

REVIEW

Legal Capital of Enterprises under Vietnamese Business Law under the Legal Science Look on Basic Characteristics

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Abstract:

Investment capital is the most important factor for investors to enter the business market in order to make profit in all countries in the world, including the developing economic market such as Vietnam. The question about how much should be the minimum capital threshold in order to allow investors to enter the market is not a simple matter, so many countries' business laws must consider to make appropriate adjustments.

The practice of legal capital (legal capital) when establishing a business has become one of the basic contents of the business law in many countries, such as: Law on enterprises of China, the Federation Russia, the Federal Republic of Germany, Indonesia, South Korea, United Kingdom, United States, France, ... including Vietnam. In this regulation, there are different specific rules to regulate issues related to legal capital of market participants for profitability in accordance with specific conditions of each country.

In order to contribute to increase the source of Vietnamese business law research materials to the world, in this article, the author clearly analyzes the characteristics of legal capital in Vietnamese business law. The author also analyses the process of forming and comparing capital and legal capital with respect to the formation of an economic organization in the current market economy in Vietnam.

Keywords: Regulating, The legal capital, Vietnamese law, Business and legal capital requirements

The nature of the enterprise's legal capital in the provisions of Vietnamese business law

Whether the business investment capital and the legal capital are the same or not, how to understand it according to its scientific nature, are very interesting questions and are eager to be answered.

Up to now, there are many different views on capital, each view has its own approach. But it can be said that in essence it is the monetary expression, the value of the assets that the business is holding. Capital is an expression of all the resources spent to invest. Resources can be material wealth of natural resources like labour as well as all other physical assets.

In business and trade activities, capital is perceived to be the initial value in the enterprise's subsequent production processes. Therefore, capital is an indispensable element of production and business activities, which is the first condition for business operation.

Capital source is the source of capital investment; it is the accumulated amount expressed in the form of value converted into investment capital to meet the social development requirements. This is the term used to refer to the sources of centralization and distribution of capital for economic development investment to meet the general needs of the state and society.

According to Clause 2, Article 9 of the 1990 Private Enterprise Law, the provisions on private enterprises must be "Having sufficient initial investment capital suitable to the size and business lines. The initial investment capital must not be lower than the legal capital prescribed by the Council of Ministers. "

In the integration period in Vietnam, this term is also used to indicate the internal strength of each enterprise when investing and trading in the process of participating in the commodity market. Business investment capital means all expenses are spent on making business investments for profit making purposes of business entities. The cost of the business is formed from the capital contributed by the members of the company, the law calls it capital contribution, "Capital contribution is the contribution of assets to form a company's charter capital. Capital contribution includes capital contribution to the establishment of a business or additional charter capital of an already established enterprise"

According to Clause 29, Article 4 of the Enterprise Law 2014, there is a regulation on charter capital. "Charter capital is the total value of assets contributed or committed to contribute by members when they set up a limited liability company or partnership; is the total face value of shares sold or registered to buy when establishing a joint stock company." This is also identified as a source of capital for business investment of enterprises in Vietnam nowadays. Meaning that business entities in the market economy in Vietnam are linked together by assets to do business for profit-making purposes, this asset is called the charter capital to generate business investment capital.

According to our research, in Vietnam, the legal capital is recognized as the minimum amount of capital required by law to establish an economic organization as a legal entity or natural person, which is a legal norm. The minimum compulsory requirement for entities deciding to engage in certain business lines must abide by the mandatory provisions on that legal capital. Legal capital is also understood as a measure to check the solvency of enterprises. From the practical requirements for profitability in business cooperation, all business investors must establish a certain amount of assets, that is, they must have

financial capacity, which is usually defined as capital. But what about the legal capital.

The process of formation, development and basic characteristics of legal capital in business according to enterprise law

The question is, what is the existence of legal capital in Vietnamese corporate law? Under the current law, specifically according to the Enterprise Law 2014, it has removed the determination of legal capital with the aim of realizing the right to freedom of doing business in all industries that are not prohibited by law. 2013 aims to protect human rights in society, especially the right to participate in economic activities more consistently. Therefore, only certain business lines with conditions required to have legal capital are among the 215 business lines with general conditions under the current investment law, such as real estate business, financial banking, insurance business etc.,

From the perspective of legal science, in general, the regulation of legal capital in Vietnamese enterprise law has the following characteristics:

First, the legal capital in Vietnam is determined by each specific business line, not applicable to each type of business in the economy.

In terms of historical formation and development of business law, the regulation of legal capital in Vietnam has gone through many different stages, but have realized that: The legal capital in Vietnam has never been applied to each type of enterprise like many other countries have been doing. Clause 3 Article 7 of the Enterprise Law 2005 and Article 8 of Decree 102/2010 / ND-CP issued by the Government on October 1, 2010, detailing the implementation of a number of articles of the 2005 Enterprise Law, which defined legal capital as capital level "floor" which only applies to specific business sectors regulated by specialized laws for enterprises in Vietnam and does not apply massively in the economy.

In the period from 1991 to 1999, legal capital was widely applied in many industries as required by the Law on Companies 1990 and the Law on Private Enterprises 1990. Each sector of the Government regulated a certain amount of capital required. Enterprises in Vietnam must meet the very specific conditions that must be certified by the bank where the enterprise has opened an account or certified by the State Notary Office of the assets contributed as capital in kind when established. Thus, legal capital applied in many business lines of enterprises in the period 1991-1999 is relatively difficult for enterprises. It can be seen that these barriers are not effective in reality but because the state stipulates that the minimum capital level is too low, inconsistent and does not reflect the meaning of the regulation on capital level. Legislation is aimed at ensuring the minimum of business owners' assets for business and for customers.

Until the 1999 when Enterprise Law was adopted, the legal capital was more clearly and specifically delineated, however, it was still very dependent on the major conditions which were quite as difficult as in very few business sectors. Specifically, as of 2003, although there were only a few industries and trades, enterprises had to prove legal capital such as currency trading - credit, insurance business, securities trading and gold trading. But the paperwork related to this conditional business sector also carries a regimes of policy, not yet untied for business investment enterprises. Later when the 2005 Enterprise Law was issued, with a huge list of nearly 2,000 (two thousand) conditional business lines, legal

capital continued to apply to a number of industries such as currency trading - credit, insurance business, securities trading, real estate business, debt collection service business, security services business, air transport business, airport business, supply business aviation services, film production business, trading of goods exchanges and independent audit services business. For example, in order to trade debt collection service, there must be at least VND 2 billion, real estate business must have a minimum capital of VND 6 billion.

If we compare the regulations of many countries in the world, the legal capital to establish a business in Vietnam has a completely different approach. There, the household stipulates legal capital to be applied for each type of enterprise, or a unified level for businesses, not applied to each specific business line such as in Vietnam and Laos. Thus, the access to legal capital to apply in each specific business sector of Vietnam is similar to the business law of the Lao People's Democratic Republic where the country also regulates legal capital, determined according to each specific business line. It can be seen that this problem is shown in the following evidence: In Finland, the legal capital for establishing a business that this country has generally is 2,500 euros. In the Dominican Republic since 2011 they require investors to have at least 100,000 Dominican Pesos (about USD 2,855) to set up a limited company.

In terms of legal science, it is not necessary to stipulate specific legal capital levels for each type of enterprise or a unified threshold for all businesses like some countries in the world. Legally, investors in Vietnam, when establishing a business, can only register with a modest capital of 1,000 VND, which is not contrary to the law. It can be said that Vietnam's regulation on legal capital is really open, creating favourable conditions for investors to enter the market, in accordance with the policy of promoting internal resources. According to statistics, in 2010, Vietnam had about 85,000 newly established private enterprises with a registered capital of about VND 500 trillion within 63 provinces and cities. The average registered capital of each enterprise is nearly 6 billion dong. Also according to the General Statistics Office, by the end of December 2014, there were more than 400,000 businesses operating in the country which is the highest number since 2011.

Secondly, the regulation of specific legal capital in Vietnam is stipulated in the laws promulgated by the National Assembly very new and generally determined mainly by the subordinate documents issued by the authorities.

Inheriting the provisions of the Vietnam Enterprise Law 2005, the current Business Law in Vietnam also applies provisions on certain conditional business lines that are classified as business lines that require capital. meaning that legal capital is only applicable to the form of conditional business. For example, Housing Business Law, Law on Securities Business, Law on Insurance Business, Law on Banking Organizations ... Thus, only the National Assembly, Standing Committee of the National Assembly and the Government have the right regulations on business conditions applicable in certain industries as prescribed by law. This means that legal capital may exist in legal documents promulgated by the National Assembly or in sub-law documents issued by the National Assembly Standing Committee and the Government. In fact, in Vietnam, the list of business lines requiring legal capital is only listed in the decrees issued by the Government, while laws and ordinances are promulgated by the National Assembly and the National Assembly Standing Committee. play a guiding role is basic, it can be said that it is quite faint, not specific. For example, the Law on Real Estate Business issued by the National Assembly on June 29, 2006 only affirms that real estate business is an industry that must have legal capital, but

does not specify how much it is. The legal capital for real estate business was "transitional" through Article 3 of Decree 153/2007 / ND-CP issued by the Government on October 15, 2007.

For the purpose, the right to decide on the specific amount of legal capital for law enforcement is to ensure the suitability in each stage of developing a market economy in Vietnam. Meanwhile, in other countries in the world, especially developed countries, if they have legal capital, they specify the specific capital in the law on enterprises that the legislature has issued. For example: In China, the Law on the People's Democratic Republic of China was promulgated by the National Assembly in 2005 and is effective from January 1, 2006, regulating the legal capital for enterprises are specifically defined in Articles of Law No. 26, 59 and 81 of the 2005 Corporate Law. In the UK, too - Article 768 of their 2006 Corporate Law clearly stipulates that the legal capital level applicable to company's stake is 50,000 euros.

We can see that this difference is due to the origin of legal capital in Vietnam applied in business lines so the laws in Vietnam cannot be encompassed. All industries must have legal capital. Therefore, to be more rational and scientific, lawmakers have studied and developed this regulation in the direction of making it available for specialized sub-law documents to be applied across the whole country from central to local. But in terms of negativity in this regulation, inefficiencies are certainly happening, other countries, legal capital are generally regulated uniformly for a specific type of enterprise or common to all businesses. If it is appropriate, the determination of minimum capital in legal documents is very suitable and easy to implement. In Vietnam, it is the regulation of legal capital in legal documents that leads to the fact that legal capital is not as stable as that of many countries in the world. In China, Article 78 of the China Company Law 1993 and Article 81 of the China Company Law 2005 regulate the adjustment of legal capital for joint-stock companies from 10 million yuan (yuan) under the Corporate Law It took 12 years to reach 5 million yuan according to the 2005 Company Law.

While in Vietnam, conditional business is required to have legal capital, especially for the banking sector. This field plays a very important role in the development of the market economy in Vietnam, but the adjustment of legal capital in Government Decrees takes place very quickly, making businesses operate. In this field, it is also very embarrassing and inadequate. For example, from the figure of VND 50 (70) billion, the legal capital required to operate in the banking sector under Decree 82/1998 / ND-CP is amended and supplemented to VND 1,000 billion under the Decree 141/2006 / ND-CP as of 2008 and then VND 3,000 billion according to Decree 141/2006 / ND-CP by 2010, it is expected to increase to VND 5,000 billion (2012) and VND 10,000 VND billion (2015). Thus, the legal capital oriented by the Government as mentioned above has caused great disturbance for the Vietnamese banking system, making the supply and demand of money in the market seriously affected, forcing enterprises to "piggyback" adds administrative procedures that should have been reduced during the economic crisis. Because, these regulations entail that the condition that business entities are enterprises must go through the procedures of getting permission from the State Securities Commission to issue securities to increase capital in the stock market must be done manually. applying for permission of the State Bank to approve the method of raising capital, having to apply for the State to postpone the time of increasing legal capital for more than 2 years, many banks are tired of the "follow" administrative procedures. In addition, the regulation of legal capital and the change of capital levels many times in a short

period of time also causes annoyance and difficulty in rotating capital of enterprises. This shows a lack of consistency in the management of state-owned enterprises for the legal capital of business enterprises that require legal capital. According to data published by the State Bank in December 2010, up to December 2010, up to 9 commercial banks failed to meet the legal capital of VND 3,000 billion, forcing the Government to extend it. the time limit for raising legal capital is 1 more years till December 31, 2011, replacing on December 31, 2010, as stipulated in Decree No. 141/2006 / ND-CP.

According to the provisions of the current law, to regulate science more for businesses doing business in the banking sector is required to have legal capital.

Thirdly, our country's Law on Enterprises still increases and considers the role and influence of legal capital on enterprises in many business sectors in the market economy.

In the world, the scope of application of legal capital has many different points of view. According to the proposal of the European Commission (EC) to simplify Directive No. 02 on the issue of capital of enterprises, which is being implemented strongly but also continues to cause fierce controversy about whether to expand. whether or not the scope of application of the legal capital in the future in the future is also one of the hot political issues of this alliance in Europe.

According to the World Bank's (WB) annual report on the Global Business Environment 2011, Vietnam is classified in a group of countries that do not have the legal capital applied in establishing businesses together with some countries in the world such as Canada, Bangladesh, Tunisia, Belarus, Colombia.

In fact, if only looking at the Report of the World Bank, investors are misunderstood that Vietnam does not apply the capital "floor" in the establishment of businesses. It can be affirmed that: Due to the specificity of legal capital in Vietnam, it does not apply to all types of businesses as most countries in the world have been implementing, in each specific business line. Therefore, the Vietnamese government will have separate regulations to adjust this issue. But here is the need to discuss that in the context of globalization and competition to attract investment, many countries are moving to narrow the role of legal capital by completely eliminating the regulation of legal capital. From the economy or to adjust the legal capital in a downward direction to facilitate investors entering the market. According to the World Bank (Denmark), Denmark, Kazakhstan, Bulgaria, Sweden, Syria, Ukraine, Zambia are the pioneering countries to abolish or reduce the requirement of legal capital in business establishment. Among them, Zambia has officially abolished legal capital for businesses, while Syria has reduced its legal capital requirements by nearly two thirds before, Bulgaria has reduced its legal capital from 5,000 leva (similar equivalent to US \$ 3250) to only 2 leva (equivalent to US \$ 1.30) for the birth of a business in handling this commission. And Kazakhstan has reduced the legal capital to set up a business in this country, only 100 tenge (equivalent to 0.70 USD) - the figures are mainly symbolic is fundamental.

In Asia, the world's third-largest representative of major economic potentials, such as Japan, is a well-known country with a conservative tradition, but in 2005 they issued a new Law on the Company with many clear regulations by completely eliminating legal capital when establishing businesses to encourage investors to market more. The Japanese Companies Law was passed by the Japanese Parliament on June 29, 2006, and took effect from May 1, 2006 to replace the 1994 Corporate Law. To set up a joint stock company in Japan must have a legal capital of 10 million JPY (Yen) but now only need to represent 1

JPY to establish a joint stock company in Japan. In Vietnam, although under the view of the international community through the evaluation of the World Bank, the legal capital is not applied, but in fact the legal capital in Vietnam has been increasing, called "rising chief" smouldering in many business lines, especially in the period from 2006 until now. By October 2010, there were about 16 business lines in the whole country that had legal capital, not to mention the independent auditing service business under the 2010 Independent Auditing Law, but waiting for the Government of Vietnam to promulgate a Decree detailing the implementation of this Law specifying specific capital levels for investors when conducting independent audit services. Currently applying the law on business investment in 2015, according to the report of the General Statistics Office of Ministry of Planning and Investment, the whole country has reduced to 14 lines of conditional business that require legal capital. Thus, in the context of deep integration into the international economy along with the process of reforming administrative procedures which are taking place very strongly, the recognition and re-evaluation of the law regulating legal capital in Vietnam. In relation to the regulation of legal capital in other economies around the world is more meaningful than ever, especially in the current period when the issues of legal capital for the operation of enterprises belong to the banking, securities, insurance and real estate business sectors in Vietnam need to be better suited to the country's socio-economic development practices to create stability for the economy of the country. sustainable development in the future.

If in 2003, there were only 3-4 business lines in the whole country that had to have legal capital, at the time of 2011, the number of business lines requiring legal capital increased 5 -6 times compared to the time of 2003 with no signs of stopping in the future. The increase in business lines that require legal capital in Vietnam also raises concerns for businesses and goes against the process of administrative procedure reform that the State of Vietnam is conducting. Circular 13/2008 / TT-BXD issued by the Ministry of Construction on May 21, 2008, guiding the implementation of Decree 153/2007 / ND-CP in real estate business. Accordingly, a real estate business enterprise must undergo procedures to prove legal capital in many different ways quite complicated, while the legal capital is too low, only 6 billion. This has made legal capital exist only formally but administrative procedures are difficult reality that real estate business enterprises must "piggyback" more, forcing businesses to have more types of paper when established by different methods such as bank confirmation of the balance on the account, bringing the financial statements of the auditing firm or having a valuation certificate of the professional valuation company. Even in some cases, legal capital in Vietnam is also used to create resistance for investors to enter the market, which is rarely seen in the law of other countries. For example, Clause 2, Article 4 of Decree No. 104/2007 / ND-CP issued by the Government on June 14, 2007 on debt collection service business, debt collection service business must have a legal capital of VND 2 billion but enterprises operating in this field "must not trade in industries, trades and services other than debt collection services". This provision makes many businesses operating in the debt collection field in Vietnam feel surprised because they violate the freedom of business for investors that the 1992 Constitution and the 2005 Enterprise Law have recognized, while reflecting huge differences in understanding and application of legal capital regulation in Vietnam and the rest of the world. Imagine this, if the business only "hugs" at least VND 2 billion and can only do business in one industry, the only occupation is the demand for debt, but this is the service industry, which does not require big expenses. Does it

attract investors to invest in this area? or is it a tough business condition that only creates a barrier to remove investors in Vietnam from this very popular business sector in this economy?

Therefore, in the amendment of the 2014 Enterprise Law and the 2014 Investment Law, the National Assembly actually untied the legal capital issue in the direction of assigning only specialized laws regulating legal capital. On the basis of conditional business lines in the market economy stipulated by the investment law and these conditional business lines must reflect the progress in the Party's guidelines. The 2013 Constitution is that everyone has the right to freedom of doing business in all sectors that are not prohibited by law.

It can be said that in the world due to differences in awareness and different political and legal perspectives, the mechanism of applying legal capital to enterprises is not identical with Vietnam. Legal capital in Vietnam has been remarkably developed over the past 30 years of reforming a multi-component market economy towards socialist orientation. Instead of concluding, in order to report on the issue of legal capital in business in Vietnam in the future, we agreed on the perspective of legal science of Assoc. Prof. Dr. Tran Thi Minh Chau on policies to encourage investment. In Vietnam, it is said: "For business lines and industries that require large capital and need risk insurance, maintaining legal capital in Vietnam is essential."

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