="list-style-type: none"> ■ Owned by an organisation or an individual ■ The company owner is responsible for the company's debts to the extent of the charter capital ■ Have legal status ■ Not to issue shares or bonds by law 	From articles 74 to 87
3	Joint Stock Company	<ul style="list-style-type: none"> ■ The charter capital is divided into equal parts called shares. The owners of shares are shareholders ■ There are at least 3 shareholders who are individuals and organisations and there is no limit to the maximum number of shareholders ■ Shareholders are only responsible for the company's debts to the extent of the contributed capital ■ Have legal status ■ To issue shares, bonds, and other securities 	From articles 111 to 176
4	Partnerships	<ul style="list-style-type: none"> ■ There must be at least 2 general partners who are company owners doing business together ■ General partners must be individuals, responsible with all their assets for the obligations of the company ■ There may be additional capital contributors who are organisations and individuals, who are only responsible for the company's debts to the extent of the amount of capital committed to contribute to the company ■ Have legal status ■ No securities may be issued 	From articles 177 to 187
5	Sole proprietorship	<ul style="list-style-type: none"> ■ It is an enterprise owned by an individual and is solely responsible for all their assets for all activities of the business ■ Each individual is only entitled to establish one private enterprise. The owner of a private enterprise must not concurrently be the owner of a business household or a general partner of a partnership ■ No legal status ■ No securities may be issued ■ Not entitled to contribute capital to establish or buy shares or contributed capital in partnerships, LLCs, or JSC 	From articles 188 to 193

Source: own elaboration.

The State's mission is to "create a legal basis for citizens to actively mobilize all potential and resources and develop production and business, improve the quality of life of themselves, their families and their families contribute to enriching the country."⁴⁶ Thereby, creating a stable legal environment for socio-economic development after the Constitution of 2013 was promulgated, contributing to streamlining the socialist-oriented market economy institution in our country.

Issues for the completion of the law governing the types of companies in Vietnam

Legal institutions governing various types of enterprises are considered central in the economic legal system. In general, "in national legal systems, company law is under the judiciary. Its development is associated with commercial development."⁴⁷ The types of enterprises regulated in the law in Vietnam today have partly met the practical needs of business life. Thereby, attracting and encouraging investors to contribute capital to establish different types of business organisations with certain associations and advantages and disadvantages. However, the law is restricted to current types of enterprises, investors are still limited when choosing business forms to establish. Therefore, the issues for the betterment of Enterprise Law in Vietnam can be listed as follows:

First, Vietnamese laws should strengthen and expand the freedom to do business and investor protection mechanisms.

When promulgating the Enterprise Law of 2020 to complete the legal framework on corporate governance organisation to meet the standards of good practices and popular in the region and internationally. They need to create the most favourable conditions for business establishment and registration; cut costs and time in starting a business; contribute to moving up the ranking of the business start-up index by at least 25 places (according to the World Bank's ranking); improve mechanisms to effectively protect the legitimate rights and interests of investors, shareholders, and members of enterprises; promote corporate governance that meets good practices and is popular in the region and internationally; increase the rating of the investor protection index by at least 20 places (according to the World Bank's ranking).⁴⁸

⁴⁶ Ibidem, Section II.3.

⁴⁷ N.T.T. Van, *op. cit.*, p. 22.

⁴⁸ Government of Vietnam, *Submission No. 533/TTr-CP dated October 28, 2019*, of the Government of Vietnam on the Law on Enterprises (amended) 2020.

However, in business practice, the forms of capital contribution and the nature of the association of owners are very diverse, requiring enterprise laws to recognise and acknowledge many types of enterprises to create an open and safe legal corridor for investors. The provisions on freedom of business in Vietnamese law are often the rights of enterprises, which means that if understood in this way, the freedom to do business only arises after investors have chosen the type of business to establish and operate.

Currently, according to the provisions of the Enterprise Law of 2020: “Rights of enterprises: 1. Freedom to do business in industries and trades not prohibited by law; 2. To exercise business autonomy and choose the form of business organisation; actively select industries, trades, geographical areas, and business forms; proactively adjust the scale and lines of business; 3. To select forms and methods of mobilising, allocating, and using capital; 4. Freedom to search for markets, customers, and sign contracts...”⁴⁹ This provision does not reflect the constitutional recognition of freedom to do business, including the freedom to choose the types of companies: “People have the right to freely do business in industries not prohibited by law.”⁵⁰

According to the regulations, the Vietnamese Enterprise Law does not recognise the forms of companies established by investors in practice. This means that apart from the types of companies recognised and regulated by the Enterprise Law, investors cannot form other types of companies.⁵¹ A regulation restricting the types of enterprises permissible is not in line with the perfection-oriented trend of the enterprise law on expanding business freedom and not in line with the reality of economic development. The current Enterprise Law needs to continue to be streamlined in the direction of expanding citizens’ freedom to do business under the rules of and in keeping with the market economy. The development trend of the law is to recognise and adjust the needs of production and business activities of investors in Vietnam.

Second, it is essential to recognise and adjust more diverse types of companies in the Enterprise Law.

On the other hand, the current types of companies in the Enterprise Law have long been noted as no longer novel. The need to add new types of enterprises to Vietnamese law is necessary and highly significant. Laws must keep pace with social life and be predictable and flexible to guide the development of the market economy in Vietnam.

⁴⁹ Article 7 of the Enterprise Law 2020.

⁵⁰ Article 33 of the Constitution 2013.

⁵¹ N.V. Lam, V. Quang, *The right to freedom to choose the type of business: The case of Vietnam*, “Revista Jurídica Portucalense” 2024, 35, pp. 192–214.

In real business life, there are many cases where investors want to link together to create a type of company to meet certain needs. In particular, there may be cases that have not been recognised by the Enterprise Law, such as:

First case: An investor wants to establish a type of company owned by members of the same family, a family line, and that company must be associated with the development of that family. These members must have the right to decide all important issues and act on behalf of the company to represent it and enter into legal relations (general partners). In particular, they do not want to be dominated or acquired by people from outside the company. Besides, they want to have the flexibility to mobilise many people to contribute capital in the form of buying shares (like a JSC) to enjoy profits from the company's operations or, in other words, they want to attract capital from the public (to become capital contributing members of the company). The internal management structure of the company must be compact, simple, and less strictly regulated by the law (different from the type of LLCs and JSCs). If you look at the types of companies prescribed by current law, none of them meet the requirements set by investors.

Second case: When the general partners of a limited partnership (according to the current Enterprise Law: partnerships with capital contributors) want to convert the form of the company to another type of company to meet the following conditions: (i). There is a relatively similar organizational model and executive power; (ii) There is a flexible mechanism to mobilize capital from outside to become a member of the company; (iii). The contributed capital is freely transferable (similar to a JSC). In this case, under the current Enterprise Law, there will be no type of company that meets the needs of investors.

It can be seen that the cases arising in the above practice have not been regulated by law. Therefore, there is no legal basis to regulate the newly arising forms of association and investors do not have the opportunity to choose the type of company. In case the Enterprise Law is not amended or supplemented with the types of enterprises that may arise in practice, stemming from the needs of investors, it will create loopholes in the law, and 'underground' transactions, concealing the types of enterprises specified in the Enterprise Law. In addition, the law does not encourage investors to participate in the establishment of various types of enterprises based on various types of associations that have not been governed under the Enterprise Law.

Third, it is necessary to separate the types of partnerships and limited partnerships in the current Enterprise Law.

In Vietnam, in recent years, the regulation on partnership has not reflected the nature of this type of company when lawmakers try to combine the two types of general partnership and limited partnership. Vietnamese law "recognises the

existence of a limited partnership into a partnership.”⁵² Therefore, it is necessary to quickly draw a clear line between a partnership and a limited partnership: because these are two completely different types of companies. When defining the two types of companies, it will bring accurate, strict, and appropriate adjustments and, at the same time, improve the operational efficiency for each type of company. Currently, according to the general trend, the laws of most countries in the world have a distinction in the regulation mechanism between partnerships and limited partnerships.⁵³

Fourth, supplementing the adjustment of the type of limited partnership by shares under the Enterprise Law.

A limited partnership by shares is a combination of the outstanding features of the limited partnership and JSC. Currently, limited partnership by shares is recognised and regulated by the laws of many countries, creating a legal basis for traders to choose to establish their businesses in this form. In many countries, legal provisions introduce the concept by listing the salient legal features of a limited partnership by shares.

In Germany, the concept of a limited partnership by shares is understood as a legal form, in which, “general partners have unrestricted responsibilities and management and other groups – shareholders – responsibilities are limited to their contribution.”⁵⁴ Specifically, according to the regulations of the German law, a limited partnership by shares is a type of company in which “at least one member has unlimited liability to the creditors of the company (general partners) and shareholders are only liable for the obligations of the company (limited shareholders) to the extent of the number of shares they own.”⁵⁵

Under French law, a limited partnership by shares is a company “whose capital is divided into shares, established by one or more general partners, who have the status of a trader and are subject to unlimited and joint liability for the company’s debt repayment obligations, and the syndicated member has the status of shareholders and suffers losses only to the extent of capital their contribution. The number of syndicated members shall not be less than three members.”⁵⁶ Limited partnership by shares was a very popular form between 1807 and 1905 in France and led to a “frenzy” at that time. This is especially due to its non-strict regulations. And it is the freedom and harmony in the

⁵² N.H. Cuong, *Partnership concept in Enterprise Law 2005*, “Journal of Legislative Studies” 2009, 11(148), pp. 23–26.

⁵³ N.V. Hung, *Improving the legal regulations on partnerships in the enterprise law 2014*, “Journal of Foreign Economics” 2017, 88, pp. 23–29.

⁵⁴ E.P.M. Vermeulen, *op. cit.*, p. 108.

⁵⁵ Clause 1, Article 278 of the German Stock Corporation Act 1965.

⁵⁶ Article L.226-1 of the Commercial Code France 1807.

organisation and operation of this kind that Americans have used to create their limited partnership.⁵⁷

In Luxembourg, the type of limited partnership by shares (*Société en Commandite par Actions, SCA*) “includes at least two types of shareholders, namely a shareholder with unlimited liability (general partners) and a shareholder with limited liability, liable for the debts of the corporation (*SCA*) only to the extent corresponding to its contribution.”⁵⁸ According to Polish law, this type of business is called limited joint-stock partnership, is regulated in the 2000 Commercial Companies Code from Articles 125 to 150. Accordingly, limited joint-stock partnership is conceptualised as a type of company, “in which at least one partner of which is liable to the creditors for the obligations of the partnership without limitation (the general partner) and at least one partner is a shareholder.”⁵⁹ Under Spanish law, a limited partnership by shares is a type of combination between partnership and JSC, a type of business arising from social needs.

In Vietnam, despite there being different names in use, the existing legal provisions all reflect the characteristic nature of limited partnership by shares that has been stipulated in the laws of France and other countries around the world. However, since the liberation of the country (1975) up to now, the State has not recognised and prescribed the type of limited partnership by shares in its legal provisions.

Therefore, the addition of the type of business management to the current Enterprise Law will meet the needs of investors to choose the type of business and demonstrate the flexibility of the Enterprise Law when recognising that the intersection between different types to create new types of enterprises is an inevitable trend and a premise to supplement the law to ensure and expand investors’ freedom to do business. At the same time, this will translate into an improvement of the quality of the business environment in general and a development of a variety of business types in particular.

Conclusions

Currently, the law on doing business in Vietnam is “established with a relatively large system of regulations on different aspects of business activities with adjustments that are more and more in line with the market economy, more transparent,

⁵⁷ L.M. Phieu, *Common types of businesses in France*, “Journal of Legal Science” 2006, 35(4), pp. 48–55.

⁵⁸ Article 600-1 of the Luxembourg Companies Act 1915, amends and modernises 2016.

⁵⁹ Article 125 of the Commercial Companies Code Poland 2000.

fair and reasonable.”⁶⁰ In the process of bilateral and multilateral integration with developed countries and regions in the world, the task is to respect international commitments through agreements in agreements and strictly implement the principle of non-discrimination trade between domestic and foreign business entities. Therefore, a legal reform is a requirement and urgent need in Vietnam today. Because “on the one hand, it is essential to meet the requirements of domestic economic reform, on the other hand, making our country’s laws should be quickly compatible with regional and international legal norms, creating a proactive position in current international cooperation relations.”⁶¹ Legislators in Vietnam must grasp the practical needs of business life, and – at the same time – ensure the conformity and compatibility of national laws with the legal systems of countries around the world, meeting the requirements of the international economic integration process and ensuring predictability and sustainability of legal regulations.

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⁶⁰ Vietnam Chamber of Commerce and Industry (VCCI), *Research report on Building a Business Legal System to Encourage Market Economy Development*, Hanoi 2002.

⁶¹ L.M. Thong, *Some legal issues of globalization*, “Journal of Legislative Studies” 2013, 1, pp. 65–75.

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