

# ABUSE OF COMMERCIAL LEGAL ENTITIES IN BUSINESS ACTIVITIES: THE CASE IN VIETNAM

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## Abstract

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This article synthesizes and analyzes legal and practical issues regarding commercial legal entity status abuse in business activities. It proposes specific solutions to improve the law and effectively implement it, thereby minimizing this abuse in Vietnam's current development practices. This study examines the legal issues arising from the abuse of commercial legal status in business activities in Vietnam, based on legal provisions and the practice of such abuses. Vietnam's market economy is still young, and acts of abuse of commercial legal status in business activities are increasingly common and frequent. The cause is the lack of unity and comprehensiveness of the law strictly regulating the activities of commercial legal entities in Vietnam. The research methods used in this article include systematizing, analyzing, and synthesizing theoretical issues, common legal theories worldwide, and their expression in the provisions of Vietnamese law. Vietnamese law needs to clearly distinguish between "personal responsibility" and "joint responsibility" and cases of joint responsibility between entities related to business activities to create a legal basis for practical application. This would avoid instances where businesses evade or shirk responsibility caused by individuals, as has happened in Vietnam in recent times. This article contributes to existing scholarship by providing one of the first systematic and practice-oriented analyses of the abuse of commercial legal entity status in Vietnam, thereby filling a notable gap between general corporate law theory and the practical enforcement of liability mechanisms in a transitional market economy.

**Keywords:** Legal Entity, Abuse of Legal Status, Commercial Legal Entity, Business Law, Vietnam

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## 1. INTRODUCTION

Commercial legal entities are those whose main objective is to seek profit and distribute profits among members/shareholders. Therefore, in the practice of business activities, acts of abuse of legal status are understood by members/shareholders, representatives, or other managers

who rely on legal status to perform acts that benefit themselves personally, and not the interests of legal entities, causing harm to legal entities, investors, and other entities. Abuse is also manifested through the actions of members/shareholders who take control by relying on the legal status of various companies to directly or indirectly benefit themselves, and not in the interests of the company

or other shareholders. These acts violate the prohibition or do not comply with the provisions of law and the legal entity's charter.

In recent years, the business legal system in Vietnam has recognized or adjusted the basic principles of the market economy, such as freedom of ownership, freedom of business, freedom of contract, freedom of competition, legal entity doctrine, the doctrine of piercing the veil of legal entity. Legal regulations must recognize and create conditions for the basic principles of the market economy to develop to meet practical needs. In addition, the law also regulates acts of abusing the legal status of various types of companies to commit acts that violate the law, infringing on the legitimate interests of business entities.

This article analyzes the basic theoretical issues about commercial legal entities and the abuse of commercial legal status in business practices in recent years. Thereby, seeing the shortcomings and existence of the law and the problems posed by the need to complete the law governing commercial legal entities in Vietnam.

Accordingly, this article addresses the following research questions:

*RQ1: How and to what extent does Vietnamese law regulate and address the abuse of commercial legal entity status in business activities?*

*RQ2: What legal reforms are necessary to ensure effective accountability and prevent such abuses in practice?*

This article is structured as follows. Section 2 reviews the relevant literature on commercial legal entities and the abuse of legal entity status in business activities, providing the theoretical and comparative foundation for the analysis. Section 3 outlines the research methodology employed in the study. Section 4 examines the legal framework governing commercial legal entities in Vietnam, analyzes the forms and manifestations of abuse in practice, and assesses the corresponding legal liabilities. Section 5 discusses the main findings and identifies key challenges and implications for legal reform. Finally, Section 6 concludes the article by highlighting the study's analysis of abuses of legal entity status in Vietnam, its proposals for improving the mechanism of piercing the corporate veil, and its key limitations and future research directions.

## 2. LITERATURE REVIEW

### 2.1. Research overview of legal entities and characteristics of legal entities

Legal entity regulations have been formed quite early in history, and have gradually become an important part of the legal system of each country. In addition to legal relations between individuals, legal entities are subjects created by the need to meet human activities as the socio-economy develops.

When studying legal entities, Karagussov and Kostruba (2019) suggest that legal entities, as legal fictions in the absence of a physical form of their existence, acquire a different, abstract reflection of the ordering of their internal content. The combination of cumulative will and capital of a human being in the integral legal structure of a legal entity, with the separation of the legal

interest of such a legal entity from the interest of individuals who created it, requires the formation of features, the implementation of which compensates for the lack of the specific in the structure of a legal entity. Consequently, the relations between a legal entity and its founder (participant), the conditionality of its legal behaviour by his/her will, are obvious.

Vermeulen (2003) has researched work on types of businesses, including partnerships and types of derivative business organizations in the United States, the United Kingdom, Germany, the Netherlands, and France. In particular, Vermeulen (2003) has studied and analyzed legal entity doctrines; the company doctrine is contractual. It can be commented that this is a significant theoretical and practical work on business organizations and the influence of legal theories on the practical law of some countries. Through research, the Vermeulen (2003) explained the theoretical basis of the company's nature based on legal theories in the company's operations.

Cahn and Donald (2010) have researched and analyzed the provisions of the law in the laws of countries on companies, explaining the differences between types of companies based on the owner's "finite" or "limitless" asset liability. The research by Cahn and Donald (2010) suggests that an entity has five core structural characteristics: 1) legal status; 2) limited liability; 3) transferable shares; 4) centralized management follows the structure of the board; 5) share ownership of capital contributors.

Fernando and Berkhout (2022), which guides practitioners, retainers, and other researchers to establish comprehensive frameworks for holding beneficial ownership information. Fernando and Berkhout (2022) commented that: "Legal persons can be misused to facilitate criminal acts. [...] Most (if not all) types of abuse of legal persons aim to hide the natural person that is the ultimate owner or controller of the company. [...] The primary way for natural persons to operate anonymously is by owning or controlling legal persons" (p. 17). Similarly, MacKenzie (2008) also researched abuses in the operations of commercial legal entities, in which Phoenix companies provide an example of such abuse.

In Vietnam, there have been many research works on legal relations, legal relations subjects, and legal entities as a theoretical premise for legal regulations to be more suitable for practical life. Research works on legal entities, right from when Vietnam was a colony of French colonialists, the legal entity model was introduced by French merchants and applied in their activities in the colonies. Jurists of that time studied legal entity doctrines, finding out the characteristics of legal persons. Recently, there have been research papers by Cuong (2001). These research works have partly clarified the basic issues of legal persons, the introduction of legal entity doctrines, and the civil liability of legal entities into Vietnamese law. At the same time, it raises the inadequacies of the Civil Code and Law on Enterprise and the perfections in the legal entity model of partnerships in Vietnamese law.

## 2.2. Research overview on the abuse of commercial legal status in business activities

Juridical personality is conceived as a “veil” that covers the legal entity, which may be raised or uncovered in case of its abuse and use by the partners for their personal benefit in prejudice of third parties or to evade the applicability of legal provisions, which, as individual persons would fail to observe, provided, however, that making use of said person and its personality they do overcome such obstacles for their personal benefit (Adriano, 2015).

The principles of limited liability and separate legal identity are fundamental to modern company law. The corporate form is not without its drawbacks. There is, in particular, the potential to abuse the concept of limited liability. This becomes most apparent in closely held companies. A well-documented form of this abuse is reckless trading. This then leads us to another type of corporate form abuse, that of Phoenix company arrangements (MacKenzie, 2008). A Phoenix company is “a company that has been ‘reborn’ soon after (and in some cases before) its failure. The new company takes on the failed company’s business, often using a similar name, the same managers and directors, and the same assets” (New Zealand Ministry of Economic Development, 2001, p. 102).

In recent years, a renewed focus has been on the abuse of the corporate form. The primary focus has been on situations where the corporate form as such has been used in an abusive way (for instance, to avoid liabilities, to cover (illegal) acts, or to benefit from certain rules), and not so much on abuse practiced within companies (by shareholders, directors, etc.). In some cases, the abuse of companies has experienced much press coverage, such as the Panama Papers, where many companies appear to have been used for tax avoidance, corruption, and other crimes. In recent years, the European Union legislators have also been active in this area, taking steps to prevent the abuse of companies in money laundering, posted workers, taxation, and company law (Birkmose et al., 2019).

In Vietnam, some authors say that the property liability of legal entities is finite or indefinite. Hong and Net (2005) argue that the legal entity is self-liable for all its assets, with unlimited liability. In contrast, the members of the legal entity have limited liability to the extent of capital contributed to the legal entity. Lam (2023) presents a summary article and an analysis of the abuse of power in the operation of a joint-stock company (JSCs), and the adjustment of current laws to limit and handle these violations.

However, in Vietnam, there has not been a complete study of the legal provisions on the abuse of legal status and the practice of abuse of legal status in the implementation of production and business activities. In recent years, many acts of abusing the legal status of various types of companies have been carried out, activities that violate the law, infringe on bona fide third parties, or harm many entities in society. There are many reasons why more and more abuses of legal status occur in practice, but a major one is the existence of

legal regulations in Vietnam. Therefore, the synthesis and analysis of the inadequacies of the law governing commercial legal entities and the abuse of commercial legal status in Vietnam show the problems posed for the law’s improvement.

## 3. RESEARCH METHODOLOGY

The article also uses the method of legal analysis, synthesis, and comparison of legal provisions of Vietnam and some countries (such as Japan, Thailand, and France) on the contents mentioned in the article. And separate research methods of legal science: normative analysis, system analysis, legal comparison, etc., to examine the adjustment of Vietnamese law in regulating commercial legal entities and the abuse of commercial legal entity status in Vietnam.

The article also analyzes actual cases to evaluate the perfection of the law on that arising issue, to see the shortcomings and limitations of the Vietnamese law. The article uses the synthesis method to recommend and propose solutions to perfect the law in regulating commercial legal entities, the main subjects participating in business activities in Vietnam.

In particular, the normative analysis method is used as the central method to clarify the content, scope of regulation, and internal logic of legal provisions on commercial legal entities and abuse of legal status in Vietnamese law. Analysis of legal provisions on conditions for establishing legal status; the principle of separation of assets and legal liability; personal responsibility, joint responsibility of members, shareholders, managers, and legal representatives. Through normative analysis, the article assesses the adequacy, clarity, and feasibility of current regulations in preventing and handling acts of abuse of legal status in business practices.

The method of system analysis is used to place the legal norms on commercial legal entities in the unified whole of the Vietnamese legal system, instead of considering them in a discrete way. Through this, the article points out that the abuse of legal status does not only stem from individual behavior, but also from the structural inadequacies of the legal system and enforcement mechanisms, especially the lack of clarity between individual responsibility and joint responsibility.

The legal comparison method is used to clarify the position of Vietnamese law in relation to the laws of some countries and other legal systems, thereby drawing suggestions for the improvement of the law. The study compares Vietnam’s approach with the laws of Japan, Thailand, France, and some international legal experiences on: scope of representation of legal entities; responsibilities of representatives and managers when exceeding the operation purposes of legal entities; mechanisms of joint liability between legal entities and individuals in relations with third parties.

## 4. RESEARCH RESULTS

### 4.1. General overview of commercial legal entity and legal entity status

#### 4.1.1. Concept of commercial entity

The term “legal entity” is of Latin origin, meaning a group or council of people. The emergence of legal persons is a tendency to humanize these groups, individuals, or collections of property from ordinary people and to recognize them as a legal personality called legal personage (Mau, 1963). Legal entities were born to meet the conditions of social life and legislative activity. So far, although there is no precise definition of a legal entity, countries recognize its existence, and there are various legal theories for states to use as the basis for their views on legal persons (Cuong, 2013). As can be seen, a legal entity is a legal entity; besides a human entity, a legal entity was born to meet the conditions of social life and legislative activities.

When studying the birth of legal entities, the views of jurists have formed legal theories about legal entities, such as the theory that legal entities are legal fictions. The theory that legal entities are denied, and the theory that legal entities are recognized. These theories discuss the different natures of legal entities, but in law, there is usually no specific definition of legal entities; only recognizing the existence of legal entities is based on the freedom of will and freedom of association of citizens.

In Vietnam, legal relationship subjects only include natural persons (individuals) and fictional legal entities participating in social relations governed by the provisions of law and other legal sources, such as case law and unwritten law. A legal entity is an entity, other than a natural person, that has a full life in the legal expectation that it can

perform its functions legally, can be sued or pardoned, and can decide through agents, as in the case of companies.

A legal entity is any legal entity lawfully established or organized under applicable law, whether for profit or non-profit purposes, and in the form of private or public ownership, including any companies, trusts, partnerships, joint ventures, sole proprietorship, or association (Agreement between the United States of America and the Socialist Republic of Vietnam on Trade Relations, 2000, Chapter 3 Article 11). When studying legal entities, Pescatore (1960) defines a legal entity as a social entity established for a defined collective purpose, which has its legal existence and is qualified to be the subject of legal relations.

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 (Lemeunier, 1993). The creation of a legal entity as an independent entity is important, especially for the interests of third parties. When a third party has a dispute with a legal entity, it will not have to initiate a lawsuit against each member of the legal entity; it must only sue the legal entity in court for the performance of property liability against it. In legal relations, legal entities are liable with all their assets for arising obligations and are not liable on behalf of members for civil obligations established or performed by members not in the name of legal entities.

The meaning of the establishment of a legal entity is to protect the common interests of the group with those who are related, for the same purpose associated with each other, 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.

**Table 1.** Classification of legal entities under Vietnamese law

<i>Type</i>	<i>Notion</i>
A commercial entity	A legal entity whose main goal is to seek profit, and the profit is divided among the members. Include: Single-member limited liability companies (LLCs), multi-member LLCs, JSCs, and partnerships.
A non-commercial entity	A legal entity that does not set a goal of seeking profit, and if there is a profit, it is not divided among members. Include: State agencies, people's armed forces units, political organizations, socio-political organizations, socio-political-professional organizations, social organizations, socio-professional organizations, social funds, charity funds, social enterprises, and other non-commercial organizations.

Source: Prepared by the Authors.

The law on the commercial legal entity is considered the legal foundation for the establishment, organization, and operation of companies. Therefore, the laws of countries around the world recognize many business organization models, especially many types of companies for investors to choose from (Hai, 2016). In practice, investors can negotiate with each other based on freedom of will and freedom of contract to establish different types of commercial legal entities. It can be said that thanks to the diversity of many economic sectors along with the freedom of business of enterprises — an inevitable product of a multi-sector commodity economy under the market mechanism

— has created a diversity of types of enterprises (Van, 2008).

#### 4.1.2. Legal status and abuse of legal status

The term “legal status” in legal norms is understood as the legal status recognized by law for an organization capable of existing and operating independently before the law. As an independent entity, the legal entity enjoys rights and shoulders legal obligations that are binding only on the company; its owners will not be involved. The purpose of establishing legal status is the separation of assets. Thus, only those

organizations that implement the principle of separation of assets will have the first important condition for becoming a legal entity (Vietnam National University, School of Law, 2001). Therefore, in many countries, the doctrines of legal status and limited liability are recognized as the foundation for the development of legal institutions on legal persons.

One of the features of the organization is that the implementation of the principle of separation in terms of assets acquires the first important condition for becoming a legal entity. When a legal

entity implements the principle of separation of property, it is also when a new legality appears, separate from the legality of the owner or the community of owners. The status of a legal entity is proven to be independent of the owners in terms of property. At that time, legal entities entering into property relations will arise legal rights and obligations related to the legal entity's property liability.

In Vietnam, an organization is recognized as a legal entity when it fully meets the following conditions:

**Table 2.** Conditions of a legal entity according to the Vietnamese Civil Code 2015

An organization shall be recognized as a legal entity if it meets all of the following conditions.	1. Being established by law.
	2. The legal entity must have an executive body specified in the legal entity's charter or the decision on the establishment of a legal entity.
	3. Having assets independent of other individuals or legal entities and taking responsibility for themselves with their assets.
	4. To participate in legal relations independently on their own behalf.

Source: Civil Code (2015, Article 74).

Thai law stipulates that when entering into legal relations, "a legal person enjoys the same rights and obligations as natural persons, except those rights and obligations that, by their nature, can only be accorded to or suffered by a natural person" (The Thailand Civil and Commercial Code, 1925, Article 80). Similarly, Japanese Law stipulates that legal entities have rights and obligations based on the provisions of laws and ordinances, and the objectives and scope of activities as specified in the articles of establishment (Civil Code of Japan, 2006, Article 43).

A company has legal status from the date of issuance of the business registration certificate. Legal status will create a veil that makes people unaware of and disregard other rights holders living and working in companies 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 (Binh & Ty, 1989). 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 (Thanh, 2018).

Commercial legal entities carry out business activities through representatives of legal entities. Accordingly, legal entities must always be represented by specific persons. The behavioral capacity of a legal entity is the behavioral capacity that the legal entity borrows from the people that the legal entity incarnates into (Dien, 2010). So, the will of a legal entity is expressed through representatives and is bound to the extent that the provisions of the legal entity charter and the law limit representation.

The representative will act on behalf of a commercial legal entity to carry out transactions with partners, customers, and state agencies for the benefit of the legal entity. A commercial entity can have multiple legal representatives, such as a partnership, which means the general partners are the legal representatives of the company and the organization that runs the company's day-to-day

business activities. 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. Each representative 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. In addition, the authorized representative is authorized by the legal entity to carry out activities within the scope and time limit according to the written authorization. The act of the authorized representative performed within the scope of authorization is considered an act of a legal entity, giving rise to legal rights and obligations to the legal entity.

"Abuse" is understood as the act of using too much, exceeding the prescribed level to achieve a certain purpose of the subject, infringing on the legitimate interests of another subject. Abuse of legal status is understood by members/shareholders and managers who rely on the legal status of legal entities to perform acts that benefit themselves, and not the interests of legal entities, causing harm to legal entities, investors, and other entities. In addition, the act of directly or indirectly abusing the commercial legal entity status by or for the benefit of the controlling members/shareholders infringes on the interests of the commercial legal entity, other members/shareholders, or third parties. These acts violate the prohibition or do not comply with the provisions of law and the legal entity's charter.

Abuse of legal status is the act of an entity relying on the company's legal status to commit acts that benefit individuals but not the interests of the company, causing harm to the company, investors, and other entities. These acts violate the prohibition or do not comply with the provisions of law and the company's charter. There are two common forms of abuse of the legal status of the company: abuse to serve own interests and abuse to commit acts of violating laws and charters.

Abuse of legal status is not for the benefit of the legal status but for personal gain. These managers or representatives may abuse the legal status of the company to conduct business or other transactions that do not serve the interests of

the company and cause damage to others. The representative establishes and performs transactions and contracts, but does not serve the interests of the company or the interests of the owners or of members/shareholders holding the majority of capital contributions/shares in the company.

Abuse legal status to commit fraudulent acts or violate the law. The establishment of a company for the personal use of the owner, the company only exists as a cover, a tool for the owner or manager to carry out non-transparent, illegal activities. Violate the law and harm the legitimate rights and interests of other subjects. The purpose of abuse is to commit illegal acts for personal gain, causing damage to investors and affecting the transparency of the market.

#### 4.2. Adjustment of the Vietnamese law on abuse of legal status

The adjustment of the law aims to protect the interests of legal entities and owners, especially those who do not participate in the management apparatus, and the interests of third parties against acts of abuse of legal status. The current Law on Enterprise and other legal documents have identified and adjusted abusive acts in the operation of the JSCs to limit and prosecute the responsibility of violators. It is possible to generalize and synthesize current regulations regulating this issue in the following aspects.

##### 4.2.1. The doctrine of “piercing the corporate veil” in Vietnamese law

Cases of “breaking the limit” of the principle of limited members/shareholders or managers concerning their obligations and responsibilities are called the mechanism through the veil of legal persons. The doctrine through the corporate veil is the legal mechanism to hold a company’s shareholders personally liable for the consequences caused in certain circumstances. 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 (Central Institute of Economic Management, 2016).

Under this doctrine, if a corporation: 1) serves the personal use of its members or shareholders or managers of the company or 2) 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 obligations (Quang, 2016). When the mechanism through the legal entity veil is applied, the legal status of the company as well as the liability of its members/shareholders will be eliminated, and the law requires personal liability of the entity that committed its wrongdoing.

In Vietnam, according to current regulations, several principles of the doctrine through the legal entity veil have also been introduced and stipulated in Vietnamese law regarding the personal liability of members/shareholders, legal representatives, or managers who are personally responsible for violating the law or infringing on the interests of the company or third party.

In the development of the Law on Enterprise in Vietnam, although the “limited wall” brings benefits to investors, creditors, judicial institutions, and society in Vietnam are having difficulties when introducing such a new concept. In addition to the trend of criminalizing economic cases (seeking to prosecute the accused against a company member when the company defaults on charges of fraud, abuse of trust, and misappropriation of assets), it is not uncommon for the local judiciary to allow the disposition of a member’s private assets to pay debts to the company (Nghia, 2006). When the mechanism of piercing the corporate veil is applied, the legal status of the company as well as the limited liability of the company owner will be eliminated, and the law requires the personal liability of the entity that committed the abuse. The doctrine of piercing the veil of a legal entity formed by the abuse of legal status applies if: 1) abuse of legal status is not for the benefit of the legal entity but for the benefit of the individual or manager; 2) abuse of legal status to commit fraudulent acts or violate the law. Members, shareholders, or managers will be subject to unlimited liability for abuse of the company’s legal status.

Managers, representatives in the course of performing their duties and authority, bring company assets to use for activities that they know are contrary to the interests of the company, to serve personal interests, or to benefit another individual or organization to which they directly or indirectly have related interests. Members of the board of directors and legal representatives shall be jointly liable for damages arising from non-performance or non-compliance with regulations on payment of shares and contributed capital registered to buy when registering for business establishment. The Law on Enterprise 2020 also stipulates the responsibilities of managers when they violate the obligations and responsibilities of managers, abuse their positions, and use information, know-how, business opportunities, and other assets of the company for personal gain or to serve the interests of other entities. Accordingly, members of the members’ council, members of the board of directors, the director/general director, and other managers who violate their responsibilities shall be personally or jointly responsible for compensating lost benefits, returning received benefits, and compensating all damages to the company and third parties.

Clause 5, Article 80 of the Law on Enterprise 2005 stipulates that ordinary shareholders shall be personally responsible when committing one of the following acts in the name of the company in any form: 1) violating the law; 2) conducting business and other transactions for self-interest or serving the interests of other organizations and individuals; 3) paying debts that are not yet due in front of possible financial risks to the company. However, this content was not stipulated in the Law on Enterprise 2014 and 2020.

The fact that the Law on Enterprise 2014 and 2020 do not stipulate that ordinary shareholders must be personally responsible when committing acts of violating the law or infringing upon the interests of the company on behalf of the company has two different streams of view. First, it is

considered that shareholders are still personally responsible in case of participating in the management, administration, or representative activities of the company. When committing acts of violating the law or infringing upon the interests of the company, the provisions of Articles 165, 166, and 167 of the Law on Enterprise 2020 must be personally or jointly responsible for compensation for lost benefits, return of benefits received, and compensation for all damages to the company and third parties. If an ordinary shareholder is not a manager, executive, or company representative, he or she does not have the right to represent the company. Secondly, according to current regulations, shareholders (including founding shareholders) do not have clear regulations on personal responsibility for the company's activities. Although the types of single-member LLCs and multi-member LLCs are still regulated in Articles 50 and 97 of the Law on Enterprise 2020.

#### *4.2.2. Stipulating the organizational structure of internal management of legal entities*

A legal entity must have an executive agency specified in the legal entity's charter or in the decision to establish a legal entity. The legal provisions and the charter of the legal entity will create a basis for members/shareholders and managers of the legal entity to properly perform their authority and obligations, and at the same time limit acts of abusing legal status to carry out activities that are not in the interests of the legal entity. These regulations are reflected in aspects such as:

*Regulations on responsibilities of managers:* According to the regulations of Law on Enterprise 2020, they have the following responsibilities: 1) perform their assigned rights and obligations in an honest, prudent, and best manner to ensure the legitimate interests of enterprises; 2) be loyal to the interests of the enterprise; not abusing their position and position and using information, know-how, business opportunities and other assets of the enterprise for self-interest or serving the interests of other organizations and individuals; 3) promptly, fully and accurately notify the enterprise of the enterprise that it or its related person owns or has shares or contributed capital according to the regulations of the Law on Enterprise. The manager of the company is personally liable for damage to the company due to the violation of his/her responsibilities.

*Regulations on the mutual supervision mechanism:* The delimitation of joint and personal responsibilities and the scope of representation in transactions in the name of the company of the legal representative. According to the regulations, "the representative must notify the transaction party of the scope of his representation" (Civil Code, 2015, Clause 4 Article 141). In case the division of rights and obligations of each person is not stipulated in the company's charter, each representative of the company is a competent representative of the enterprise before a third party. All legal representatives must be jointly and severally responsible for the damage caused to the company by the law.

*Regulations on the relationship between related persons and the company:* Contracts and transactions must be approved by the board of members or the company's president, the director or general director, and the controller of the single-member LLC; approved by the members' council of the multi-member LLC; approved by the board of directors or the general meeting of shareholders of the JSCs approves to ensure the legality and accuracy of the contract, such transaction and the interests of the parties when participating in the transaction. Contracts and transactions are invalidated under the court's decision and handled by the provisions of law when they are signed in contravention of the regulations of the Law on Enterprise; the signatories of contracts or transactions, shareholders, members of the board of directors or relevant directors/general directors must jointly compensate for damages incurred and refund to the company the profits earned from the performance of such contracts or transactions.

*Regulations on the rate of organizing meetings and approving resolutions within legal entities:*

- *Multi-member LLC:* The meeting of the board of members shall be conducted when the number of members attending the meeting owns 65% or more of the charter capital. In case the first meeting of the board of members is not eligible for conduct, the second meeting shall be conducted when the number of members attending the meeting owns 50% or more of the charter capital. In case the second meeting is not eligible to be conducted, the third meeting shall be conducted regardless of the number of members attending the meeting and the amount of charter capital represented by the number of members attending the meeting. Resolutions and decisions of the board of members shall be adopted at the meeting in the following cases: a) approved by the members attending the meeting owning 65% or more of the total contributed capital of all members attending the meeting; b) being approved by the members attending the meeting owning 75% of the total contributed capital of all members attending the meeting or more, for the resolution or decision on the sale of assets valued at 50% or more of the total value of assets stated in the company's latest financial statement or another smaller rate or value specified in the public charter company; amending and supplementing the company's charter; reorganization and dissolution of the company.

- *Single-member LLC:* A meeting of the members' council shall be held when at least two-thirds of the total number of members attend the meeting, and each member shall have a vote of equal value. A resolution or decision of the board of members shall be passed when more than 50% of the members attending the meeting approve, or the number of members attending the meeting owns more than 50% of the total votes in favor. The amendment or supplementation of the company's charter, reorganization of the company, or transfer of part or all of the company's charter capital must be approved by at least 75% of the members attending the meeting or the number of members attending the meeting owning 75% or more of the total number of votes.

- *JSCs:* The general meeting of shareholders is conducted when the number of shareholders

attending the meeting represents more than 50% of the total number of votes; the charter prescribes the specific ratio. In case the first meeting is not eligible for conduct, the second meeting shall be held when the number of shareholders attending the meeting represents 33% or more of the total number of votes. In case the second meeting is not eligible to be conducted, the third meeting shall be conducted regardless of the total number of votes of the shareholders attending the meeting. At the same time, resolutions are passed when they are approved by the number of shareholders owning more than 50% of the total votes of all shareholders attending the meeting; except for specific cases, they must be approved by the number of shareholders representing 65% or more of the total votes of all shareholders attending the meeting.

- *Partnerships*: Resolutions of the members' council must be adopted if they are approved by at least two-thirds of the total number of general partners, except for specific important decisions that must be approved by at least three-fourths of the total number of general partners.

#### 4.2.3. Regulations on owners' rights to acts of abuse of legal status

*The right to initiate a lawsuit against the company's manager*: In a multi-member LLC, the company's members initiate a civil liability lawsuit against the chairman of the board of members, the director/general director, the legal representative, and other managers due to the violation of rights, obligations, and responsibilities of managers. The cost of initiating a lawsuit, in case a member initiates a lawsuit on behalf of the company, shall be included in the company's expenses unless the lawsuit request is rejected.

In a JSC, shareholders/groups of shareholders owning at least 1% of the total number of ordinary shares have the right to initiate lawsuits on their own or on behalf of the company for personal and joint liability against members of the board of directors, directors/general directors. It arises when their rights are directly infringed, or the company sues the managers. This right is one of the important rights and constitutes a mechanism to protect shareholders, especially minority shareholders.

*Right to request cancellation of decisions and resolutions*: Shareholders/groups of shareholders owning 5% or more of the total ordinary shares or another smaller percentage as prescribed in the charter have the right to request the cancellation of the resolution of the general meeting of shareholders within 90 days from the date of receipt of the resolution or the minutes of the meeting or the minutes of the vote counting results for the opinion of the general meeting of shareholders, if any. Grounds to believe that: the order and procedures for convening meetings and issuing decisions of the general meeting of shareholders seriously violate or the content of the resolution violates the law or the company's charter.

*Ensuring the balance of rights and obligations of the owner*: It can be seen that the key factor in balancing the rights of the majority and the rights of the minority is reasonableness, which is reflected in the fact that the majority has the right to decide,

but the minority has the right to object and criticize. Accordingly, the decisions of the general meeting of shareholders must put the interests of the company and shareholders first. To avoid the abuse of the majority by allowing the pooling and centralized use of voting rights, the mechanism to restrict the voting rights of dominant shareholders, the mechanism for shareholders to sue, etc. Abuses of power are prone to occur because there is no strict mechanism to ensure that the entity performs its functions and duties properly.

#### 4.2.4. Liability of entities that abuse their commercial legal entity status

The study demonstrates the following types of liability of entities that abuse their commercial legal entity status.

##### *Civil liability*

Civil liability is a type of liability, according to which the subject who commits the act of violating the law must be obliged to compensate the party harmed by their act. Civil liability is a source of obligation not based on the will of the litigant, i.e., an illegal origin; Therefore, civil liability gives rise to the obligation to pay compensation to a person who has done an unlawful act to the detriment of another person (Mau, 1963). Therefore, when a person causes damage to another through his/her fault, whether negligent or unintentionally careless, they must compensate the person who suffered the damage. This is a civil liability issue (Mau & Chan, 1968). Civil liabilities of entities when carrying out activities that abuse legal status include:

There are many legal representatives for the JSCs. Under the provisions of civil law and other relevant laws, all legal representatives are jointly responsible for damage caused to the company.

In short, the declaration is when the increase in charter capital or valuation is higher than the actual value. The Law on Enterprise stipulates that in case the assets contributed as capital are valued higher than the actual value of the assets at the time of capital contribution, the capital contributor and members of the board of directors jointly contribute an additional amount equal to the difference between the assessed value and the actual value of the assets contributed as capital at the time of completion of valuation. At the same time, she is jointly responsible for damage caused by intentionally valuing assets contributed as capital higher than the actual value.

In case of withdrawal of capital from the company. As a rule, it is forbidden to withdraw capital contributed by ordinary shares from the company in any form, except in the case of redemption of shares 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.

In case the resolution or decision of the board of directors is contrary to law, the resolution of the general meeting of shareholders, or

the company's charter. If such a resolution or decision causes damage to the company, the members who agree to pass it must jointly take personal responsibility and must compensate for the damage to the company. Members who object to adoption are exempt from liability. In this case, shareholders of the company have the right to request the court to suspend the implementation or cancel the resolution or decision.

In case the manager violates his/her responsibilities and obligations: members of the board of directors, the director/general director, and other managers who violate the responsibilities of managers shall be personally or jointly responsible for compensating lost benefits, returning received benefits, and compensating all damages to the company and third parties.

#### *Administrative liability*

Administrative violations of enterprise registration, securities, and securities market activities for acts of abuse of power in the operation of commercial legal entities. The act of declaring is inaccurate and dishonest about charter capital registration. This act can be administratively sanctioned according to five fines: "A fine from VND 20,000,000 to VND 100,000,000. Remedies: Force registration of charter capital adjustment equal to the actual contributed capital for violations" (Government's Decree 122/2021/ND-CP, 2021, Article 47). The statute of limitations for processing is one year from the time of detecting the violation or the time of termination of the violation, which is considered the time of commencement. Thus, administrative penalties for capital declaration are negligible compared to the expectation of profits to bring to the violator.

#### *Criminal liability*

In Vietnam, the Criminal Code is an important development in the State's criminal policy, marking many advances in criminal legislative thinking, including the addition of provisions on criminal liability of commercial legal entities.

Entities that commit acts of abusing their legal status may be examined for criminal liability for crimes such as embezzlement of assets, fraudulent misappropriation of assets, abuse of trust, and misappropriation of assets, etc. In cases where persons holding positions and powers in enterprises abuse their positions and powers to seize assets that they are responsible for managing, they are guilty of embezzlement of assets. Those who abuse their positions and powers to appropriate assets that they are responsible for managing in enterprises are guilty of embezzlement of assets. Damages of the act of "embezzlement of assets" of the company are based on the following grounds: 1) the value of the appropriated property or the value of the damage caused by the act; 2) adversely affecting the lives of employees in the company; 3) causing adverse effects on security, social order, and safety; iv) Leading to bankruptcy or the discontinuance of the enterprise or other organization.

### **4.3. Abuse of commercial legal entity status in business practices in Vietnam**

In the practice of business activities, entities abuse the legal status of various types of companies to commit acts of violating the law, infringing on the interests of other entities. Some abusive behaviors can be mentioned.

#### *4.3.1. Abusing legal status to raise illegal capital*

Over the past time, many cases have shown signs of violating the law, abusing legal status to commit illegal acts for personal gain, causing damage to investors, and affecting the transparency of the market. The issuance of bonds with forged documents related to the purpose of using capital, collateral, and financial statements of the company's legal entity. This abusive behavior is abetted by bond distribution organizations that entice individual customers from the list of available customers but provide incomplete information, not true to the nature of bond products, to offer to buy individual corporate bonds. The lack of transparency in the market and the ineffective enforcement of legal regulations have created an opportunity for abuses of the legal status of companies to become more common, to deceive, and defraud investors. People who lack information are enticed by fake information, not exactly what the abusers give.

#### *4.3.2. Abusing legal status to commit fraudulent acts or violate the law*

The company only exists as a cover, a screen, a tool of the owner or manager to carry out non-transparent activities, violate the law, and harm the legitimate rights and interests of other entities. The purpose of the abuse is to commit illegal acts to gain the interests of individuals to the detriment of legal entities, investors/owners, and affect the transparency of the market.

#### *4.3.3. Abusing legal status to carry out activities not for the benefit of legal entities*

Managers, acting in the course of performing their duties and authority, bring the company's assets to use for activities that they know are contrary to the interests of the company, to serve personal interests, or to benefit another individual or organization to which they directly or indirectly have related interests. Managers and representatives who commit acts of misusing the company's assets, such as: withdrawing capital of the company; using company assets for personal purposes; overpayment or no reason; making the company pay debts to individuals, pay unwarranted expenses; expenditure for the manager's benefit (Binh & Ty, 1989). In addition, acts of using information, know-how, business opportunities, abusing positions, and using company assets for personal gain or serving the interests of other organizations and individuals.

The abuse of authority of managers and representatives through potentially self-interested transactions is transactions that are likely to cause damage to assets and interests of the company because the representative participating in

the transaction abuses his position for personal gain (Ly, 2022). Self-interest transactions can only be carried out when there is the empowerment to manage and run the business, that is, transactions without the abuse of the position of a manager or representative. The purpose of the act is to replace the interests of the company with the interests of individuals, so this transaction always threatens to cause damage to the property and interests of the company.

The acts of the powers of managers and representatives of the company manifest when there is an abuse of their position and power to appropriate assets that they are responsible for managing. Taking advantage of the tasks assigned to the manager, the representative has made use of the money and assets of the company for personal purposes. The activities of the representative may cause damage to legal entities, and owners, use information, know-how, and business opportunities, abuse their positions and positions, and use assets of legal entities for personal gain or to serve the interests of other organizations or individuals. Potentially self-interested transactions are transactions that are likely to cause damage to the company's assets and interests because the representative participating in the transaction abuses his position for personal gain (Ly, 2022).

#### *4.3.4. Abusing legal status to carry out illegal activities on tax, the environment, and the securities market*

The act of abusing legal status to avoid the obligation to pay taxes and obligations to the state. Over the past few years, large foreign companies have continuously reported losses despite entering the Vietnamese market for a decade and are constantly expanding production. These multinationals will often set up branches in countries to operate. Branches that operate effectively will transfer their profits to the parent company. As such, the income generated will be taxed by governments either in the parent company or in its overseas subsidiaries (Diep, 2016). This is an abuse of legal status to "transfer pricing" to evade tax payment in Vietnam. According to international practice, transfer pricing is understood as "the implementation of a pricing policy" (Wittendorff, 2010, p. 35), for goods and services between members of the same group (or corporation) across borders without market prices to minimize the amount of tax payable to the state budget receiving investment globally. To do this, multinational companies must apply differences in policies, tax incentives, and tax rate differences between countries to develop policies on transaction prices within the group (Wittendorff, 2010).

In addition, the acts of borrowing documents from many individuals to establish new companies or buy back bankrupt companies, companies that have suspended operations but still have tax codes existing on the system to buy invoices at tax departments, and then short-selling. These "ghost" businesses operate only to buy and sell value-added invoices, invoice buying and selling crimes, vouchers, and tax evasion crimes. The enterprise only exists as a cover, a screen, a tool of the owner

or manager to carry out non-transparent activities, violate the law, and harm other entities and society.

## 5. DISCUSSION

The process of increasingly deep and comprehensive international economic integration in Vietnam has brought, is bringing, and will bring Vietnam opportunities and challenges to develop the country's economy, and we cannot stand outside this trend if we want to successfully build a socialist-oriented market economy. The requirements of the integration process must abandon protection and discrimination among investors, although we know that we will have to face many difficulties in a fiercely competitive environment (Hai, 2012). The issues that suggest the process of perfecting the law on business entities in Vietnam can be seen in the following aspects:

Firstly, according to the Law on Enterprise 2020, a sole proprietorship does not have legal status, which means that a sole proprietorship cannot be a commercial legal entity. One of the reasons is that the assets of a sole proprietorship are not independent of the assets of the individual who owns the enterprise. At the same time, in litigation relations in court and arbitration, a sole proprietorship cannot participate in its name as an independent entity, but the participation status is that of the owner of the sole proprietorship. However, according to the provisions of Clause 1 and Clause 2, Article 75 of the Civil Code 2015, it is stipulated that:

1. A commercial legal entity is a legal entity whose main objective is to seek profits, and profits are divided among members.

2. A commercial legal entity includes enterprises and other economic organizations.

With this provision, the civil law "equalizes" all types of enterprises as commercial legal entities, including sole proprietorships, which is inconsistent with the Law on Enterprise 2020. Therefore, it is necessary to amend the concept of commercial legal entities in Clause 2, Article 75 of the Civil Code 2015 to unify the way to determine which enterprises are commercial legal entities. It can be amended as follows: "2. Commercial legal entities include enterprises with legal status and other economic organizations". At the same time, clarify the content of "having assets" in the definition of enterprises stated in Clause 10, Article 4 of the Law on Enterprise 2020, to be consistent with the type of sole proprietorship.

Secondly, it is necessary to supplement provisions in Vietnamese law on cases where the representative directly or indirectly takes advantage of the enterprise's reputation, or when the damaged person is a majority, the enterprise and the representative are jointly responsible for civil liability to the damaged person.

The Japanese Civil Code stipulates that 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 Civil Code stipulates that both the legal entity and the director are jointly responsible (Vacaxun & Aritdumi, 1995). In the current Law on Enterprise, there is no provision in the case of joint liability.

The addition of this case provision in the Law on Enterprise in Vietnam will prevent the representative from taking advantage of the business for his/her own profit. Still, when the victim sues the representative in court to claim compensation for damages, the representative cannot fulfill the responsibility for compensation. In contrast, businesses always intend to evade and extrude their responsibilities. Therefore, the provision of joint liability between the enterprise and the representative in the above case contributes to ensuring the feasibility of liability for compensation for damage to the entities.

Thirdly, the law needs to clearly define “individual liability” and “joint liability”, as well as cases of joint liability between entities involved in the activities of commercial legal entities, to facilitate and provide a legal basis for practical application and to prevent businesses from evading responsibility for actions caused by their employees. In reality, this distinction is still unclear and occurs quite commonly in the practical operation of legal entities. In practice, courts encounter difficulties and obstacles when there is no legal basis to determine the individual liability, the liability of the legal entity, or the joint liability between individuals and legal entities.

Fourth, it is necessary to stipulate the joint responsibility of legal entities and individuals in relations with third parties. Accordingly, study and learn from foreign legal experiences when adjusting the responsibilities of business representatives in the representative’s activities to complete the provisions in the current Law on Enterprise. Thailand law is as follows: “If the damage caused to others is caused by an act that does 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 pay compensation” (The Thailand Civil and Commercial Code, 1925, Section 76). Thus, according to this regulation, the determination of acts causing damage to others is based on the scope of the “purpose of operation” of the legal entity. The Japanese Civil Code also has similar provisions on legal entity representation, that is, performing acts recognized as acts of legal entities; the scope of representation covers all matters related to the purpose of operation of legal entities. But otherwise, it is not considered an act of a legal entity, and the performers must be jointly personally liable to compensate for the damage caused. Therefore, Vietnam needs to define the scope of “operation purposes” of commercial legal entities as the basis for the activities of representatives, as well as the activities of managers and executives, to complete the current regulations of the Law on Enterprise.

Fifth, it is necessary to clearly define the objectives and scope of activities of the legal entity: If damage is caused to others due to an act that is not within the scope of the legal entity’s operational purpose, the members or managers who approve that act, the managers, and other representatives who carry out that act must jointly and severally compensate. French legal experience stipulates on this issue: In relations with third parties, the actions of a manager performed within

the framework of the company’s operational objectives are binding on the company. The objection of a manager to the actions of another manager is not effective against a third party unless it can be proven that the third party knew about those actions. The provisions of the charter limiting the authority of a manager are not effective against a third party (French Civil Code, 1804, Article 1849). On the other hand, if the restriction of the authority of a member in an unregistered business association is binding on other members, it cannot be effective against third parties (The Thailand Civil and Commercial Code, 1925, Article 1053). Therefore, it is necessary to consider and supplement regulations on the objectives and scope of operations of legal entities in the issue of property liability of legal entities to serve as a basis for determining whether the actions of managers and representatives are consistent with the objectives and scope of operations as prescribed in the charter or by law. “Law on enterprise must be innovated and perfected, to create the premise and basis for sustainable socio-economic development. Along with building the legal environment for production and business activities, market institutions in Vietnam are also gradually being formed” (Nguyen Van & Vu, 2024, p. 209).

In contrast to prior Vietnamese and comparative scholarship that typically isolates discrete issues (e.g., asset liability, isolated abuses in joint-stock companies, or doctrinal surveys), this article advances a system-wide account that links corporate personhood, representation, internal governance, and the full spectrum of civil-administrative-criminal liabilities, thereby explaining abuse as a structural phenomenon. Rather than attributing enforcement gaps to a mere absence of rules, our findings identify the core bottleneck in Vietnam as the lack of coherence in allocating individual, corporate, and joint liabilities; leveraging functional comparisons with Japan, Thailand, and France, we translate these insights into adaptable legislative design principles for defining corporate purposes, calibrating joint liability, and operationalizing veil-piercing in practice.

## 6. CONCLUSION

This article provides a systematic analysis of the abuse of commercial legal entity status in business operations in Vietnam, clarifying the relationship among independent legal entity status, the principle of limited liability, and the “penetrating the corporate veil” doctrine. It also points out gaps and inconsistencies in defining the individual and joint liability of members/shareholders, managers, and legal representatives. Based on this foundation, the study proposes improvements to the legal framework by specifically clarifying the mechanism of penetrating the legal entity veil, clearly establishing cases of joint liability between legal entities and individuals in relation to third parties, and clearly defining the purpose and scope of activities as a basis for evaluating the scope of representation and resulting liability.

The study acknowledges several limitations: it relies primarily on normative analysis and comparative law, while empirical data (case law,

violation statistics) are limited in availability and consistency; some conclusions on accountability mechanisms are currently only at the academic interpretation level in the context of a changing legal system; and the cost-benefit of reform options for the investment environment and business compliance costs have not been quantified.

Recommended further research directions include: 1) conducting empirical research on enforcement (coding of judgments/sanction

decisions) to assess the application threshold and deterrent effect of sanctions, as well as the level of acceptance of the “penetrating the veil” doctrine in litigation; 2) analyzing the policy impact using a cost-benefit approach for the proposed amendment options; 3) expanding regional comparisons to identify best practices in corporate governance and accountability mechanisms; and 4) developing a risk indicator framework to support risk-based supervision for regulators and investors.

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