

COMPLETING THE LEGAL FRAMEWORK FOR SOCIAL ENTERPRISES IN VIETNAM

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Abstract

Social enterprises are a new trend emerging in Vietnam. Social enterprises is formed to address social issues or specific environments through models of business truly sustainable, not just to maximize profits for owners or investors invest. The provisions of the law on social enterprises are an important legal framework in encouraging social enterprises to develop. For the first time in the history of Vietnamese business law, social enterprises were recognized as a new business model in the Law on Enterprise 2014. After that, the Government introduced This form of social enterprises is in Decree No. 96/2015/ND-CP of October 19, 2015. Currently, the law on social enterprises in Vietnam is relatively new both in terms of theory and practice. law enforcement. The paper examines the laws and practices that apply the laws governing social enterprises, proposes solutions to improve the law and improve the performance of the social enterprise model in Vietnam today. The author tries to clarify some theoretical issues about social enterprises, analyze legal provisions on models, assess the situation and propose solutions to improve the law on social enterprises in Vietnam.

Keywords: *Social enterprises; Law on Enterprise; Enterprise.*

1. Introduction

Social enterprise is a new legal term appearing in Vietnam and recently, social enterprises are receiving the attention of policy makers, as well as French scientific researchers. physical. Currently, the legal status of social enterprises is prescribed in Article 10 of the Law on Enterprise 2014 and Decree No. 96/2015/ND-CP , generally the legal corridor on social enterprises in Vietnam is still very primitive and needs to be further improved. The article provides some theoretical issues about social enterprises under Vietnamese law to contribute to a clear description of the nature of social enterprises in order to develop appropriate adjustment policies and raise common awareness. about social enterprise.

2. Research method

Specific methods used to study this topic "Improving the law on social enterprises in Vietnam" are as follows:

- Method of interpretation

This method is applied to study the basic theoretical issues that govern the social enterprise legislation in Vietnam.

- Methods of analysis, comment

This method is applied to present the specific provisions of the Vietnamese international legal system of social enterprises in Vietnam.

- Systematization and synthesis method

This is the research method used to generalize and draw conclusions and basic proposals about the author's new contributions to the completion of Vietnamese law on social enterprises.

3. Research questions and research results

3.1. Research question

Research questions 1. What is the legal nature of social enterprises in Vietnam?

Research questions 2. What is the solution to perfect the provisions of the law on social enterprises in Vietnam?

3.2. Research results

3.2.1. Social enterprises are enterprises registered under the Law on Enterprise 2014

The Law on Enterprise 2014 does not provide a definition of social enterprises but there are criteria for identifying social enterprises in Article 10. From this provision, we can understand that a social enterprise is an enterprise established under the Enterprise Law, with the purpose of operating to solve social and environmental issues for the benefit of the community, which uses at least 51% of the total annual profit to reinvest in order to achieve the goal, society and environment.

According to Point a, Clause 1, Article 10 of the Law on Enterprise 2014, a social enterprise whose first criteria is an enterprise registered to establish under the provisions of this Law. Thus, the Law on Enterprise 2014 does not consider social enterprises a particular type of enterprise, but like ordinary businesses, social enterprises still organize and operate under one of the business types: Joint-stock companies, limited liability companies, partnerships and private enterprises [1].

Because it is also an enterprise, in order to establish a social enterprise or a social entrepreneur (the person who invests capital to establish a social enterprise, the author uses the term "social entrepreneur") to carry out the procedures. The common legal framework for establishing a business is one of the types of businesses designed by the Law on

Enterprise 2014. This criterion shows one of the basic characteristics of social enterprises, similar to ordinary businesses, that is having business activities. Accordingly, business is the continuous implementation of one, some or all stages of the investment process, from production to sale of products or provision of services on the market for profit-making purposes. From the definition of enterprise, business law of enterprise and according to the traditional conception in legal science in Vietnam, it is the factor "aiming at profitability" which is the basic and decisive factor to the birth. and business activity, "an inseparable attribute of the enterprise" [2] and "the ultimate destination of business" [3]. From that, it can be understood that the main purpose of starting a business is to create profits for investors in the business, while solving social issues for the benefit of the community is not the main goal. of business. Therefore, there is a view that the business definition in Vietnam is too emphasizing the idealism, the legislators have not generalized businesses not for profit-seeking purposes [4].

On the other hand, also taking into account the definition of "enterprise", the purpose of establishing a business is to carry out its business function, the main objective is to make a profit for investors in the enterprise, provided in Article 75. The Civil Code 2015 was classified as a commercial legal entity. Meanwhile, according to Article 76 of the 2015 Civil Code, a social enterprise is a non-commercial legal entity, "it is possible to seek profits but it is not the main goal and it is important if it is beneficial. Profits are not distributed to members "[5]. According to the Law on Enterprise 2014, social enterprises fall under the category of "enterprises", according to that logic, social enterprises must be a commercial legal entity, but the Civil Code did not follow that direction. It seems that in the spirit of the 2015 Civil Code, social enterprise is a category outside the business concept, which created a contradiction with the Law on Enterprise 2014.

Currently, the procedures for establishing a social enterprise are stipulated in the Law on Enterprise 2014 and the Government's Decree No. 96/2015/ND-CP dated October 19, 2015 detailing a number of articles of the Law on Enterprises. (Decree No. 96/2015/ND-CP). Like every other business, social entrepreneur also has its own name. Based on the standards of enterprise name prescribed by law, social entrepreneurs will actively decide on naming for social enterprises. According to regulations from Article 38 to Article 42 of the Law on Enterprises 2014, there is no specific regulation on naming of social enterprises. Under Clause 2, Article 4 of Decree No. 96/2015/ND-CP, the phrase "social" may be added to the proper names of social enterprises. Regulations can add the phrase "society" to the private name of a social enterprise is an arbitrary norm, decided by the founder of social enterprise. However, both the Law on Enterprise 2014 and its implementing regulations do not provide for the prohibition or restriction of investors from using the phrase "social enterprise" or the abbreviation "Social Enterprises" in the name of the enterprise. ordinary karma. Consequently, investors may take advantage of these terms in naming their businesses

so that the State, the public and partners may confuse the entity for unhealthy business. Therefore, the law of Vietnam needs to prohibit the use of the words "social enterprises" or the abbreviation "Social Enterprises" in the names of ordinary businesses, this is also consistent with the provisions of the law. United Kingdom and South Korea.

3.2.2. Social enterprises have operation objectives aimed at solving social and environmental issues for the benefit of the community

According to Point b, Clause 1, Article 10 of the Law on Enterprises 2014, social enterprises have an operational objective to solve social and environmental issues for the benefit of the community. Social, environmental and community issues such as protecting the environment, protecting and responding to basic human rights through job creation activities for those who are difficult to integrate and vulnerable trade, provision of health services, education, clean water supply, waste treatment, pollution... These social goals have become the motivation for social entrepreneurs to establish social enterprises. and using business options to solve social problems. Legally, Clause 1, Article 5 of Decree No. 96/2015/ND-CP stipulates that social enterprises must notify their commitment to social and environmental objectives to business registration agencies, to be public. on the National Business Registration Portal when establishing a business or in the course of its operation. Through this legal act, an ordinary enterprise will wear a social enterprise shirt, from which the State and society can recognize the legal status of social enterprises, accompanied by rights and obligations of social enterprises. This criterion contributes to give us a basis to distinguish social enterprises from ordinary businesses. Specifically, in conventional businesses, investors rely on the market to find out the needs of customers, thereby planning, investing strategies, producing and trading in goods, providing services and through a series of business activities regulated by the rules of the market economy to achieve the ultimate goal of profitability. In other words, it is profit that becomes the motivation for investors to decide to find business solutions, best meet the needs of customers and maximize their profits, get profits, or investors. was successful.

Meanwhile, for social enterprises, the factor "profitability" is not a decisive factor to the birth of enterprises, but from the existing problems in society. Social issues become the motivation for social entrepreneurs to find and decide the appropriate business model, after all, social entrepreneurs use business methods to solve the social problems that they have. discovered. When the social problem is solved, the purpose of social enterprise is achieved, although it may not be profitable, even at a loss.

Thus, ordinary businesses are social enterprises that operate under the market mechanism, that is, must have revenue and profit, but they are different in nature and destination, so there is a view. argued that: "social enterprises can be profitable, even need profits to serve social objectives but not" for profit "but" for society "[6].

In fact, social enterprises are often confused with corporate social responsibility (Corporate Social Responsibilities) [7]. Business is a commitment to improve the quality of life of the community through the business process and voluntary contributions of businesses [8]. The nature of social enterprises is to recognize the voluntary commitment of enterprises to implement ethical and social standards for human goals and sustainable development, which is an additional activity of enterprises, corporate social responsibility is still the ordinary business with the purpose and nature of seeking profit. Meanwhile, the principle, purpose and the whole operation of social enterprises are to solve social or environmental issues identified right from the inception and maintained throughout the operation process, which can If the social enterprise has changed or terminated its social objectives, then the social enterprise must notify the state agency of the current status. authorization.

3.2.3. Social enterprises use most of their profits to reinvest in order to realize social and environmental objectives

A social enterprise, when its profit generating business is not distributed like normal businesses. Profits that enterprises gain from production and business activities are used to reinvest in enterprises with the aim of solving the social issues that social enterprises are pursuing. The criterion of using profits to reinvest in serving social objectives is the distinction between social enterprises and ordinary enterprises, clearly showing the criterion "for society". According to Point c, Clause 1, Article 10 of the Law on Enterprises 2014, social enterprises must use at least 51% of the total annual profit to reinvest in order to achieve the registered social and environmental objectives. The 51% figure is intended to create favorable conditions and opportunities for social enterprises to mobilize business capital from other investors, members and shareholders by ensuring a certain dividend for investors. This circular, thereby contributing to the sustainable development of social enterprises [9]. This criterion contributes to a clear and specific quantification of social goals of social enterprises and social enterprises.

The goal of solving social and environmental issues and bringing benefits to the community is the noble mission of social enterprises, which makes social enterprises different from ordinary businesses and is not the same. with charities. Social enterprises have the characteristics of "hybrid" between ordinary businesses and charities [10]. On the one side are enterprises operating for the purpose of maximizing financial profits, and on the other side are non-governmental organizations established to pursue purely social benefits. Therefore, social enterprises are a model that harmoniously combines both form and content of these two entities to take business as the main field of activity, but not for profit but to solve problems. specific society, so most of the profits are used to serve the society and the environment.

In addition, social enterprises also have some similarities with public enterprises,

both of which are aimed at serving the needs of society, may both provide products that are nature-based services. serving the common interests of the society such as providing clean water, cleaning up waste, protecting the environment ... [11] To a certain extent, these enterprises may be grouped into groups of enterprises with the same purpose. main activities [12]. However, the nature of social enterprises is established voluntarily by social entrepreneurs, social enterprises are stable and consistent, determined by social goals, regardless of the nature of the social enterprises. products and services that businesses provide. Meanwhile, public utility enterprises are established by the State to produce and provide public products and services according to the mode of task assignment and enjoy special privileges [13].

3.2.4. Rights and obligations of social enterprises

Social enterprises differ from ordinary businesses in the purpose of distributing and using profits. Therefore, in addition to the rights and obligations of enterprises in general, social enterprises also have specific rights and obligations corresponding to the objective of solving social problems under Clause 2, Article 10 of the Law on Enterprise 2014. Important rights and obligations of social enterprises include:

Firstly, social enterprises must maintain the objectives and conditions for profit distribution throughout the operation process. As analyzed above, the legal characteristic to distinguish social enterprises from ordinary businesses is in the profit distribution conditions and conditions, so social enterprises must maintain these criteria throughout. submit your activities. Enterprise law prescribes mechanisms to ensure the compliance with social and environmental objectives of social enterprises.

Secondly, social enterprises are allowed to mobilize and receive funding. According to the research and assessment of the Central Institute for Economic Management, social enterprises in Vietnam are still quite young, established primarily from individual ideas, with initial investment. most of it is capital contributed by founding members on a small scale. Social enterprises are typically not for profit, doing business in markets with high risks, low financial yields, which are not attractive to commercial investors, along with investment costs. privately owned, the management of social enterprises is larger than average [14]. Therefore, social enterprises are facing many difficulties in financial matters, so the contributions and grants from other organizations and individuals to partially offset the management and operating costs of is very necessary.

Thirdly, social enterprises must not use the mobilized grants for purposes other than to offset management and operating expenses to solve social and environmental issues that they have registered. Based on the objective of addressing social and environmental issues for the benefit of the community, social enterprises can mobilize funding sources, and the donors when sponsoring into commune enterprises. The Association wants the grant to be

used for the right purpose and effectiveness. In essence, the funding raised by a social enterprise is not an asset owned by the social enterprise, so the decision to use it is limited. Therefore, Point d, Clause 2, Article 10 of the Law on Enterprise 2014 stipulates that social enterprises can only use grants to cover management and operating expenses to solve social and environmental issues. that the business has registered. Social enterprises that violate this obligation will be sanctioned for administrative violations according to the Government's Decree No. 50/2016/ND-CP of June 1, 2016, on sanctioning of administrative violations. field of planning and investment.

Fourthly, the State has policies to encourage, support and promote the development of social enterprises. With the ability to detect and solve problems of social security needs, to serve the needs of the poor, the weakest and the largest in society. This is a group of people who have long been sponsored by the state policies, in other words, this is the "burden" of the state budget [15]. Social enterprises share responsibility with the State, greatly contributing to creating jobs, incomes and opportunities for this group of people to be confident and integrated, thereby helping them to have a more stable life. . Social enterprises are trying to solve problems in society that the State does not bring about, the value that social enterprises bring to society is great. Therefore, the State needs to consider social enterprises as their companions in resolving social issues and formulating policies to enable social enterprises to develop.

In general, although the Law on Enterprise 2014 is specifically stipulated by the Government in Article 10 of the Law on Enterprise 2014, including incentives and support policies for social enterprises, Decree No. 96/2015/ND-CP has no specific regulations on this issue. This can be explained by the fact that Decree No. 96/2015/ND-CP is a guiding document of the Law on Enterprise 2014, so that incentives for social enterprises need to be regulated in France. Specialized laws (such as laws on investment, taxes, education, health ...), thereby contributing to the unity in the legal system.

Social enterprises under Vietnamese law are a special subject, an enterprise that operates but is not for the purpose of maximizing profits for investors but most of the profits of social enterprises are served for community. Therefore, the adjustment of laws for social enterprises needs to take into account the specific factors of this model, in order to contribute to creating a good ecosystem and create conditions for social enterprises to develop as many countries. in the world.

3.2.5. Improve the law on social enterprises in Vietnam today

3.2.5.1. Limited law enforcement

Many businesses do not know the concept of "social enterprises" is included in the law, and the law does not have specific policies for social enterprises agreed in specific documents. Social enterprises in Vietnam are still quite young, established mainly from

individual ideas, so the initial investment capital is mostly self-contributed capital, ability to raise capital, access to commercial investment. usually very limited. As a business, the social enterprise model guarantees profitability and lofty community obligations that challenge social entrepreneurs. There are businesses that operate rightly for social and environmental purposes, but there are still many cases of taking advantage of the disadvantaged and disabled to call for funding. Currently, the contribution of social enterprises to the country is low because the products or services of social enterprises are still simple, do not use much technology, and the price of products made by businesses. The society produces is much higher than the price level of ordinary products. The social entrepreneurs who wish to set up social enterprises are rooted in social and environmental goals, so many social business owners are not well-trained, lack of business thinking and management skills. treatment. From the side of consumers when using products with the psychology of giving, accepting poor quality products, this reduces the motivation for the development of social enterprises.

3.2.5.2. Limitations in the management and supervision of corporate social opportunity

In order to strengthen the management of business registration, in Vietnam, it is now implemented under the policy of strengthening post-inspection. However, when implementing this policy, many localities have not really done well, so the situation of law violations in business registration takes place every year. Many local officials at the place where the enterprise is headquartered do not know the provisions of the law on the social enterprise model, causing difficulties in business registration as well as administrative management in the process of operation. activities. The control of competent State agencies still faces many difficulties, the authorities are still passive only when there are requests from related individuals and organizations when exercising their rights. I am new to the investigation and supervision. The research, understanding and application of regulations in the legal documents of the National Assembly, the Government, ministries and central branches in some localities are still weak.

3.2.5.3. The need to improve the system of social legislation on legal letter Vietnam Nam

The law is an effective tool to implement the government's policies and protect consumers, but the incomplete system of legal documents will not effectively implement the social enterprise model. Therefore, it is necessary to ensure the legal system so that social entrepreneurs can trust the State, need timely sanctions and management tools to master the state management function. Perfecting the comprehensive and sustainable legal system in various fields of law from the central to local levels to ensure stability and economic development. We need to clearly define the business model that is distinct from corporate

social responsibility. Perfecting the legal system to ensure citizens' freedom, democracy and equality.

3.2.5.4. Solutions to perfect the law on social enterprises and improve the efficiency of law enforcement on social enterprises in Vietnam today

Regarding the solution to complete the law, the most important thing is to specify the provisions of the legal documents, simplify the registration procedure, specify the cases where the commitment to social objectives must be reported., environment. Next is to change the way of monitoring; identify commercial or non-commercial legal entities for social enterprises; uniform regulations on incentive regime for social enterprises. And finally, it is strict and strict in using the sanctions applied to the violations of social enterprise law.

3.2.5.5. Solutions to improve the efficiency of law enforcement

In order to effectively apply the provisions of the law on social enterprises, there should be specific solutions to guide the development of social enterprises, that is, effective coordination between competent agencies; raise awareness about social enterprises; incorporate a social enterprise model into the higher education system ; improve the quality of products and services; improve the efficiency of financial funds; have a long-term strategy in formulating and implementing social and environmental goals of social enterprises ; incentive model, effectively bringing thoughts communal households.

4. Discussion and Conclusion

In order for social enterprises to have an effective legal and business environment, appropriate legal frameworks are needed to overcome the difficulties of social enterprises today. Demand for tissue formation of social enterprises bring huge benefits to society, thus encouraging the development of social enterprises, overcoming weaknesses and outstanding for corporate social associations have a role very important.

Currently, Vietnam has hundreds of social enterprises officially registered and thousands of other enterprises intend to become social enterprises. Implementing the work of perfecting the legal system of social enterprises helps the State reduce social burdens when implemented by social enterprises and bring significant impacts. Therefore, focusing on completing the provisions of the law plays a huge role.

5. References

1. Standing Committee of the National Assembly (2014), *"Report No. 798 / BC-UBTVQH13 dated November 24, 2014 on the acquisition, revision and explanation of the Enterprise Law project (amended)"*, accessed at the address : http://duthaonline.quochoi.vn/DuThao/Lists/DT_DUTHAO_LUAT / View_Detail.aspx?ItemID = 753 & TabIndex = 2, 2014.

2. Ho Chi Minh City University of Law (2016), *Curriculum "Law on business subjects"*, Bui Xuan Hai (editor), Publishing House. Hong Duc, 2016, p. 26.
3. Hanoi Law University (2016), *Textbook "Commercial Law"*, volume 1, edited by Nguyen Viet Ty, Publisher. People's Public Security, 2016, p. 29.
4. Pham Duy Nghia (2010), *Textbook "Economic Law"*, Publisher. People's Public Security, 2010, p. 29.
5. Do Van Dai (2016), *"Scientific commentary on new points of the Civil Code 2015"*, Publishing House. Hong Duc, 2016, p. 101.
6. Vo Sy Manh (2015), *"Social enterprises in accordance with the Law on Enterprise 2014 from the perspective of business freedom"*, Proceedings of Scientific Conference "Enterprise Law and Investment Law 2014: These innovations to realize business freedom", Ho Chi Minh City University of Law, 2015, p. 50.
7. Phan Thi Thanh Thuy, *"Social Enterprises under Law on Enterprise 2014"*, Journal of Democracy and Law, No. 6 (279), 2015, p. 26.
8. Philip Kotler and Nancy Lee (2005), *"Corporate Social Responsibility Doing the Most Good for Your Company and Your Cause"*, 2005.
9. Standing Committee of National Assembly (2014), *"Report No. 761 / BC-UBTVQH13 dated October 28, 2014 on the acquisition, revision and explanation of the Enterprise Law Project (amended)"*, source: http://duthaoonline.quochoi.vn/DuThao/Lists/DT_DUTHAO_LUAT/View_Detail.aspx?ItemID=753&TabIndex=2.
10. Nguyen Dinh Cung, Luu Minh Duc, Pham Kieu Oanh and Tran Thi Hong Gam (2015), *"Social Enterprises in Vietnam - Concepts, context and policies"*, Hanoi, 2012, p. ten.
11. Phan Thi Thanh Thuy, *"Social enterprises according to Law on Enterprise 2014"*, Journal of Democracy and Law, No. 6 (279), 2015, p. 25-26.
12. Ho Chi Minh City University of Law, *Textbook "Law on business subjects"*, edited by Bui Xuan Hai, Publisher. Hong Duc, 2016, p. 31.
13. Phan Thi Thanh Thuy (2015), *"Social enterprises according to Law on Enterprise 2014"*, Journal of Democracy and Law, No. 6 (279), p. 25-26.
14. Nguyen Dinh Cung, Luu Minh Duc, Pham Kieu Oanh and Tran Thi Hong Gam, *"Social Enterprises in Vietnam - Concept, context and policy"*, Hanoi, 2012, p. 53-60.
15. Nguyen Thi Yen, *"Social enterprises and solutions for developing social enterprises in Vietnam"*, Journal of Law, No. 11, 2015, p. 73.