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INFLUENCE OF LEGAL DOCTRINES IN THE DEVELOPMENT OF VIETNAM COMPANY LAW

INFLUÊNCIA DAS DOUTRINAS LEGAIS NO DESENVOLVIMENTO DO DIREITO SOCIETÁRIO DO VIETNÃ

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ABSTRACT

Objective: This article assesses and analyzes the influence of legal theories in the development of company law in Vietnam since the implementation of the "Doi Moi" (renovation) until now. The current legal provisions in Vietnam still have disadvantages and limitations, one of which is due to the lack of clear recognition and unification of legal doctrines to fully and completely stipulate and anticipate issues arising related to the property liability of legal entities in real life.

Methods: The article uses common methods in jurisprudence such as synthesis, normative analysis, and comparative jurisprudence.

Results: The article analyzes the major impact of legal doctrines on the process of perfecting corporate law since the implementation of the innovation process from a subsidized economy to a market economy in Vietnam and the need for research and reception to further regulate the current trend of improving the law.

Conclusion: The author has demonstrated the role of legal doctrines in company law. Therefore, there is a need for lawmakers to research and develop legal regulations based on commonly accepted legal doctrines in the world to meet the need for deep integration in the world. international economy and by the development of the current Vietnamese economy.

Keywords: *enterprise law; company law; legal doctrine; legal Entity; Vietnamese law.*

RESUMO

Objetivo: *Este artigo avalia e analisa a influência das teorias jurídicas no desenvolvimento do direito societário no Vietnã desde a implementação da renovação até agora. As actuais disposições legais no Vietname ainda apresentam desvantagens e limitações, uma das quais se deve à falta de reconhecimento claro*

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e unificação de doutrinas jurídicas para estipular e antecipar total e completamente as questões que surgem relacionadas com a responsabilidade patrimonial das entidades jurídicas na vida real.

Métodos: *O artigo utiliza métodos comuns em jurisprudência, como síntese, análise normativa e jurisprudência comparada.*

Resultados: *O artigo analisa o grande impacto das doutrinas jurídicas no processo de aperfeiçoamento do direito societário desde a implementação do processo de inovação de uma economia subsidiada para uma economia de mercado no Vietnã e a necessidade de pesquisa e recepção para regular ainda mais a tendência atual de melhoria a lei.*

Conclusão: *O autor demonstrou o papel das doutrinas jurídicas no direito societário. Portanto, é necessário que os legisladores pesquisem e desenvolvam regulamentações jurídicas baseadas em doutrinas jurídicas comummente aceites no mundo, para satisfazer a necessidade de uma integração profunda no mundo. economia internacional e pelo desenvolvimento da actual economia vietnamita.*

Palavras-chave: *direito empresarial; direito societário; doutrina jurídica; pessoa jurídica; direito vietnamita*

1. INTRODUCTION

The legal form of the type of business entity is significant, not only delineating the rights and obligations of the owners but also bringing long-term effects on the development orientation and future vision. The formation and development of different types of business entities are based on the exercise of the rights of freedom of will, freedom of law and association, and freedom of business of citizens. Over the years, laws governing various types of enterprises have had positive impacts in creating a favorable and equal business environment, promoting capital mobilization, business development and expansion of enterprises; contributing to maintaining growth, and solving social problems. Therefore, the importance of law and legal institutions for economic development is widely acknowledged today (Pistor, Katharina et al., 2003).

More than 30 years since the first laws for enterprises (the 1990 company law), the socio-economic face of Vietnam has changed markedly, becoming a land with a dynamic economy, and many potentials, and attracting investment. Integration poses a major challenge to Vietnam's legal system, requiring the implementation of two basic tasks: (i) building a legal foundation for the emergence and protection of elements of the market economy and (ii) harmonizing the legal system, especially the law on

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investment and commercial business under international standards and international commitments of Vietnam (Khanh, B.N., 2010, p.12-13). In the process of perfecting the law, the reception and learning of popular legal doctrines in the world such as the doctrine of freedom of business; Legal entity doctrine, and legal status of the company; Company doctrine is a contract; Doctrine of representation and property responsibilities of legal entity representatives; Limited liability doctrine and Piercing the Corporate Veil doctrine. The recognition of doctrines in Vietnamese law stipulates the law on types of enterprises to conform to the trend of international economic integration and create favorable conditions for the registration and operation of business entities. However, the legal provisions on all types of enterprises in Vietnam are still unclear, not covering legal issues arising in the practice of doing business in Vietnam. This article assesses and analyzes the influence of legal theories in the development of company law from the implementation of the renovation to the present in Vietnam.

2. LITERATURE REVIEW

There have been many research works on Vietnamese company law both at home and abroad, thereby seeing the picture of the birth, development, and introduction of legal theories in the process of legal reform in Vietnam. This issue can be seen through typical works such as:

In examining the nature of these types of companies, author Paul L. Davies (2003) states that one consequence of the artificial nature of a company as a legal person is that inevitably decisions for, and actions by, it has to be taken for it by natural persons. Rahul Kumar Singh (2022) said that the essence of the company is an association of people who contribute capital and assets in installments and use that association in commercial business to share the benefits and risks incurred. Phillip I. Blumberg argues that the corporate form is regarded as another milestone for industrialization, the creation of viable market economies, and ultimately economic prosperity (Blumberg, P.I., 1993, p. 316).

In the development of company law in Vietnam, John R. Davis (2010) assessed that Vietnam has rapidly developed the legal framework for commercial business beginning in the early 1990s, through successive revisions of its company law. However, the literature

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on legal transplantation has highlighted the difficulty of transplanting legal concepts from one country to another.

Author Bui Xuan Hai (2006) when analyzing the development of company law in Vietnam said that Vietnamese company law is derived from the French law that applied to Vietnam during its colonization by France. However, its development has been influenced by local factors, especially the economic policies of the Communist Party of Vietnam. Nevertheless, Vietnamese company law and the corporate governance regime have significantly developed since Doi Moi (renovation) 1986 through corporate law reforms, especially in 2005. During the beginning of the reform period, John Gillespie (2006) argues that therefore the most important task of the law was planting the idea of business freedom which derived from economic reform (Doi Moi) in 1986. Lawmakers initially copied French law and then looked more widely for inspiration from Japan, Southeast Asia, and the international donor community. Compliance with international treaties (such as the ASEAN Free Trade Area and the World Trade Organization) has also been a powerful driver of legislative reforms. Vietnam has now enacted a legislative framework that covers most aspects of a capitalist economy (John Gillespie, 2009, p. 319-350). Author Pham Duy Nghia (2004) analyzed the characteristics of Vietnamese society when entering Western company law and the difficulties of acquiring this type of company.

Commenting on the development of the Vietnamese legal system, author Pham Huu Nghi (2008) assessed that the period from 1992 to now is a period when the Vietnamese legal system has developed by leaps and bounds. Vietnam's law has developed rapidly because the Communist Party of Vietnam has renewed its thinking in using law to manage society.

Author Ngo Huy Cuong (2004) has a research work on company establishment contract in Vietnam, which has given the theoretical and practical basis of the law on the company establishment contract. 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 company establishment contract (Cuong, N.H., 2003, p.1-8) and some contents of the company establishment contract (Cuong, N.H., 2004, p. 12-23). According to the author's argument, while most countries stipulate that a company is a contract, in Vietnam until now, the company is considered a new contract only from a legal point of view.

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The research report within the framework of Project VIE/94/003 (1998) makes recommendations that it is necessary to introduce into law the forms of companies that are popular in the market economy and are in actual demand in our country. In addition, in their research works, authors Nguyen Viet Ty (2015) and author Bui Ngoc Cuong (2010) also analyzed and explained typical legal issues about the type of business in the world and Vietnamese law today.

In addition to the above research works, there are many research articles on issues of Vietnamese company law. However, up to now, there have been no research works synthesizing, evaluating, and analyzing the process of incorporating popular legal theories in the world into law and their influence on the development of company law in Vietnam.

3. METHODOLOGIES

The research methods used in this article include: systematization, analysis, synthesis of theoretical issues, legal theories common in the world, and their expression in the provisions of Vietnamese law. The article also uses the method of comparative law to see the legal provisions of some countries on the contents mentioned in the article. And separate research methods of legal science: normative analysis, system analysis, legal comparison, etc. to see the adjustment of Vietnamese law in regulating types of companies.

In the article, the author also uses methods of explaining, analyzing, and evaluating the expressions of legal theories in company law and issues arising in the practice of business activities in Vietnam. Thereby, seeing the problems raised about the need to complete the legal regulations governing the types of companies in Vietnam today.

4. RESULTS AND DISCUSSION

4.1. THE DEVELOPMENT OF COMPANY LAW IN VIETNAM

Corporate forms and company law did not exist in Vietnam until the French occupation in the late 19th century (Thong, V.Q., 1971, p.45). During the French colonial

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period (from 1874 when France imposed colonial rule in Southern Vietnam with the surrender of the Nguyen Dynasty, until August 19, 1945, when France withdrew from the Vietnamese court), the French introduced to Vietnam the law on companies built based on the practical activities of traders. French Commercial Law is applied in different territories of Vietnam. The Commercial Code 1907, and the Limited Liability Company Law 1925 were directly applied by the Cochinchina courts and French courts in colonial cities. 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 (Hai, B.X and Walker, G., 2005, p.567-568). 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, beginning to build a centralized subsidized bureaucratic economy. In the South the Republic of Vietnam regime.

After the liberation of the country 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 centralized economy – planning consists of two main economic sectors: the state and the collective. Only socialist economic organizations (state-owned, collective) are allowed to do business, while other economic sectors are restricted and prohibited (Cuong. B.N, 2004, p. 13). In the legal system, there is no Law governing the types of companies and in practice, there is only the collective economy and the state-owned economy.

In December 1986, the Communist Party adopted sweeping economic reforms, the so-called “Doi Moi” or “renovation” policy, in which it abandoned the command economy and started building a multi-sectored market economy (Hai, B.X., and Nunoi, C., 2008, p. 45-65). Accordingly, building a multi-component commodity economy under the market mechanism with state regulation has created conditions for companies to be born (Faculty of Law-VNU, 2001, p. 160).

In 1987, Vietnam promulgated the Law on Foreign Investment in Vietnam to expand its economy with foreign countries, develop the national economy, and boost exports based on the efficient exploitation of resources, labor, and other potentials of the country (Law on Foreign Investment 1987). Because there is no law on companies,

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foreign investors and Vietnamese partners, most of whom are state-owned enterprises, have to rely on some sketchy provisions of the foreign investment law and implementation guidelines to negotiate their contracts (Nghia, P.D., 2004, p. 245). By 1990 and 1992, amended and supplemented several articles of the Law on Foreign Investment in Vietnam and replaced by the Foreign Investment Law in Vietnam in 1996. Implement the goal set by the 1992 Constitution: A multi-sector market economy and business freedom (Constitution, 1992). As can be seen, the 1992 Constitution provides for a multi-component commodity economy functioning by market mechanisms, and the 2001 amendment further expands the permissible scope of private business activities (Gillespie, J., and Chen, A.HY., 2010, p. 1-26).

The 1990 company law was enacted with many limitations due to being enacted in the early years of the innovation process but is still influenced by French company law (Gillespie, J., 2002, p.647). The 1990 Company Law is considered the beginning of a new reception of company law in legal life and business activities in Vietnam with two types of companies: joint stock companies (JSC) and limited liability companies (LLC). In addition, the National Assembly of Vietnam also promulgated the Law on Private Enterprises 1990 amended in 1994 stipulating that Vietnamese citizens who are fully 18 years old have the right to contribute investment capital or participate in the establishment of LLCs, JSCs, or sole proprietorships. The State also promulgates the Law on State Enterprises regulating economic organizations with capital investment, establishment, and management by the State, business activities or public utility activities, to realize socio-economic objectives assigned by the State (Law on State Enterprises 1995). This law was replaced by the Law on State Enterprises 2003. These provided domestic and foreign investors with the right to operate a business under various forms such as LLCs, JSCs, sole proprietorships, partnerships, cooperatives, and joint-venture companies (Toan, L.V., and Walker, G., 2008).

The Enterprise Law 1999 replaced the Company Law 1990 and the Private Enterprise Law 1990. The law stipulates the types: one-member LLC, muti-member LLC, JSC, partnerships, and sole proprietorships. However, according to regulations, a one-member LLC only allows organizations with the right to establish, individuals are not allowed to establish.

The Enterprise Law 2005 consolidates, adjusts, and applies uniformly to all types of enterprises, regardless of whether economic sectors are state-owned or

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privately owned, or foreign-invested enterprises and are intended to meet WTO membership. The Enterprise Law 2005 replaced the Enterprise Law in 1999; the Law on State Enterprises 2003; The Law on Foreign Investment in Vietnam in 1996 and the Law amending and supplementing some articles of the Law on Foreign Investment in Vietnam in 2000). All types of state, private, and foreign ownership have established types of enterprises governed by the Enterprise Law 2005. All types of companies are governed by general, uniform regulations, creating equality of legal status. The law also allows a one-member limited liability company to allow individuals and organizations to have the right to establish and stipulates that a partnership does not have legal status. Thus, Vietnamese company law and the corporate governance regime have significantly developed since Doi Moi (renovation) 1986 through corporate law reforms, especially in 2005 (Hai, B.X., 2006, p.22-44). The unification of the Enterprise Law will facilitate the development of domestic and foreign investment.

The Enterprise Law 2014 is promulgated in an open direction when the law only stipulates the most general, oriented, suggestive issues on the establishment, management organization, reorganization, dissolution, and related activities of enterprises, in detail, ceded to free enterprises, voluntary, committed and agreed upon by the provisions of law, such as: Allowing limited liability companies or joint-stock companies to have one or more legal representatives; allowing JSCs 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 (Article 172 of the Enterprise Law 2014).

Up to now, the current Enterprise Law issued in 2020 has many outstanding new points, creating favorable conditions for businesses in the stage of market entry and the process of investment and business.

Table 1. The development of company law in Vietnam after 1986 (the beginning of the "doi moi" period)

Text	Year of issue	Types	Number of articles
Foreign Investment Law in Vietnam	Issued in 1987 - 1990 and 1992 amendments	Foreign organizations and individuals may invest in Vietnam in the following forms: - Business cooperation based on a business cooperation contract; - Enterprise or Joint Venture Company, collectively referred to as a joint venture enterprise; - 100% foreign-owned enterprise.	42 articles

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Foreign Investment Law in Vietnam	Enacted in 1996 to replace the 1987 law - 2000 amendments	Foreign investors may invest in Vietnam in the following forms: - Business cooperation based on a business cooperation contract; - Joint venture enterprises; - 100% foreign-invested enterprises.	68 articles
Company Law	Issued in 1990	The law governing limited liability companies and joint-stock companies are enterprises in which members contribute capital, share profits, jointly bear losses corresponding to the contributed capital, and are only responsible for the company's debts to the extent of their capital contribution to the company.	46 articles
Private Enterprise Law	Issued in 1990 1994 amendments	The law governs the type of private enterprise as a business unit with a capital level not lower than the legal capital, owned by an individual, and responsible with all his assets for all activities of the enterprise.	28 articles
Enterprise Law	Enacted in 1999 replaced the Companies Law 1990 and the Private Enterprise Law 1990 (amended in 1994)	The law regulates the establishment, organization of management, and operation of various types of enterprises: LLCs, JSCs, partnerships, and sole proprietorships.	124 articles
Law on State Enterprises	Issued in 1995	The law applies to state-owned enterprises organized in the form of independent enterprises, corporations, member enterprises of corporations, and management of the State's capital invested in enterprises	58 articles
Law on State Enterprises	Issued in 2003	The Law governing state-owned enterprises means economic organizations in which the State owns all charter capital or has dominant shares and contributed capital, organized in the form of state-owned companies, JSCs, or LLCs.	95 articles
Enterprise Law	Issued in 2005 Substitution: Enterprise Law 1999; The Law on State Enterprises 2003; Law on Foreign Investment in Vietnam 1996 (amended in 2000)	The Law provides for the establishment, organization of management, and operation of LLCs, JSCs, partnerships, and sole proprietorships of all economic sectors (hereinafter collectively referred to as enterprises); and regulations on company groups.	172 articles
Enterprise Law	Issued 2014	The law provides for the establishment, organization of management, reorganization, dissolution, and related operations of enterprises, including LLCs, JSCs, partnerships, and sole proprietorships; regulations on company groups.	213 articles
Enterprise Law	Issued in 2020, in effect to date	The law provides for the establishment, organization of management, reorganization, dissolution, and related operations of enterprises, including LLCs, JSCs, partnerships, and sole proprietorships; regulations on company groups.	218 articles

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4.2. THE INFLUENCE OF LEGAL THEORIES IN THE DEVELOPMENT OF COMPANY LAW IN VIETNAM

4.2.1. Doctrine of freedom of business

Derived from the doctrine of natural law, human beings are naturally born with freedoms, including the freedom to do business and, the freedom to choose types of enterprises. Accordingly, the freedom to do business is an integral part and plays an important role in the system of human freedoms (Binh, N.V., and Ty, L.T., 1989, p.14). As a system of interconnected rights that the law must recognize, 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 (Cuong. B.N, 2004, p.43).

If analyzed 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 (Hai, B.X., 2016, p.68). 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 (Miller, T., and Kim, A.B., 2010, p.59). 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 freedom of business includes a system of rights associated with business entities, expressed through rights such as: i) The right to secure ownership of the property; ii) The freedom to establish an enterprise (which implies the freedom to choose business lines, business locations, and enterprise models); iii) Freedom of contract; iv) The right to freedom of competition under the law; v) The right to self-determination in the field of dispute settlement (Cuong., B. N., 2004, p. 23). These rights must be specified by each State in its legal provisions. 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. The role of the law is the framework for freedom of enterprise to be concretized, protected, and limited where necessary to ensure sustainable development, consistent with public interests and minimizing the impact on the freedom to do business of others (VCCI, 2002, p. 30).

From a legal perspective, freedom to do business is one of the fundamental rights of citizens stipulated in the Constitution and detailed in the provisions of relevant specialized laws. However, the freedom to do business is always limited by the freedom of others and

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so the law (the State) must intervene when necessary: (i) Safeguarding public order; (ii) Protection of the competitive environment; (iii) Consumer Protection; (iv) Environmental protection; ... (Hieu, N.A., 2017, p. 6-10). It can explain the State's interference in the freedom to do business in aspects such as: *First*, the State's intervention to ensure the effectiveness of the law to the needs of business life; *Second*, to ensure 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 Constitution stipulates that people have the right to do business in industries not prohibited by law (Article 33 of the Constitution 2013). This regulation demonstrates the openness and encouragement of the State to business activities of people and enterprises. This is also an important premise to change state management thinking for business activities (VCCI and World Bank, 2017, p. 1). 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.

Table 2. Provisions on freedom of business in the Constitution of Vietnam

Text	Article	Content	Explain
1980 Constitution	Article 18	The national economy mainly has two components: the state-owned economic component owned by the whole people and the cooperative economic component owned collectively by the working people.	The state-owned economy plays a leading role in the national economy and is prioritized for development. Private economy and unrecognized freedom of enterprise
1992 Constitution (amended 2001)	Article 57	Citizens have the right to freedom of business by the law	This is the first explicit provision in the Constitution that recognizes the freedom to do business of Vietnamese citizens.
2013 Constitution	Article 33	People have the freedom to do business in professions not prohibited by law	The freedom to do business is the right of everyone including Vietnamese and foreign individuals and organizations.

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The Enterprise Law regulates the freedom of enterprises such as: freedom to conduct business in industries and professions that are not prohibited by law; business autonomy and choice of form of business organization; proactively choosing industries, occupations, locations, and forms of business; proactively adjust business scale and industries; Choose the form and method of mobilizing, allocating and using capital; Freedom to search for markets, customers and sign contracts... (Article 7 of the Enterprise 2020).

At the same time, it is stipulated that investors have the right to conduct investment and business activities in industries and professions that are not prohibited by law. For conditional business investment industries and professions, investors must meet business investment conditions according to the provisions of the law (Article 5 of the Investment Law 2020).

4.2.2. Legal entity doctrine and legal status of the company

In the system of legal relationship subjects, in addition to the subject being a specific natural person or subject considered as a natural person, there are other legal entities with the status of subjects as legal persons. A legal entity is a concept that refers to a type of subject of legal relations independent of other entities and owners of legal entities. Legal entities were born that meet the conditions of social life and legislative activity. Today, most companies are regulated by the laws of countries with legal status (if the enterprise does not have legal status, then enter into legal relations as natural persons) as independent subjects of legal relations. Corporate legal entities actively participate in economic activities and management activities of the state on the basis that the state respects the freedom of will and freedom of business of citizens. Therefore, in the process of studying the company and its nature, it is necessary to mention the legal entity and legal status of the types of companies.

In legal science, when studying legal persons, there are many different (even contradictory) views of jurists on the formation and recognition of laws for legal persons. These views became legal doctrines that served as the basis for solving theoretical problems about the origin and nature of legal persons. Each country, when developing regulations on legal entities, is based on a certain doctrine (Cuong, N.H., 2013, p. 46). Typical legal entity doctrines include:

The theory of legal persons is a legal fiction (classical theory): According to

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this theory, in addition to ordinary people who are called natural persons, other rights holders are only artificial interests, created by law. All legal entities are by the will of the legislator, the purpose of which is to facilitate the participation in relations between a group of people and third parties. When formed, the assets contributed by the members constitute a property separate from the property of the members, and by a legal fictitious form, this property constitutes a legal entity(Dat, L.V., and Chi, P.H., 1993, p. 168). If the state does not want to let legal entities exist, of course, it can be decided to cancel, terminating its existence. However, this doctrine is strongly criticized because it is not a reasonable doctrine and does not explain why it should be posed (Mau, V.V., 1957, p.379-380).

Denial of legal person doctrine: Scholars of this view try to prove who ultimately profits from legal relations and come to the conclusion that there does not exist any other entity outside of natural persons, thereby not recognizing legal persons as subjects of legal relations (Faculty of Law – VNU, 2001, p. 65). This doctrine also holds that if a legal entity is fiction, then a legal entity is nothing more than a formula devised to cover up a fact. However, this doctrine has also been criticized for not focusing on the time factor and cannot treat the interests of legal entities only as the interests of members, because sometimes these two interests contradict each other (Mau, V.V., 1957, p. 380-381).

The doctrine recognizes the true character of legal persons: This doctrine is formulated based on the freedom of will and freedom of association of citizens. A legal entity is a right holder and subject to obligations prescribed by law when entering into legal relations. According to this doctrine, legal persons are not created by states or legislative powers. The State certifies and controls these legal entities only. It is not possible to destroy legal entities on their own, legal persons shall dissolve themselves upon attainment of their purpose, and property shall be subject to the rules of the legal entity prescribed in the charter or inheritance by law, and not as derelict objects (Mau, V.V., 1957, p. 385).

In Japan, when explaining and explaining the provisions of the Japanese Civil Code, scientists, and practitioners take the view of recognizing the actual existence of legal persons. Those who hold this view believe that legal persons are indispensable subjects of legal relations and exist independently (Giao, N.D and Dung, L.T., 1995, p. 66-67). The birth and loss of legal entities do not depend on the will of the lawmaker.

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In France, Courts used this doctrine to explain the concept of legal entity through the judgment of the Civil Chamber of January 8, 1954, that humanity is not the creation of laws, each group has a collective expression to preserve legitimate interests, deserve legal recognition and protection, have the legal status (Cuong, N.H., 2006, p. 339). Similarly, Thailand's Civil and Commercial Code states: A legal person enjoys the same rights and obligations as natural persons, except those rights and obligations that, by their nature, can only be conferred on or incurred by a natural person (Thai Civil and Commercial Code, 1925). When a legal entity enters into legal relations, it shall be liable with its assets for the exercise of legal rights and obligations established and performed by its representative in the name of the legal entity. A legal entity is not liable on behalf of a member of a legal entity for civil obligations established or performed by a member, not in the name of a legal entity. Members of legal entities are not liable on behalf of legal entities for civil obligations established or performed by legal entities.

Most countries make laws according to the concept of recognizing the reality of legal entities based on freedom of association and freedom of business of citizens in economic life. It is stated that the prevailing doctrine of reality is seen as the triumph of freedom of association because it is opposed to the view of the fictional doctrine that considers the birth and existence of legal persons subordinate to the will of the lawmaker or the government (Cuong, N.H., 2013, p. 78). Countries recognize that the company has legal status, so it is an independent subject of legal relations.

In Vietnam, the approach according to this doctrine must refer to the provision of Article 285 of the Civil Law of Tonkin 1931 when explaining: A legal person can acquire all rights and assume all obligations that do not belong to one's natural status as male, feminine, age, or kinship (Mau, V.V., 1957, p. 377-378).

Table 3. Conditions of legal entities under Vietnamese law

An organization is recognized as a legal entity when it fully meets the following conditions:	1. Established by law.
	2. Having an executive agency as prescribed by the legal entity's charter or establishment decision.
	3. Having assets independent of other individuals and legal entities and taking responsibility for themselves with their assets.
	4. To participate in legal relations independently on their behalf.

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In Vietnam, there are still many opinions that disagree with the Enterprise Law stipulating that a partnership has legal status, sometimes scholars rely on the conditions of the Civil Code to criticize legislators when prescribing legal status for a legal entity. One author explains that the regulation of legal status for a partnership is an exception to the provisions of the common law and that the Civil Code is merely an academic inference, with no definite legal validity... For a partnership, the legal status provision of the partnership has revealed unreasonableness (Anh, L.V., 2008, p. 34-40).

According to Enterprise Law 2020, general partners are jointly responsible for paying off the remaining debts of the company if the company's assets are not enough to cover the company's debts (Enterprise Law, 2020). Thus, independent property is not synonymous with limited liability. This is already a legislative fact. The members of the partnership must transfer ownership of the assets contributed as capital to the company (Hong, P.H., and Net, L., 2006, p. 22-28). The denial of the legal status of a partnership, because this type of company does not have assets independent of its members, is contrary to legislative practice. In Australian Company Law, although all companies are considered legal entities, it does not mean that the obligations of a legal entity are paid only with its property, nor does it mean that the members of the legal entity are entitled to a limited liability regime (Hai, B.X., 2004, p. 23-29).

Partnerships in Vietnamese law include two common types in the world, partnerships and simple syndicated companies. Accordingly, the company has two types of members: *General partners*: There are at least two general partners, and the general partners are liable with all their assets for the obligations of the company if the company has not been able to fully fulfill its obligations. *Capital contributors* are members who may or may not have limited liability to the extent of capital contribution to the company, similar to investors contributing capital to the company. This is a unique feature of a partnership in Vietnamese law.

Table 3: Classification of legal entities under Vietnamese law

Type of legal entity	Notion	Type
Commercial legal entity	a juridical person whose primary purpose is seeking profits and its	Enterprises and other business entities

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	profits shall be distributed to its members.	
Non-commercial legal entity	a juridical person whose primary purpose is not seeking profits and its possible profits may not distributed to its members.	Regulatory agencies, people's armed units, political organizations, socio-political organizations, political-socio-professional organizations, social organizations, socio-professional organizations, social funds, charitable funds, social enterprises, and other non-commercial organizations.

Source: Prepared by the authors

The legal entity institution in Vietnamese law is gradually being improved, meeting the requirements of the development and socio-economic integration of our country. Currently, the legal system regulating legal entities is regulated in many fields of law, related to socio-economic life, so the process of completing the law must be synchronous, uniform, and comprehensive in the legal system regulating legal entities.

4.2.3. Company doctrine is a contract

The company doctrine is a contract based on the freedom of will, freedom of association, and freedom of enterprise of citizens. These ideas come from the research results of Adam Smith, and Immanuel Kant ... Accordingly, no one should be compelled to do or not to do a thing that does not come from their interests. Therefore, a contract is considered a product of a well-formed from the interests of the contracting parties (Cuong, N.H., 2003, p.1-8). The founders have the right to come to an agreement based on free will on the legal issues of the company. Therefore, in a broad sense, investors have the right to freely negotiate, choose the form of the company or create different types of companies that are respected and recognized by law. Through a contract of incorporation, the founders create a business entity, or in other words, create a legal entity (Cuong, N.H., 2003, p. 2-9).

A company is a contract stating that the establishment of the company and its maintenance of existence are related to the material issues of entering into and performing the contract, as well as the termination of the contract. The basis of fact is that the founders must agree with each other on issues of capital contribution, time of capital contribution, number of members, basic rights and obligations of members,

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and principles of profit sharing in the course of business activities... When the founders agree on the above issues, a contractual relationship has been established.

Thus, the meaning of company doctrine is that a contract is often considered in terms of settling the relationship between the members of the company; the relationship between the members of the company and the company itself, and the relationship between the company and the state (Henn, H.G., and Alexander, J.R., 1983). In addition to the provisions of law governing certain types of companies, agreements in the company establishment contract (or in Vietnam, the charter) are the basis and grounds for resolving related disputes between owners, with the company, or with third persons. Explaining these arguments, the classical authors see that: The principle of freedom of will is the basis of all legal acts, just as marriage, the company is a kind of contract. Many of the rules in Company Law borrow the technique of contracts: The company must satisfy the conditions on the validity of the contract (agreement, capacity, object) and the rules of corporate governance can be explained by contract law (directors authorized to manage the company) (Bach, N.M., 2006, p. 16).

In Germany, partner companies are usually established based on a contract between the members of the company. In terms of the form of the incorporation agreement, the company is generally established in writing, however, it is not always required to do so. In principle, the contract of incorporation must be registered in the commercial directory (Cuong, N.H., 2013, p. 32). The French Civil Code states: A company is a contract through which two or more persons agree to use their assets or capabilities in a joint activity to share the profits derived from that activity (Civil Code of the French Republic, 2005). Therefore, under French law, there are types of companies, where just signing a contract is enough to create a company – in case the company participates or also needs to operate as in the case of a company established in fact (Binh, N.V and Ty, L.T., 1989, p.41).

Thailand's Civil and Commercial Code states: A contract to form a partnership or corporation is a contract whereby two or more persons agree to join together in a mutual commitment to share the benefits derived therefrom (Article 1012). It can be seen that a problem arises when treating the company as a contract that is required to monitor the respect for the basic conditions for a contract to be valid (Article 1108, Civil Code of the French Republic). However, a company formation contract differs from a conventional contract because it creates a legal entity and creates a corporate form

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capable of exerting great influence on society... Therefore, the law often requires this type of contract to contain many mandatory clauses (Cuong, N.H., 2004, p.12).

Currently, according to jurists, the tendency of countries around the world often express the contractual nature of the company in two ways (Cuong. N.H., 2013, p.173-174): *First*: detailed provisions on both the contract of incorporation of the company and the company's charter; *Secondly*, only specify the details of the company's charter. Therefore, it can be seen that the most important thing in the company establishment contract is the agreement on the responsibilities of the members (Phuoc, H.T., 1992, p.32) in the company. Vietnamese law provides for a charter as a contract that founders agree upon when establishing a company. Accordingly, the legal nature of the charter is a corporate contract, subject to general contractual rules concerning substantive conditions, conditions of form, and sanctions for violations of these conditions (Bach, N.M, 2006, p. 30). The charter is considered to establish contractual relations based on the provisions of law (Han, T.C, 2009, p. 139-145). If the charter contains agreements contrary to the provisions of law, then the agreement is invalid.

The founders, when approving the charter, must directly sign the charter and submit it to the business registration authority. A charter is an important document that governs the establishment, operation, reorganization, or dissolution of an enterprise. The company's charter is “the commitment of all members on the establishment and operation of the company, approved at the general meeting of establishment” (Article 10, Company Law 1990). The charter aims to regulate basic entities including members or shareholders; companies and third parties. When a dispute arises, the charter is binding between members or shareholders, the company, and a third person.

Thus, the company charter is a special contract between the founders. The content of the charter is not entirely based on the agreement of the parties but must be based on the provisions of law. If the charter contains agreements contrary to the provisions of law, then the agreement is invalid. Members cannot agree on the contents entirely according to their will but also must comply with the mandatory provisions of the law on the contents of the charter. It is very important to recognize the nature of the company as a contract when the company's charter is bound by law. The laws of other countries consider the charter to be a contract between the company and the capital contributors and between the capital contributors (Bich, N.N., and Cung, N.D., 2009, p.95).

The current Enterprise Law 2020 has no specific provisions acknowledging and explaining the nature and legal position of the company's charter. As well as not

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giving a specific concept of the company's charter, from which to see the position and importance of the charter for the operation of companies. The company's charter is being overlooked, when developing and drafting the charter, the founders often take samples on the internet or copy from the sample charter to meet the business registration conditions, but the members do not understand the nature and important role of the charter in the operation of the company (Lam, N.V., 2023, p. 20-25).

4.2.3. Doctrine of representation and property responsibilities of legal entity representatives

Economists argue that the separation between ownership and executive management is an inevitable feature of joint-stock companies. According to the doctrine of representation, the relationship between shareholders and company managers is understood as a relationship of representation – or a relationship of trust. This relationship is considered a contractual relationship whereby shareholders appoint, appoint another person, the manager of the company to perform the management of the company for them, which includes giving authority to make decisions to dispose of the company's assets (Hai, B.X., 2007). Accordingly, the managers and operators of the company will dispose of the company's assets on behalf of shareholders. Shareholders elect, appoint, and control the activities of representatives and put in place appropriate mechanisms to limit the divergence of interests between the company and the manager.

A representative is a person who conducts activities on behalf of, a legal entity in the interests of a legal entity following the provisions of the charter and law. The will of a legal entity is expressed through the representatives of that legal entity. The expression of will by the representative expresses that “such expression of will is made in the name of the represented person within the jurisdiction of the representative binding the represented person” (Article 99 of the Civil Code of Japan 2005).

From a legal perspective, representation is an important institution in private law, enshrined in the laws of many countries around the world, including civil law and common law countries, in which common law countries also have their comprehensive doctrine of representation (Hoang, N.V., 2013). In activities, the representative based on the scope of representation must always perform for the benefit of the legal entity, and the legal entity is bound by the arising legal rights and obligations. A legal entity

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can have multiple representatives, each of whom is in charge of certain activities of the legal entity and has the right to act on behalf of the legal entity in business activities.

Under current regulations, a legal entity is only liable for property for those acts of a representative that are considered acts of a legal entity, while acts performed as an individual do not give rise to property liability to the legal entity. In case the representative does not have the authority to represent or exceeds the authority to represent, it will not give rise to rights and obligations to legal entities, the person who does not have the right to represent must still perform obligations towards the person who has transacted with him or the representative must perform obligations to the person who has transacted with him in respect of the excess transaction part scope of representation, unless the person who has transacted knows or ought to know about the representative who is not authorized to represent or that the scope of representation is exceeded and still transacts.

In the previous enterprise law, each type of company had only one legal representative (except for partnerships where at least two general partners are legal representatives of the company). Then to the Enterprise Law, 2014 and 2020, LLCs and JSCs may have one or more legal representatives. The company's charter specifies the number, management titles, and rights and obligations of the legal representative of the enterprise. If the company has more than one legal representative, the company's charter specifies the rights and obligations of each legal representative (Article 12 of the Enterprise Law 2020).

This is a new point for Vietnamese legislators and legal representatives of the company. If LLCs and JSCs have many legal representatives but the division of rights and obligations of each legal representative is not specified in the company's charter, all legal representatives must be jointly responsible for damage caused to the enterprise in their representative activities.

4.2.4. Limited liability doctrine and Piercing the Corporate Veil doctrine

When the company is formed, along with the legal entity attribute, the LLC principle is also clearly reflected in the fact that the member/shareholder is only responsible for the debts and other property obligations of the company to the extent of the amount of capital contributed to the company (Enterprise Law 2014). Since its birth, “legal status” has allowed the company to exist independently, with legal destiny,

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rights, and obligations separate from the investors who established it. In other words, when the company enters into a transaction with a third party through a legal representative or authorized representative, the rights and obligations arising from the transaction are binding only on the company, and the owners of the company will not be involved (Quang, L.T., 2018). Creditors of the company will not have the right to demand payment from the private assets of members/shareholders when they have properly contributed enough shares committed to buy under any circumstances, even if the company no longer has assets to pay for debt obligations.

Members/shareholders must fully pay the contributed capital/number of shares registered to buy within 90 days from the date of issuance of the Certificate of Business Registration. The assets of the company are contributed by members/shareholders and transfer ownership of assets contributed as capital to the company. The assets of the company and the assets of its members/ shareholders are completely separate. The company, as the owner of the assets contributed by the founders, is the subject of legal relations – and has legal status. For the company, members/shareholders have shareholders' rights that arise when owning the contributed capital/shares of the company. Owning contributed capital/shares is a condition for investors to become members/ shareholders of the company and enjoy the rights of members/shareholders exercised on an independent entity – the company's legal entity. With such a nature, the rights of members/shareholders are prescribed by law attached to the ratio of ownership of contributed capital/shares.

Limited mode refers to the member/shareholder's liability for the property obligations of the company. That is, the LLC principle is imposed only on shareholders, not the company, which limits the rights of the company's creditors to only the assets owned by the company, not to the personal assets of the members/shareholders. The Company under no circumstances shall be subject to unlimited liability for its property obligations. Based on the LLC principle, members/shareholders are protected by a cover and are not liable for debts caused by the company. Thus, between the company and its owners a certain veil of separation (Quang, N.H., 2012). In the US, the doctrine of legal status and the doctrine of limited liability are the two backbone doctrines for building legal institutions on JSCs. These two theories have made JSC attractive to investors from the public who are willing to put money into risky business activities without worrying about personal liability (CIEM, 2016, p. 134).

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The principle of limited liability originates from the assets of members/ shareholders, associated with the rights and responsibilities of members /shareholders - owners of contributed capital/shares in the company. Members/ shareholders do not have the right to directly own, use, and dispose of any assets of the company, but only exercise rights based on the ownership of shares prescribed by law or the company's charter.

The assets of the original legal entity formed by the contributions of the members constitute a separate asset from the assets of the members. The property of the legal entity is separate from the property of the member. When implementing the principle of separation of property, a new legality emerges, separate from the legality of the owner or the community of owners. In the course of the operation of a legal entity, if a third person has a dispute with a legal entity, instead of suing each of the founding members, it must only sue the legal entity in a competent court.

Membership/shareholder rights can be understood as rights arising when owning the contributed capital/shares that make up the charter capital of the company. As for JSC, only when asserting that the company has independent assets separate from the shareholder's assets can it be said that the shareholder bears the property of the company (Phu, N.V, 2003, p. 53-58). The limited liability regime of members/ shareholders is responsible for property obligations corresponding to the contributed capital/number of ownership shares without having to take the personal assets of members/shareholders to be responsible on behalf of legal entities.

The legal status of the company will create a veil that makes people not notice and disregard other rights holders living and working in the company with legal status. Just as those in the greenhouse are still visible to outsiders, but are protected from any outside intrusion, members are well known, but the company's legal status sets them apart from the pursuit of the company's creditors. This translucent and clear nature causes crevices in the veil.

The veil is understood as the separation of the owner from a company in terms of liability. To break through this veil, it is necessary to hold the owners of the company jointly responsible for the company in some cases. The “piercing the corporate veil” doctrine is a legal mechanism to hold a company's shareholders personally liable for the consequences caused in certain circumstances.

Historically, *piercing the corporate veil* was first recorded in the United States in 1912. The corporate veil is a legal doctrine formed in the Anglo-American legal system

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and deals with cases of "breaking the line" when applying the principle of limited liability of shareholders or managers to the property obligations of the company. In certain cases, the court will ignore the legal status of the company and hold the shareholder personally liable for the company's debts and obligations (CIEM, 2016, p. 134).

Under this doctrine, if a corporation: "(i) serves the personal use of its members or shareholders or managers of the company or (ii) engages in fraudulent or unlawful activity, the court may not accept the LLC nature of the corporation as a legal entity and hold the member or shareholder or manager accountable personal liability with the company's debt obligation" (Quang, N.N, 2016, p. 128-129). When the "piercing the corporate veil" mechanism is applied, the legal status of the company, as well as the liability of the company's shareholders, will be eliminated, the law requires personal liability of the entity who has committed his wrongdoing.

Table 5. Some cases of Piercing the Corporate Veil

Cases	Content	Regulation
In the valuation of assets contributed as capital at the establishment	When assets contributed as capital are valued higher than the actual value at the time of capital contribution, the founding members/ shareholders jointly contribute more by the difference and jointly take responsibility for damage caused by intentionally valuing the assets contributed as capital higher than the actual value.	Clauses 2 and 3 Article 36 of the Enterprise Law 2020
Valuation of assets contributed as capital during operation	When assets contributed as capital are valued higher than the actual value of such assets at the time of capital contribution, capital contributors, owners, members of the Members' Council for limited liability companies and partnerships, members of the Board of Directors for joint-stock companies jointly contribute more by the difference and jointly responsible liability for damage caused by intentionally valuing assets contributed as capital higher than the actual value.	Clause 3 Article 36 of the Enterprise Law 2020
When refunding a of contributed capital due to illegal reduction of charter capital	When repaying a part of contributed capital due to a reduction in charter capital when tax obligations and other financial obligations as prescribed by law have not been fulfilled, failing to ensure full payment of debts and other property obligations due after profit sharing, the members of a limited liability company with two or more members must refund to the company the amount, Other assets received, must be jointly responsible for debts and other property obligations of the company in proportion to the amount	Article 70 of the Enterprise Law 2020

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	and assets that have not been fully repaid until the full amount and other assets received.	
When making the withdrawal of contributed capital	✓ *First*, for the owner of a one-member limited liability company that withdraws part or all of the contributed charter capital from the company other than by transferring part or all of the charter capital, the company owner and related individuals and organizations must be jointly responsible for debts and other property obligations of the company. ✓ *Second,* for shareholders in a JSC, shareholders are not allowed to withdraw capital contributed by ordinary shares from the company in any form, unless shares are repurchased by the company or another person. In case a shareholder withdraws part or all of the contributed share capital contrary to regulations, that shareholder and related interests in the company must be jointly responsible for debts and other property obligations of the company to the extent that the value of shares has been withdrawn and damages occur	Clause 5, Article 77, and Clause 2, Article 119 of the Enterprise Law 2020

Source: Prepared by the authors

In Vietnam, according to current regulations, some principles of the doctrine of piercing the corporate veil have also been introduced and stipulated in Vietnamese law regarding the personal liability of shareholders or managers who are personally responsible for violating the law or infringing on the interests of the company or third parties. But this is not enough, it does not cover the acts of abusing legal status to serve personal interests to harm legal entities, investors, and other entities.

4.3. Issues for company law in Vietnam today

First, on expanding the freedom to do business. In the trend of recognizing and expanding the freedom to do business with social actors including foreign citizens and investors, there is a need for lawmakers to research and build a variety of types of companies to meet and match the reality of life. The law on types of companies needs to be perfected in the direction of introducing a variety of types, especially the forms of companies with the nature of associate with people and simple structure, suitable to the culture and commercial habits of Vietnamese people. At that time, investors can promote all their resources to contribute to building the economy based on legal regulations.

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Second, renew the views of the commentators according to the doctrine of actual legal persons. According to the provisions of the current Civil Code in Vietnam, the fiction theory is dominant when it comes to the existence and development of legal entities depending on the will of the authorities and lawmakers. However, the establishment of a legal entity is to protect the common interests of the group, as well as the interests of third persons related to the group, it is necessary to recognize the independent existence of the group from the individual. The law fulfills that requirement by recognizing to the group the status of a subject of the legal relationship.

However, at present, the concept based on the freedom of will and freedom of association of citizens in economic life must be reflected and regulated by the civil code. Freedom of will based on self-interest is the driving force behind economic activities, and therefore, must be promoted so that human beings for their benefit in a free society compete for the common good. Therefore, the completion of the law on legal entities should be synchronized with both provisions in general law and specialized laws based on basic theoretical foundations of law and legal entities.

Third, the concept of legal liability of legal entities. Accordingly, limited liability and infinite liability are not characteristic of legal entities, they cannot be considered as criteria for considering whether the organization has legal status. Property between a legal entity and the member establishing a legal entity is independent of each other but does not mean limited liability. Members of a legal entity may bear unlimited liability for the liability of a legal entity if, in the course of the operation of the legal entity, there is no ability or insufficient liability to a third party, then the member of the legal entity must jointly bear such liability. In Vietnam today, the form of partnership is regulated from the above point of view, according to which, general partners are subject to unlimited liability for the company's liability.

Fourth, change the perspective on the nature of the company's contract. On the basis that the nature of the company is a contract and like all agreements, which not only give rise to the will and obligations between the contracting parties but also create a new legal entity (Dat, L.V., and Chi, P.H., 1993, p. 164), the company was born expressing the freedom of will of the founding members of the company. Following the trend of countries around the world, Vietnamese scholars have set a need for a change in the thinking and conception of lawmakers in forming legal entities based on freedom of association and freedom of business. In Vietnam's socialist-oriented market economy, the law also

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governs freedom of will as a principle of contract formation and a condition for contractual validity. The function of the Enterprise Law is, after all, to encourage all people to invest capital and participate in business (Nghia, P.D., 2011, p. 162). If the State restricts a trader's freedom to choose the form of investment without a legitimate reason on the part of the community, it is unreasonable (Cuong, N.H., 2013, p. 200). The recognition of the company as a contract will help the founders when establishing, members when contributing capital to the company understand the importance and importance in the contents of the agreement in the charter when establishing or contributing capital to various types of companies.

Fifth, on the property responsibilities of legal entities and individual representatives. When the representative of a legal entity conducts transactions with a third party under its competence according to the applicable company's internal regulations, the liability of the legal entity to the third party arises for improper performance or non-performance of obligations towards the third party. There have been many cases in which a legal entity has denied responsibility for its property, claiming that the representative violated the provisions of the legal entity's internal statutes to carry out transactions with third persons.

A legal entity cannot disclaim its responsibility when it believes that the representative has violated internal regulations or shown signs of abuse of power in the process of conducting transactions. A legal entity is obliged to compensate for any damage, caused to others by its manager or other representatives in the performance of its duties, and reserves the right to complain about those who caused such damage. If the interests of the legal entity conflict with the interests of the manager, the manager does not have the right to representation.

Current legislation should provide more clarity on cases of clear distinction between legal liability and individual liability, as well as cases of joint liability between legal entities and representatives. The current law should further provide for cases if: The representative directly or indirectly takes advantage of the prestige of the legal entity or when the damaged person is a majority of citizens, the legal entity and the director are jointly responsible. The joint liability between the legal entity and the representative in the above case contributes to ensuring the feasibility of liability for compensation for damage.

Sixth, civil liability of legal entities in the objectives and scope of activities of legal entities. If damage caused to others is caused by an act that does

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not fall within the scope of the purpose of operation of the legal entity, the members or managers who approve such act, the managers and other representatives who carry out such acts must jointly bear compensation. The experience of French law provides in this regard: In relations with third persons, the acts of the manager performed within the framework of the company's operational objectives are binding on the company... The provisions of the charter restricting the powers of the manager shall not apply to third persons (Article 1849, Civil Code of the French Republic). On the other hand, if the restriction of the powers of one member in an unregistered business association is to bind other members, it cannot be effective for third persons (Article 1053, Thai Civil and Commercial Code). Therefore, it is necessary to consider and supplement regulations on the objectives and scope of activities of legal entities in the issue of property liability of legal entities to serve as a basis for determining whether the acts of managers and representatives are consistent with the objectives and scope of activities as prescribed in the charter or law.

Current laws in Vietnam should clearly and uniformly recognize these legal doctrines to fully and fully stipulate and anticipate issues arising in real life related to the civil liability of legal entities. Therefore, perfecting regulations on the civil liability of commercial legal entities needs to be paid attention to create favorable conditions for all types of commercial legal entities to be equal, developed, and integrated.

Seventh, consider separating the type of private enterprise from the current enterprise law and changing the name of the enterprise law to the company law. The essence of a private enterprise is an individual mode of doing business, carrying out transactions based on unlimited liability with his property. Private enterprises should only be regulated in commercial law, based on being a trader in carrying out commercial acts. In Vietnam, private enterprises and business households operate as individuals, without legal status, therefore, need to be governed by a separate law. In addition, the renaming of corporate law into company law to regulate the types of companies is also by the laws of most countries in the world.

5. CONCLUSIONS

Vietnam's economy is integrating strongly, deeply, and effectively, clearly reflected first of in the scale of an economy with nearly 100 million people and a GDP

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of nearly 400 billion USD (IMF, 2021). The foundation of that development is the process of perfecting laws in recent years, especially laws governing business activities. The private sector is the fastest-growing sector creates the most new jobs for the economy, and will be a key and sustainable driver of Vietnam's long-term growth in the context of global competition. Vietnam's business law has been gradually developed and improved to contribute to implementing the integration policy and implementing international commitments; However, there are still certain limitations and inadequacies that need to be amended and supplemented (Hai, B.X., 2012, p. 89-97).

Therefore, improving the efficiency of state management and perfecting the legal system regulating business entities in particular and legal relations, in general, will be a key condition and a mandatory requirement for economic development. The perfect trend of corporate law in a market economy is to increasingly recognize and expand the freedom to do business. Therefore, there is a need for lawmakers to study and develop legal regulations based on legal doctrines widely recognized in the world to meet the needs of deep integration in the international economy and line with the development of the current economy./.

6. REFERENCE

ANH, L.V., (2008). Legal Status of Partnerships, **Journal of Legislative Studies**, (113), p. 34-40

BACH, N.M., (2006). **Trading Companies**, Dong Nai General Publishing House, p. 16

BICH, N.N., & Cung, N.D., (2009). **Company: Capital, Management, and Dispute according to Enterprise Law 2005**, Knowledge Publishing House, p. 95

BINH, N.V., & Ty, L.T., (1989) (translated). **Company organization - Volume 1**, Research Institute of Legal Science- Ministry of Justice, p. 14

BLUMBERG, P.I., (1993). **The Multinational Challenge to Corporation Law: The Multinational Challenge to Corporation Law**, Oxford University Press, 1st edition, p. 316

CENTRAL INSTITUTE FOR ECÔNMIC MANAGEMENT (CIEM), (2016). **Economic legal institutions of some countries in the world (monograph)**, Hanoi, p. 134

CIVIL CODE OF THE FRENCH REPUBLIC (2005)

CIVIL CODE OF JAPAN 2005

CIVIL AND COMMERCIAL CODE OF THAILAND (vols. I-VI) (1925)

CUONG, B.N., (2010) (ed.). **Textbook of Commercial Law - Vol. 1**, Educational Publishing House

CUONG, B.N., (2004). **Some issues of freedom of business in current Vietnamese law**, National Political Publishing House, Hanoi

CUONG, N.H., (2004). **Company establishment contract in Vietnam**, Ph.D. thesis at the Institute of State and Law

CUONG, N.H., (2003). The philosophical basis of the company establishment contract, **VNU Journal of Science: Economics - Law**, Vol. XIX, (4), p.1- 8

CUONG, N.H., (2004). "Some contents of the company establishment contract", **VNU Journal of Science, Economics, and Law**, Vol.XX, (1), p.12- 23

CUONG, N.H., (2006). **Contributing to the article on legal reform in Vietnam today**, Judicial Publishing House, p. 339

CUONG, N.H., (2003). Company: From legal nature to types, **Journal of Economic Science and Law**, Vol.XIX, (1), p.1 – 8

CUONG, N.H., (2013). **Textbook of Commercial Law: general section and traders**, Hanoi National University Publishing, p. 76

DAT, L.V., & CHI, P.H., (1993) (translated). **Principles and practice of commercial law, business law**, National Political Publishing House, p. 168

DAVIES, P.L., (2003). Gower and Davies' Principles of Modern Company Law (7th ed), Sweet & Maxwell, p.129

DAVIS, R.R., (2010). The Developing Fiduciary Standard in Vietnamese Corporate Law, Prepared for presentation at the 6th Asian Law Institute (ASLI) Conference, Hong Kong, p. 29-30, 2009 and revised thereafter, quoted under: **https://papers.ssrn.com/sol3/ papers.cfm?abstract_id=1722583**

FACULTY OF LAW – VNU (2001). **Vietnam Economic Law Textbook (3rd edition)**, Hanoi National University Press, p. 160

GIAO, N.D., & DUNG, L.T., (1995) (translated). **Scientific Commentary on the Civil Code of Japan**, National Political Publishing House, p. 66-67

GILLESPIE, J., (2006). **Transplanting Commercial Law Reform – Developing a "rule of Law" in Vietnam**, Routledge.

GILLESPIE, J., (2018). **Is Vietnam Transitioning Out of Socialism or Transforming Socialism? Searching For Answers in Commercial Regulation** in Fu Hualing, J Gillespie, P Nicholson and W Partlett (eds.,) Socialist Law in Socialist Asia, Cambridge: Cambridge University Press p. 319-350

GILLESPIE, J., & CHEN, A.H.Y., (2010). **Legal Reforms in China and Vietnam: A Comparison of Asian Communist Regimes**, London: Routledge 2010 1-26

GILLESPIE, J., (2002). Transplanted Company Law: An Ideological and Cultural Analysis of Market-Entry in Vietnam, 51 (3). **The International and Comparative Law Quarterly**, p. 647

HAN, T.C., (2009). Water Woon on Corporate Law, **Sweet & Maxwell**, Singapore, p. 139-145

HAI, B.X., (2006). Vietnamese company law: The Development and Corporate Governance Issues, **Bond Law Review**, 18 (1), p. 22-44

HAI, B.X., (2016) (ed.). **Legal textbook on business subjects (1st edition),** Hong Duc Publishing House – Lawyers' Association, p. 68

HAI, B.X., (2012). Vietnamese Business Law in the Context of Integration, **Legislative Research Journal,** 1+2(210+211), p.89-97

HAI, B.X., (2004). About the types of companies under Australian company law, **Journal of Legal Science,** (6) p. 23-29

HAI, B.X., (2007). Doctrine on representation and issues of Vietnamese company law, **Journal of Legal Science**, Vol. 4 (41)/2007.

HAI, B.X., & Walker, G., (2005). "Transitional Adjustment Problems in Contemporary Vietnamese Company Law", **Journal of International Banking, Law and Regulation**, (20) (11), p. 567 – 568

HAI, B.X., & Nunoi, C., (2008). Corporate Governance in Vietnam: A system in Transition, **Hitotsubashi Journal of Commerce and Management**, (42), p. 45-65

HENN, H.G., & ALEXANDER, J.R., (1983). **Laws of Corporations and Other Business Enterprises**, West Publishing Co.

HIEU, N.A., (2017),. The rationality of law in limiting citizens' freedom to do business, **Journal of Democracy and Law**, (6) (303), p. 6-10

HOANG, N.V., (2013). Representation in Vietnamese law and its practical problems, **Journal of Jurisprudence**, (2).

HONG, P.H., & Net, L., (2006). Property liability of legal entities: finite or infinite, **Journal of Legal Science**, (3), p 22-28

KATHARINA, P., YORAM, K., JAN, K. and MARK, D.W., (2003). The Evolution of Corporate Law: A Cross-Country Comparison. Available at SSRN: **https://ssrn.com/abstract= 419881 or http://dx.doi.org/10.2139/ssrn.419881**

KHANH, B.N., (2010). Content of economic regimes in the Constitutions of European countries and suggestions for Vietnam, **Journal of State & Law,** (2), pp. 12-13.

LAM, N.V., (2023). The expression of the doctrine of "a company is a contract" and recommendations for perfecting corporate law, **Vietnam Lawyer Journal**, (1+2), p. 20-25

MAU, V.V., (1957). **Civil Law Theory**, Ministry of National Education Publishing, p. 379-380

MILLER, T., & KIM, A.B., (2010). Defining Economic Freedom, - 2010, Index of Economic Freedom, **The Heritage Foundation &; The Wall Street Journal**, p. 59

NATIONAL ASSEMBLY (1987). Law on Foreign Investment in Vietnam, Hanoi, Vietnam

NATIONAL ASSEMBLY (1992). Constitution, Hanoi, Vietnam

NATIONAL ASSEMBLY (2013). Constitution, Hanoi, Vietnam

NATIONAL ASSEMBLY (1995). Law on State Enterprises, Hanoi, Vietnam

NATIONAL ASSEMBLY (1990). Company Law, Hanoi, Vietnam

NATIONAL ASSEMBLY (1999). Enterprise Law, Hanoi, Vietnam

NATIONAL ASSEMBLY (2005). Enterprise Law, Hanoi, Vietnam

NATIONAL ASSEMBLY (2014). Enterprise Law, Hanoi, Vietnam

NATIONAL ASSEMBLY (2020). Enterprise Law, Hanoi, Vietnam
NATIONAL ASSEMBLY (2020). Investment Law, Hanoi, Vietnam

NGHIA, P.D., (2004). **Monograph of Economic Law**, Hanoi National University Press

NGHIA, P.D., (2011). **Textbook of Economic Law (third edition)**, People's Police Publishing House, p. 162

NGHI, P.H., (2008). **Looking back on the development of law in Vietnam from 1945 to the present**, Proceedings of the Third Vietnam Studies International Conference - Vietnamese Law Subcommittee, p. 627-645

PHUOC, H.T., (1992), (ed.). **Some economic legal issues of the Federal Republic of Germany**, Legal Publishing House, p. 32

PHU, N.V., (2003). On the Nature of Shareholder Rights, **Journal of Legislative Studies**, (12), p.53-58

PROJECT VIE/94/003 (1998). **Thematic report on the fields of the economic legal framework in Vietnam**, Volume II, Law on types of enterprises; Securities and securities market legislation; Banking Law (Project Proceedings), Hanoi

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QUANG, N.N., (2016). **Enterprise Law: Basic Legal Issues**, Dan Tri Publishing House, p.128-129

QUANG, T.Q., (2018). Vietnam needs a case law to break through the "corporate veil", **according to: https://thesaigontimes.vn/viet-nam-can-mot-an-le-de-xuyen-pha-buc-man-che-cong-ty/**

QUANG, N.H., (2012). The mechanism of "piercing the corporate veil" in the laws of some countries and Vietnam, **Journal of Legislative Studies**, No. 12 (221), 7/2012
SINGH, R.K., **Origin, and Evolution of the Modern Company Law**, referenced at www.legalserviceindia.com/artycles/eocindia.htm, [Accessed June 2022]

THONG, V.Q., (1971). **History of Vietnamese Law**, p.45-8

TOAN, L.M., & WALKER, G., (2008). Corporate Governance of Listed Companies in Vietnam, Bond Law Review, 20 (2), **Bond Law Review, under: http://epublications.bond.edu.au/blr/vol20/iss2/6**

Ty, N.V., (2015) (ed.). **Textbook of Commercial Law - Vol. 1**, People's Police Publishing House

VIETNAM CHAMBER OF COMMERCE INDUSTRY (VCCI) (2002). **Research report on Building a business legal system to encourage market economy development**. Hanoi, p. 30

VIETNAM CHAMBER OF COMMERCE INDUSTRY (VCCI), WORLD BANK (2017). **Review report: Business conditions and freedom to do business in Vietnam**, Hanoi, p. 1