

# Criminal Liability of Commercial Legal Entity in Vietnamese Law

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## ABSTRACT

Through searching of the current situation of Vietnam's current legal situation and learning from the experience of other countries in the world providing for criminal liability for legal entities, Vietnamese criminal law scientists have boldly building up the criminal liability regulations for commercial legal entities in Vietnam's criminal code. On November 27, 2015, the National Assembly of the Socialist Republic of Vietnam voted to pass the amended Criminal Code that takes effect from January 1, 2018. The introduction of the Criminal Code in 2015 marked a breakthrough development in Vietnam's criminal policy and legislative thinking. For the first time in the history of criminal legislation, the Criminal Code provides for the criminal liability of commercial legal entities in chapter XI with 33 specific offenses.

**Keywords:** *commercial legal entity, criminal liability, Vietnam, legal entity, crime, punishment*

## 1. INTRODUCTION

Since 1986, in the process of international integration, Vietnam has become a member of many international organizations and participated in many international conventions on economy, human rights and international cooperation with many countries in many areas of political and economic life such as: transnational organized crime convention, anti-corruption convention, anti-terrorism financing convention and 40 recommendations of the Financial Action Task Force (FATF) on prevention fight against money laundering ... and the strong development of the market economy creates breakthroughs in economic life.

However, Vietnam faces many phenomena and dangerous behaviors for society carried out by legal entities. That reality has posed for Vietnam's criminal legal science the big questions that need to be answered: should legal entity be the subject of crime? If so, how?

A legal entity is an organization that is legally established, has a unified structure, has its own property and is responsible for its own assets, and participates independently in legal relations in its own name [1-5]. According to the laws of Vietnam, legal entities include commercial and non-commercial legal entities. In which the legal entity has the main objective of seeking profits and profits distributed to its members.

The form of a commercial legal entity must be an enterprise or other economic organization. Within the scope of the article, the author analyzes the characteristics, legal status, criminal liability responsibility of commercial legal entities according to Vietnamese law.

## 2. RESULTS

### *2.1. The Theory of Criminal Liability Commercial Legal Entity*

In Vietnam's current criminal law, there is no legislative definition of the concept of criminal liability. This concept is only mentioned by criminologists in criminal law science. Although specific views differ, but in general, it is agreed on the nature of criminal responsibility to be a condemnation of the state for criminal acts. By declaring certain acts (of a certain level of danger) as criminals and applying criminal coercive measures to the subjects who have committed the acts.

Thus, criminal responsibility is a measure of the state's influence on the subject of a crime [6-8]. As the subject of criminal law relations, the State has the right to pass through law enforcement bodies to investigate criminal liability and apply criminal coercive measures to the subjects of a crime.

On the basis of scientific arguments, the nature of the criminal liability of a commercial legal entity is also the state's condemnation of a criminal act committed by the commercial legal entity, reflecting the relationship between a state and a legal entity that has committed a crime through the state's right to declare dangerous acts committed by a commercial legal entity as a crime and has the right to apply criminal measures (including penalties and judicial measures) to that commercial legal entity in order to protect the legal order and to educate people to be aware of the law [9-15].

Criminal liability is a detrimental legal consequence that a commercial entity incurs, and is imposed by penalties, criminal justice measures and criminal convictions decided by the court to apply to the law on its behalf because the juridical person has committed a dangerous act for society in the cases prescribed in the current Criminal Code.

It should also be affirmed that referring to the criminal liability of a commercial legal entity refers to that legal entity as an independent subject and must be criminally responsible to the state for its acts of violation out. The criminal liability of commercial legal entities is not synonymous with the concept of collective criminal liability.

In order to identify a commercial legal entity as the subject of a crime in Vietnam's criminal law, the commercial legal entity must ensure the following criteria:

*Firstly, commercial legal entities must ensure legal capacity.* According to Article 74 of the Civil Code No. 91/2015 / QH13 on legal entities, there are two types of commercial and non-commercial legal entities. The 2015 Criminal Code only raises the issue of criminal liability for commercial legal entities. Under the provisions of Article 75, an organization recognized as a commercial legal entity must satisfy the following conditions: it is established under the provisions of civil law, business law or other relevant laws; have an organizational structure in accordance with the civil code, that is, have an executive body, a clear and legal operating charter, and a separate seal managed and used by the representative; having property independent from other individuals or legal entities and taking self-responsibility with their own property; participating in legal relations independently.

In essence, a commercial legal entity is a legal entity whose main objective is to seek profits and profits shared among its members. Businesses and economic organizations that satisfy these characteristics, independently as participating in legal relations, will naturally enjoy certain rights and obligations, and at the same time have to take criminal responsibility for their own criminal acts.

Therefore, when being held criminally responsible for an offense that has been committed, a commercial legal entity cannot entrust or transfer it to another legal entity (including superior management agency or a legal entity) are subject to the responsibility of the legal entity (such as investigation, prosecution, adjudication, etc....), are convicted, subject to sanctions criminal and judicial measures, carrying criminal records.

*Secondly, the act performed by a commercial legal entity* must be an act that endangers society, causes damage or threatens to cause damage to social relationships protected by criminal law. Such dangerous acts must be defined as criminals, which are listed in Article 76 of the 2015 Criminal Code .

*Thirdly, it is the fault of a commercial legal entity in committing a crime:* according to Vietnam's criminal law, the error is the psychological attitude of the offender to the criminal act and the consequences thereof. Commercial legal entity is a "legal person" who cannot have psychological activities, therefore, it is not possible to

make mistakes in the above traditional views. Vietnam applies the theory of homogenization so it requires the legal entity to be at fault. And because individuals commit criminal acts on behalf of, on behalf of, representatives or authorized by legal entities to commit criminal acts in order to make profits for commercial legal entities; therefore, the fault of the individual is also considered to be identical with the fault of the commercial entity. Those individuals who are leaders, commanders, directors and executives have committed acts on behalf of, on behalf of, or on behalf of the interests of organizations and legal entities within the scope of their functions, tasks and powers. delivery ... errors of commercial legal entities in committing crimes herein are intentional or unintentional acts of illegal criminal acts, based on the awareness and will of the subject to commit such acts.

The fourth is about the condition of criminal liability: commercial legal entities are only responsible for criminal liability when they meet the conditions under Article 75 of the Criminal Code 2015. This is one of the prerequisite provisions in considering criminal liability of commercial legal entities Accordingly, criminal prosecution of a legal entity is only allowed when it meets all of the following 4 bases:

Crimes are committed in the name of commercial legal entities. In order to investigate penal liability for a legal entity, the first person committing an offense must act on behalf of the legal entity, that is in the name of the legal entity. According to current law, the person who performs the act in the name of the legal person may be the leader, the executive of the legal entity, and the person authorized by the legal entity.

Crimes are committed for the benefit of commercial legal entities. A criminal act committed for the benefit of a legal person is the act of acting by the representative in order to bring about the common interests of the legal person, even in the case where the legal entity's interests are not unique. Crimes are committed under the direction, administration or approval of commercial legal entities. Crimes are committed with the direction, administration or approval of legal entities. This is an important basis to determine whether a legal entity is subject to criminal prosecution. In other words, this base reflects the "error" sign of a legal entity by assessing the subjective consciousness of the head and leader of the legal entity.

The statute of limitations for penal liability examination has not expired as prescribed in Clauses 2 and 3, Article 27 of the Criminal Code. Just like the criminal act of a single individual who wants to investigate a person's criminal liability, such act must still have a statute of limitations for prosecuting criminal liability. The statute of limitations for prosecuting criminal liability for legal entities is determined by determining the statute of limitations for examination for penal liability of individuals but only within 33 crimes prescribed in Article 76 of the Code Criminal.

When considering the criminal liability of commercial legal entities, it is also necessary to pay attention to the relationship between the criminal liability of individual representatives and commercial legal entities. According

to Clause 2, Article 75 of the 2015 Criminal Code, it stipulates the principle of determining the relationship between an individual's penal liability and that of a legal person, specifically: "2. The fact that commercial legal entity has criminal responsibility does not exclude the individual's criminal liability". This means that: firstly, in all cases, the person directly committing the offense is always criminally responsible for the same crime with the legal entity except in the case of one of the exclusion of liability criminal; secondly, for the person or the head of the legal entity, depending on each specific case to handle. If these people all know and agree to direct and approve the implementation, they are jointly responsible for the crime with the legal entity and the person directly committing the crime. If there are grounds to believe that some of them do not know or oppose the conduct of this act, they are not responsible for the same crime with legal entities. This provision is aimed at preventing individuals from committing crimes, taking advantage of the guise of legal entities, and trivia for legal entities to escape crimes.

## ***2.2. Applying Criminal Responsibility to Commercial Entities***

In Vietnam, the Criminal Code 2015 defines the criminal liability of commercial legal entities as a new issue, and this is the first time criminal law has been imposed on this subject. Therefore, Article 76 of the 2015 Criminal Code stipulates 31 crimes for which a legal entity is liable for criminal liability and is divided into two groups:

Firstly, the criminal group in the economic field includes: abusive acts in the field of tax; infringing acts in the field of business and trade; acts of abuse in the field of finance, banking and acts of infringement in the field of insurance.

Secondly, the crime group in the field of environment implies that the most common acts of abuse in the field of environmental protection are in the field of industrial production, capital construction and urban environment, violations. regulations on research, exploration and exploitation of resources.

In 2017, the law amending, supplementing and abolishing a number of articles of the 2015 Criminal Code added two additional crimes, namely terrorism financing (article 300) and money laundering (Article 324).

Regarding the implementation of criminal responsibilities of commercial legal entities in the Vietnam Criminal Code 2015, there are two forms of punishment and the application of other judicial measures.

In Vietnam, the subject of criminal responsibility is the commercial entity that is an independent economic organization, operating for profit and not using the state budget, so the penalty is economic. considered to be the most appropriate and effective and also suitable to the scope of crime determined to be prosecutable for legal entities. For the penalty of time-limit deprivation or deprivation of a license only apply in particularly serious cases and there is no other way.

Article 33 of the Criminal Code prescribes a system of penalties for criminal legal entities, including: principal penalties: fine; suspend operation for a definite time; permanent suspension of operation; additional penalties: prohibiting business, banning activities in certain areas; banning capital mobilization; Fine, when not applicable is the main penalty.

At the same time, articles 77 to 81 of the Criminal Code specify conditions for applying principal penalties to legal entities detail:

Article 77 of the 2015 Criminal Code provides for fines. In principle, the fine is applied as a main or additional penalty for a commercial legal entity committing a crime. The fine level is decided based on the nature and severity of the crime and taking into account the financial situation of the criminal legal entity, the fluctuation of the price but must not be lower than 50,000,000 VND...

Based on such a general principle, the Criminal Code 2015 specifically stipulates the fine level in each specific crime corresponding to each specific penalty frame.

Article 78 of the Criminal Code : suspend operation for a definite time. A penalty of suspension of operation for a definite time is the suspension of the operation of a commercial legal entity in one or several areas where a commercial entity commits a crime causing damage to human life, health, the environment or security. , social order and safety and their consequences that are practically overcome; The suspension period is from 06 months to 03 years. In the spirit of handling criminal responsibility for legal entities, it is necessary to take into account the negative impacts that may occur to society such as job loss of workers, reduction of tax ... so the Criminal Code provides for apply this penalty in the spirit of encouraging legal entities to correct errors and correct errors to continue production and business activities and their consequences, which are capable of overcoming in reality. In the case where a legal entity operates in different fields, any violating sector shall suspend that field.

Article 79 of the Criminal Code: a permanent suspension, whereby a permanent suspension is the termination of the operation of a commercial legal entity. Commercial legal entities are subject to this penalty in two cases: one or several areas where the commercial legal entity commits a crime causing damage or likely to actually cause damage to many lives, causing incidents. environment or adversely affect security, social order and safety and are unable to overcome the consequences caused. Commercial legal entities established only to commit crimes are permanently suspended from all activities, for example, legal entities established only to commit crimes such as committing smuggling or hiding acts. tax....

Regarding additional penalties, there is business ban, operation ban in certain areas (article 80); banning capital mobilization (article 81). The time limit for these punishments is from 01 year to 03 years. Prohibition of capital mobilization is an additional penalty that first appeared in the Criminal Code 2015. This is a strong measure to strictly handle and at the same time prevent the possibility of legal entities recidivism. This measure affects the survival of a commercial entity, such as for

credit institutions, which is prohibited from raising capital almost as a ban, since it will quickly lead to insolvency.

The application of judicial measures to criminal legal entities is prescribed in Article 82 of the Criminal Code and is divided into two groups:

Firstly, the group of judicial measures applied to offenders is at the same time the measure applied to commercial legal entities committing crimes: the confiscation of objects and money directly related to crimes; return the property, repair or compensate for damage; force to apologize publicly;

Secondly, the group of judicial measures that applying specifically to commercial legal entities committing crimes: measures forcing the restoration of the original state; forced implementation of a number of measures to overcome and prevent consequences from happening again.

Formally, some of the penalties and judicial measures prescribed in the 2015 Criminal Code are no different from the coercive measures in the handling law. However, the nature of these measures varies. In particular, in dealing with legal violations, the application of the above measures is only critical, reminding that in criminal matters, the application of penalties, suspension of operation, ban on business and ban on raising capital. ... More deterrent deterrence and therefore, more effective than the administrative handling measures.

### ***2.3. Proposal to Improve the Criminal Liability Regulation of Commercial Entities in the Criminal Code 2015***

It can be said that, compared with the 1999 Criminal Code amended and supplemented in 2009, the Criminal Code 2015 includes completely new provisions on criminal liability of legal entities, specifically legal entities trade. The process of implementing the provisions of criminal liability of commercial legal entities under the Criminal Code 2015 in reality still has issues that need to be reviewed and supplemented accordingly. The author raised specific problems and proposed specific complete solutions:

*Firstly:* The 2015 Criminal Code, although defining specific areas in which a legal entity is subject to criminal liability, still has many social relationships that can be criminally committed by legal entities. Commercially abused but not yet adjusted. Specifically, the Criminal Code 2015 only stipulates criminal liability of commercial legal entities for 2 groups of criminals that violate the order of economic management and environmental crimes, until 2017 the Criminal Code added supplement for criminal groups violating public safety, public order (crime of terrorism financing or money laundering ...). However, there are still groups of crimes that can be committed by commercial legal entities such as: crimes relating to positions (crimes of accepting bribes, giving bribes ...); crimes of human trafficking, destruction of property, crimes of tombs.... This also reflects the

incompatibility of the Criminal Code with the requirements of international conventions on the prevention of crime to which Vietnam is a member. Thus, in the next phase, it is possible to consider expanding the scope of crimes for which a legal entity may be subject to criminal liability.

*Secondly:* there are inadequacies between the laws and there are still general laws that need to be adjusted and supplemented accordingly.

According to Clause 2, Article 2 of the Criminal Code 2015, "only a legal entity committing an offense prescribed in Article 76 of this Code shall be subject to criminal liability" and needs to be changed to "committing a crime". or many crimes prescribed in Article 76 and meeting the conditions under Article 75 of this Code shall be subject to criminal liability "in accordance with Article 75 on" conditions of criminal responsibility of commercial legal entities "and accurate with practice as there are cases where a legal entity commits a crime, there are cases of committing many crimes, one or more crimes must be handled with penal liability and for retrospective, the conditions must be met criminal liability (for example, a commercial entity commits a crime in article 76 but that time limit for criminal prosecution expires, obviously that legal entity is not criminally responsible).

According to Clause 2, Article 9 of the Criminal Code 2015, which provides for the classification of crimes against legal entities: "Crimes committed by commercial legal entities are classified based on the nature and extent of danger to society of criminal acts prescribed in Clause 1 of this Article and corresponding provisions on crimes prescribed in Article 76 of this Code". This means that crimes are classified into less serious, serious, very serious and particularly serious crimes (under paragraph 1 - based on the highest level of the penalty frame), but not yet are there any provisions that "convert" the nature and extent of danger to society of criminal acts committed by commercial legal entities corresponding to the highest level of the penalty bracket imposed by commercial legal entities in the Code Criminal. Moreover, the main penalty for a criminal legal entity that has only a monetary penalty is redeemable, but only corresponds to less serious offenses. Therefore, there should be more specific guidance on this content, in order to clearly identify cases of crimes committed by commercial legal entities as less serious, serious, very serious or particularly serious crimes. In which, offenders should base themselves on the type of crime committed by the offender.

According to Article 78 of the Criminal Code 2015, the punishment of "suspending operation for a definite time" for commercial legal entities committing the crime is as follows: "suspending operation for a definite time is the suspension of activities of legal entities trade in one or some areas where a commercial entity commits a crime causing damage to human life, health, the environment or security, social order and safety and the consequences thereof, potentially in fact" (paragraph 1). This provision is not really accurate because if causing damage to "life" (the previous paragraph), the consequence is "practically remedy" (the following paragraph) is not true because it

causes damage to life is obviously irreparable. Therefore, it is necessary to correct it in the direction that "some consequences can be overcome in reality ...".

*Thirdly*, it is necessary to supplement the form of punishment to suit the actual situation: with a commercial legal entity, reputation, prestige and position are extremely important, it is an invaluable spiritual asset built. Over the years, the appreciation of the community, society ... therefore, the experience in criminal law of many countries in the world such as the French republic, the Netherlands, Belgium ... all stipulate penalties. "Posting judgments and decisions pronounced or notified of such judgments or decisions on audiovisual means" to deter and awaken other legal persons and the legal entities themselves committing the crimes. Meanwhile, the Criminal Code 2015 has not prescribed this penalty as experienced by some countries. Therefore, the author said, lawmakers in our country consider supplementing this penalty to improve the effectiveness of crime prevention by commercial legal entities, so that other legal entities see that, reputation of commercial legal entity is very long and very difficult to build a brand but notoriety and discredit are very fast, so there is no intention to commit a crime.

### 3. CONCLUSION

Thus, for the first time in the history of criminal legislation, Vietnamese lawmakers have introduced the criminal liability provisions of commercial legal entities in the Criminal Code and take effect on January 01, 2018. This is a breakthrough in the legislative thinking of Vietnamese lawmakers when considering commercial legal entity as a subject of crime. It properly reflects the urgent needs of the era of market economy construction that Vietnam is undertaking and it is also consistent with the development trend of world criminal law and in accordance with international conventions Vietnam participated. However, since the effective date, the criminal prosecution of commercial legal entities under Vietnam's Criminal Code 2015 has not been effective, and there are still limitations omission. This issue continues to pose Vietnamese lawmakers with new requirements to continue revising, supplementing and perfecting the law provisions to effectively apply in the fight against organized crime in the new phase.

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