

DETERMINATION OF THE LEGAL REPRESENTATIVE OF VIETNAMESE ENTERPRISES IN ENTERPRISE-RELATED DISPUTES - INADEQUACIES AND RECOMMENDATIONS FOR IMPROVEMENT

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Abstract:

According to the 2020 Law on Enterprises of Vietnam, 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, 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. However, not all enterprise's legal representatives have equal rights and obligations in representing the enterprise before Arbitration, Court, and other proceeding authorities. If an enterprise has many legal representatives, the company's charter assigns only one of them to act as a representative to participate in prosecuting business-related disputes, or if the enterprise has one legal representative, but this person is dead or missing, etc. Since then, changing the legal representative or authorizing another person to participate in proceedings has encountered many difficulties. Therefore, the Law on Enterprises of Vietnam needs to be further amended, supplemented, or guided for implementation to be more uniform and feasible in practice.

Keywords: *Legal representative, Law on Enterprises, dispute resolution, participating in proceedings, Arbitration Court.*

1. INTRODUCTION

According to Vietnamese law, four enterprises include limited liability companies, joint-stock companies, partnerships, and sole proprietorships. In addition to the general provisions on the enterprise's legal representatives, the 2020 Law on Enterprises stipulates how to identify legal representatives of each type and their competence in representing enterprises before Arbitration, Court other proceeding authorities. However, Vietnamese law has not been complete and specific enough to apply in practice. Therefore, it is indispensable to amend, supplement or guide the implementation of this content in detail. This aims at creating a clear legal corridor for the enterprise's legal representative to directly participate or authorize another person to participate in proceedings of enterprise-related disputes.

2. GENERAL PROVISIONS OF VIETNAMESE LAW ON DETERMINING THE ENTERPRISE'S LEGAL REPRESENTATIVES

According to the 2020 Law on Enterprises, limited liability companies and joint-stock companies can have one or more legal representatives. Meanwhile, by default, all general partners are legal representatives in a partnership, and there is only one legal representative in sole proprietorships.

First, for multi-member limited liability companies

According to Clause 3, Article 54 of the 2020 Law on Enterprises, *"The company shall have at least one legal representative who holds the title of President of the Board of Members, Director/General Director. Unless otherwise prescribed by the company's charter, the President of the Board of Members shall be the company's legal representative"*.

This provision means that a multi-member limited liability company will have a legal representative as follows: If the company's charter does not provide for the number and name of the legal representative, the company's legal representative is the President of the Board of Members. However, if the company's charter has specific provisions, the following principles shall be applied. If the company has only one legal representative, that person must be the President of the Board Members or the Director/General Director. If a company has two or more legal representatives, one

must be the President of the Board of Members of the Director/General Director. Therefore, Vietnamese law has no mandatory provision for the other legal representatives (from the second person onwards). Thus, the company can hire someone other than the company to be the legal representative from the second person.

Second, for single-member limited liability companies owned by an organization

According to Clause 3, Article 79 of the 2020 Law on Enterprises, *“The company shall have at least one legal representative who holds the title of President of the Board of Members, the company’s President or Director/General Director. Unless otherwise prescribed by the company’s charter, the President of the company or President of the Board of Members shall be the company’s legal representative.”*

This provision is similar to the multi-member limited liability companies mentioned above. The only difference is that if the company has the framework of organization with the President of the company (instead of the President of the Board of Members), the legal representative shall be the company’s President or the Director/General Director. At the same time, in this framework, the company’s President shall be the company’s legal representative unless the company’s charter stipulates the legal representative.

Third, for single-member limited liability companies owned by an individual

Article 85 of the 2020 Law on Enterprises does not specify the company’s legal representative. Therefore, in principle, everyone can be the company’s legal representative unless they are one of the persons “not having the right to manage an enterprise” as prescribed in Clause 2, Article 17 of this Law.

Fourth, for joint-stock companies

Clause 2, Article 137 of the 2020 Law on Enterprises stipulates that *“If the company has only one legal representative, the President of the Board of Directors or the Director/General Director shall be the legal representative. The President of the Board of Directors shall be the company’s legal representative unless otherwise prescribed by the company’s charter. If the company has more than one legal representative, the President of the Board of Directors and the Director/General Director shall be the company’s legal representatives.”*

If a company has a legal representative, the company’s charter shall specify either the President of the Board of Directors or the Director/General Director. If it is not prescribed in the company’s charter, the company’s legal representative shall be the President of the Board of Directors. If the company has many legal representatives, the first two legal representatives shall be the President of the Board of Directors and the Director/General Director. From the third legal representative onwards, Vietnamese law does not explicitly require any person in the company.

Fifth, for partnerships and sole proprietorships

For partnerships, Clause 1, Article 184 of the 2020 Law on Enterprises stipulates that *“general partners are the partnership’s legal representatives.”* For a sole proprietorship, Clause 3, Article 190 of this Law stipulates that *“the sole proprietorship’s owner is its legal representative.”*

The above regulations show that, by default, all general partners are the partnership’s legal representatives. Hence, Vietnamese law does not recognize capital contributors or outsiders but general partners as the partnership’s legal representatives. Similarly, Vietnamese law only assigns the sole proprietorship’s owner to act as the legal representative for a sole proprietorship. Therefore, although the sole proprietorship’s owner can hire a director to manage the enterprise, the legal representative shall be the sole proprietorship’s owner.

3. INADEQUACIES IN DETERMINING THE LEGAL REPRESENTATIVE OF THE ENTERPRISE IN DISPUTES RELATED TO THE ENTERPRISE AND RECOMMENDATIONS FOR IMPROVEMENT

According to Clause 1, Article 12 of the 2020 Law on Enterprises, a legal representative is a person *“on behalf of the enterprise, exercises and performs the rights and obligations derived from the enterprise’s transactions, 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.”* Thus, the questions are: 1) If an enterprise has many legal representatives, who are the enterprise’s

legal representatives to participate in or authorize another person to participate in enterprise-related dispute procedure? 2) If an enterprise has only one legal representative to participate in or authorize another person to participate in the procedure, but they are dead, missing, facing criminal prosecution, etc., who is the surrogate to exercise these rights? 3) If the only enterprise's legal representative is dead/missing but has no authorization for another person, who is the legal representative to participate in the procedure?

3.1. For limited liability company and joint-stock company

According to Clause 2, Article 12 of the 2020 Law on Enterprises, *"The enterprise's charter shall specify the quantity, position, rights, and obligations of its legal representatives. In case there is more than one legal representative, the charter shall specify the rights and obligations of each of them. Otherwise, each of the legal representatives shall fully represent the enterprise and take joint responsibility for any damage to the enterprise as prescribed by civil laws and relevant laws."*

Under the above provision, if a company has many legal representatives, the company's charter shall specify the legal representative, on behalf of the enterprise, to act as the plaintiff, defendant, or person with relevant interests and duties in disputes. If the company's charter does not specify the rights and obligations of each legal representative or does not assign any legal representative with the rights and obligations to participate in proceedings of disputes, all the company's legal representatives, on behalf of the company, act as a plaintiff, defendant, person with relevant interests and duties before the Arbitration, the Court and other proceeding authorities. Therefore, when participating in proceedings, the legal representative proves their legal status prescribed in the company's charter. Or they demonstrate that the company's charter does not specify anyone to participate in the proceedings, so all the company's legal representatives can represent the company to participate in the proceedings.

The questions are: If the company's charter stipulates only one legal representative to represent the company before the Arbitration, Court, and other proceeding authorities, but that person is dead, missing, facing criminal prosecution, etc., can one of the other legal representatives replace that person to participate in the proceedings? Can the company owner, the Board of Members, the Board of Directors have the right to appoint another legal representative to participate in the proceedings? Do Arbitration, Court, and other proceeding authorities have the right to nominate another legal representative to participate in the proceedings?

First, we can refer to Clause 5, Article 12 of the 2020 Law on Enterprises, *"In case the only legal representative of an enterprise he/she is not present in Vietnam for more than 30 days without authorizing another person to act as the enterprise's legal representative or is dead, missing, facing criminal prosecution, kept in temporary detention, serving an imprisonment sentence, serving an administrative penalty in a correctional institution or rehabilitation center, has the limited legal capacity or is incapacitated, has difficulty controlling his/her behaviors, is banned by the court from holding certain positions or doing certain works, the enterprise's owner, Board of Members/Partners or Board of Directors shall appoint another legal representative, except for the cases specified in Clause 6 of this Article."* This provision cannot be applied to enterprises having many legal representatives. Still, the only person who has the right to participate in the proceedings as prescribed in the company's charter is dead or missing, etc. In other words, in this case, the company shall amend its charter to assign another person to act as the company's legal representative before the proceeding authorities. Therefore, the company owner, the Board of Members, and the Board of Directors do not have the right to assign another person to act as the company's legal representative to participate in the proceedings.

In addition, we can also refer to Clause 6, Article 12 of the 2020 Law on Enterprises. Specifically, *in a two-member limited liability company, if the member who is the company's legal representative is dead, missing, facing criminal prosecution, kept in temporary detention, serving an imprisonment sentence, serving an administrative penalty in a correctional institution or rehabilitation center, making getaway; has the limited legal capacity or is incapacitated, has difficulty controlling his/her behaviors, is banned by the court from holding certain positions or doing specific works, the other member shall assume the role of the company's legal representative until the Board of Members*



issues a new decision on the company's legal representative. On the one hand, this provision cannot be applied if the company has many legal representatives; on the other hand, there are many unclear and unreasonable contents. It is because of the following issues:

First, for a two-member limited liability company in which one is an organization, this organization cannot become the company's legal representative. It is because, when a company member is an organization, the Law on Enterprises stipulates that the management of contributed capital in the company is by one or a group of individuals (maximum 03 people), authorized by this organization to enter the company to participate in the Board of Members (Clause 1, Article 55). Thus, in this case, if a member of the company being an individual (who is a legal representative, also a member of the Board of Members) is dead, missing, etc., the Board of Members of the company is still left with the other one or other members. Therefore, the Law on Enterprises assigning the other company member to act as the legal representative is unreasonable because an organization cannot act as the legal representative. Suppose Law on Enterprises gives the other board member of the Board of members the company's legal representative. It is also unreasonable because the company may have several members on the Board of Members.

For example, in the AB two-member limited liability company, member A is an organization holding 35% of the charter capital, while member B is an individual holding 65% of charter capital. In this case, the Board of Members of the company includes B (an individual) and individuals A1, A2, A3 authorized by member A (an organization) to manage their 35% capital contribution in the AB company (Clause 2, Article 14 and Clause 1, Article 55 of the 2020 Law on Enterprises). Thus, when B is dead/missing, etc., organization A will be the company AB's legal representative according to the 2020 Law on Enterprises. This cannot happen because organization A cannot be a legal representative. Individuals A1, A2, A3, are still members of the Board of Members authorized by organization A to participate in the Board of Members.

Second, the Law on Enterprises neither requires legal representatives to be members of the company nor needs legal representatives to be members of the Board of Members. Therefore, if the company has two members, but there are many legal representatives, in which the individual member who acts as the legal representative is dead/missing, etc., the other legal representatives, on behalf of the company, still exercise the rights and obligations to participate in proceedings according to the company's charter or the law. In other words, the Law assigns *"the other member shall assume the position of the company's legal representative until the Board of Members issues a new decision on the company's legal representative"* is unreasonable when the company has many legal representatives. Especially in case, many company's legal representatives are not members of the company.

For example, the AB two-member limited liability company has members A and B. The company hires C as director, hires E as deputy director, and assigns B, C, and E to legal representatives. Thus, C and E are neither members of the AB company nor of the Board of Members. If B is a member of the company (also a legal representative and a member of the Board of Members) is dead, missing, etc., C and E are still the company's legal representatives. However, according to Clause 6, Article 12, A (another member of company AB) will obviously assume the position of the company's legal representative until the Board of Members issues a new decision on the company's legal representative. Therefore, if the company's charter assigns C and E to represent the company in company-related disputes or the company's charter does not assign any person as the legal representative in participating in proceedings, C and E still have full authority to represent the company as the plaintiff, defendant, person with relevant interests and duties. Obviously, in this situation, such provisions of the Law are unreasonable because C and E are the legal representatives according to the company's requirements and conditions of a legal representative.

From the above examples, it can be seen that the provisions of Clause 6, Article 12, can only be applied in the following case. The company has only one legal representative who is an individual member and has two members who are both individuals or one individual and one organization authorizing one person to participate in the Board of Members.



In addition, Clause 7, Article 12 of the 2020 Law on Enterprises stipulates that *“the court and other proceeding authorities are entitled to appoint the legal representative who participates in proceedings as prescribed by law.”* This provision is consistent with Point c, Clause 1, Article 137 of the 2015 Civil Code. Whereby, *“Legal representatives of juridical persons include: a) The person appointed by the juridical person according to its charter; b) The person competent to represent as prescribed by law; c) The person appointed by a court during the proceedings at the court.”* However, this provision does not have any guiding documents for implementation, leading to many different interpretations and not being applied in practice. Specifically, *“appointing a legal representative to participate in proceedings as prescribed by law”* is done under what circumstance? If the company's charter assigns this person to participate in the proceedings, do the Arbitration, Court, and other proceeding authorities have the right to appoint another person to participate in the proceedings? If the person authorized by the company's charter to participate in the proceedings is dead, missing, etc., do the Arbitration, the Court, and other proceeding authorities have the right to appoint another legal representative? If the company has only one legal representative, but that person is dead, missing, etc., do the Arbitration, Court, and other proceeding authorities have the right to appoint another person as a legal representative? Therefore, without instructions, the provision for appointing legal representatives to participate in proceedings is not feasible. Or if applied in practice, it is straightforward to violate provisions related to legal representatives and the rights of each legal representative in the company's charter or the Law on Enterprises.

In addition, the 2020 Law on Enterprises has no provisions relating to the determination of legal representatives of a one-member limited liability company owned by an individual. This means that the dispute settlement agency or organization can only base on the company's charter and the business registration certificate to determine the legal representative in company-related disputes. On the National Business Registration Portal, the rights and obligations of each company's legal representative in the company with many legal representatives are not clear.

From the above inadequacies, Vietnamese law needs to be amended and supplemented as follows:

1) For the 2020 Law on Enterprises: If a limited liability company/a joint-stock company has many legal representatives, the company's charter appoints rights and obligations for one legal representative to represent the company in company-related disputes, the company's charter shall contain provisional content. If the legal representative is dead, missing, etc., the company's charter shall be amended to assign another legal representative to participate in the proceedings; or it is required the decision of the company owner/the Board of Members/the Board of Directors to appoint another legal representative to participate in the proceedings. Or supplement, explain in the following direction: If the legal representative who is assigned the right to participate in the proceedings by the company's charter is dead, missing, etc., then this provision in the alliance is considered to be no longer valid. The other legal representatives in the company have the right to represent the company to participate in the proceedings or authorize another person to participate in the proceedings.

In addition, Clause 6, Article 12 of this Law should be amended towards: *“For a limited liability company in which the Board of Members has two members, if the company has only one legal representative and that person is also a member of the Board of Members, but this person is dead or missing, etc. The other member shall assume the position of the company's legal representative until the Board of Members issues a new decision on the company's legal representative* Or in the direction that if that sole legal representative does not concurrently hold the position of Director/General Director when that person is dead, the Director/General Director will assign the other member shall assume the part of the company's legal representative until the Board of Members issues a new decision on the company's legal representative.

2) For the 2015 Civil Procedure Code, the 2010 Commercial Arbitration Law, and documents related to other proceeding authorities: It is necessary to specify which cases the Court, Arbitration, and other proceeding authorities may appoint legal representatives to participate in the proceedings. For example, in the case of many legal representatives, but the company's charter does not specify



the company's representative before the Arbitration, Court, or other proceeding authorities, they have the right to appoint one of the legal representatives to participate in the proceedings. In the other cases, the proceeding authorities comply with the company's charter and the Law on Enterprises in determining the legal representative to participate in the proceedings or authorize others to participate.

3.2. For sole proprietorships and partnerships

First, for partnerships

Clause 4, Article 184 of the 2020 Law on Enterprises stipulates, *"The President of the Board of Partners, the Director/General Director has the following rights and 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..."*. In addition, Clause 1, Article 182 of this Law stipulates *"the Board of Partners consists of all partners and shall elect a partner as the President of the Board of Partners, who may concurrently hold the position of Director/General Director of the partnership unless otherwise prescribed by the charter."*

Therefore, the President of the Board of Partners is also one of the partnership's legal representatives. It shows that the other general partners are the partnership's legal representatives, but not being allowed to represent the company to act as the person to request the settlement of a civil matter, the plaintiff, the defendant, the person with related interests and duties before the Court. Meanwhile, suppose the partnership's charter stipulates that the President of the Board of Partners cannot concurrently hold the Director/General Director position, but the partnership's charter assigns a person who is not a member of the association acting as Director/General Director. In that case, this person will also have the right to represent the partnership in the capacity of a requester for settlement of civil matters, plaintiff, defendant, a person with related interests and obligations before Arbitration, Court and other legal proceedings without having to be the legal representative of the partnership.

What if the President of the Board of Partners cum Director/General Director is dead or missing? The company shall have a new President of the Board of Partners or a Director/General Director to exercise the right to participate in the proceedings. There is no legal person to participate or authorize a new member of the Board of Directors to participate in the proceedings. Meanwhile, the other general partners are all partnership's legal representatives but are not allowed to act as the partnership's representative to participate in the proceedings. Therefore, in this situation, the dispute will not be resolved if the partnership does not have a new President of the Board of Partners or a new director.

From the above inadequacies, the 2020 Law on Enterprises should remove the requirement that only the President of the Board of Members and the Director/General Director acts as the legal representative in disputes at Arbitration, Court, and other proceeding authorities. Instead, the Law should assign the company's charter to stipulate a limited liability company and a joint-stock company with many legal representatives in the above sections. This ensures equal rights among general partners because all general partners are legal representatives of the company.

Second, for sole proprietorships

Clause 3, Article 190 of the 2020 Law on Enterprises defines the owner of a sole proprietorship as a legal representative and also a person *"who will represent it during civil proceedings, as the plaintiff, defendant or person with relevant interests and duties before the court and arbitral tribunals, and in performance of other rights and obligations prescribed by law"*. This provision repeats Clause 1, Article 12 of the 2020 Law on Enterprises on duties and rights of legal representatives in general. However, the question is, when the owner of a sole proprietorship is dead or missing (in this case, there is no authorization for another person), who will be the sole proprietorship's legal representative to participate in the proceedings?

This issue has been regulated by the 2020 Law on Enterprises but has not been completed. Specifically, according to Clause 2, Article 193, *"in case the owner dies, this/her heir or one of the legal heirs or designated heirs shall be the owner under an agreement among the heirs. If such an agreement cannot be reached, the sole proprietorship shall be converted into a company or*

dissolved." Thus, if the owner of a sole proprietorship dies, the determination of the new legal representative can only be done when there is an heir who agrees to receive the inheritance. Or many heirs agree to accept the estate and have an agreement with the new owner of the sole proprietorship. Therefore, in the following cases, a sole proprietorship will not have a new legal representative: No heir; All heirs refuse to inherit or are not entitled to inherit; the heirs accept the inheritance but cannot agree on the new legal representative.

If there are no heirs or all heirs refuse to accept the inheritance or are not entitled to inherit, if the dispute is being taken by arbitration or court, the case will not continue or be suspended. Because, according to the 2020 Law on Enterprises, the owner is not the plaintiff, the defendant, the person with related rights and obligations, but *"the sole proprietorship's representative is acting as a requester for settlement of civil matters, plaintiff, defendant, a person with related interests and duties."* Therefore, when a sole proprietorship owner dies without a new sole proprietorship owner to replace, there is no basis in Clause 1, Article 59 of the 2010 Law on Commercial Arbitration to terminate dispute settlement¹. At the same time, there is no basis under Clause 1, Article 217 of the Civil Procedure Code 2015, to complete the case payment.² In other words, previously, according to Clause 3, Article 185 of the 2014 Law on Enterprises (expired), *"The owner of a sole proprietorship is the plaintiff, defendant or person with related interests and obligations before Arbitration or Court in sole proprietorship-related disputes."* Therefore, in the past, when the owner of a sole proprietorship died. Still, their rights and obligations did not have an heir; there was the basis for the Arbitration or Court to terminate the settlement of the dispute or the case. However, now, according to the 2020 Law on Enterprises, the owner of a sole proprietorship is no longer determined as the plaintiff, defendant, or person with related interests and obligations before Arbitration or Court in associated disputes, but *"to represent the sole proprietorship during civil proceedings, as*

¹According to Clause 1, Article 59 of the 2010 Commercial Arbitration Law, Settlement of a dispute shall be terminated in the following cases: a) The individual plaintiff or defendant is dead without any heir of his/her rights and obligations; b) The institutional plaintiff or defendant has terminated its operation, gone bankrupt, or has been dissolved, consolidated, merged, divided, split up or reorganized without any agency or institution taking over its rights and obligations; c) The plaintiff withdraws his/her petition or is regarded as having withdrawn his/her petition under Clause 1. Article 56 of this Law. unless the defendant requests the settlement of the dispute to be continued; d) The parties agree to terminate the dispute settlement; e) A court has decided that the dispute falls beyond the arbitration council's jurisdiction, or there is no arbitration agreement, or the arbitration agreement is invalid or unrealizable under Clause 6, Article 44 of this Law.

²According to Clause 1, Article 217 of the 2015 Civil Procedure Code, after accepting cases which fall within their respective jurisdiction, the Courts shall issue decisions to terminate the resolution of the civil lawsuits in the following circumstances: a) The plaintiffs or defendants being individuals have died while their rights and obligations are not inherited; b) Agencies or organizations have been dissolved or are bankrupt without any agencies, organizations or individuals inheriting their procedural rights and obligations; c) The litigators withdraw all petitions for initiation of lawsuits or the plaintiffs are absent though having been duly summoned twice, unless they apply for trials in their absence or a force majeure event or an objective obstacle occurs; d) The Courts have issued decisions to open bankruptcy procedures for enterprises or cooperatives being a party to the cases and the resolution of such cases is related to the obligations and property of such enterprises or cooperatives; dd) plaintiffs fail to advance the charges for property price appraisal and other procedural charges prescribed in the Code. If the defendants with counter-claims or persons with relevant interests and duties with independent claims fail to advance the property price appraisal and other procedural charges as prescribed in this Code, the Courts shall terminate the resolution of counter-claims or the independent claims of the persons with relevant interests and duties; e) The involved parties have requested to apply the statute of limitations before the firstinstance Courts issue the judgments/decisions on case resolution and the statute of limitations for lawsuit initiation expire; g) Cases prescribed in clause 1 Article 192 of this Code that have been accepted by the Courts; h) Other circumstances prescribed by law.

the plaintiff, defendant or person with relevant interests and duties before the court and arbitral tribunals, and in performance of other rights and obligations prescribed by law.” Therefore, currently, the basis for suspending dispute settlement in arbitration proceedings and court proceedings when “*an individual plaintiff or defendant is dead but his/her rights and obligations are not inherited*” will no longer apply in the event of the death of the sole proprietor.

Besides, suppose the sole proprietorship owner is dead but the agreement on the new sole proprietorship owner cannot be reached. In that case, Article 193 of the Law on Enterprises stipulates that the sole proprietorship shall be “*converted into a company or dissolved.*” Thus, in the case of conversion into a company, that company will participate in the proceedings through the company’s legal representative as prescribed in the company’s charter or Point c, Clause 2, Article 74 of the 2015 Civil Procedure Code. However, in the case of dissolution, the inheritance of procedural rights and obligations under Article 74 of the 2015 Civil Procedure Code and Article 59 of the 2010 Commercial Arbitration Law is not recognized. Therefore, the case will be suspended for settlement according to Point b, Clause 1, Article 217 of the 2015 Civil Procedure Code, and Point b, Clause 1, Article 59 of the 2010 Commercial Arbitration Law. This may lead to the heirs intentionally not converting into a company towards the dissolution to suspend the settlement of the case.

In addition, Articles 12 and 193 of the 2020 Law on Enterprises, Articles 214 and 217 of the 2015 Civil Procedure Code, Article 59 of the 2015 Commercial Arbitration Law 2010 have not anticipated this situation where the sole proprietorship owner has not expected this situation is missing. Therefore, it cannot suspend or terminate the settlement due to the missing of the sole proprietorship owner, who is the legal representative.

With the above inadequacies, the 2020 Law on Enterprises should be supplemented with a condition for dissolution of a sole proprietorship if the heirs cannot agree on who is the new owner of the new sole proprietorship in the following direction. Sole proprietorships shall not be dissolved during the legal proceedings as defendants, plaintiffs with counter-claims of the defendants, or persons with related interests and obligations. At the same time, the 2015 Civil Procedure Code and the 2010 Commercial Arbitration Law should plan for the disappearance of the sole proprietorship owner for the temporary suspension of the settlement.

4. CONCLUSION

In Vietnamese law, the determination of the enterprise’s legal representative has been specified in the 2020 Law on Enterprises, but there are several inadequacies and shortcomings. This will lead to many difficulties in practice, especially in determining the enterprise’s legal representative to participate in or authorize another to participate in legal procedure at Arbitrations, Courts, and other proceeding authorities. The research and discovery of mentioned inadequacies and recommendations significantly contribute to the improvement of Vietnamese law in general and the Law on Enterprises, the Civil Procedure Code, the Law on Commercial Arbitration.

References

- [1] 2015 Civil Procedure Code
- [2] 2020 Law on Enterprises
- [3] 2014 Law on Enterprises
- [4] 2010 Law on Commercial Arbitration