

SHORTCOMINGS IN VIETNAMESE LAW ON GENERAL PARTNERS AND RECOMMENDATIONS FOR IMPROVEMENT

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I. INTRODUCTION

A general partnership business arrangement is a type of business whereby two or more investors get into a business venture with a vision of sharing the profits and liabilities that might arise from the business. It is generally understood that the partners in general partnerships bear unlimited liability for any liabilities that the general partnership business may accrue. This means that, if the assets of the general partnership business are depleted before completely offsetting its liabilities then the individual assets of the general partners are used to offset the balance.¹ Further, it is noteworthy that

¹ A. Bloomenthal, “General Partnerships: Definition, Features, and Example,” *Investopedia* (Aug. 14, 2023), <https://www.investopedia.com/terms/g/generalpartnership.asp>.

general partners are actively involved in running the business. They are compensated for this role and therefore can be held personally liable for the liabilities incurred by the business. On the other hand, the law recognizes another type of partner known as a limited or silent partner. This partner buys shares in the business but is not involved in the day-to-day running of the enterprise. Because they are not actively involved in the running of the business, they cannot be held personally liable for the liabilities of the business. The scope of their liability is limited to their investment in the business (their shareholding).² Therefore, a general partner invests in the partnership, controls its management, and is also actively involved in its day-to-day operations and hence bears personal responsibility for its liabilities. A general partner's assets may be confiscated and liquidated to pay off creditors. While a limited/silent partner invests in the enterprise but is

² W. Kenton, "Limited Partner: What It Is, Laws, Role, and Tax Treatment," *Investopedia* (Oct. 2, 2022), <https://www.investopedia.com/terms/l/limited-partner.asp>.

not involved in its operations and so is exempted from personal responsibility for its liabilities.³

According to the applicable law of Vietnam, Article 177 of the 2020 Law on Enterprises,⁴ a partnership is an enterprise in which there are at least two general partners who are joint owners of the company and do business under a common name. There can be limited partners in addition to general partners. General partners must be individuals who are liable for the obligations of the partnership with all of their assets. Limited partners may be individuals or legal entities and are liable for the company's debts equal to the promised capital contribution. Hence, according to Point dd, Clause 2, Article 181 of the Law on Enterprises the general partner of the partnership must be an individual.⁵ The founding general partners of the company must jointly pay the partnership's remaining debts after all

³ M. Horton, "Silent Partner vs. General Partner: What's the Difference?," Investopedia (Dec. 21, 2022), <https://www.investopedia.com/ask/answers/062515/what-difference-between-silent-partner-and-general-partner.asp>.

⁴ Vietnam, Law on Enterprises, art. 177 (2020).

⁵ *Id.* at art. 181, cl. 2, point dd.

of the partnership's assets are used to pay them. However, suppose a new general partner joins the company after its establishment. In that case, as per Clause 3, Article 186 of the 2020 Law on Enterprises the new general partner may not be jointly liable with all its assets for the debts and other property obligations of the company if there is an agreement between such partner and the others.⁶ In addition, Clause 1, Article 35 of the 2020 Law on Enterprises stipulates that all general partners must transfer the ownership of contributed assets.⁷ However, the provisions related to the conditions of becoming a general partner, the joint responsibility of a new partner after the establishment of the company, the transfer of ownership of contributed assets, internal disputes between general partners, etc., have not been finalized or interpreted clearly. Therefore, the study and analysis of these regulations is necessary to find solutions to propose amendments and supplements to contribute to the improvement of

⁶ *Id.* at art. 186, cl. 3.

⁷ *Id.* at art. 35, cl. 1.

Vietnam's law in general and the Law on Enterprises in particular.

II. MATERIALS AND METHODS

This research Article is solely based on library-based data. The researcher collected and analyzed existing publications concerning the law on partnerships. The research was also heavily based on Vietnam's expired Law on Enterprises (2005 and 2014), Law on Enterprises 2020, and Law on Investment 2020.⁸

III. RESULTS AND DISCUSSION

The general partners may be divided into two groups based on the time of joining the partnership. They are founding general partners and general partners contributing/buying capital contribution after the company is established. Both groups must comply with the general conditions of general

⁸ Vietnam, Law on Enterprises 2005 (expired), Law on Enterprises 2014 (expired), Law on Enterprises (2020), and Law on Investment (2020).

partners. However, some provisions on conditions to become a general partner of a partnership have been inadequate.

A. Legal Entities Shall Not Be a General Partner of the Partnership

The applicable law of Vietnam only allows individuals, not legal entities, to be partners. This provision has not met the development needs and the choice of business models of business entities. Indeed, the partnership model in Vietnam is the reception of the laws of the countries. However, the subject participating in the partnership as a general partner is limited, i.e., legal entities are allowed to participate.

The reason may be that the legal entities often have limited asset liabilities.⁹ According to N.V. Hung, it likely disrupts the nature of the general

⁹ N.H. Cuong, *Interpretation of Partnership in the 2005 Law on Enterprises*,
<http://www.lapphap.vn/Pages/tintuc/tinchitiet.aspx?tintucid=211233>.

partners, which is their indefinite asset liabilities.¹⁰ However, in Vietnam's law, not all legal entities have liability limited to the scope of that legal entity's assets. Typically, a partnership must have at least two general partners who are jointly liable for the company's activities with all their assets. It can be said that a partnership is also a legal entity but does not have liability limited to the company's assets.

Notwithstanding, a partnership as a legal entity should be fully entitled in its name to participate in legal relations, have full rights to its assets, use its assets, and be solely responsible for such use. Referring to the 2015 Law on Lawyers, when regulating foreign law firms operating in Vietnam, this Law stipulates: "A partnership law firm is a partnership law practice organization between a foreign law practice organization and a Vietnamese partnership law firm."¹¹ Thus, in essence, the Law on

¹⁰ N.V. Hung, *Development of Legal Regulations on Simple Syndicated Companies in Vietnam*, 32 VNU J. SCIENCE: LEGAL STUD. 42 (2016).

¹¹ Law on Lawyers (2015).

Lawyers has acknowledged a type of partnership between legal entities, of which Vietnam's partnership law firm is a partner.¹²

Thus, Vietnam's law has different conditions for becoming a general partner of a partnership. In particular, under the 2020 Law on Enterprises, only individuals can be general partners in a partnership.¹³ Meanwhile, under the 2015 Law on Lawyers, members of a partnership law firm may be legal entities (which is a combination of a foreign law practice organization and a Vietnamese partnership law firm).¹⁴ Only allowing an individual to be a general partner is a restriction on freedom of business and is not consistent with international practice.¹⁵ In many countries such as France, the United States, Japan, Singapore, etc., there are many cases where two jointly contribute capital to establish a corporation. For instance, under the laws of the

¹² *Id.*

¹³ Law on Enterprises (2020).

¹⁴ Law on Lawyers (2015).

¹⁵ D.D. Hanh, *Commentary on Provisions on Partnerships in 2020 Law on Enterprises*, <https://lsvn.vn/binh-luan-cac-quy-dinh-ve-cong-ty-hop-danh-trong-luat-doanh-nghiep-nam-20201632327822.html> .

United States, a partnership is a business entity established by individuals, at least two general partners. Each general partner shall be personally, jointly, and indefinitely liable for all debts and obligations of the company.¹⁶ Also, according to D.D. Dai, in France, especially in the fields of credit, real estate, or international trade, the majority of partnerships are established by legal entities.¹⁷ In Cambodia, general partnerships are governed by the Law on Commercial Enterprises as amended by The Royal Kram No. NS/RKM/0122/003 on the Law on the Amendment of the Law on Commercial Enterprise as promulgated on January 29, 2022.¹⁸

¹⁶ N.T.N. Uyen & L.N. Bao, *Provisions on Partnerships under 2014 Law on Enterprises: Inadequacies and Recommendations*, <http://lapphap.vn/Pages/tintuc/tinchitiet.aspx?tintucid=210493>.

¹⁷ D.D. Dai, *Lack for Reasonable Regulations on Partnerships*, https://vibonline.com.vn/bao_cao/can-quy-dinh-hop-ly-ve-cong-ty-hop-danh.

¹⁸ Cambodia's Law on Commercial Enterprises (2005), amended by the Law on the Amendment of the Law on Commercial Enterprise (2022). KPMG, "Technical Update: Law on the Amendment of the Law on Commercial Enterprise" (Apr. 2022), <https://assets.kpmg.com/content/dam/kpmg/kh/pdf/technical-update/2022/Law%20on%20the%20Amendment%20of%20the%20Law%20on%20Commercial%20Enterprise.pdf>. Law on Commercial Enterprises (2005), amended by The Royal Kram No. NS/RKM/0122/003, Law on the Amendment of the Law on Commercial Enterprise (Jan. 29, 2022).

The Law in Article 8 defines a general partnership “as a contract between two or more persons to combine their property, knowledge or activities to carry on business in common with a view to profit.”¹⁹

The 2020 Law on Enterprises stipulates that the application of specific laws takes priority over the Law on Enterprises.²⁰ Accordingly, according to the stipulations of Article 3 of the 2020 Law on Enterprises “in case another law contains particular provisions on the establishment, organization, reorganization, and dissolution of, and activities related to, enterprises, such law must prevail.”²¹ However, the Law on Enterprises should expand the conditions for a legal entity to become a general partner as prescribed by the Law on Lawyers, especially as these partnerships may become general partners of other partnerships.²² The purpose is to facilitate legal entity investors with unlimited liability and joint participation as a general partner of

¹⁹ Law on Commercial Enterprises, art. 8.

²⁰ Law on Enterprises (2020).

²¹ Law on Enterprises, art. 3 (2020).

²² Law on Lawyers.

other partnerships, especially foreign-invested legal entities established in Vietnam. However, to limit the risks for the remaining partners and ensure the interests of third parties (partners of the partnership), the consent of the remaining partners of the partnership is required for a partnership to participate in another partnership.

B. The Owner of the Private Enterprise Is Not Allowed to Be a General Partner of a Partnership, and the Conditions for the Member of a Household Business (Who Is Registering to Operate under the Business Household Model) to Be a General Partner of the Partnership

Clause 2, Article 17 of the Law on Enterprises 2020 stipulates cases where enterprises are not established and managed.²³ In particular, the following individuals do not have the right to establish and manage enterprises: officials and public employees defined by the Law on Officials and the Law on Public Employees;²⁴ commissioned

²³ Law on Enterprises, art. 17, cl. 2 (2020).

²⁴ Law on Officials and Law on Public Employees.

officers, non-commissioned officers, career military personnel, military workers, and public employees in agencies and units of Vietnam People's Army; commissioned officers, non-commissioned officers, and police workers in police authorities and units; executive officers and managers of state-owned enterprises; minors; people with limited legal capacity; incapacitated people; people having difficulties controlling their behaviors; organizations that are not juridical persons; people who are facing criminal prosecution, kept in temporary detention, serving an imprisonment sentence, serving an administrative penalty in a correctional institution or rehabilitation center, banned by the court from holding certain positions or doing particular works; and other cases prescribed by the Law on Bankruptcy and the Anti-corruption Law.²⁵

In addition to the above cases, this Law also provides additional cases where the owner of a private enterprise is not allowed to be a general

²⁵ Law on Bankruptcy and Anti-corruption Law.

partner of a partnership.²⁶ Specifically, Clause 1, Article 180 of the 2020 Law on Enterprises stipulates: “A general partner must not be the owner of a private enterprise; must not be a general partner of another partnership unless the other general partners accept it.”²⁷ Clause 3, Article 188 of the Law on Enterprises 2020 continues to stipulate that the owner of a private enterprise may not concurrently be a general partner of a partnership.²⁸

Based on the above provisions, it can be concluded that an individual who is a private enterprise owner cannot become a general partner of a partnership even with the consent of the remaining general partners. Meanwhile, an individual who is a general partner of a partnership may become a partner of another partnership if he/she has the consent of all the remaining general partners of both partnerships that he/she wants to be a member of. In addition, according to Clause 3 of Article 80 Decree No. 01/2021/ND-CP dated January 4, 2021, on

²⁶ Law on Enterprises (2020).

²⁷ Law on Enterprises, art. 180, cl. 1 (2020).

²⁸ *Id.* at art. 188, cl. 3.

enterprise registration, an individual who is the owner or a member of a business household may be a general partner of a partnership if agreed by the remaining general partners.²⁹

Further, Clause 1, Article 188 of the 2020 Law on Enterprises and Clause 1, Article 79 of Decree No. 01/2021/ND-CP dated January 4, 2002 on enterprise registration notes that “there must be the consent of the remaining general partners” means that the remaining partners commit to being jointly liable for the property obligations of that member when that member uses his/her assets to be infinitely liable for another economic organization.³⁰ Thus, the owner of the private enterprise uses his/her assets to be infinitely liable for the private enterprise without being a partner despite the consent of the remaining partners. In other words, according to the above provisions, there is an inequality between the owner of the private enterprise and the owner of the business household in the right to become a partner

²⁹ Decree No. 01/2021/ND-CP, art. 80, cl. 3 (Jan. 4, 2021).

³⁰ Decree No. 01/2021/ND-CP, art. 79, cl. 1 (Jan. 4, 2002) and Law on Enterprises, art. 188, cl. 1 (2020).

of the partnership. Meanwhile, the nature and infinite liability regimes of the owner of the private enterprise and the owner of the business household are the same.

Previously, under the Clause 1, Article 133 of the 2005 Law on Enterprises (expired), Clause 1, Article 175 of the 2014 Law on Enterprises (expired), “A general partner must not be the owner of a private enterprise or a general partner of another partnership unless the remaining general partners accept it.”³¹ This implies that in the past, the owner of a private business could still be a general partner if the remaining general partners agreed.

From the above inadequacies and the reasonableness of the previous Laws, the 2020 Law on Enterprises should amend the provisions in the same direction as before, which is to allow the owner of the private enterprise to be a general partner if there is the consent of the remaining general

³¹ Law on Enterprises, art. 175, cl. 1 (2014) and Law on Enterprises, art. 133, cl. 1 (2005).

partners.³² Specifically, Clause 1, Article 180 should be amended from “A general partner must not be the owner of a private enterprise; must not be a general partner of another partnership unless it is accepted by the other general partners”³³ to “A general partner must not be the owner of a private enterprise or a general partner of another partnership unless the remaining general partners accept it.”³⁴

In addition, for the conditions for business household owners and members of business households to become partnership members of a partnership, the only document recorded under the law is Decree No. 01//2021/ND-CP dated January 4, 2021, on enterprise registration.³⁵ On the other hand, this provision is still inadequate. Specifically, there is a lack of condition “the consent of the remaining business household members” when one of the business household members participates in the

³² Law on Enterprises, art. 175, cl. 1 (2014) and Law on Enterprises, art. 133, cl. 1 (2005). Law on Enterprises (2020).

³³ Law on Enterprises (2020).

³⁴ See Law on Enterprises (2020).

³⁵ *Id.* at Decree No. 01//2021/ND-CP (Jan. 4, 2021).

partnership member of the partnership.³⁶ Therefore, it is recommended to include the provisions of Decree No. 01/2021/ND-CP mentioned above in the 2020 Law on Enterprises and add conditions for business household members to become general partners of a partnership.³⁷

In other words, for easy application of the law and more complete provisions, Clause 1, Article 180 of the 2020 Law on Enterprises³⁸ should be added: “A general partner must not be concurrently a business household owner unless there is the consent of the remaining general partners. A general partner must not be concurrently a member of a business household unless there is a consensus of the remaining general partners and the remaining business household members.”

Simultaneously, for the agreement between the provisions of the same legal document, in the provisions on private enterprises, there is a need to amend the 2020 Law on Enterprises Clause 3, Article

³⁶ See Law on Enterprises, art. 188, cl. 3 (2020).

³⁷ *Id.* at Decree No. 01/2021/ND-CP.

³⁸ *Id.* art. 180, cl. 1.

188 from “The owner of a private enterprise must not concurrently own a household business or hold the position of a general partner of a partnership” into “The owner of a private enterprise must not concurrently own a household business or hold the position of a business household member unless there is the consent of the remaining business household members. The owner of a private enterprise must not concurrently be a partner of a partnership unless there is the consent of the remaining partners.”³⁹

This amendment will be reasonable, as the obligation of the general partners of the partnership in point d, Clause 2, Article 181 of the 2020 Law on Enterprises is “to jointly pay the partnership’s remaining debts after all of the partnership’s assets are used to pay them.”⁴⁰ Therefore, if there is a commitment of the remaining general partners, an individual, whether a business household owner or a private enterprise owner, can also become a general

³⁹ Law on Enterprises, art. 188, cl. 3 (2020).

⁴⁰ *Id.* at art. 181, cl. 2, point d.

partner of the partnership. Simultaneously, if an individual participates in two organizations with many members who are indefinitely and jointly liable, the consent of the remaining members of both organizations is required. This case applies to general partners of a partnership and members of a household business.

C. Foreigners Are Not Allowed to Be New Partners in a Partnership

The Law on Enterprises of Vietnam does not prohibit foreigners from being general partners of a partnership. However, suppose they are a founding partner of a partnership. In that case, foreigners only need to satisfy market access conditions and then carry out procedures to be granted an Investment Registration Certificate and an Enterprise Registration Certificate. However, if a partnership has been established, the foreigner must participate in the partnership in the form of capital contribution for the admission of a new partner or purchase of the capital contribution of an existing partner to become

a partner of the partnership. However, for partnerships, in Point c, Clause 2, Article 25 of the 2020 Law on Investment of Vietnam only acknowledges the form of investment by “Purchasing the capital contribution of the partner to become a partner of the partnership.”⁴¹ This means that the foreigner will not have a legal basis to purchase the capital contribution of the general partner to become a general partner of the partnership.

To reach an agreement between the Law on Investment and the Law on Enterprises and also create conditions for foreign individual investors to become new general partners of partnerships, the 2020 Law on Investment should supplement the provisions in the form of investment in capital contribution, share purchase, and capital contribution purchase:⁴² “Purchase the capital contribution of general partners in partnerships to become a general partner of a partnership.” The recognition of the

⁴¹ Law on Investment of Vietnam, art. 25, cl. 2, point c (2020).

⁴² *Id.* Law on Enterprises.

capital contribution right of a foreign individual as a general partner of a partnership is reasonable. It does not affect the nature of the partnership when it admits more general partners who are foreign investors. This is because both the Law on Investment and the Law on Enterprises recognize the legal status of foreign individual investors as partners of a partnership from the start.⁴³

D. Shortcomings in the Provisions on the Partner's Liabilities for the Company's Debts and Other Obligations and Recommendations for Improvement

Point b, Clause 1, Article 177 of the 2020 Law on Enterprises stipulates that general partners must “be liable for the obligations of the company with all their assets.”⁴⁴ Simultaneously, Point dd, Clause 2, Article 181 of the Law stipulates that general partners “must be jointly liable for paying the partnership’s remaining debts after all of the

⁴³ Law on Investment and the Law on Enterprises.

⁴⁴ Law on Enterprises, art. 177, cl. 1, point b (2020).

partnership's assets are used to pay them.”⁴⁵ Then, Clause 5, Article 185 of the 2020 Law on Enterprises notes that two years after termination of general partner status, such partner shall still be jointly liable with all their assets for the partnership's debts that arose prior to the date of termination of general partner status.⁴⁶ However, when the company admits a new general partner, “the new general partner shall be jointly liable for the debts and other property obligations of the company with all his/her assets unless otherwise agreed by such partner and other partners.”⁴⁷

The above provisions can be explained as follows: The founding partners of the company must be liable for the obligations of the company with all their assets and jointly liable for paying the partnership's remaining debts after all of the partnership's assets are used to pay them.⁴⁸ For a new general partner who the company admits after the

⁴⁵ *Id.* at art. 181, cl. 2, point dd.

⁴⁶ *Id.* at art. 185, cl. 5.

⁴⁷ *Id.*

⁴⁸ See Law on Enterprises, art. 177, cl. 1, point b; art. 181, cl. 2, point dd; and art. 185, cl. 5 (2020).

company is established, he/she may not be jointly liable for the debts and other property obligations of the company with all his/her assets if there is an agreement between the new general partner and the remaining partners of the partnership.⁴⁹ The above content of the joint liability of general partners shows the inadequacy. Details are as follows:

Firstly, is the newly admitted general partner jointly liable with all his/her assets for the debts and other property obligations of the partnership arising before this new partner is admitted; or only jointly liable with all its assets for the debts and other property obligations of the company arising since the new general partner joined the company? It is generally understood that a new general partner is only jointly liable for the debts and other property obligations of the company arising since such general partner joins the company. However, with such words, many people⁵⁰ have understood that a

⁴⁹ Law on Enterprises, art. 177, cl. 1, point b; art. 181, cl. 2, point dd; and art. 185, cl. 5 (2020).

⁵⁰ N.V. Hung, *Principles of a Partnership under the 2014 Law on Enterprises*, <https://danchuphapluat.vn/cac-nguyen-tac-cua-cong-ty-hop-danh-theo-luat-doanh-nghiep-nam-2014>. N.C. Dung, *Discussion*

new general partner is jointly liable for all debts and other property obligations of the company, including debts and obligations of the company incurred before such partner joined the company.

Secondly, does the phrase “the remaining partners” mean the remaining general partners or all remaining general partners and limited partners?

In addition, in case the partnership already has a new partner who is joining as a general partner not affiliated with the founding partners to take liability with all of its assets for the company’s debts and other property obligations: When the company continues to admit new partners for the second time or later, is it necessary to have the consent of all founding partners and newly admitted partners for the first time? For instance, a partnership has two general partners, A and B, who are jointly liable for the company’s debts and other property obligations with all their assets. The Company admits the first new general partner as C with the agreement between

on Joint Liabilities of Business Managers, <https://lsvn.vn/ban-ve-trach-nhiem-lien-doi-cua-nguoi-quan-ly-doanh-nghiep1612749870.html>.

C and A and B that C is not jointly liable to A and B for debts and other property obligations of the Company with all its assets. Thus, the problem is when the company admits a new member for the second time as partner D, such partner wants to negotiate with the “remaining partners” so as not to be jointly liable with all of his/her assets for the debts and other property obligations of the company. Which partners shall D negotiate with, A and B or A, B, and C?

Considering the nature and ability to take liability with all of its assets for debts and other property obligations of the company, the general partner D must only negotiate with A and B. However, the 2020 Law on Enterprises states: “The new general partner has a joint liability for the company’s debts and liabilities which is equal to his/her total assets unless otherwise agreed upon by the new partner and the other partners.”⁵¹ This provision is unclear for general partners joining the company for the second time or later.

⁵¹ Law on Enterprises (2020).

In addition, it is unreasonable for the Law on Enterprises not to allow a founding general partner to reach an agreement with the remaining founding members so that such a partner is not jointly liable.⁵² This is because the partnership at its establishment may have more than two partners. Thus, the third founding partner, who needs to negotiate with the other two founding partners so as not to be jointly liable with them, does not have a legal basis to do this. Meanwhile, if the two founding partners complete the establishment of the company, then the third member joins later; this third member is entitled to negotiate with the two founding members on not being jointly liable.

There are some ways to solve this problem. Firstly, in terms of the scope of joint liability of the new general partner, the 2020 Law on Enterprises⁵³ should stipulate: “A new general partner must be jointly liable with all his/her assets for debts and other property obligations of the company arising

⁵² *Id.*

⁵³ *Id.*

since this general partner officially becomes a general partner of the company.” The amendment in the above direction will create equity and reasonableness because it excludes the obligation of the new general partner to bear all the debts the company incurred before the admission of such a partner.

Secondly, regarding the agreement on not being jointly liable between the founding partners of the company, the 2020 Enterprise Law is forcing all founding partners to be jointly liable with all their assets, even when there are more than two founding partners.⁵⁴ Therefore, if the company has three or more founding partners, it should recognize the right of agreement between the founding partners on the lack of joint liability of the third member onwards as long as at least two partners are jointly liable with all their assets for the debts and other obligations of the company. Even if there is the consent of the creditors and other authorized persons, the Law should also allow the conversion from a fully liable general

⁵⁴ *Id.*

partner to a general partner who is not jointly liable or from a general partner to a limited partner.⁵⁵ In other words, for a partnership, the provision should be amended as follows:⁵⁶ “If there is the consent of at least two founding partners, the remaining partners (whether a founding partner or a partner who joins later) can also negotiate with those two partners so that they are not jointly liable with all their assets for the debts and other property obligations of the company.” It can be explained in terms of reasonableness as follows:

Firstly, this amendment maintains the nature and meaning of the partnership; that is, there are at least two general partners who are liable with all their assets for the debts and other property obligations of the partnership. This is because the condition for the establishment and existence of a partnership is that at least two general partners are jointly liable with all their assets for other debts and obligations of the partnership.

⁵⁵ *Id.*

⁵⁶ *Id.*

Secondly, this amendment creates equality between the newly joined general partner and the founding general partners in agreeing with the remaining general partners on the lack of joint liability for the debts and other property obligations of the company with all their assets.

Thirdly, this amendment will make it more transparent that there is only an agreement with the general partners, who are infinitely and jointly liable with all their assets for the debts and other property obligations of the company, not the consent of the general partners who are not jointly liable with other general partners in the company.

However, this recommendation must also take into account the interests of third parties (customers) when dealing with the company. Specifically, to avoid the situation that a third party trusts in the joint liability of many general partners when setting up transactions of economic contracts with the company, the Law on Enterprises needs to supplement the regulations on disclosure of the number of general partners who are jointly liable and

the number of general partners who are not jointly liable with all their assets for the debts and other property obligations of the company.⁵⁷

E. Shortcomings in the Provisions on the Legal Representation Competence of the General Partners and Recommendations for Improvement

According to Clause 1, Article 12 of the Law on Enterprises 2020, “The enterprise’s legal representative is the person that, on behalf of the enterprise, exercises and performs the rights and obligations derived from the enterprise’s transactions, in civil proceedings, acts as the plaintiff, defendant or person with relevant interests and duties before in court, arbitration, and performs other rights and obligations prescribed by law.”⁵⁸ For a partnership, Clause 1, Article 184 of this Law stipulates: “General partners are the partnership’s legal representative and shall administer its everyday

⁵⁷ *Id.*

⁵⁸ Law on Enterprises, art. 12, cl. 1 (2020).

business.”⁵⁹ It can be inferred that all general partners must be the representatives of the enterprise in civil proceedings, act as the plaintiff, defendant, or person with relevant interests and duties before court or arbitration, and perform other rights and obligations prescribed by law. However, in the provisions on partnerships, the Law on Enterprises only assigns this obligation to the Chairperson of the Members’ Council, the Director, or the General Director of the company. Specifically, Clause 4, Article 184 stipulates that the Chairperson of the Members’ Council, Director, or General Director has the following obligations: “... dd) Represent the company in civil proceedings, as the plaintiff, defendant, person with relevant interests and duties in front of the court or arbitral tribunal; represent the company in the performance of other rights and obligations prescribed by law.”⁶⁰ Meanwhile, the obligations of the general partner specified in Clause 2, Article 181 of this Law do not clearly state the

⁵⁹ *Id.* at art. 184, cl. 1.

⁶⁰ *Id.* at art. 184, cl. 4, dd.

obligation to represent the company in civil proceedings, act as the plaintiff, defendant, or person with relevant interests and duties in front of the court or arbitral tribunal; represent the company in the performance of other rights and obligations prescribed by law.⁶¹ Clause 2, Article 181 lists a series of obligations of general partners, of which point h of Clause 2 of this Article has a very general provision as “Other obligations prescribed by Law and the charter.”⁶²

Thus, the problem is when all general partners are legal representatives, are they obliged to represent the company in civil proceedings and act as the plaintiff, defendant, or person with relevant interests and duties in front of the court or arbitral tribunal? The answer in applicable practice is that there is no obligation to do so. This is because this obligation is only assigned to the Chairperson of the Members’ Council, the Director, or the General Director. It has shown inadequacies and

⁶¹ *Id.* at art. 181, cl. 2.

⁶² *Id.* at art. 181, cl. 2, point h.

inconsistencies among the provisions of the Law on Enterprises.⁶³

For unified and clear provisions on the legal representation of general partners, the 2020 Law on Enterprises should be amended in one of the following two directions:

The first direction: Clause 1, Article 12 of the 2020 Law on Enterprises⁶⁴ should be supplemented with “unless otherwise provided by this Law.” Specifically: “The enterprise’s legal representative is the person that, on behalf of the enterprise, exercises and performs the rights and obligations derived from the enterprise’s transactions, takes civil proceedings, acts as the plaintiff, defendant or person with relevant interests and duties before in court, arbitration, and performs other rights and obligations prescribed by law unless otherwise provided by this Law.” According to this proposal, the general partner, who is also the legal representative of the company, should be able to exercise all the rights and

⁶³ *Id.*

⁶⁴ Law on Enterprises art. 12, cl. 1 (2020).

obligations of the legal representative of the company. Still, the obligation to represent the enterprise in civil proceedings, act as the plaintiff, the defendant, the person with related rights and obligations before the arbitrator, the court, etc. This is because this obligation has been assigned to the Chairperson of the Members' Council, Director, or General Director.

The second direction: Remove the provision "Represent the company in civil proceedings, act as the plaintiff, defendant, person with relevant interests and duties in front of the court or arbitral tribunal" from the group of obligations of the Chairperson of the Members' Council, Director or General Director of the partnership.⁶⁵ This is because the obligation to represent is a general obligation of the legal representative as stipulated in Clause 1, Article 12 of this Law.⁶⁶ Therefore, in principle, all general partners must have this obligation. The proposal in the second direction is more reasonable

⁶⁵ *See id.*

⁶⁶ *Id.*

and consistent with all provisions on legal representatives in the Civil Code and Law on Enterprises when the general partners are required to be the legal representatives of the partnership.⁶⁷ In addition, this recommendation also facilitates the legal application of the court or arbitral tribunal when it is necessary to appoint a legal representative who is not the Chairperson of the Members' Council, Director, or General Director to participate in the proceedings. This is because Clause 7, Article 12 of the 2020 Law on Enterprises stipulates: "The court and other proceeding authorities are entitled to appoint the legal representative who participates in proceedings as prescribed by law."⁶⁸ Simultaneously, Clause 2, Article 47 of the 2014 Law on Bankruptcy also stipulates that on the perception that the insolvent entity is incapable of running the business operation or denoted to disperse assets, the judge shall decide to replace the legal representative of the insolvent entity upon the

⁶⁷ *Id.*

⁶⁸ Law on Enterprises, art. 12, cl. 7 (2020).

request of creditors' meeting or the asset management officers and/or asset management enterprises.⁶⁹ Therefore, for partnerships, because the Law on Enterprises has recognized all partners as legal representatives, this Law should also fully acknowledge the rights and obligations of all partners when they perform the role of legal representatives.⁷⁰

IV. CONCLUSIONS

Vietnam's Law on Enterprises is constantly amended, supplemented, and promulgated new laws to catch up with the development of the economy.⁷¹ Currently, the 2020 Enterprise Law has made more progress than previous Laws.⁷² However, the progress points of the 2020 Law on Enterprises, compared to previous Laws, mainly focus on enterprise registration procedures and the

⁶⁹ Law on Bankruptcy, art. 47, cl. 2 (2014).

⁷⁰ Law on Enterprises.

⁷¹ Law on Enterprises.

⁷² Law on Enterprises (2020). *See* Law on Enterprises 2005 (expired) and Law on Enterprises 2014 (expired).

organizational structure of all types of enterprises.⁷³ Particularly for provisions related to general partners of the partnership, although there are many new points. In particular, there are new provisions that lead to more restrictions on the right to participate as a general partner of a private enterprise owner. This is because, under the 2014 Law on Enterprises, the owner of a private enterprise is allowed to be a general partner of a partnership with the consent of the remaining general partners.⁷⁴ In addition, there are new provisions to create more opportunities for individuals who want to be general partners of the company but do not want to be jointly liable with all their assets for the debts of the company. However, these new provisions, as well as many other provisions on general partners of the partnership, are still inadequate, unclear, unreasonable, or inconsistent with other provisions in the same Law.⁷⁵ Therefore, some analysis and recommendations to amend and supplement the above-mentioned

⁷³ *Id.*

⁷⁴ Law on Enterprises (2014) (expired).

⁷⁵ *See* Law on Enterprises.

relevant provisions are essential for the law of Vietnam in general and the Law on Enterprises of Vietnam, in particular, to be completed, ensuring maximum freedom of business and the right to establish and manage enterprises of individuals and organizations.⁷⁶

⁷⁶ Law on Enterprises.