

Rights Of Defence Of Commercial Legal Persons Criminally Charged Under The Vietnam Penal Procedure Law

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Abstract

The article delves into a comprehensive exploration of the existing regulatory landscape concerning the rights of defense for commercial legal entities accused in Vietnam. By thoroughly analyzing the current Vietnam penal procedure law provisions on the right to self-defense and seeking legal counsel for accused commercial legal entities, the article sheds light on the legal framework's intricacies in this context. This scrutiny is vital in ensuring that the fundamental principles of justice and fairness are upheld in the legal proceedings of such cases. By engaging in an in-depth analysis of the legal framework, the authors aim to gain a deeper understanding of the practical implications of these laws within the context of real-world legal proceedings. Through this approach, the article strives to provide a holistic understanding of the challenges and opportunities that arise when protecting the rights of these entities facing criminal accusations. The authors employ a comparative methodology to bolster their findings, evaluating the rights of defense for charged individuals and commercial legal entities. By juxtaposing the rights afforded to individuals facing charges with those granted to commercial legal entities, the article identifies potential limitations within the current legal provisions. This approach helps highlight any disparities or gaps in legal protection, providing a foundation for advocating for more robust legal safeguards for commercial legal entities accused of criminal conduct.

Building upon their insightful analysis, the authors offer practical solutions tailored to address the unique challenges commercial legal entities face in the legal landscape. These solutions encompass a spectrum of legal and procedural enhancements, all aimed at ensuring the protection of commercial legal entities' legitimate rights and interests, thereby establishing a more balanced and equitable legal environment for all parties involved in criminal legal proceedings. Crucially, the proposed solutions serve to protect

the rights of commercial legal entities and maintain the fairness and integrity of the entire legal process. By strengthening the rights of defense for these entities, the authors contend that the overall fairness of case settlements can be improved. The article emphasizes that a just and well-balanced legal system is crucial for maintaining public trust in the criminal justice system.

In conclusion, the article's exploration of the regulations concerning the rights of defense for commercial legal entities accused in Vietnam is a timely and significant endeavor that addresses a crucial aspect of the legal system. Through a meticulous analysis of the existing legal provisions, a comparative assessment to uncover potential limitations, and the presentation of practical solutions, the authors contribute to the ongoing discourse surrounding the enhancement of legal safeguards for commercial legal entities. This ensures the protection of their rights and plays a pivotal role in maintaining the credibility and fairness of the broader criminal case settlement process. By advocating for these improvements, the authors underscore their commitment to fostering a legal environment where justice, fairness, and equitable treatment are paramount.

Keywords: Right of defence; commercial legal person; penal liabilities; legal representative of the legal person; Vietnam penal procedure.

1. Introduction

The issue of commercial legal entities being held liable for criminal and penal prosecution procedures is not a novel topic in the penal law of numerous countries globally. Still, rather, it presents a fresh challenge in the legal landscape of Vietnam. Before the significant juncture of 2015, in the Vietnamese legal framework, the scope of legal entities' responsibility was primarily delineated by civil, economic, and administrative laws. However, a distinct differentiation was apparent within the domain of criminal law. Despite the codification of the penal law on two separate occasions, through the enactment of both the 1985 Penal Code and the 1999 Penal Code, the imposition of criminal liabilities was exclusively reserved for individual offenders. This effectively meant that only individuals endowed with the capacity for penal liability, found guilty of committing offenses explicitly stipulated in the Penal Code, could feasibly be subjected to the ramifications of penal liabilities. Meanwhile, legal entities, which inherently exist as non-individual entities,

were effectively exempt from bearing the weight of penal liability.

However, the legal landscape underwent a momentous transformation on November 27, 2015, when the 10th session of the 13th National Assembly of Vietnam convened and formally endorsed the new editions of the Penal Code and the Penal Procedure Code. These far-reaching revisions introduced various amendments and supplements to the existing legal framework. Notably, a watershed development came to the fore. For the very first time in the evolutionary trajectory of Vietnam's penal law, provisions were enacted to endow commercial legal entities with penal liabilities. Additionally, comprehensive mechanisms were established to meticulously chart the trajectory of penal prosecution procedures applicable to this previously untouched legal subject. This pioneering inclusion can be attributed to an amalgamation of practical difficulties, the imperative to address challenges, and the overarching goal of rectifying inadequacies encountered when adjudicating legal transgressions committed by commercial legal entities. Beyond this, the pivotal inclusion also aspired to engender a conducive environment for effectively safeguarding the legitimate rights and interests of individuals who bore the brunt of legal infractions wrought by these commercial legal entities. It's noteworthy to emphasize, however, that the ambit of penal liabilities, as outlined by the current Vietnamese penal law, remains confined to commercial legal entities, excluding non-commercial legal entities from its purview. This groundbreaking shift in legal principles underscores Vietnam's commitment to harmonizing its legal framework with international standards. It represents a bold stride towards establishing a balanced and equitable system that holds both individuals and commercial legal entities accountable for their actions. By extending penal liabilities to encompass entities beyond individual actors, Vietnam demonstrates its willingness to embrace a holistic approach to justice and accountability, thus enhancing the integrity and credibility of its legal system on a global scale.

A committed commercial legal person is understood as a commercial legal person that commits acts dangerous to society specified in the Penal Code, intentionally or unintentionally, infringing upon an object recognised and protected by the Penal Code according to the provisions of this Code must be penalised. The current Penal Code regulates the scope of crime for which legal persons are criminally liable, unlike natural persons, but “only a commercial legal person who commits a crime specified in Article 76 of this Code will be

held criminally liable”¹. Accordingly, legal persons are only criminally liable for 33 crimes as prescribed in one of the following articles of the Penal Code²: Article 188 (smuggling); Article 189 (illegal trafficking of goods or money across the border); Article 190 (manufacture or trading of banned commodities); Article 191 (storage or transport of banned commodities); Article 192 (manufacture or trading of counterfeit goods); Article 193 (manufacture or trading of counterfeit such as foods, foodstuff, or food additives); Article 194 (manufacture or trading of counterfeit such as medicines for treatment or prevention of diseases); Article 195 (manufacture or trading of counterfeit such as animal feeds, fertilizers, veterinary medicine, pesticides, plant varieties, animal breeds); Article 196 (hoarding); Article 200 (tax evasion); Article 203 (Illegal printing, issuance, trading of invoices or receipts for state budget collection and payment); Article 209 (deliberate publishing of false information or concealment of information in securities activities); Article 210 (use of internal information to deal in securities); Article 211 (cornering the stock market); Article 213 (commitment of frauds in insurance business); Article 216 (evasion of social insurance, health insurance, unemployment insurance payment for employees); Article 217 (violations against regulations on competition); Article 225 (infringement of copyrights and relevant rights); Article 226 (infringement of industrial property rights); Article 227 (violations against regulations on survey, exploration and extraction of natural resources); Article 232 (violations against regulations on forest extraction and protection, and management of forest products); Article 234 (violations against regulations on management and protection of wild animals); Article 235 (Causing environmental pollution); Article 237 (violations against regulations on environmental emergency prevention, response, and relief); Article 238 (Violations against regulations on protection for safety of irrigation works, embankments, and works for protection against natural disasters; violations against regulations on protection of river banks); Article 239 (Import of wastes into Vietnam’s territory); Article 242 (Destruction of aquatic resources); Article 243 ((Forest destruction); Article 244 (Violations against regulations on management and protection of endangered, value and rare animals); Article 245 (Violations against regulations on management of wildlife sanctuaries); Article 246 (Import and spread of invasive alien species); Article 300 (Terrorist

¹ Clause 2, Article 2 of the Vietnam Penal Code.

² See: Article 76 of the Vietnam Penal Code.

financing); Article 324 (Money laundering) and when the following conditions are met³:

- Crime offence is committed in the name of a commercial legal person;
- Crime offence is committed for the benefit of a commercial legal person;
- Crime offence is committed under the direction, control, or approval of a commercial legal person;
- The statute of limitations for penal prosecution has not yet expired as prescribed in clauses 2 and 3, Article 27 of this Code: depending on the crime committed by the commercial legal person: 05 years for less serious crimes; 10 years for serious crimes; 15 years for grave crimes; 20 years for severe crimes.

In Vietnam's penal procedures, the criminally charged legal person only includes the status of the accused and defendants and entails the full rights and obligations of the accused and defendants as individuals. However, since a legal person is independent, it cannot act for itself but only through specific humans. Therefore, to ensure equality under and before the law of legal persons facing criminal charges, the Penal Procedure Code stipulates that all procedural activities of legal persons subject to penal prosecution shall be conducted through their legal representatives. It means that the representatives of the legal persons are not acting in their name as an individual but rather in the name of the subject being represented (the charged legal person). Therefore, the representatives should not be regarded and treated as charged persons.

This comprehensive catalog of specific criminal offenses underscores the far-reaching responsibility of legal entities within the bounds of the law. It delineates the clear boundaries within which commercial legal persons can be held accountable for their actions. This meticulous definition of crimes is a foundational cornerstone of the legal system, fostering clarity, consistency, and equity in the administration of justice. The comprehensive nature of these provisions guides the actions of legal entities and promotes a pervasive sense of legal compliance that contributes to broader societal well-being. By specifying the array of offenses for which legal entities can be prosecuted, the Penal Code aims to strike a delicate balance between the need for accountability and the recognition of these entities' distinct roles in the economic

³ See: Clause 1, Article 75 of the Vietnam Penal Code.

landscape. Each designated offense carries its weight and significance, reflecting the nuanced intricacies of modern legal dynamics. As the legal landscape continues to evolve, it's essential to view this list of offenses as a reflection of the dynamic nature of criminal law itself. Including newer offenses, such as those related to environmental protection and cybercrimes, exemplifies the legal system's commitment to adapting to the challenges of the contemporary world.

In essence, these articles shape the framework of legal accountability and uphold the principle of justice that extends to all entities, be they individuals or commercial legal persons. The provision of precise articles ensures that accountability remains just, clear, and balanced, aligning with the broader goals of promoting social order and safeguarding the interests of the state, individuals, and the environment. Moreover, the careful selection and detailed description of these offenses showcase the Vietnamese legal system's emphasis on clarity and specificity. This meticulous approach mitigates potential ambiguities in legal proceedings and ensures that the criteria for legal prosecution are transparent and universally understood. It's also worth noting that this enumeration of offenses reverberates beyond mere legal statutes. It reflects a broader societal commitment to integrity, fairness, and the protection of public interests. By encompassing a wide spectrum of actions, the Penal Code serves as a deterrent against unlawful conduct and underscores the egalitarian principles that form the foundation of a just society.

The multifaceted nature of these provisions is a testament to the intricate interplay between legal principles and the practical challenges of the modern world. Each enumerated offense represents an aspect of the legal framework that must be meticulously tailored to address evolving circumstances, technological advancements, and societal shifts. Therefore, the meticulous listing of criminal offenses within the Vietnam Penal Code exemplifies the legal system's commitment to transparency, equity, and accountability. This comprehensive compilation of specific offenses, ranging from economic infractions to environmental protection violations, demonstrates the legal system's responsiveness to the multifaceted challenges of the contemporary world. By consistently upholding principles of fairness, integrity, and justice, these legal provisions contribute to establishing a harmonious society rooted in the rule of law.

The fundamental right of defense of the charged person appeared in the world very early in the Medieval Ages.

It progressed to the present day, associated with the inevitable objective necessity to protect the legitimate interests of the charged person in the criminal case settlement process. Today, the charged person's right to defence is a compulsory and indispensable standard in the right to a fair trial, enshrined in numerous international legal documents on human rights, as well as in the Constitution and laws of virtually all countries. In Vietnam, the principle of ensuring the right of defence is enshrined in all Constitutions, which serves as the cornerstone for charged persons to protect their legitimate rights and interests. It also facilitates competent authorities in conducting legal procedures to properly, objectively, and comprehensively settle the criminal case, avoiding errors and ensuring the crime is not overlooked. This is in line with the requirements of judicial reform to improve the quality of litigation in criminal procedure.

From January 1, 2018, the time when the Penal Code and the Vietnam Penal Procedure Code came into force to the present day, the practice of settling criminal cases for commercial legal entities in Vietnam is not widespread; only a couple of cases involving legal persons were brought to trial by the Vietnamese Court. Specifically, case 1: On January 14, 2020, the People's Court of Phu Tho Province, Vietnam, held the first-instance trial of the case "Infringement of industrial property rights" against the defendant, Viet Phap Aluminum Factory - Viet Phap Aluminum Joint Stock Company, and its director Vu Van Phu, about the illegal use of the "Viet Phap Shal Aluminium" trademark; and case 2: On March 16, 2023, the Court of Ba Ria - Vung Tau province, Vietnam heard the first-instance trial of the case "Infringement of industrial property rights" against the defendant, Sai Gon Viet Nam Beer Group Joint Stock Company and defendant, Le Dinh Trung, who is the representative of Sai Gon Viet Nam Beer Group Joint Stock Company, for the act of infringing industrial property rights over the protected beer trademark. With the limited number of practical cases of criminal prosecution against legal persons as mentioned above, the authors do not have enough background to comprehensively evaluate the guarantee of this subject's right of defence in criminal procedures in reality. However, our research found that the content of the provisions on the right of defense of the charged legal person in the Vietnam Penal Procedure Code has some limitations; therefore, it is necessary to conduct a thorough discussion and come up with a comprehensive and well-considered solution. While considering international best practices, an in-depth examination of these limitations can yield insights into refining

and improving the existing legal framework. Furthermore, the essence of ensuring justice through comprehensive defence mechanisms cannot be underestimated. By addressing these limitations, the Vietnamese legal system can stand as an exemplary model that respects the rights and interests of charged legal persons, ensuring fair and just proceedings.

To sum up, the dynamics surrounding legal persons' criminal charges in Vietnam have witnessed notable changes in recent years. These changes reflect an evolving legal landscape that embraces modern principles of justice. While the number of practical cases remains limited, the significance of upholding the right to defence cannot be undermined. Navigating the intricate nuances of ensuring fair trials for legal entities requires a nuanced approach. Collaborative efforts from legal practitioners, scholars, and lawmakers are essential in ensuring a robust legal framework that stands the test of time and upholds the ideals of justice, equity, and integrity.

2. Provisions of penal procedure law on rights of defence of charged commercial legal persons

The 2013 Constitution of Vietnam recognises the vital principle of guaranteeing the right of defence of the legal persons criminally charged in clause 4, Article 31, according to which: "Any person who has been arrested, held in custody, prosecuted, investigated, charged or brought to trial in violation of the law has the right to self-defend or to seek the assistance of defence from lawyers or other people." To specify the above principles content, Article 16 of the 2015 Penal Procedure Code provides that: "Any person who has been charged has the right to self-defend or to seek the assistance of defence from lawyers or other people..."; the right to self-defend or to seek the assistance of defence, is recognised as a specific procedural right of persons held in an emergency, persons arrested, held in custody, accused and defendants in criminal procedures.

Similar to the charged individual, an integral mechanism for the accused, the defendant, who is a commercial legal person, to protect themselves against the accusations of the State during the settlement process of criminal cases is the right to defence. However, according to the provisions of the Penal Procedure Code, this right is exercised through the legal representative of the legal person. Clause 1, Article 435 of the Penal Procedure Code provides that the legal representatives of the legal persons have the right to defend themselves or ask counsel to defend the legal persons, and stipulate other specific procedural rights guaranteeing the right of defence to elaborate on, dispute, a part or all of the

accusation or provide extenuating circumstances for the penal liability of the charged legal person. Notably, the scope of the right of defence and the exercise of the right of defence of the charged commercial legal person is intrinsically linked to the legal representative of the commercial legal person in penal procedures. Therefore, this right can be transferred to another representative when there is a change of the legal representative of the legal person in the cases prescribed by the statutory provisions.

Furthermore, the concept of defence in criminal cases, especially for commercial legal entities, has evolved considerably over time. It reflects a fundamental principle enshrined in legal systems worldwide, wherein every accused party has the right to present their arguments, counter-evidence and ensure their interests are represented adequately. Including the right to defence for commercial legal entities in the Penal Procedure Code marks a significant milestone in aligning Vietnamese legal practices with international standards of justice. This inclusion safeguards the principle of due process and upholds the tenets of a fair trial. By allowing legal representatives to advocate for charged commercial legal persons, the legal system can mitigate the potential power imbalance between the State and corporate entities.

Moreover, the provision to transfer this right to another representative underlines the flexibility of the legal system in adapting to practical scenarios, such as changes in leadership within corporate entities. Essentially, the right to defence is a pivotal component of a just and transparent legal framework. Its application in the context of charged commercial legal persons underscores the commitment to equitable proceedings, ensuring that individuals and entities are accorded their fundamental rights within the criminal justice system. This further cements the legal system's role as a guarantor of justice, promoting accountability and upholding the rule of law in the realm of commercial legal entities facing criminal charges.

2.1. Right of self-defence for legal persons

Self-defence is one of the specific rights of the charged person, recognised and guaranteed by law, allowing the charged person to exercise himself in penal procedures through specific procedural acts and procedural rights to protect their legitimate rights and interests during the settlement process of criminal cases. For a charged commercial legal person, the right of self-defence is provided for by law to be exercised through the legal representative of the legal person. According to Clause 1, Article 435 of the Penal Procedure Code, the authors

determined that in addition to the right to access procedural information related to the prosecution of a legal person, the legal representative of the legal person is also allowed by the law to self-perform procedural acts to protect the legitimate rights and interests of the legal person against accusations, to reduce the penal liability of the legal person, specifically:

- The right to present statements, to express opinions, not to be forced to testify against the legal person represented by the representative, or to admit the legal person represented is guilty.

According to the current Vietnam Penal Procedure Code, the subject is responsible for proving and determining the facts of a criminal case and is the agency competent to conduct the procedures, including the Investigation agency, Procures, Court, and several agencies tasked with conducting certain investigative activities. In the process of settling a case against a legal person subject to criminal prosecution, the agency competent to conduct the procedures will necessarily convene and take testimonies of the legal representative of the legal person in order to collect details related to the case, or this representative actively provides meaningful information for the settlement of the case. Point dd, clause 1, Article 453 of the Penal Procedure Code provides that the representative of a legal person has the right to “present testimony, present opinions, not be forced to give testimony against the legal person he represents or be forced to admit that the legal person he represents is guilty.” Accordingly, the representative has the right to give arguments to protect the rights and interests of the charged legal person. For adverse circumstances, determining the legal person is guilty, contrary to the interests of the legal person, the representative is not required to present or admit. This provision content is entirely similar to the rights of the charged person being an individual as recognized by law in point dd clause 1, Article 58; point dd, clause 2, Article 59; point dd, clause 2, Article 60, and point dd, clause 2, Article 61 of the Penal Procedure Code, directly affirms that determining the facts of a case is only a right but not a liability of the legal representative of the legal person. This subject can invoke the above provision to, on behalf of a charged legal person, exercise the “right to silence” at various stages of the criminal procedures process.

This alignment between the rights of charged individuals and those of charged legal persons underscores the principles of justice and equity within the criminal justice system. The integral concept of affording individuals and entities the right to present their arguments, express their opinions, and provide

testimony fosters a transparent legal framework that upholds due process and safeguards the rights of all parties involved.

Additionally, it's crucial to acknowledge the intricate interplay between the legal representative of a charged legal person and the broader criminal proceedings. The testimony provided by the representative can serve as a vital source of information for the competent agencies to determine the veracity of allegations and establish a comprehensive understanding of the case. Moreover, this provision not only underscores the rights of the representative but also emphasizes the legal principle of protecting the legal person's interests. By allowing the representative to exercise the "right to silence" under certain circumstances, the law acknowledges the delicate balance between ensuring a fair trial and safeguarding the legal person's reputation and interests. In summary, the Vietnam Penal Procedure Code emphasizes the significant role played by legal representatives in the criminal justice system. This recognition is in line with international principles of justice that prioritize the right of individuals and entities to defend themselves against allegations. The provisions within the Code create a harmonious and equitable legal environment where both individuals and commercial legal entities can exercise their rights to a just and fair trial.

- The right to present evidence, documents, objects, requests

Point e, clause 1, Article 453 of the Penal Procedure Code provides that the legal representative of the legal person has the right to present evidence, documents, objects, and requests to the competent authority to conduct procedures to protect the legitimate rights and interests of the charged legal person. As the legal representative of the legal persons criminally charged, this person is entitled to proactively provide evidence, documents and objects related to the case to prove that the legal person he represents is innocent, proving extenuating circumstances for the penal liability of the legal person. In this case, the competent authority must make minutes of receipt, examine, evaluate, and use this evidence source according to the order and procedures prescribed by the statutory. In addition, the legal representative is also entitled to make other lawful requests, such as requesting a confrontation with a witness, and the competent authority shall, within the ambit of its responsibilities, handle such request or request and notify them of the results. If the request or proposal is not accepted, it must reply and clearly state why. If the representative disagrees with the settlement result of the agency competent to conduct the procedures, the

representative has the right to complain according to the statutory⁴.

- The right to request the change of competent procedure-conducting persons, experts, appraisers, interpreters, and translators according to the provisions of the Penal Procedure Code

Persons competent to conduct procedures are subjects carrying state power in the settlement of criminal cases; experts, appraisers, interpreters, and translators are participants who are solicited or required to participate in the legal procedures to clarify details related to the case as well as ensure the right to use of spoken and written language in penal procedures. The penal procedure process requires the above subjects to adhere to the principle of “Ensuring the impartiality of persons competent to conduct procedures and participants in the procedures” recorded in Article 21 of the Penal Procedure Code in order to protect ensure that the results of the case settlement of the competent procedure-conducting agencies are objective and lawful. Therefore, point g, clause 1, Article 435 of the Penal Procedure Code stipulates that the legal representative of the legal person has the right to “request to change the person competent to conduct the procedures, the expert, the appraiser, interpreters, translators...” if there are backgrounds to believe that their participation in penal procedures is not impartial according to statutory backgrounds⁵. Exercising this right in practice means that the representative protects the charged legal person by himself by limiting procedural acts. Procedural decisions are made and are issued not based on legal provisions but are subjective, not impartial to the mentioned subjects, directly affecting the lawful rights and interests of the charged legal person.

- The right to participate in the trial, to request the presiding judge to inquiry or to question the participants in the trial by himself if so agreed by the presiding judge; right to argue in court

The content of these rights is specified in point k, clause 1, Article 453 of the Penal Procedure Code, which allows the legal representative of the legal person to have the right to participate in the trial, to fully monitor the procedures of the charged legal person, to be allowed to request the presiding judge to inquiry or to question of the participants in the trial by himself such as questioning victims, witnesses, experts, etc., and argue with prosecutors and other subjects to protect the

⁴ See: Article 175 of the Vietnam Penal Procedure Code.

⁵ See: Article 49; clause 5, Article 68; clause 5, Article 69; clause 4, Article 70 of the Vietnam Penal Procedure Code.

rights and interests of the legal person. This group of rights of the representative also makes an essential contribution as the basis for the hearing at the trial to be objective, comprehensive, and complete.

- Right to state the final opinion before deliberation

Stemming from the defendant's right to have the last word to defend himself before the Trial Panel conducts a deliberation, point I, clause 1, Article 453 of the Penal Procedure Code stipulates the legal representative of the legal person has the right to "state the final opinion before deliberation". This right is exercised at the court trial after the end of the argument, allowing the legal representative of the legal person to present issues that they consider important and necessary for the Trial Panel to pay attention to consider when deliberating so that it can issue a grounded and lawful judgment or decision. The content of the final statement may be to request the Trial Panel to extenuate the penalty if the representative admits that the legal person is guilty or to ask the Trial Panel to note the exculpatory evidence if it thinks that the legal person is not guilty. The legal representative of the legal person may also present new details that are important to the case for the Trial Panel to consider and decide to return to questioning and arguing so that the settlement of the case is objective, factual, quick, avoids omitting criminals, and avoids doing wrong to the legal person.

- Right to appeal judgments and decisions of First-instance courts

Clause 1, Article 435 of the Penal Procedure Code stipulates the right to "appeal the judgment or decision of the court" of the legal representative of the commercial legal person. The right of appeal, in this case, allows the representative to request the superior court to directly re-trial the judgment or consider the decision of the first-instance court when it thinks that the judgment or decision is inappropriate, affecting the lawful rights and interests of the legal person they represent. The legal consequences of the representative exercising the right to appeal under regulations are that the Court of Appeal must open a court trial to carefully consider and evaluate evidence and circumstances related to the appealed content, on that basis, to issue judgments and decisions in the name of the State accurately, objectively and fairly.

- Complaints about procedural decisions and acts of agencies or persons competent to conduct procedures

In criminal procedures, agencies and persons competent to conduct procedures issue many decisions and perform many procedural acts to settle the case. These procedural decisions and acts are not always the result of compliance with the legal order and procedures, and therefore, the possibility of affecting the lawful rights and interests of the charged legal person may happen in reality. Point o, clause 1, Article 435 of the Penal Procedure Code stipulates that the legal representative of a legal person has the right to “complain about procedural decisions and acts of agencies or persons competent to conduct procedures” when having backgrounds consider that such decision or act is illegal, infringes upon his lawful rights and interests or that of the legal person that he represents. Competent agencies and persons must receive, consider, and settle complaints in a timely and lawful manner; At the same time, the written settlement result must be sent to the complainant for information⁶.

2.2. Right to ask for defence counsel

In addition to the right to defend himself, the charged commercial legal person is also entitled to ask others to defend himself in criminal procedures. Similar to other rights of a charged legal person, the legal representative also exercises the right to ask for the defence counsel of a legal person. Point h, clause 1, Article 435 of the Penal Procedure Code stipulates that the legal representative of a legal person has the right to “self-defend or to ask for defence counsel to defend the legal person.” The order and procedures for the legal representative of the legal person to ask for a defence counsel and the registration of defence of the subject of this request shall be carried out as for an individual⁷. Thus, the legal representative is entitled to ask a lawyer or another person to defend the legal person, and this person must register for defence under the law⁸. Only when forming the status of a defence counsel in criminal procedures by the competent authority entering the register and sending a written notice to the defence counsel will this subject have full procedural rights of the defence counsel provided in clause 1, Article 73 of the Penal Procedure Code, to officially participate in the procedures to protect the legitimate rights and interests of the charged legal person, to perform the exculpatory, and to

⁶ See: Article 32 of the Vietnam Penal Procedure Code.

⁷ According to the provisions of Article 431 of the Vietnam Penal Procedure Code, the procedures for legal persons to be denounced, reported on crimes, proposed to be prosecuted, investigated, prosecuted, tried and executed may proceed under the provisions of Chapter XXIX of the Penal Procedure Code, and under other provisions of this Code not inconsistent with the provisions of Chapter XXIX.

⁸ See: Article 78 of the Vietnam Penal Procedure Code.

extenuate penal liabilities of this legal person. It can be seen that, through the representative's right to ask for a defence counsel, the commercial legal person has better legal protection and, at the same time, contributes to helping the competent authority to conduct the procedures to settle the criminal case objectively, limiting mistakes and omissions, avoiding wrongdoing, and unjustly innocent legal persons.

3. Some limitations and proposed solutions to improve the legal provisions on rights to defence of charged commercial legal person

Due to the provisions of the procedure for criminal prosecution of legal persons, firstly recorded in chapter XXIX of the 2015 Vietnam Penal Procedure Code and the practice of settling criminal cases for this subject are not many, and at the same time, the right to defence of the charged legal person cannot exercise directly as an individual's right but through a legal representative, so it is certain that the legal issues surrounding this subject's right to defence still have many limitations and shortcomings that need to be studied and provided a complete solution.

Firstly, about the time arising the legal right to defend the charged commercial legal person

As described, the right to defence of a legal person is guaranteed through the right to self-defence, to ask a legal representative to represent the legal person. Therefore, determining the representative of the charged legal person is very important because, from this moment, the legal person's right to defence arises simultaneously.

According to clause 1, Article 434 of the Penal Procedure Code, a legal person must appoint and ensure his legal representative participates fully in prosecution, investigation, prosecution, adjudication, and enforcement activities at the request of a competent authority or person. In case the legal representative of a legal person is charged, investigated, prosecuted, tried, or cannot participate in the procedures, the legal person must appoint another person to act as his legal representative to participate in the procedures. If the legal person changes the representative, the legal person must immediately notify the agency competent to conduct procedures. At the time of prosecution, investigation, prosecution, or trial, if the legal person does not have a legal representative or has more than one person acting as the same legal representative, the agency competent to conduct procedures shall appoint a representative for the legal person to participate in the procedures. The problem set up here is that the law has not specified clearly how long a reasonable time for

a legal person to send a defence counsel to participate in the procedures is after the competent authority prosecutes the accused; the same applies to the case where the legal person appoints another person to be the succeeding legal representative to participate in the settlement, or the agency competent to conduct the procedures appoints the representative in the case the legal person has many representatives? According to the authors, this limitation leads to a passive legal entity in appointing a representative, and the competent authority is also arbitrary, delaying in appointing a representative, which directly affects the time of arising and exercising the right of defence of the charged legal person in practice.

We recommend that Vietnamese legislators need to study and promulgate specifically this milestone based on reference to the regulations on the time that the State Legal Aid Centre appoints defence counsels for charged individuals at the request of the agency competent to conduct the procedures⁹ so that the charged legal person can obtain the right of defence as soon as possible through the right to defend himself and ask for a defence counsel for the legal person of the legal representative. If the eligibility to participate in this procedure has yet to be determined, the right of defence of the accused legal entity has not been exercised.

Secondly, on conflict resolution, in case the legal representative of a legal person exercises statutory rights but not for the benefit of the legal person

As analysed, in the process of representing a legal entity to participate in the procedures, the legal representative of the legal entity is entitled to exercise the following rights: To present testimony, to present opinions, and not to be required to give testimony against the legal person he represents or is forced to admit that the legal person they represent is guilty; Present evidence, documents, objects, or requests; State the final opinion before deliberation; To appeal against court judgments and decisions;... From the perspective of the meaning of the above rights, it is aimed at ensuring that the

⁹ Clause 4, Article 3 of Joint Circular 10/2018/TTLT-BTP-BCA-BQP-BTC-TANDTC-VKSNDTC stipulates the time for the appointment of defence counsels for charged persons of the State Legal Aid Center when there is the request from the agency competent to conduct procedures is as follows: *“In case of receiving the notice of the competent agency or person to conduct the procedure, the Center or Branch shall have to appoint a person to provide legal aid within 03 working days from the date of receiving the notice. If the case falls under the case of immediate acceptance, the Center or Branch will immediately appoint a person to provide legal aid to the person receiving legal aid”*.

legal representative of the legal person has a legal basis to defend the legal person he represents against the prosecution. However, if the representative exercising the above rights does not come from the protection of the legal person, going against the interests of the legal person, how the law will handle it so that the legal person's right to defence is guaranteed during the penal procedure process. For example, a representative gives testimony, provides evidence to accuse or makes an appeal in the direction of aggravating the penalty against a legal person without the consensus of that legal person...

To solve the above problem, the authors propose to add to the content of Article 343 Penal Procedure Code relating the case "when there is a conflict or conflict between the legal representative of the legal person and the legal person in the exercise the right to defence" is one of the backgrounds for the legal person to be entitled to appoint another representative to participate in the procedure process to protect its best legitimate rights and interests besides the two bases already identified: (1) the legal representative of the legal person is charged, investigated, prosecuted, tried, and (2) the legal representative of the legal person cannot participate in the procedures.

Thirdly, regarding the consideration of regulations on appointing a defence counsel for the charged legal person

Appointing a defence counsel for a charged person is a procedure by a competent authority to conduct legal procedures in certain statutory cases to ensure that an individual charged has a defence counsel to protect his legitimate rights and interests for them in penal procedures. Specifically, clause 1, Article 76 of the Vietnam Penal Procedure Code stipulates that the competent procedural authorities must appoint a defence counsel for the charged person if the charged person, his representative or relatives uninvited defence counsels include: Firstly, for the accused, defendants of crimes which the current Penal Code stipulates the maximum penalty frame is 20 years imprisonment, life imprisonment, death penalty; Secondly, for a charged person with a physical defect that cannot be defended, a person with a mental disability or a person under the age of 18.

The Vietnam Penal Procedure Code does not currently stipulate the appointment of a defence counsel for the charged legal person if the subject has no defence counsel. Considering that out of 33 crimes for which commercial legal persons are criminally liable, 23 are less severe crimes, 09 are of serious types, and 01 are very serious. Although the highest penalty

that a legal person can bear does not fall into the group of severe crimes with the highest level of the applicable penalty frame is over 20 years imprisonment, life imprisonment, or the death penalty as in the case of individuals who are allowed to appoint defence counsels according to Vietnamese penal procedure code, one of the primary penalties that a commercial legal person that commits a crime can be imposed is the permanent suspension of operations, which leads to the legal consequence of a complete cessation of the commercial legal person's operations in one or other areas where commercial legal persons commit crimes that cause damage or are likely actually to cause damage to the lives of many people, cause environmental incidents or adversely affect security, order and social safety, and unable to remedy the consequences caused¹⁰. Suppose a legal person is charged with the maximum penalty frame applied is the permanent suspension of operations. This legal person, for various reasons, does not invite a defence counsel, such as not having enough financial resources to pay the defence costs, the lawyers do not agree to accept the defence for the legal person, whether the legal representative of the legal person can by himself or herself ensure the excellent performance of the defence, guarantee best protect the legal rights and interests of the legal person? Moreover, it should be noted that in the case of a permanent suspension of operations imposed by the court, in addition to directly stopping the business activities of the legal person, it also indirectly affects the economic life of many employees of such legal person, causing some adverse social problems such as unemployment, leading to law violations, etc. It is thought that legislators should consider and consider expanding the scope of appointing defence counsels specified in clause 1, Article 76 of the Penal Procedure Code to the case of "the accused or defendants for crimes for which the Penal Code stipulates that the application level is the permanent suspension of operations" without defence counsel so that the legal person's right to defence in Vietnam is further guaranteed in the future.

4. Conclusions

In order to effectively address the evolving challenges posed by criminal activities in the new era, along with the imperative socio-economic development requirements of Vietnam, the historic 2015 Penal Code introduced a pivotal transformation. This transformative shift marked the first instance where the penal liability of commercial legal entities was explicitly stipulated. Simultaneously, the 2015 Penal Procedure Code established comprehensive procedures for the criminal

¹⁰ See: Clause 1, Article 79 of the Vietnam Penal Code

prosecution of legal persons. The introduction of these legal provisions signifies a theoretical milestone and a groundbreaking step in practical application.

As this aspect of the Vietnamese penal law navigates uncharted territory, it is imperative to recognize the inherent complexities of granting rights to defence for legal entities involved in the procedural realm. While the foundation of the rule of law seeks to ensure impartiality, justice, and rights protection, the practical execution of these ideals in this new context presents inherent challenges and potential limitations. Through an in-depth exploration of the provisions governing the right to defence within the Vietnamese penal procedure law, this article stands as a beacon of insight. Its role extends beyond mere discourse, guiding the ongoing process of building and refining the legal framework surrounding the right to defence. This endeavor, in turn, contributes significantly to the comprehensive implementation of measures and strategies that underpin the broader justice reforms in Vietnam. This commitment finds its roots in the resolution set forth by the Conference of the Party Central Committee, session XIII, which envisions a legal system characterized by democracy, fairness, and humanity.

The directive to construct a legal framework that is not only comprehensive and well-structured but also in alignment with the ideals of democracy and fairness is pivotal. It underscores the Party's determination to establish a legal environment that embraces principles such as transparency, accessibility, and protecting the rights and interests of individuals, organizations, and businesses. This vision extends to fostering an environment that facilitates innovation and growth while safeguarding the fabric of social relations. As the Vietnamese legal system undergoes these transformations, it is worth acknowledging that integrating commercial legal entities into criminal prosecution is a multi-faceted endeavor. It necessitates harmonizing legal principles, practical realities, and ethical considerations. The process demands a delicate balance that considers not only the interests of the State but also the principles of justice and equity that underpin the legal system. Hence, the journey toward a more comprehensive and inclusive legal framework is monumental and complex. The introduction of penal liability for commercial legal entities and the establishment of procedures for their criminal prosecution marks a significant leap forward. However, as this landscape unfolds, the challenges and intricacies of ensuring the right to defence for these entities come to the forefront. By fostering an environment that promotes open discourse, exploration,

and refinement of these legal provisions, Vietnam can forge a path towards a just, democratic, and equitable legal system that serves as a model for the region and beyond.

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