

# The Criminal Liability of Commercial Legal Entities in the Current Criminal Code of Vietnam

---

*The criminal liability of commercial legal entities has been established in the criminal laws of many countries around the world. In Vietnam, the Criminal Code approved by the 13th National Assembly of the Socialist Republic of Vietnam on November 27, 2015, officially recognizes the criminal liability of commercial legal entities. This has marked the development of the country's criminal law in line with the general trend of criminal law in the world to meet the requirements of the prevention and fight against crime. The addition of provisions on the criminal liability of commercial legal entities is of great significance in tightening the legal corridor in current Vietnamese economic integration. However, the 2015 Criminal Code regulating the criminal liability of commercial legal entities also poses new problems in terms of both the theory and practice of the law's application. One crucial issue is the proven activity in cases where a commercial legal entity is accused. To clarify the problem of proven activity in such cases, these authors outline and analyse the provisions of the 2015 Criminal Code on the criminal liability of commercial legal entities.*

---

## Nguyen Hung

*PhD in law*  
Vietnam-Hungary Industrial University (Vietnam)  
ORCID – 0000-0001-9353-1764  
e-mail: nomaniohamas@gmail.com

## Mai Van Thang

*PhD in law*  
Vietnam National University (Hanoi)  
ORCID – 0000-0002-5998-3158  
e-mail: thangmv@vnu.edu.vn

## Tran Thu Hanh

*PhD in law*  
Vietnam National University (Hanoi)  
ORCID – 0000-0001-5198-7982  
e-mail: hanhtt@vnu.edu.vn

Key words:  
Commercial legal entity, Criminal Code of Vietnam, Criminal liability, Offender

<https://doi.org/10.36128/priw.vi40.398>

## 1. Introduction

In recent years, Vietnamese economy has been developing strongly, bringing many advantages and contributing to improving people's quality of life. However, numerous organizations and businesses engage in production and business activities in search of profits by any means, regardless of the safety and security of the market and the life and health of the community. In doing so, they commit serious violations of the interests of the state of Vietnam and the legitimate rights and interests of organizations and citizens in fields such as production and business, economic management, social sphere, securities, investment, insurance, construction bidding, environmental protection, or labor protection.

Many of these cases come with particularly serious consequences, but their handling is difficult and does not go beyond administrative processing. Meanwhile, administrative sanctions under the Law on Handling of Administrative Violations are both lacking in deterrence power and inadequate. Additionally, a review of the current legal system has shown that the number of violations committed by legal entities is not specified in the decrees sanctioning administrative violations such as human trafficking, acts of trafficking, corruption, or money laundering; thus, there are no grounds to punish these activities. The regulation of the criminal liability of commercial legal entities is consistent with the theory of criminal liability because commercial legal entities enter legal relations as equal subjects independent of other subjects<sup>1</sup>. Commercial legal entities must have legal and behavioral capacity<sup>2</sup>.

Moreover, the criminal liability of commercial legal entities is not a new issue but has been recognized in national criminal law as well as international legal documents<sup>3</sup>. From the perspective of national law, the issue of the criminal liability of commercial legal entities has been addressed by the criminal laws of numerous countries around the world, such as the UK, the US, Canada, Australia, the Netherlands, Portugal, Finland, Belgium, Switzerland, or Spain. In Asia, some countries, such as Japan, Singapore, Malaysia, and China, have also recognized the criminal liability of commercial legal entities. From the perspective of international law, multiple United Nations conventions have recommended establishing criminal liability for commercial legal entities, such as the Convention on the Suppression of the Financing of Terrorism, the International Convention against Corruption, and the Convention against transnational organized crime. Therefore, for Vietnam to effectively implement the provisions of international conventions as well as reach a consensus with countries in the region regarding crime prevention and control, especially the prevention of and fight against transnational crimes and corruption, the issue of the criminal liability of commercial legal entities must be internalized in the law, and criminal law must be applied to create a unified and synchronous legal basis for cooperation in this field.

In Vietnam, the legal responsibility of commercial legal entities has long been regulated in the fields of civil, economic, and administrative law.

- 
- 1 Evgeny A. Sukhanov, „On the Concept of Developing Legislation on Legal Entities” *Russian Law: Theory and Practice*, No. 1 (2010): 50.
  - 2 Azat M. Toleubai, Antonina Kizdarbekova, „The concept of commercial legal entities in Kazakhstan and foreign legislation” *Journal of Advanced Research in Law and Economics* 9, No. 37 (2018): 2437.
  - 3 Leonard Orland, Chales Cachera, „Corporate crime and punishment in France: Criminal responsibility of legal entities (personnes morales) under the new French Criminal Code (Nouveau Code Penal)” *Connecticut Journal of International Law*, (1995): 111.

However, in the criminal field, as Vietnamese criminal law was codified with the promulgation of the 1985 and 1999 Criminal Codes, criminal liability was only imposed on the individual offender; that is, the subject of a crime could only be an individual who has the criminal capacity and is guilty of committing one of the crimes specified in criminal law. Conversely, a commercial legal entity could not be the subject of a crime and was, thus, not criminally responsible<sup>4</sup>. The introduction of criminal liability for commercial legal entities in the 2015 Criminal Code thus represented a breakthrough innovation in criminal policy based on theory and the requirements of the practice of crime prevention and fighting. It aimed at solving difficulties and obstacles in the handling of serious legal violations committed by commercial legal entities in areas such as the economy, the environment, public order, and safety, contributing to the effective protection of the interests of the state and society, human rights, and the legitimate rights and interests of organizations and individuals<sup>5</sup>. In this article, we will analyze and clarify the issue of the criminal liability of commercial legal entities specified in the 2015 Criminal Code of Vietnam.

## **2. The criminal liability of commercial legal entities in the general provisions of the 2015 Criminal Code**

The general provisions of the 2015 Criminal Code of Vietnam contain two groups of provisions concerning the criminal liability of commercial legal entities. The first includes the content generally associated with the criminal liability of individuals, such as Article 2 (basis of criminal liability), Article 3 (rules for punishing crimes), Article 8 (definition of crime), and Article 9 (classification of crimes). A second group, which comprises specific content applicable to commercial legal entities, is addressed in a separate chapter (Chapter XI, including Article 74 to Article 89).

### **2.1. Basis for the criminal liability of commercial legal entities**

Article 2 of the 2015 Criminal Code stipulates the following: „1. Only those who commit a crime prescribed by the Criminal Code shall bear criminal liability; 2. Only commercial legal entities that commit a crime specified in Article 76 of this Code shall bear criminal liability”.

This article affirms that criminal liability has critical political, social, and legal significance, guarantees the legal principle in criminal law ensuring the legitimate rights and interests of citizens, and is the basis for the

---

4 Harmen van der Wilt, „Corporate criminal responsibility for international crimes: exploring the possibilities” *Chinese Journal of International Law*, No. 1 (2013): 43.

5 Andrew Weissman, David Newman, „Rethinking criminal corporate liability” *Indiana Law Journal*, (2007): 411.

prevention of and fight against crime. In addition to the criminal liability of individuals, Article 2 constitutes an official „statement” on the provisions related to the criminal liability of commercial legal entities in the Criminal Code. It also specifies the extent to which a *commercial legal entity* must be held criminally liable. Additionally, Article 76 of the Criminal Code indicates the scope of the types of crimes for which a commercial legal entity faces criminal liability.

## 2.2. Definition of the crimes for which a commercial legal entity is criminally liable

Article 8 of the 2015 Criminal Code defines a crime as „an act that is dangerous for society and defined in [the] Criminal Code, is committed by a person who has the criminal capacity of the commercial legal entity, whether deliberately or involuntarily”. This article inherits the provisions on the concept of crime from the 1985 and 1999 Criminal Codes, with the addition of a new subject, the „commercial legal entity”, alongside the traditional subject, which is the individual. Article 8 also lists the mandatory factors in a crime, including the act, the fault, the subject of the crime, and the object of the harm.

The analysis of the provisions of Article 8 above shows that in terms of fault, as with individuals, commercial legal entities can commit crimes deliberately or involuntarily. Combined with other factors, it reveals that there are two types of crimes committed by two different subjects: one by an individual who has the criminal capacity and the other by a commercial legal entity.

Thus, like the criminal liability of individuals, specific provisions must concretize the contents of the criminal liability of commercial legal entities, such as the fault, the classification of crimes, complicity, and the stage of the crime. However, the 2015 Criminal Code does not contain any provisions regarding the criminal liability of commercial legal entities as it does for the criminal liability of individuals. Moreover, in all articles and clauses elaborating on the concept of crime, such as those concerning the fault (Article 10 and Article 11), the preparation for a crime (Article 14), incomplete crime (Article 15), abandonment (Article 16), complicity (Article 17), and the concealment of a crime (Article 18), commercial legal entities are not mentioned.

Some opinions have contested the provisions of Article 8 of the Criminal Code<sup>6</sup>. Studying the provisions related to the concept of crime and the criminal liability of commercial legal entities, Nguyen Ngoc Hoa has pointed out that the regulation on the criminal liability of commercial legal entities

---

6 Nguyen Ngoc Hoa, „The concept of crime and the regulations on criminal liability of commercial legal entity in the Criminal Code 2015” *Jurisprudence Journal*, No. 2 (2016).

only changes one article. While Article 8 stipulates an additional subject of the crime, that is, the „commercial legal entity”, other articles that have the task of clarifying the concept of crime only use the word „offender”, with no reference to commercial legal entities<sup>7</sup>. In another study, Nguyen Ngoc Hoa confirmed that there is an inconsistency between the various provisions of the 2015 Criminal Code regarding the criminal liability of commercial legal entities. Agreeing with this point of view, Nguyen Thi Phuong Hoa further clarified that the provisions on fault in Article 10 and Article 11 only apply to an „offender” because, in the language used in Article 2, this term does not imply a „commercial legal entity committing a crime”. Thus, Article 10 and Article 11 are only applicable to individuals and not to commercial legal entities<sup>8</sup>.

We concur with the abovementioned opinions. The provisions of Article 8 of the 2015 Criminal Code evidently identify two types of crimes corresponding to two subjects: the individual and the commercial legal entity. Nonetheless, in other provisions of the Criminal Code, this issue is almost mentioned. Regarding the scope of the criminal liability of commercial legal entities specified in Article 74, the list of crimes provided concerns those committed by individuals and although commercial legal entities must bear criminal liability, there are no specific crimes reserved for these subjects. Thus, the provisions of Article 8 of the 2015 Criminal Code are inconsistent with other provisions of this very code because the article considers commercial legal entities as possible subjects of a crime, in addition to another subject, the individual. This inadequacy is apparent in the amendment and supplementation of several articles of the 2015 Criminal Code, which were revised in 2017<sup>9</sup>. In recognition of the necessity of „supplement[ing] the provisions on [the] classification of crimes for commercial legal entities in the draft Law”<sup>10</sup>,

- 7 Nguyen Ngoc Hoa, „Consistency among provisions on criminal liability of commercial legal entities in the Criminal Code 2015” *Jurisprudence Journal*, No. 3 (2016): 32.
- 8 Nguyen Thi Phuong Hoa, „Completing the provisions on criminal liability of commercial legal entities committing crimes in the Criminal Code 2015” *Jurisprudence Journal*, special issue (2015).
- 9 The 2015 Criminal Code was adopted by the 13<sup>th</sup> National Assembly of the Socialist Republic of Vietnam on November 27, 2015. However, due to technical errors, the 2015 Criminal Code has been amended and supplemented. On June 20, 2017, the National Assembly adopted the Law on Amendments and Supplements to the 2015 Criminal Code.
- 10 Judicial Committee, Report on the examination of the project of the Law to amend and supplement a number of articles of the Criminal Code No. 100/2015/QH13 sent to the National Assembly Standing Committee on September 30, 2016.

Article 19 of the 2015 Criminal Code has supplemented specific provisions on this very topic. Clause 2 of Article 9 stipulates that „Crimes committed by commercial legal entities are classified by their nature and danger to society as prescribed in Clause 1 of this Article”. This provision considers the classification of the crimes listed in Clause 1 to be generally applicable to both individuals and commercial legal entities. This indirectly acknowledges the fact that there is only one way to classify crimes, only one common crime but two possible responsible subjects. Although Clause 2 lays out the classification of crimes for legal entities, Clause 1 does not present a classification of crimes for individuals but only defines the classification of crimes in general. This both shows a lack of consistency in the perception of the assertion that there is a second type of crime, which is committed by commercial legal entities, in accordance with Article 8, and does not guarantee logic in the content of the provisions of Article 9. It can be affirmed that the addition of provisions on the classification of crimes committed by commercial legal entities is only a formality that does not bring about change in the content because there is, in fact, only one type of crime, which is committed by individuals. Thus, the general provisions of the 2015 Criminal Code, and especially those contained in Article 8, do not ensure consistency with other provisions of the same code, or guarantee the correct nature of the criminal liability of legal entities. This not only leads to inconsistency in perceptions but also certainly affects the practical application of the provisions of this regulation.

### **2.3. Principles of application of the criminal liability of commercial legal entities**

Article 74 (Chapter XI) of the 2015 Criminal Code lays out general principles for the application of the provisions of the Code regarding commercial legal entities. Article 74 provides that „A commercial legal entity shall bear criminal liability according to this Chapter, other regulations of Part One hereof that do not contravene this Chapter”.

It clarifies the fact that the criminal liability of a legal entity is related to the criminal offenses of an individual. Thus, in addition to the specific provisions, the provisions of the Criminal Code regarding individuals are applied to the treatment of criminal offenses committed by individuals. The provisions of Article 74 are appropriate, further asserting clearly that crimes committed not only by individuals but also by legal entities must be subject to criminal liability. Thus, issues such as the fault, the stage of a crime, the classification of crimes, and complicity (inter alia) are all based on the corresponding provisions of the Criminal Code to apply to the criminal liability of legal entities.

#### 2.4. The extent of the criminal liability of commercial legal entities

Clause 2 of Article 2 of the 2015 Criminal Code stipulates that „Only commercial legal entities that commit a crime specified in Article 76 of this Code shall bear criminal liability”. Thus, the legal entity that is subject to criminal liability is clearly defined as a “commercial legal entity”<sup>11</sup>.

Research on the criminal laws of countries around the world shows that the regulations regarding the extent to which a legal entity (organization) is subject to criminal liability vary from country to country. Some countries have very broad regulations, which include organizations and legal entities under private law and organizations and legal entities under public law. Conversely, some other countries have adopted narrower regulations, in which only legal entities (organizations) fall within the scope of private law. However, most countries have in common the exclusion of the criminal liability of the state and state agencies as well as local government agencies; only under Chinese Criminal Code can state agencies be prosecuted in the context of criminal liability<sup>12</sup>. Additionally, the criminal law of most countries (except for France) does not require organizations that are subject to criminal liability to have legal status.

Thus, the provisions of the criminal law of Vietnam on the extent to which a legal entity is subject to criminal liability are like those of many countries across the world, which do not apply criminal liability to state agencies. Simultaneously, the boundaries of „commercial legal entities” also exclude organizations that have no legal status or have the legal status of „non-commercial legal entities”.

#### 2.5. Conditions for a commercial legal entity to bear criminal liability

The conditions for bearing criminal liability are one of the most basic aspects of regulations on the criminal liability of legal entities and have great legal and practical significance. These conditions both present the nature of the regulations on the criminal liability of legal entities and serve as a legal basis for prosecution based on the criminal liability of legal entities.

These conditions are also the core point of the theory of the criminal liability of a legal entity (organization) in legal theories<sup>13</sup>. Because the approach and explanation of the nature of the criminal liability of legal entities are

---

11 Article 75 of the 2015 Civil Code: „1. Commercial legal entities means a legal entity whose primary purpose is seeking profits and its profits shall be distributed to its members. 2. Commercial legal entities include enterprises and other business entities”.

12 Vincent Cheng Yang, „Corporate crime: State-owned enterprises in China” *Criminal Law Forum* 6, No. 1 (1995): 143.

13 Gerard E. Lynch, „The role of criminal law in policing corporate misconduct” *Law and Contemporary Problems* 60, No. 3 (1997): 23.

different in each legal theory, so are the conditions for a legal entity to bear criminal liability. Therefore, there is diversity in the regulations on these conditions in the criminal law of countries around the world, which depends on the theoretical point of view and the specific nature of many aspects in each country. However, countries that apply the doctrine of responsibility homogenization share several similarities given that most of them stipulate that a legal entity is only subject to criminal liability for criminal offenses committed by its leader, commander, or organization, as well as for criminal offenses committed for the benefit of the legal entity. In most countries, criminal law also dictates that a legal entity must bear criminal liability but does not exclude the criminal liability of individuals.

In the 2015 Criminal Code of Vietnam, the conditions for a commercial legal entity to be held criminally liable are described in Article 75. This article states the following:

„1. A commercial legal entity shall only bear criminal responsibility if all the following conditions are satisfied: a. The criminal offence is committed in the name of the commercial legal entity; b. The criminal offence is committed in the interests of the commercial legal entity; c. The criminal offence is under instructions or approval of the commercial legal entity; d. The time limit for criminal prosecution specified in Clause 2 and Clause 3 Article 27 hereof has not expired.

2. The fact that [the] commercial legal entity has criminal responsibility does not exempt [the] criminal responsibility of individuals”.

According to these provisions, there are four conditions for a commercial legal entity to bear criminal liability. The first (point a) requires the criminal offense to be committed in the name of the legal entity. Thus, the offense is an act of the legal entity's representative, leader, or executive or is authorized by the legal entity. Acts that are not carried out in the name of the legal entity but only in the name of an individual, even if it belongs to anyone, do not satisfy this condition.

The second condition (point b) specifies that the criminal offense must be committed in the interests of the commercial legal entity. Thus, the purpose of the offense is to serve the common interests of the legal entity, which can be material or spiritual. Acts that are performed in the name of the legal entity but only in pursuit of the interests of an individual do not satisfy this condition.

According to the third condition (point c), the criminal offense must be committed under the direction, operation, or approval of the commercial legal entity. This means that the commercial legal entity must direct, operate, or approve the acts even though it is aware that they constitute a criminal offense. The direction, operation, and approval of the commercial legal entity are established based on the actions of the person holding these powers for the commercial legal entity.



The fourth condition (point d) relies on the provisions of the Criminal Code regarding the time limit for a criminal prosecution, a regulation that also applies to the criminal liability of individuals.

Thus, according to these regulations, a legal entity is criminally liable only when it fully satisfies the four conditions, of which three (points a, b, and c) have a characteristic nature and play a decisive role in the criminal liability of commercial legal entities. However, some opinions critical of the provisions of Article 75 exist. These argue that in principle, the three conditions specified in points a, b, and c must be independent of each other; nonetheless only the second (point b) and the first (point a) conditions, as well as the second (point b) and the third (point c) conditions can be independent of each other. The third condition (point c) cannot be independent of the first (point a) because when an act is considered to have been committed in the name of a legal entity, the direction, operation, and approval of the legal entity is crucial; conversely, an act carried out without the direction, operation, or approval of the legal entity cannot be considered to have been performed in the name of the legal entity. Article 75 does not clearly distinguish the types of acts and the conditions necessary to force commercial legal entities to bear criminal liability. Based on the theory and practice of criminal legislation in a number of countries, the acts should be classified into three types, and each type must satisfy appropriate conditions. For the first type, a legal entity may be criminally liable for failing to perform the obligations directly prescribed to it. For the second type, the legal entity can be held liable for a criminal offense committed in its name and in the interests of the organization. For the third type, the legal entity shall bear criminal liability if a person within the legal entity commits a criminal offense while performing the work assigned by the legal entity and this crime is partly the fault of the legal entity.

We believe that the comments above make reasonable points. Research on the legal doctrines and criminal law in some countries has shown that legal entities may be subject to criminal liability for more than one type of act<sup>14</sup>. In other words, there are numerous cases where a legal entity must bear criminal liability, and each type of act corresponds to appropriate conditions that the case must satisfy.

However, the limit of cases to be specified in the criminal law is determined by each country in accordance with its situation and conditions<sup>15</sup>. In Vietnam, the provisions of Article 75 of the 2015 Criminal Code determine the cases in which a commercial legal entity must be criminally liable

14 Aleksandr V. Fedorov, „Objective Conditions for Criminal Liability of Legal Entities in the Russian Federation and Prospects of Its Introduction” *Russian Law: Theory and Practice*, No. 1 (2016): 70.

15 Daniel Sznycer, Carlton Patrick, „The origins of criminal law” *Nature Human Behaviour*, No. 4 (2020): 506.

for a criminal offense committed with a deliberate fault (determined through the fault of the performer), which are common at present. Given the current conditions in Vietnam and because the regulations on the criminal liability of legal entities have only recently been specified in the Criminal Code, these cases should be limited. We agree with the point of view that it is necessary to consider prescribing the conditions for commercial legal entities to bear criminal liability in a more suitable way than the provisions of Article 75 currently do.

## 2.6. The scope of the criminal liability of commercial legal entities

The scope of the criminal liability (limited to types of crimes) of a commercial legal entity is determined in Article 76 of the 2015 Criminal Code<sup>16</sup>. Research on the criminal laws of many countries in the world shows

- 
- 16 Article 76 of the 2015 Criminal Code lists 33 crimes for which a legal entity is subject to criminal responsibility, including: smuggling (Article 188); illegal trafficking of goods or money across the border (Article 189); manufacture or trading of banned commodities (Article 190); storage or transport of banned commodities (Article 191); manufacture or trading of counterfeit foods, foodstuff, or food additives (Article 192); manufacture or trading of counterfeit medicines for treatment or prevention of diseases (Article 194); manufacture or trading of counterfeit animal feeds, fertilizers, veterinary medicine, pesticides, plant varieties, animal breeds (Article 195); hoarding (Article 196); tax evasion (Article 200); illegal printing, issuance, trading of invoices or receipts (Article 203); deliberate publishing of false information or concealment of information in securities activities (Article 209); use of internal information to deal in securities (Article 210); cornering the stock market (Article 211); fraud in the insurance business (Article 213); evasion of social insurance, health insurance, unemployment insurance payment for employees (Article 216); violations of regulations on competition (Article 217); infringement of copyrights and relevant rights (Article 225); infringement of industrial property rights (Article 226); violations of regulations on the survey, exploration, and extraction of natural resources (Article 227); violations of regulations on forest extraction and protection (Article 232); violations of regulations on the management and protection of wild animals (Article 234); causing environmental pollution (Article 235); violations of regulations on environmental emergency prevention, response, and relief (Article 237); violations of regulations on the protection of irrigation works, embankments, and works for protection against natural disasters; violations of regulations on the protection of river banks (Article 238); import of wastes into Vietnam's territory (Article 239); destruction of aquatic resources (Article 242);

that there is diversity in the regulations on this issue. Some countries do not set a limitation, which means that a legal entity must bear criminal liability for all crimes; however, some types of crimes are excluded, some of which can only be committed by an individual subject. Other countries prescribe a limited scope, but it is expressed differently: it may be limited to a general provision, concern the provisions of the criminal liability of legal entity for each specific crime specified in the criminal law, or be specified in specialized laws.

According to the provisions of Article 76 of the 2015 Criminal Code, the crimes for which commercial legal entities may bear criminal liability mainly concern the economic and environmental spheres, with a few crimes related to the economic security sector. These are crimes possessing a “characteristic” nature, which is common among crimes for which legal entities may be subject to criminal liability. We believe that, given the political, economic, and social conditions and the requirements of crime prevention and control in Vietnam in the current period, the scope of the criminal liability of commercial legal entities prescribed in Article 76 of the 2015 Criminal Code is appropriate. Technically, listing crimes for which a legal entity may bear criminal liability in a single article of legislation facilitates identification. However, such regulation can also be seen as inconvenient when lawmakers wish to add or subtract crimes from the list of those for which a legal entity may bear criminal liability, which requires amending the law. Thus, it should be done in a way that has a provision according to which a commercial legal entity shall bear criminal liability for a crime only in cases where the law on this crime dictates it.

## **2.7. Penalties and judicial measures applied to commercial legal entities**

The penalties against commercial legal entities committing crimes listed in the 2015 Criminal Code are prescribed in Article 33 and specified in Article 77, Article 78, and Article 79, which cover primary penalties and additional penalties. Primary penalties include fines, the suspension of operations, and a permanent shutdown. Additional penalties include prohibition from doing business and operating in certain fields, prohibition from raising capital, and fines if no primary penalties are imposed.

In addition to the penalties specified above, the 2015 Criminal Code also delineates judicial measures to be applied to commercial legal entities committing crimes in Article 47, Article 48, and Clause 1 of Article 82. Furthermore, several other measures forcing commercial legal entities to perform

---

forest destruction (Article 243); violations of regulations on the management and protection of endangered, rare animals (Article 244); violations of regulations on the management of wildlife sanctuaries (Article 245); import and spread of invasive alien species (Article 246); terrorism financing (Article 300); money laundering (Article 324).

actions to remedy and prevent criminal consequences are laid out in Clause 2 of Article 82.

Research on the criminal law of other countries shows that the penalty (sanction) prescribed for legal entities subject to criminal liability varies depending on the country. While most countries have put in place a system that includes several different penalties, those that follow the Anglo-American legal system, as well as others including China, only provide for fines<sup>17</sup>. However, the common point in the regulations of the various countries is that the penalties applied to legal entities are mainly economic in nature. This is understandable and reasonable because the crimes for which legal entities are criminally liable mainly concern the economic sphere and are associated with profits and material benefits. Economic penalties not only entail punishing legal entities for illegally obtaining profits or other benefits but also greatly contribute to overcoming the damage caused by criminal acts and preventing crime.

### **3. Regulations on the criminal liability of commercial legal entities in the section of the 2015 Criminal Code concerning criminal offenses**

As mentioned above, the criminal liability that commercial legal entities must bear is related to offenses that are committed by an individual who has a special relationship with the commercial legal entity and that meet the conditions prescribed by the Criminal Code. In other words, there is no separate type of crime committed by commercial legal entities independent of the type of crime committed by individuals. Instead, there is only one type of crime, for which two subjects – the individual and the commercial legal entity – are jointly responsible.

The types of crime for which commercial legal entities must be subject to criminal liability are defined by Article 74 of the 2015 Criminal Code. Accordingly, in the part addressing specific crimes, only the crimes specified in Article 74 refer to the criminal liability of commercial legal entities.

In terms of legislative techniques, the crimes for which commercial legal entities are criminally liable are generally set by the provisions on the crimes committed by individuals. These articles regarding crimes (within the limits of Article 74) have the following structure: Clause 1 specifies the criminal liability of individuals, and Clause 2 addresses the criminal liability of commercial legal entities. It should be noted that only Clause 1 contains a description of the signs of a crime (basic composition) and Clause 2 does not but only provides for penalties and judicial measures applicable to commercial legal entities.

---

17 Donald Clarke, „China’s legal system and the fourth plenum” *Asia Policy*, No. 20 (2015): 10.

#### 4. Conclusions

The criminal liability of commercial legal entities is established in the 2015 Criminal Code, whose adoption marked the first time that this principle was recognized in the criminal law of Vietnam. The provisions of the 2015 Criminal Code are essentially consistent with the theory of the criminal liability of legal entities popular around the world and like those found in the criminal law of many countries. Simultaneously, they are also suitable for the current situation and conditions in Vietnam. Although the provisions of the 2015 Criminal Code on the criminal liability of commercial legal entities are still inconsistent and do not exactly represent the true nature of the criminal liability of legal entities, the following elements are found.

First, the criminal liability that commercial legal entities must bear is connected to a criminal offense committed by an individual that satisfies the conditions prescribed by the Criminal Code. The criminal liability of commercial legal entities does not exclude the criminal liability of individuals.

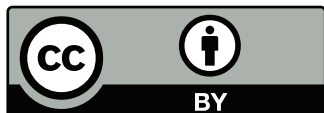
Second, there is no separate type of crime committed by commercial legal entities independent of the types of crime committed by individuals. There is only one type of crime, which is committed by an individual, but two subjects, the individual and the commercial legal entity, jointly bear criminal liability.

Third, as a result, the specific contents of the criminal liability of commercial legal entities, such as the fault, the stage of a crime, complicity, and the classification of crimes are determined by the definition of the criminal offenses committed by individuals.

#### Bibliography

- Clarke Donald, „China’s legal system and the fourth plenum” *Asia Policy*, No. 20 (2015): 10-16.
- Fedorov Aleksandr V., „Objective Conditions for Criminal Liability of Legal Entities in the Russian Federation and Prospects of Its Introduction” *Russian Law: Theory and Practice*, No. 1 (2016): 70-93.
- Hoa Nguyen Ngoc, „Consistency among provisions on criminal liability of commercial legal entities in the Criminal Code 2015” *Jurisprudence Journal*, No. 3 (2016): 32.
- Hoa Nguyen Ngoc, „The concept of crime and the regulations on criminal liability of commercial legal entity in the Criminal Code 2015” *Jurisprudence Journal*, No. 2 (2016).
- Hoa Nguyen Thi Phuong, „Completing the provisions on criminal liability of commercial legal entities committing crimes in the Criminal Code 2015” *Jurisprudence Journal*. special issue (2015).
- Lynch Gerard E., „The role of criminal law in policing corporate misconduct” *Law and Contemporary Problems* 60, No. 3 (1997): 23-65.

- Orland Leonard, Chales Cachera, „Corporate crime and punishment in France: Criminal responsibility of legal entities (personnes morales) under the new French Criminal Code (Nouveau Code Penal)” *Connecticut Journal of International Law*, (1995): 111-125.
- Sukhanov Evgeny A., „On the Concept of Developing Legislation on Legal Entities” *Russian Law: Theory and Practice*, (2010): 50-57.
- Sznyder Daniel, Carlton Patrick, „The origins of criminal law” *Nature Human Behaviour*, No. 4 (2020): 506-516.
- Toleubai Azat M., Antonina Kizdarbekova, „The concept of commercial legal entities in Kazakhstan and foreign legislation” *Journal of Advanced Research in Law and Economics* 9, No. 37 (2018): 2437-2446.
- van der Wilt Harmen, „Corporate criminal responsibility for international crimes: exploring the possibilities” *Chinese Journal of International Law* 12, No. 1 (2013): 43-77.
- Weissman Andrew, David Newman, „Rethinking criminal corporate liability” *Indiana Law Journal*, (2007): 411-427.
- Yang Vincent Cheng, „Corporate crime: State-owned enterprises in China” *Criminal Law Forum* 6, No. 1 (1995): 143-165.



This article is published under a Creative Commons Attribution 4.0 International license. For guidelines on the permitted uses refer to <https://creativecommons.org/licenses/by/4.0/legalcode>