

Enterprise Law to make enterprises “take off”



VCN - Business activities of enterprises always have “changes” under the fluctuations of the economy, therefore, the business law must also have changes to be more suitable. The Enterprise Law (amended) being discussed by the National Assembly is expected to have more positive changes for businesses

The “openness” of business

The current Enterprise Law 2014 was promulgated on the basis of the Enterprise Law 1999 and 2005. Over 20 years, the Enterprise Law 2014 is considered to have better reforms, such as: specifying the list of prohibited industries and trades and conditional business lines, un-recording business lines and removing mandatory requirements with seals. Businesses all assessed that business freedom was guaranteed, compliance cost was reduced and business security increased. However, many people believe that some industries still control and restrict business freedom, such as legal, finance and banking services. In addition, compliance costs have decreased significantly, but are still high. The reduction of compliance costs is mainly implemented in each phase of administrative procedure reform, so there is no suitable institution to systematically reduce.

Regarding the implementation of the Law on Enterprises, PhD. Nguyen DinhCung, former director of the Central Institute for Economic Management (CIEM), said that complying with business laws in Vietnam is a challenge as the National Assembly promulgates 20 laws each year, in addition to about 100 decrees, 600-700 circulars and thousands of dispatch documents. Therefore, rights to freedom of business only is mainly within the scope of “what business items are”, but “how to do business” is still to be discussed. This has restricted the opening of new business models, new products and services in the era of the Fourth Industrial Revolution.

An example of compliance with business laws in a new area is room sharing. This model must comply with a number of legal provisions on business registration such as the Enterprise Law (2014) and other specialized laws such as the Tourism Law (2017), [the Housing Law](#) (2014) and many related decrees and circulars. This can be seen as a very positive innovation of laws “catching up” with models of the shared economy. However, in order to have strict compliance with the law for accommodation service providers under the shared economy model, it is necessary to have the active coordination of the parties involved in declaration and information provision. Obviously, as many new types of business have emerged, the authorities either do not know how to manage, or manage in a “narrow” way with regulations. Meanwhile, these business types are interwoven and intertwined with traditional business activities, as well as between the functions of ministries and branches.

Regarding the regulations related to state-owned enterprises in the Enterprise Law, Mr. Pham Duc Trung, Head of the Enterprise Development and Reform Research Committee (CIEM) said that when compared with 39 governance principles of Cooperative Organization and Economic Development (OECD), the management of state-owned enterprises in Vietnam has been implemented and tried, but it has not been fully implemented. In particular, the target of state ownership is not clear and

consistent, the function of state ownership is not yet separated from the function of state management, although a State Capital Management Committee has been established; there are still signs of preferential access to resources; not ensuring the rights of related parties; while information disclosure is still weak.

From these limitations, the new Enterprise Law requires innovations and amendments in a way that is more suitable to reality, improves the quality of **corporate governance** organization in accordance with good international practices, and promotes business freedom. Therefore, the Enterprise Law Draft (amended) being discussed by the National Assembly has made major changes such as simplifying the procedures for market entry, improving the governance efficiency of state-owned enterprises, completing the legal framework on business households. This amendment is based on the principle of continuing to inherit and promote the results and impacts of the reforms in the previous Enterprise Laws on the principle that enterprises are entitled to conduct business in all industries which are not prohibited or not restricted by law.

Preventing “dodging” of the law

The most prominent issue when discussing the development of the Enterprise Law is the inclusion of business households in the law with the expectation that business households will be developed into professional business organizations. Accordingly, the draft will recognize the existence of “business households” as a form of business, besides private enterprises, partnerships, limited liability companies, joint stock companies; ensure the diversification of business forms, empowering investors to select appropriate business forms; do not force business households to transform into businesses or eliminate the form of business households. This has been causing many opinions among experts because business households have very specific business methods.

A business has shared that it owns both businesses and business households, but uses businesses to trade, sign contracts, and business households is to carry out production due to lower costs, less tax fees and less often subject to the control and inspection of the authorities. Therefore, the Enterprise Law 2014 requires business households that regularly employ 10 or more employees to establish an enterprise. Mr. Phan Duc Hieu, Deputy Director of CIEM, member of the Drafting Board of the Enterprise Law (amended) said that this is an administrative coercive regulation, so the law must be amended in the direction of recognizing business households as a form of business. This means recognizing the important role and position of this sector in the economy.

In fact, business households do not want to become businesses, because they will have to comply with stricter regulations on statistics, accounting, tax and social **insurance**. In addition, they will have the opportunity to receive more inspection teams. These are issues that a true enterprise is also very difficult. Because according to experts, the law of Vietnam still has many uncertainties, even right or wrong depends on the mood of the enforcement. Therefore, it becomes an extremely fertile ground for inspection and is the source of risks, bureaucracy, corruption and law violations in Vietnam. Thus, many businesses said that they operate in compliance with the law but they must “dodge” the law to make their business more favorable.

In that context, the business law in general and the Enterprise Law in particular must have reform but based on the combination with many other related issues, to form a friendly marketing system for businesses and to promote development. According to Mr. Nguyen Hung Quang, Executive Director of

NHQuang& Associates Law Firm, the law-making must be in line with reality along with the stability of law. This stability will help the law be more predictable, creating a consistency in regulations to avoiding abuse of power. In addition, the Enterprise Law needs to follow core principles such as: principles of enterprise ownership, rights and obligations of businesses, ensuring rights for people, investors access the market, protecting minority shareholders.

Obviously, the amendment of the Enterprise Law includes many issues, so it must be done bylawmakers on the basis of capturing changes in the domestic economic situation and the world to have practical regulations, ensure freedom of business, and contribute to improving the quality of the business environment according to the goals that the Government has set out as a group of ASEAN-4.

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