



## Enterprise Conversion in Vietnam: Legal Inadequacies and Suggested Solutions

Nguyen Vinh Hung<sup>1\*</sup>, Nguyen Dang Duy<sup>1</sup>

<sup>1</sup> School of Law, Vietnam National University, Hanoi, VIETNAM.

\*Corresponding Author (Tel: +84 942 392 285, Email: [nguyenvinhung85@gmail.com](mailto:nguyenvinhung85@gmail.com)).

Paper ID: 13A4Q

Volume 13 Issue 4

Received 27 November 2021

Received in revised form 28 March 2022

Accepted 5 April 2022

Available online 12 April 2022

### Keywords:

Private enterprise;  
general partnership;  
enterprise conversion;  
Enterprise Law;  
unlimited liability.

### Abstract

The 2020 Vietnam's Enterprise Law has expanded the types of enterprise to be converted, from the business theory and practice, however, it has also been shown that the private enterprise and general partnership conversion poses a lot of limitations, inadequacies and differences from the law of most countries in the world. These defects in regulations of the 2020 Enterprise Law have caused several difficulties for those in the conversion process and partially provoked the inefficient legal system. Accordingly, this article aims to analyze the inadequacies of the current regulations on enterprise conversion law in Vietnam and suggests possible solutions to enhance the mentioned inadequacies.

**Disciplinary:** Business Law & Management, Economic Management, Economic Law.

©2022 INT TRANS J ENG MANAG SCI TECH.

### Cite This Article:

Hung, N.V., Duy, N.D. (2022). Enterprise Conversion in Vietnam: Legal Inadequacies and Suggested Solutions. *International Transaction Journal of Engineering, Management, & Applied Sciences & Technologies*, 13(4), 13A4Q, 1-13. <http://TUENGR.COM/V13/13A4Q.pdf> DOI: 10.14456/ITJEMAST.2022.80

## 1 Introduction

In the modern legal system of developed countries such as the UK, the United States, Germany, and France, enterprise conversion is strictly regulated. Unlike Vietnam, they have regulations on various types of enterprises, as a result, when necessary one type of enterprise can convert into another one. Typically, in Germany's law, the types of human-capital-based companies are diversified, which leads to the fact that a general partnership can be easily converted into a limited partnership if needed. In other words, the diversity of enterprise types along with reasonable, flexible and creative regulations on enterprise conversion has made it possible for enterprises to quickly and easily convert their legal type into another to continue the existence or meet the needs of investors in certain conditions or circumstances.

In Vietnam, the most significant drawback is that from the 1999 Enterprise Law to the ones of 2005, 2014, and 2020, the legislators have stipulated the existence of only one type of human-capital based company as the general partnership, there are no other types for it to convert into. This is the cause that explains that in some cases, "due to the lack of the minimum number of general partners, the general partnership has to cease to exist" (Nguyen Vinh Hung, 2013). Although the mentioned type has been regulated for more than 20 years, "general partnership has been mostly undeveloped in Vietnam" (Nguyen Vinh Hung, 2016). In addition, the Enterprise Laws from 1999 up to now have not allowed the general partnership to convert into a limited liability company or a private enterprise, but the 2020 Enterprise Law permits the conversion of private enterprises into a general partnership. Another important difference between Vietnam's law and the law of most countries in the world is that a private enterprise, originally a single business owner model, can be converted into a limited liability company or a joint-stock company. Therefore, it can be seen that the regulations on enterprise conversion on these two business models have not only been different from those prescribed in the law of many other countries but also brought up many inadequacies.

In the context of extensive international integration, more and more foreign investors are willing to do business in Vietnam, and without a doubt, they need to choose appropriate business models for their plans. Therefore, the enterprise legal system in general and the enterprise conversion legal regulations in particular need to be completed and in line with international practices. Moreover, the research on enterprise conversion focusing on private enterprises and general partnerships under the current law in Vietnam has become fundamentally necessary.

## 2 Literature Review

Enterprise conversion is a topic that always attracts attention and interest in Vietnam. Therefore, during the last time, quite a few studies in Vietnam mentioned a number of related contents to this article, and typical of which are the following studies:

Research on the legal nature of different types of companies, so that there is a basis for considering the problem of enterprise conversion, typically the research works of Bui (2010), Nguyen et al. (2011), Pham (2015). These are studies that lay the foundation for fully and accurately grasping the legal nature of these types of businesses. At the same time, these studies also partly mention the problem of enterprise conversion and the limitations of the transformation.

Research related to enterprise conversion can include typical works such as those Le et al. (2006), Le et al. (2010), Hanoi Law University (2018). These studies have mentioned the legal issues of enterprise conversion in Vietnam. In which, the limitations and inadequacies of the enterprise conversion have been mentioned in relative detail and clearly.

Some studies also briefly mention the problem of enterprise conversion and can be mentioned as those of Nguyen (2013), Nguyen (2016), Tran (2016). These are important studies and point out the shortcomings and limitations of enterprise conversion in Vietnam.

Besides, a number of studies on corporate forms are related to enterprise conversion by foreign authors such as Cozian et al. (1990), Fubler et al. (1992), Lemeunier (1992). These studies are the basis to compare the enterprise conversion in some countries with Vietnam.

On the basis of inheritance and development from the above studies, the authors study the limitations of the enterprise conversion in Vietnam. From there, the authors propose a number of solutions to overcome the limitations and inadequacies to contribute to the improvement of corporate law and the improvement of Vietnam's business and investment environment.

### 3 Method

To study the inadequacies in enterprise conversion in Vietnam, the authors have used a combination of traditional research methods of the social sciences and legal sciences such as the legal analysis method, the legal efficiency evaluation method, and the comparative-legal method to achieve the objectives of the research.

In general, the above research methods are used in close and harmonious combination by the authors to achieve the research objectives of the article.

### 4 Result and Discussion

#### 4.1 The Inadequacies in Legal Conversion of the General Partnership in Vietnam

From the 1999 Enterprise Law to the 2005, 2014 and 2020 Enterprise Law, “both general partnership and limited partnership exist under one common name *general partnership*” (Nguyen Vinh Hung, 2015). In the regulations of the general partnership, there is the participation of capital contributors with limited liability for assets. However, limited partners only exist in the limited partnership, and these two types of enterprises are distinguished mainly on the basis of limited partner participation. On the other hand, the law in Vietnam stipulates that one general partnership must have at least two general partners (must be individuals) and may have additional limited partners (Point A, clause 1, Article 177 of the 2020 Enterprise Law). Therefore, it shows that the role and presence of limited partners (who can be individuals or legal entities) are not likely meant for the general partnership because, in principle, a general partnership requires at least two general partners. However, unlike Vietnam, the law of most countries in the world stipulates that a general partnership has only one type of member, the general partner. Limited partners exist only in the limited partnership. Therefore, these countries stipulate the existence of both types of partnerships so that investors have more choices and can easily convert between these two if necessary.

It is possible that when formulating the first regulations on general partnership in the Enterprise Law 1999, Vietnamese legislators wanted to make it convenient for investors to choose either a general partner or a limited partner. If investors do not want to be responsible for unlimited liability and joint obligations of a general partner, they can choose to be a limited partner with limited liability for assets. This is one advantage of limited partners to attract investors. In other words, investors joining a general partnership as limited partners is almost the

same as joining a joint-stock company or a limited liability company because they are all entitled to the limited liability for assets. In addition, the regulation on the existence of both types of members in general partnership also brings convenience to the company in case there are more limited partners to join or any member withdraws suddenly, there is no need to convert the type. In other words, the volatility of limited partners does not affect the partnership's need to register to change members.

However, some may argue that “these regulations make Vietnam's general partnership quite different from the ones in other countries, causing difficulties for investors' identification and integration in the general partnership model” (Hanoi Law University, 2018). At the same time, the general partners have no choice for the general partnership to convert the type of business when necessary because, as mentioned before, both general partnership and limited partnership are combined in a common name of a general partnership. This also causes difficulties for customers in transactions with the general partnership since “when the general partnership is established and operates, the public and those who have a business relationship with the company have to find out which general partnership has unlimited liability members and which one has limited liability members. If all members in the company are general partners, with unlimited liability, the customers can transact with any of them and can demand them to pay all the company's debt. If the general partnership has both types of members, the customers must identify clearly which ones have limited and which ones have unlimited liability for transactions and debt collection, if any. Limited partners are only liable for the debts of the company to the extent of their contributed capital. Customers cannot claim a limited partner to pay all the company's debt if such debt is greater than the liability of this member” (Nguyen et al., 1999). Therefore, the regulation of combining the two types of partnership not only causes difficulties and confusion for customers or makes it impossible for these companies to convert the legal type between the two but also makes Vietnam's enterprise legal system more incoherent and ununiformed.

In practice, the inadequacies of the unclear separation of these two types of human-capital-based companies also cause problems. If a general partner suddenly leaves the company (death, disappearance, incapacitated civil act...), according to point c, clause 1, Article 207 of the 2020 Enterprise Law, within six months, in case there is no more general partner, the general partner will be dissolved, although it may still have one (or more) limited partner(s). In this case, the remaining general partner has to invite and persuade at least one more investor to participate as the other general partner to avoid the general partnership dissolution due to the lack of the minimum number of general partners as prescribed at point a, clause 1, Article 177 of the 2020 Enterprise Law. Unlike a joint-stock company, which is easy to attract investors to participate in, a general partnership, calling a general partner is troublesome due to its characteristics. Therefore, the formation and existence of the general partnership are based on the close association and attachment of the partners, their relationship is so close that they may “live and die together” (Bui, 2010). With the “nature of a human-capital based company (concerning the members' identities)”

(Tran et al., 2017), general partners must put trust in each other to be able to bear the joint liability and unlimited responsibility together. In Vietnam, joint obligations and infinite responsibility are burdensome civil obligations in which, “when a general partner causes losses in performing a company’s service, the affected person has the right to request any general partner to compensate for the entire damage” (Van, 2002). Thus, “even though they do not directly cause damages, these general partners have to bear the consequences of the acts of other general partners because of the joint responsibility between them. The company is the debtor for the creditors of a general partnership, and the general partners have joint responsibility” (Nguyen Vinh Hung, 2016). “Unlimited liability” including “the full debt repayment .... is the unlimited (and even eternity) of the debt repayment obligation” (Nguyen, 2011), or it is also considered “the full and unlimited responsibility” (Pham, 2009). Thus, “joint obligations and unlimited liability have very closely bound the general partner with the general partnership and the general partner together” (Nguyen Vinh Hung et al., 2021). Therefore, to invite an investor as a general partner in a general partnership is very difficult since it is possible that the newly joined member not having received any benefits must be involved and have the unlimited liability of all financial obligations of the general partnership with its assets (Clause 3, Article 186 of 2020 Enterprise Law.) according to the regulations of the 2020 Enterprise Law. In addition, there are cases in which new investors or legal heirs of the deceased general partner only want to be a limited partner to benefit from limited liability for the assets. If this happens, the general partnership cannot continue to exist, because according to the law, the general partnership must have at least two general partners. Therefore, if the 2020 Enterprise Law clearly separates the general partnership from the limited partnership, the problem will be solved very quickly and easily with the conversion from the previous to the latter one. Unlike the general partnership, the limited partnership simply needs one general partner and one limited partner. Furthermore, the general partners of a limited partnership are general partners in a general partnership with the same legal status. Thus, the clear-cut distinction between a general partnership and limited partnership is very important to convert the legal type between them. On the other hand, this also helps the general partnership be more flexible and proactive if the company encounters unexpected changes in the number of partners. Therefore, it can be concluded that “the unclear separation between a general partnership and a limited partnership results in difficulties in legal type conversion between them” (Nguyen, 2016).

On the other hand, the contradiction between 2020 Enterprise Law and other legal documents in the conversion of general partnership reflects in the operation of the Bailiff Office. Although the Enterprise Law 2020 does not allow the general partnership to be converted into any other type, Bailiff Offices is operating under the model of a general partnership can be converted into a private enterprise or vice versa according to Article 26 of Decree No. 08/2020/ND-CP on the organization and operation of the Bailiffs (Decree No. 08/2020/ND-CP of the Government dated 8 January 2020, on the organization and operation of bailiffs.). If only one Bailiff conducts the

operation, it is the model of a private enterprise, whereas with more than two members, the model is of the general partnership, and the owners of both models have unlimited liability, which is the legal guarantee of their business. In order to facilitate meet the needs and desires of investors, the Bailiff Office is allowed to convert the legal type between these two models. In principle, “The Bailiff’s, that want to convert the type of operation from a private enterprise to general partnership and vice versa, submits directly or via the postal system 01 sets of registration application for conversion to the Department of Justice ”(Clause 1, Article 26 of Decree No. 08/2020/ND-CP of the Government dated 8 January 2020, on the organization and operation of bailiffs.). This regulation is quite satisfactory with the current operation of the Bailiff’s. This means it is possible to convert the legal type between a general partnership and a private enterprise. There also has been a change in the view of Vietnamese legislators to suit the requirements of the current business practice. However, Decree No. 08/2020/ND-CP and the 2020 Enterprise Law have been issued in a fairly short time period, but it is an insufficiency that the latter has not stipulated the legal conversion of these two types.

Broad research on the legal regulations of some countries shows that France is considered to have “enterprise types that include almost all the characteristics of the company organization of the commodity economy in many countries throughout the world” (Maurice Cozian et al., 1990). The law of this country allows a limited liability company to be converted into a general partnership. However, the conversion must have the consent of all members of the company, because in principle they will have joint and unlimited liability (Francis Lemeunier, 1992). Moreover, France’s law also allows a limited liability company to be converted into a limited partnership (Cozian et al.1990). It means that a physical capital-based company can be converted into a human capital-based company. If all members agree about all issues, including the unlimited liability and joint obligations, the conversion absolutely will not affect the legitimate rights and interests of creditors and customers in transactions with the company. In Vietnam, “the Law on Enterprises does not stipulate the conversion from limited liability company, joint-stock company to private enterprise or general partnership because this process changes the status of the investors from limited liability to unlimited liability, which resulting in the significant change in the position, the risk or the debt security for creditors” (Le et al. 2006). However, the conversion from a physical capital-based company to a human capital-based company in France can be done easily as it can assure the rights of customers and creditors. It is worthwhile for Vietnamese legislators to consider appropriate adjustments.

## 4.2 The Problems of Legal Conversion to Private Enterprises in Vietnam

Presently, the 2020 Enterprise Law allows private enterprises to convert into many business models such as limited liability companies, joint-stock companies and general partnerships (Clause 1, Article 205 of the 2020 Enterprise Law.). However, it is worth mentioning that the conversion of the business model had not been allowed in the previous laws until 2020 Enterprise Law come into effect. Consequently, private enterprise is the only type that can be converted into both a physical capital-based company and a human capital-based company in Vietnam. This shows a relatively special legal characteristic of the private enterprise which is very different from many countries in the world.

“Private enterprise is one of the earliest business models during the innovation period in Vietnam. Along with the 1990 Company Law, the 1990 Private Enterprise Law was promulgated by the State. The model of private enterprise also known as people’s business, was orientated to promote the potentials of individuals and society in the renewal economic background” (Nguyen Vinh Hung, 2017). In Vietnam, another viewpoint is that it is “a private enterprise is a type of one-owner company, similar to a one-member limited liability company” (Nguyen Vinh Hung, 2017). By nature, a private enterprise is a business owned by a single member. Besides, the private enterprise and the household business model (also known as an individual business household) are easily mistakable because they both have only a single owner. In principle, a household business is one established by an individual or household member and he is responsible with all his assets for the business activities. (Clause 1, Article 79 of Decree No. 01/2021/ND-CP dated January 4, 2021, on business registration.) This model can be seen as a single trader in Vietnam. While both of these two have unlimited liability for assets in business activities, they are different in business sizes, “the word enterprise refers to a larger business scale than a household business” (Ngo Huy Cuong, 2013). Nevertheless, the private enterprise seems to have not escaped from the concept of a single household business.

Unlike Vietnam, private enterprise in other countries is often considered as a “sole proprietorship or sole trader, a business form in which the owner is also the manager - run the business on their own, with no separation of the ownership between the property of the owner and of the business” (Le et al., 2010). In the United Kingdoms, the model that similar to Vietnam's private enterprise is called as a "sole trader enterprise", while it is known as a sole proprietorship in the United States. In addition, the governing laws of most countries do not treat an individual proprietorship in the same way as an enterprise because a private enterprise is considered a single trader. In Vietnam, although there are differences between companies and enterprises, the private enterprise has been codified with other types of companies to be governed by the Enterprise Law since the enactment of the 1999 Enterprise Law. In Germany, there is a point of view that a “company is understood as the association of two or more individuals or legal entities by a legal event to carry out activities to achieve some common goals” (Friedrich Fubler et al., 1992).

Meanwhile, in France, a company can be interpreted as “a contract by which two or more persons agree to use their assets or capabilities in a common activity in order to share the profits obtained through that activity” (Hanoi Law University, 2018). The private enterprise is regarded as the business activities of an individual, or to be more specific, a private enterprise does not have the association among members like in a company. It is necessary to affirm that “the true legal nature of a private enterprise is of an individual trader” (Ngo, 2013). Therefore, the fact that the Enterprise Law of Vietnam stipulates the model of a sole trader under the name of a private enterprise is unreasonable and inappropriate. In fact, there used to exist a view that the name of a private enterprise had to be changed into other names such as “individual enterprise, individual trader, or sole trader”. (Ngo, 2013).

Due to the sole proprietorship and its owner having the same responsibility, or in other words, the assets of the sole proprietorship and the assets of its owner are closely linked. A private enterprise is not eligible to be recognized as a legal business entity because it is required to have a clear separation between the assets of the business and of the owner (Point C, Clause 1, Article 74 of the 2015 Civil Code.)in a legal entity. However, the inadequacy from 2014 to 2020 is that the current Enterprise Law at that time allow a private enterprise can be converted into a limited liability one. The transformation only can be conducted in case its owner commits in writing his personal liability with all his assets to the unpaid debts and commits to its repayment when they are due. (Article 199 of 2014 Enterprise Law; Article 205 of 2020 Enterprise Law.)Decree No. 139/2007/ND-CP even permitted a private enterprise to convert into a limited liability one before the 2014 Enterprise Law did this, (Article 24 of Decree No. 139/2007/ND-CP dated September 5, 2007 detailing the implementation of a number of articles of the Enterprise Law.) and it was once “regarded as a breakthrough to help private enterprises easily convert into limited liability ones with more advantages and convenience in operation, without having to go through complicated procedures of dissolution and then the establishment of new companies” (Le Hoc Lam et al., 2010).

It can be seen that a limited liability company is a type of physical capital-based company and has its own legal status. Thus, is it appropriate to allow the conversion from an individual business model without legal status to another with legal status? Vietnamese legislators probably wanted to create favorable conditions for private business owners to convert the legal type of operation easily. However, the conversion must be reasonable, otherwise, it will cause nuisance and complication for business management and registration. In fact, there may be private enterprises that have been operating for a while and have a certain business reputation but then convert into a single-member limited liability enterprise. Within the limited liability characteristic of the model, customers who have already had transactions with the previous private business owner (now become the owner of a single-member limited liability company) may suffer losses when dealing with a new company. It results from the practice that these customers are familiar with the owner's unlimited liability of the previous model of a private enterprise. Therefore, it can be concluded that allowing the conversion of a private enterprise into a limited liability company may not only cause

damage and risks to customers but also create a legal loophole for deceitful business activities. Concurrently, the legal system on enterprise conversion can become unreasonable in a quite loose manner and incompatible with international laws.

## 5 Conclusion

Since it was re-regulated in the Enterprise Law in 1999, “the general partnership has been less attractive to businessmen” (Nguyen, 2013). From current business practice in Vietnam, it is shown that “the number of general partnerships established under the Enterprise Law is relatively small” (Pham, 2009). Thus, there was an opinion that “the model of general partnership has not been successfully imported into our country.... For very reasons, this model has completely failed, Vietnamese businessmen hardly choose this type of business” (Pham Duy Nghia, 2015). Regarding the general partnership, as addressed above, the failure to convert the legal types can potentially lead to the risk of dissolution. In addition, the unclear determination of the legal nature of the private enterprise leads to the unreasonable conversion. All these reasons cause difficulties and complications in the conversion of the enterprise types and make the legal system in Vietnam different from the law of other countries around the world. Thereby, the authors believe that the following suggestions should be considered as effective ways to deal with the problems in the conversion of a general partnership and private enterprise, and make the regulations more productive:

Firstly, separating the two types of the general partnership and the limited partnership to legalize the conversion of the company form between them

“According to Vietnamese law, general partnership company includes two types of human capital based companies like other countries” (Hanoi Law University, 2018). Therefore, the only way to convert the company form between them is to clearly separate the general partnership from the limited partnership. Especially, according to the authors, the legal regulations on general partnership in the 2020 Enterprise Law presently only cover general partners and the other aspects of the company such as organizational structure, management and administration, representation mechanism... Otherwise, it is necessary to quickly supplement legal regulations on the limited partnership, which stipulate regulations on both types of limited partner and general partner. In order to effectively distinguish between two types of enterprise, it is necessary to maintain the stipulation that a general partnership must always have at least two general partners. For a limited partnership, there must have at least one general partner and at least one limited partner. As a result, the regulations on a limited partner in the current partnership law should be moved to the limited partnership law. According to the writers, only in this way can both types of enterprise exist in accordance with their legal nature and type. Furthermore, this allows the general partnership and limited partnership to easily and quickly convert the legal form to each other as appropriate. The authors believe that the suggested regulations will bring great convenience, flexibility and proactiveness to both types and at the same time, promote their strong development in Vietnam.

Second, supplementing regulations on the legal conversion from a general partnership to a limited liability company and vice versa

The authors believe that it is necessary to regulate that a general partnership can also legally convert into a limited liability company and vice versa. It is probably from the fear of the complexity and problems of converting the legal form from a human capital-based company to a physical capital-based company, that Vietnam's law does not allow conversion between these two types. However, as addressed above, according to the research on France's law, it still allows a limited liability company to be converted into an unlimited one. Therefore, a limited liability company can freely convert into a general partnership. On the other hand, the conversion of the legal form between them does not affect the liability obligations of the company to its creditors and customers. Because the decision to convert from limited liability for property to an unlimited one or vice versa must come from the common will of all members. However, it is necessary to clearly stipulate the legal conditions for conversion such as: The conversion required the assent of all members; general partners must ensure all financial obligations of the general partnership during the operation and up to the time of completion of the conversion or specifying if they want to convert, they must commit and have certification from the competent authority that the company has fully paid all financial obligations to customers and creditors; Besides, the general partner continues to bear joint obligations and unlimited liability during the operation at the limited liability company or in case that the general partner does not continue to participate or has left the limited liability company, but it is discovered that the financial obligations of the previous general partnership have not been completely fulfilled in a certain period of time (this time limit should be 2 years similar to the time prescribed in Clause 5, Article 185 of 2020 Enterprise Law). In addition, it is also necessary to refer to the regulations on the conversion of private enterprises: "The owner of a private enterprise commits in writing to be personally liable with all his assets for all unpaid debts and commitments fully paid upon maturity of the debt. The owner is personally liable with all his/her property for all debts incurred before the date the converted company is granted the Certificate of business registration" (2020 Enterprises Law, Article 205). According to the authors, such regulations will ensure the rigor and binding of responsibilities of general partners when converting into limited liability companies. As a result, provided the regulations are stringent, precise and unambiguous, the conversion of a general partnership to a limited liability company will not impair the legitimate rights and interests of the company's creditors and customers. This also contributes to Vietnam's legal system on the conversion of general partnership closer to and in accordance with international laws. Thus, foreign investors feel more secure and confident when operating under the model of a general partnership or limited liability company.

*Third, developing a system of general regulations on enterprise conversion for all business types in the Enterprise Law*

It can be seen that allowing a private enterprise to convert into a limited liability company or a joint-stock company causes controversy and it can even create a legal loophole for private

business owners to take advantage of deceitful business activities. However, it should be confirmed that allowing a private enterprise to be converted into a physical capital-based company creates favorable conditions and attracts investors when establishing this business model. The business owner may decide on the private enterprise model when other members have not mobilized to join yet and, when the scale increases, the private enterprise owner may convert into other companies types of limited liability companies or joint-stock companies, so that it raises capital and membership is more easily accessible. However, according to the authors, it is necessary to research and develop a consistent system of regulations on enterprise conversion. Because, up to now, Enterprise Laws in Vietnam tend to stipulate the conversion of each business model into a completely separate law and there have been no general principles and unification for regulations of these laws. Therefore, there is no consensus and synchronization in the enterprise conversion that may cause legal loopholes affecting the legitimate rights and interests of those involved in the process. The authors believe that, when building a regulatory system on enterprise conversion, it is vital to define scenarios or assumptions and solutions in order for the 2020 Enterprise Law business models to be applied consistently and successfully. Especially, it is assumed that the conversion of private enterprises in particular and other types of companies, in general, will be required to publicly announce this not only at the head office or at branches, representative offices of the enterprise but also in the media commonly used by many people such as website, email, electronic information network of the business registration agencies and local press. In addition, the conversion enterprise announcement should be sent compulsorily to all customers and creditors having regular transactions or having had the negotiation in a certain period of time with the converting company. It is also a way to protect the legitimate rights and interests of customers after a private enterprise has converted into a limited liability company or a joint-stock company. In other words, the research and development of a regulatory system on enterprise conversion must be thoroughly able to grasp the required protection of the legitimate rights and interests of those related to the converted company so that they are not affected. At the same time, the conversion of private enterprises in particular and other types of companies, in general, prevent the legal loopholes for the acts to deceive and defraud customers.

By doing so, the Enterprise Law in general and the regulations on general partnership and private enterprise conversion in particular in Vietnam will be more and more complete, advanced and modern and consistent with the laws of many countries around the world.

Because Vietnam's 2020 Enterprise Law only stipulates the existence of one type of human capital-based company, it is dissolved easily with the sudden lack of a general partner. On the other hand, the lack of an enterprise type to convert in necessary cases has caused a lot of difficulties and complications for general partners and is one of the important reasons why the appearance and development of this company in Vietnam face many challenges. As for private enterprises, the conversion regulations to a limited liability company are not indeed reasonable. Because converting from an individual business model to a company model with full legal entity status is

not really satisfactory and different from national regulations around the world. Therefore, in order to solve the limitations and inadequacies in conversion regulations for the two types of businesses, namely general partnership and a private enterprise, the article has proposed some important suggestions such as the need to distinguish clear transparency between the general partnership and the limited partnership so that company legal form conversion can be done between them; supplementing regulations on converting a general partnership to a limited liability company and vice versa; and a system of general regulations on enterprise conversion for all types of business in the Enterprise Law in Vietnam should be developed. Accordingly, the regulations on enterprise conversion in Vietnam will properly be completed, meeting the needs of domestic and foreign investors, while also adhering to international practices.

## 6 Availability of Data and Material

All information is included in this study.

## 7 References

- Bui Ngoc Cuong (2010), *Commercial Law*. Textbook, Volume I, Education Publishing House, Vietnam, p. 52.
- Lemeunier, F. (1992), *Principles and Practice of Commercial Law, Business Law*. National Political Publishing House, Hanoi, p. 265 - 266.
- Fubler, F. and Simon, J. (1992), *Economic legal issues of the Federal Republic of Germany*. Legal Publishing House, 29p.
- VietnamGov (2007). Government, Decree No. 139/2007/ND-CP dated September 5, 2007 detailed instructions on the implementation of a number of articles of the Enterprise Law.
- VietnamGov (2020). Government., Decree No. 08/2020/ND-CP of the Government dated January 8, 2020, on the organization and operation of bailiffs.
- VietnamGov.(2021). Government, Decree No. 01/2021/ND-CP dated January 4, 2021, on business registration.
- Hanoi Law University (2018), *Commercial Law*. Textbook, Volume I, People's Police Publishing House, p. 140, 109, 138.
- Le Hoc Lam and Le Ngoc Duc (2010), *Business Law*. Statistics Publishing House, 100p.
- Le Minh Toan and Nguyen Nhu Phat (2006). *Vietnam's Economic Law*. National Political Publishing House, 333p.
- Cozian, M. and Viandier, A. (1990). *Company organization, translated from the original French "Droit des societees: Litec, 1988*. Institute of Legal Sciences - Ministry of Justice, p. 3, 149.
- VietnamGov. (1999). National Assembly, Enterprise Law 1999.
- VietnamGov. (2005). National Assembly, Enterprise Law 2005.
- VietnamGov. (2014). National Assembly, Enterprise Law 2014.
- VietnamGov. (2015). National Assembly, Civil Code 2015.

VietnamGov. (2020). National Assembly, Enterprise Law 2020.

Cuong N.H. (2013). *Commercial Law*. Textbook, General introduction and Traders, VNU Publishing House, p. 141, 142, 142.

Nguyen Thi Khe, Bui Thi Khuyen (1999). Business Law, Statistical Publishing House, p. 197.

Nguyen Vinh Hung (2013). Partnerships under the Enterprise Law 2005 - Some inadequacies and recommendations, Journal of Democracy and Law, No. 07, p. 37, 35.

Nguyen Vinh Hung (2015). General Partnerships and limited partnerships Distinction according to Enterprise Law 2014, Journal of Law Profession, No. 6, p. 9.

Nguyen Vinh Hung (2016). Principles of partnership under the Enterprise Law 2014, Journal of Democracy and Law, No. 05, p. 23.

Nguyen Vinh Hung (2016). Completing legal regulations on partnerships in the Enterprise Law 2014, Foreign Economic Journal, No. 88, p. 97, 100.

Nguyen Vinh Hung (2017). Private enterprises and their suitability to the commercial environment in Vietnam, Journal of the Law Profession, No. 02, p. 11, 12.

Nguyen Vinh Hung and Nguyen Van Phuoc (2021). Legal regulations on general partners in a partnership under the Enterprise Law 2020, Journal of European Studies, No. 04, p. 95.

Pham Duy Nghia (2009). Enterprise Law: Situation - Analysis - Commentary, Faculty of Law - Hanoi National University, VNU Publishing House, pp. 40, 58.

Pham Duy Nghia (2015), Economic Law, Textbook, People's Police Publishing House, p. 187.

Nguyen Nhu Phat (editor, 2011). Vietnam's Economic Law, Textbook, Hanoi Open University, People's Police Publishing House, p. 33.

Tran Ngoc Dung and Tran Ngoc Anh (2017). Regulations on partnerships and solutions for completion in the Enterprise Law 2014, Journal of Law, No. 04, p. 37.

Van Thieu (2002), Why the partnerships has not come to life yet?, Legal Journal No. 04, p. 6.



**Dr. Hung Nguyen** got a Doctorate in Law from the School of Law, Vietnam National University, Hanoi and a master's degree in Economics from the University of Economics & Business, Vietnam National University, Hanoi and a System Engineer, IT professional (certificates) degree in Information Technology from Microsoft corporation. His research pertains to Commercial Law, Civil Law, Civil Procedure Law, Securities Law, Finance Law, Banking Law, Economics and IT System Security.



**Duy Nguyen Dang** is a Lecturer at the School of Law, Vietnam National University, Hanoi. He got a Master's degree in Law from the School of Law, Vietnam National University, Hanoi. His research encompasses Commercial Law.

---