

# Vietnam's Legal Policy on Obligations of Company Managers

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**Abstract:** The Company is a legal entity that cannot carry out its activities but must go through the actions of specific objects called the company's manager. Company enterprise law always has provisions that compel the company manager to perform their obligations to protect the interests of investors adequately. The article uses historical and statistical methods to assess the development and limitations of Vietnam's current legal policies for company managers. Accordingly, the performance of obligations of a company manager in Vietnam, mainly corporate governance, should generally be taken more seriously. The article also uses analytical and comparative jurisprudence methods to evaluate and comment on regulations on the obligations of company managers in the United States, Australia, and France. On that basis, the article proposes to improve the Vietnamese law related to the duties of the company manager, specifically: (i) To improve the Vietnamese enterprise law in both form and content to create a legal corridor as the foundation for business and commercial relations to develop. This is done through the development of a system of case law on corporate law in general and obligations of company managers in particular; (ii) attach great importance to the duties of honesty, diligence, loyalty, and prudence of the Company's managers because these are influential subjects who can interfere in management and operating decisions; (iii) Develop criteria to identify those considered company managers.

**Keywords:** Corporate Legal Policy, Company Managers, Obligations of Company Managers

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## 1. Introduction

In Vietnam, the collapse of large corporations such as Vinashins and Vinalines has raised many problems in business management in real life. If the policy on the obligations of company managers is not appropriate, the rights of owners and investors will not be protected. Therefore, people holding idle money will refrain from boldly investing in businesses, which seriously affects the ability of enterprises to raise capital for production and trade. Enterprises have the form of organization and operate according to the model of private enterprise, partnership, limited liability company, and joint-stock Company. In which the Company is a legal entity. Therefore, the Company wants to advocate through specific people, in which the roles and obligations of the company managers are always upheld. The company manager has an important position in the

existence and development of the Company. When and only when the Company's manager correctly implements the regulations on rights and obligations the Company will achieve the set objectives and ensure the legitimate rights and interests of investors. Some countries such as Newzealand, Canada, Singapore, and Australia. determine a company manager based on the following principles: (i) Being a member of the Board of Directors; (ii) Holding a position or performing a role in the position of a Director; (iii) The person who gives instructions for the Director to follow. Thus, the concept of a company manager includes people who are not legitimate as prescribed by law but have the same operation as managers in reality, which these countries call: actual directors (de facto directors) and the hidden Director or shadow director.

According to the Vietnam Enterprise Law 2020, a company manager is a general partner, the chairman of the Members' Council, a member of the Members' Council, the

company president, the chairman of the Board of Directors, and a member of the Board of Directors. Administrators, Directors or General Directors, and individuals hold other managerial positions as prescribed in the Company's charter. By the enumeration method, the Vietnamese Enterprise Law approaches the concept of a company manager in a much narrower scope than the concept of a manager in some countries. The idea of a company manager under the Vietnam Enterprise Law 2020 is no different from that of a manager under the Vietnam Enterprise Law 2014 and the 2005 Vietnam Enterprise Law. Up to now, the performance of obligations of company managers in Vietnam, mainly Corporate governance, is generally very loose and needs to be taken more seriously.

Compared with ASEAN countries, Vietnamese companies have the lowest average score on governance across all five criteria: (i) Ensuring shareholders' rights; (ii) Ensuring fair treatment among shareholders; (iii) Ensuring the role of stakeholders in corporate governance; (iv) Ensuring transparency and information disclosure; (v) Ensure the roles and responsibilities of the Board of Directors. Vietnamese corporate law currently ignores the issue of controlling the obligations of the Company's managers; some regulations are still not strict and unclear, leading to inconsistent application of the law, creating many loopholes for some company managers to abuse, causing loss of company assets. Therefore, studying, amending, supplementing, and perfecting Vietnam's corporate legal policies to ensure the diligence, honesty, loyalty, and prudence of the Company's managers is very necessary for the current context of Vietnam joining CPTPP, EVFTA.

## 2. Research History

The obligation of the company manager is a reasonably common research topic in countries with developed market economies. Some typical works can be listed, such as: "Business Law" by Keith Abbott, Norman Pendlebury, and Kevin Wardman, published in the USA. This book contains sections on company law and chapters on data protection and regulatory bodies, covering the legal framework for the obligation of the Company Manager [17]. "The Legal Environment of Business" by Jethro K. Lieberman & George J. Sided, printed at Harcourt Brace Jovanovich Publisher, San Diego. New York. Chicago. Austin. Washington D. C. London. Sydney. Tokyo. Toronto in 1989. This is comprehensive text includes coverage of the legal environment of business as well as separate chapters on business ethics and social responsibility and the international aspects of doing business, including the obligation of the company manager [5]. *Laws of Corporations and Other Business Enterprises* by Harry G. Henn & John R. Alexander Published in St. Paul, Minn. West Publishing Co. 1983. This book discusses the corporate governance structure; The special affairs of tightly organized corporations; Special issues of public joint stock companies; In particular, there is a discussion of the responsibilities and obligations of the

company manager [4]. "Laws of Corporations and Other Business Enterprises" by Harry G. Henn & John R. Alexander, 1991 [3]; The 1991 revision and supplement in this book analyzed the legal provisions of the United States related to corporations, private companies, partnerships, limited liability partnerships, and other legal entities; Text that explains the law and the theory behind the law. The book also introduces the Uniformity Act and the Business Model Company Act, which most state legislatures use to create specific rules [5].

In Vietnam, there are also research works on the obligations of company managers, typically: "Commercial law textbook - General and traders" by Assoc. Dr. Ngo Huy Cuong published at Publishing House. Hanoi National University in 2013. This book has provided much doctrinal background for considering the responsibilities of corporate managers. For example, the theory of fiction or artificial entity, the theory of contractual relationship, the idea of contract... [9]; Articles and studies by some scholars, such as Assoc. Dr. Bui Xuan Hai's "Company manager under the Enterprise Law 1999 - From the perspective of comparative law," published in the Journal of Legal Science in April 2005. The article's author affirmed that "the correct identification of the company's manager and the reasonable regulation of the obligations arising for them will contribute to effective corporate governance, control of self-interest transactions to protect the rights of owners as well as related parties..." [1]. "Responsibility of managers under Vietnamese company law" by Le Duc Nghia, published in the Journal of Legislative Studies. The owners of the company all have to choose, appoint a manager, and exploit their assets for profit; if they put their trust in the wrong place, the loss and loss of investment properties is inevitable. The question is how to prevent or limit their self-interested behavior or reconcile this contradiction. [7].

These works have significantly contributed to legal science and created a solid foundation for further research. Studies abroad do not mention Vietnamese law and the suitability of solutions developed in foreign laws with the specific conditions of Vietnam today. Meanwhile, research works in Vietnam were carried out before the promulgation of the Enterprise Law 2020, so there are no policy recommendations suitable for the context of Vietnam's accession to the CPTPP and EVFTA.

## 3. Research Methods

The study uses the analysis and comparison of jurisprudence to evaluate and comment on the legal provisions on the obligations of the company managers compared with the requirements of the laws of the United States, Australia, and France.

The study also uses statistical and historical methods to assess the development and limitations of current legal policies. From there, propose solutions to improve Vietnamese enterprises' legal procedures regarding company managers' obligations.

#### 4. Legal Policy on Company Managers of the US, Australia, and France, and Experience in Vietnam

The Corporate Governance Principles of the Organization for Economic Cooperation and Development (OECD) require Board members to act with complete information, reliability, diligence, and care. In most countries, due diligence does not cover errors in business judgment as long as it is not gross negligence and decisions are made with due diligence [6].

In the United States, corporate law and case documents do not refer to the term "managers" but only to the words "directors" and "officers"); In addition, members of the Board of Directors are, by default, the company manager [2]. According to the provisions of the Revised Model Business Corporation Act (RMBCA) [8], Under the Revised Model Business Corporation Act (RMBCA), due diligence requires a company manager to obtain all relevant information and demonstrate that they have considered all relevant information. Ability to choose before making a decision. According to Article 8.30(a) RMBCA, the condition for the Company Manager to fulfill his duty of due diligence is: (i) good faith, the care that an ordinary person would also do while in that position in a similar situation; and (ii) in a manner that the person reasonably believes is in the best interest of the Company. When performing the duties of the Board of Directors, the Company Manager has the right to rely on information, opinions, and reports, including financial statements and other financial data, prepared or presented by: (i) one or more executives or employees of the Company that the Company Manager considers reliable and competent in the functions to be performed or to provide information, opinions or reports; (ii) legal counsel, accountants, or others employed by the Company to deal with matters related to skills or expertise that the Company Manager reasonably believes are within the professional competence of that person or a trusted person; (iii) a board of which the Company Manager is not a member of the Company Manager has reasonable confidence in it.

The United States has enacted a "business judgment rule" to determine that a company manager has correctly performed their duty of due diligence if and only if the company manager fully meets the requirements. The following conditions are met: (i) There is no personal interest relationship with the obligation on which they have made the decision; (ii) There are reasonable grounds to believe that the information they hold on which to base judgments and decisions is adequate in the circumstances; (iii) There are reasonable reasons to believe that their decisions are in the best interests of the Company.

Under Australian corporate law, a business judgment is any decision to take or not to take action on an issue relating to a company's business. A company MANAGER, when making a business decision, is deemed to have met a duty of care and diligence if: (i) the decision is made in good faith, to the practical purpose; (i) has no personal interest in the

matter mentioned in the decision; (iii) seek information on the subject referred to in the decision to the extent that the company MANAGER believes to be reasonably appropriate; and (iv) reasonably believe that the decision is in the best interest of the Company [14].

In French law, the relationship between the company manager and the Company is established through a contract of authorization (contract de mandate). Accordingly, the Company is the authorized person, and the manager of the Company is the qualified person. The authorized person must perform the work for the principal's benefit within the commitment between the parties. In this role, the company manager must act with care and loyalty to the Company. Therefore, in principle, the company manager is not responsible for a third party outside the Company (understood in a broad sense, for example, suppliers, customers, partners, creditors, and community). Society etc.) about the acts they have committed on behalf of and behalf of the Company. In this case, the Company will be liable to a third party and settle the relationship with the manager based on whether the manager has fulfilled his duty of care and loyalty. You or not. Through the study of some provisions in Article L. 222-23 of the French Commercial Code applicable to SARL (Limited Liability Company) [15], and Article L. 225-251 of the Commercial Code applicable to SA (Company) [16].

According to Vietnam's corporate law, the Company's Manager needs to exercise their rights and obligations honestly, carefully, and in the best way to ensure the maximum legitimate interests of the Company. Company managers are those holding positions in the Company, signing transactions on behalf of the Company, such as general partners, chairman of the Members' Council, members of the Members' Council, chairman of the Company, Chairman of the Board of Directors, member of the Board of Directors, Director or General Director [13]. The above subjects have the following obligations:

Firstly, perform the rights and obligations honestly, carefully, and best to ensure the maximum legitimate interests of the Company. The Vietnamese enterprise legal system needs to explain what is fair and prudent.

Second, they are loyal to the Company's interests; they do not abuse their position and position and use information, know-how, business opportunities, and other company assets for personal gain or the benefit of other organizations or individuals.

Thirdly, promptly, thoroughly, and accurately notify the Company about the enterprise to which he owns or has contributed capital. The enterprise in which his related person owns jointly owns, or owns shares, controlling capital contribution [13].

The law on Vietnamese enterprises also pays attention to the responsibilities of the legal representative with the following provisions: *"Implement the assigned rights and obligations honestly, carefully and in the best way, to protect the ensure the legitimate interests of the enterprise; Loyal to the interests of the enterprise; not abuse their position and*

position and use information, know-how, business opportunities and other assets of the enterprise for personal gain or to serve the interests of other organizations or individuals; To promptly, fully and accurately notify the enterprise of the enterprise of which he or his related person owns or has shared or contributed capital by the Law on Enterprises" [13]. If the enterprise's legal representative violates the above provisions, he shall be personally liable for the Company's damage.

Compared with the Enterprise Law 1999, 2005, and 2014 [10-12], the Law on Enterprises of Vietnam 2020 has many amendments and supplements to accurately and clearly identify and clearly define the company manager's obligations. However, the Enterprise Law has yet to expand the scope of company managers to those with authority to plan, policy, and strategy for business development in the medium and long term. That is, Vietnam's corporate law is not strict enough; there are loopholes for these competent people to influence the Company's activities to conduct self-interested transactions, causing damage to the Company and public members. Company. In addition, the Law on Enterprises of Vietnam only stops at the essential obligations; at the level of stating general principles, qualitative, not strictly stipulating, unifying the responsibilities, duties, and powers of the Company's managers. This is the cause of deliberately circumventing the law and committing violations of the Company's managers in the practice of socio-economic life.

## 5. Legal Policy Recommendations on Company Managers for Vietnam

Completing legal policies in Vietnam is always relative and appropriate to each development stage of the socialist-oriented market economy. Therefore, perfecting Vietnam's corporate legal policy is a continuous and long-term process with proper steps and solutions. Learning from the experiences of the United States, Australia, and France, the author recommends some legal policies for company managers in Vietnam as follows:

Firstly, perfecting the Vietnamese enterprise law in terms of form and content to create a legal corridor as the foundation for developing business and commercial relations. Today, corporate legal policies lack stability in Vietnam and are frequently amended and supplemented<sup>1</sup>. Promulgating corporate legal policies to regulate all social relations related to company managers is challenging to implement and not feasible. Vietnam can absorb the experience of the United States associated with the development of a system of case law on corporate law in general and the obligations of company managers in particular. By the context of the trial, the judgment recorded in the case law will handle each specific case and produce more possible and flexible results. At that time, the law on enterprises will issue essential criteria to determine the obligations of the company manager.

Judges and lawyers will compare and contrast with case law judgments related to each situation.

Secondly, the process of perfecting the law needs to pay attention to the specific cultural and business psychology factors of Vietnamese society and people to ensure it is suitable for socio-economic life. Vietnam can thoroughly study and fully accept the law; systematic content on the obligations of honesty, diligence, loyalty, and prudence of a company manager under the laws of the United States; or business decision rules under Australian law.

Third, promulgate corporate law policies to recognize that the Company's managers are influential individuals or legal entities who can interfere in management and administration decisions for the Company's operations. Company action. Criteria to determine the actual company managers can absorb the experience of the French Republic.

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<sup>1</sup> The average speed is less than ten years (Vietnam Enterprise Law was first promulgated in 1999, then enacted in 2005, 2014, and 2020 respectively).

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