

LAW ON RESPONSIBLE BUSINESS PRACTICES TO GUARANTEE HUMAN SECURITY IN VIETNAM

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ABSTRACT

People are the centre, subject, and essential resource and goal of development. Therefore, the issue of ensuring human security was mentioned for the first time in the Document of the twelfth Party Congress (2016) and reaffirmed quite a lot in the Document of the thirteenth Party Congress (2021). Many research works have also devised synchronous solutions to ensure human security firmly. In addition to the solutions that have been researched and proposed by scientists, the addition of solutions to improve the Law on responsible business practices is necessary to make an efficient contribution to ensuring human security in Vietnam. Because responsible business activities are directly related to ensuring urgent human security issues such as jobs, income, health, environment.

Keywords: Human Security, Responsible Business, Guidelines and Policies of the Party, Laws of the State, Application Efficiency Improvement.

Legal Framework for Responsible Business Practices Related to Ensuring Human Security in Vietnam

Human security is a status in which people live stably and safely without being threatened by threats of abuse; ensuring human security means guaranteeing all human rights and fundamental rights of citizens as stipulated in the Constitution and legal documents, ensuring that all people live comfortably and freely, happiness in an orderly, disciplined, secure, safe and healthy social environment (Xo et al., 2021).

Currently, in Vietnam, human security is mentioned very clearly in the contents of the Document of the thirteenth Party Congress (2016), specifically in the following contents: Development orientation of the country from 2021 to 2030; Management of sustainable social development, ensuring social progress and justice; National defence and security strengthening, firm defence of the Fatherland of Socialist Vietnam; Key tasks, strategic breakthroughs in the thirteenth National Congress (Vietnam, 2021). Thereby, human security is expanded and embodied in all aspects of human life and all areas of social life, from politics, economy to culture, society, national defense, security, environmental protection, education, health (Truong, 2022; Nham, 2017). Therefore, the legal framework to ensure human security is comprehensive, covering all areas of social life. However, in responsible business practices related to human security, the legal framework focuses mainly on legal documents in business investment, labour, environment, and consumer protection (Hai et al., 2020).

Firstly, in the Field of Business Investment

In business investment, to ensure human security according to the guidelines and policies of the Party, business entities must aim at responsible business activities. To do so, business entities must comply with the Law, simultaneously implement risk assessment measures for human, social, and environmental factors, and address potential threats, such as preventing, mitigating, or taking appropriate remedial action when violations occur. It is the primary responsibility of business entities. However, the State and society are also responsible for promoting and ensuring compliance (Uyen, 2022).

To ensure both business freedoms according to the 2013 Constitution Article 33, The Viet Nam National Assembly (2013) and human security, the 2020 Enterprise Law and the 2020 Investment Law have many provisions on the responsibilities of business entities. Accordingly, one of the groups of common obligations of the enterprises that are brought to the forefront in the structure of chapters of the 2020 Enterprise Law is to *“Ensure the legitimate and justifiable rights and interests of employees under the provisions of the law; not discriminate and insult the honour and dignity of employees in the enterprise; not mistreat and force labour or illegally use juvenile workers; support and create favourable conditions for employees to participate in training to improve professional qualifications and skills; implement policies and regimes of social insurance, unemployment insurance, health insurance and other insurance for employees according to the provisions of law”* Clause 5, Article 8, The Viet Nam National Assembly (2020). In addition, businesses in particular and entities, in general, are also governed by the 2020 Investment Law in their business activities. Specifically, the 2020 Investment Law lists industries and trades banned from business investment, such as: a) Trade of narcotics specified in Appendix I of this Law; b) Trade of chemicals and minerals specified in Appendix II of this Law; c) Trade of specimens of wild plant and animal species originating from nature specified in Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; specimens of endangered, precious and rare species of forest plants, animals and aquatic animals of Group I, originating from natural exploitation as specified in Appendix III of this Law; d) Trade of prostitution; đ) Purchase and sale of human beings, tissues, corpses, body parts, and fetuses; e) Business activities related to asexual reproduction in humans; g) Trade of firecrackers; h) Business of debt collection service (Article 6, The 2020 Investment Law of Viet Nam) (The Viet Nam National Assembly, 2020). In addition to the list of industries and trades banned from business investment, the 2020 Investment Law lists conditional business lines. They are industries or trades where business investment activities must satisfy necessary conditions for national defence and security, social order and safety, and social ethics, the community’s health - specified in Appendix IV of this Law (Article 7, The 2020 Investment Law of Viet Nam). In addition, for foreign investment activities in Vietnam, this Law also stipulates more about industries, trades and market access conditions for foreign investors. Accordingly, in addition to having to comply with general regulations on industries and trades banned from business investment and conditional business lines like domestic investors, in some fields, foreign investors may also have to comply with additional conditions on the rate of ownership of charter capital in economic organizations, forms of investment, the scope of investment activities, the capacity of investors and partners participating in the implementation of investment activities and other conditions as prescribed in laws and resolutions of the National Assembly, ordinances and resolutions of the National Assembly Standing Committee, decrees of the Government and international treaties to which the Socialist Republic of Vietnam is a member Article 9, The 2020 Investment Law of Viet Nam) (The Viet Nam National Assembly, 2020).

Secondly, in the Field of Labour, Social Insurance, Health Insurance

The labour sector has a close relationship with the business investment sector. For example, the 2020 Enterprise Law only stops at the general regulations on the responsibility of enterprises to ensure human security for employees; in that case, the 2019 Labor Code, the 2014 Law on Social Insurance, the 2008 Law on Insurance health care (amended in 2014), and implementation guiding documents have quite a lot and detailed regulations on the responsibilities of employers (including enterprises) in the areas as mentioned above.

Firstly, in the field of labour, the 2019 Labor Code identifies prohibited acts in the labour field such as Discrimination in labour, Labour mistreatment and coercion, Sexual harassment in

the workplace, Exploiting the labour force or enticing, seducing or forcing apprentices into illegal activities (Article 8, The 2019 Labor Code of Viet Nam)... Therefore, the employee has the right to unilaterally terminate the labour contract when being beaten or abused by the employer with abusive words, acts, or actions, leading to their health, dignity, and honour being affected; being forced into labour or sexually harassed at work (Article 35, The 2019 Labor Code of Viet Nam)... Therefore, it can be said that human security in the labour field has been recognized by apparent legal bases, thereby defining the responsibility of employers and other entities if they violate the above prohibitions. At the same time, it gives the employees the right to terminate the labour contract unilaterally when the above cases occur.

Secondly, in the field of social insurance and health insurance, the 2014 Law on Social Insurance and the 2008 Law on Health Insurance (amended in 2014) are two critical documents for ensuring human security in the field of labour and health, public health, not-for-profit and organized by the State.

Accordingly, the Law on Social Insurance was created and developed in order to guarantee workers to replace or partially compensate for their income reduced or lost due to illness, maternity, occupational accident, occupational illness, end of working age or death, based on contributions to the social insurance fund (Clause 1, Article 3, The 2014 Law on Social Insurance of Viet Nam). Business entities that are employers are regulated by the Law with many responsibilities to ensure the implementation of the Law's purposes in general and ensure human security in particular. Responsible business activities to ensure human security are regulated by this Law, mainly focusing on the responsibilities of the employer, such as: Paying social insurance premiums for employees according to regulations and monthly deducted from the employee's salary according to regulations to contribute to the same time to the social insurance fund; Introducing employees who are subject to regulations for examination and assessment of working capacity decline at the Medical Assessment Council; Coordinating with social insurance agencies to pay social insurance allowances to employees (Article 21, The 2014 Law on Social Insurance of Viet Nam) ...

In the medical field, the 2008 Law on Health Insurance (amended and supplemented in 2014) aims to stipulate the form of compulsory insurance applicable to the subjects as prescribed for health care, not because of for-profit purposes and organized by the State. Applied in the field of responsible business practices to ensure human security, business entities such as employers must be responsible for paying health insurance premiums for employees (Article 12, The 2008 Law on Health Insurance of Viet Nam - amended and supplemented in 2014). Specifically, the employers pay 2/3, and the employees pay 1/3 of the total health insurance premium as prescribed (Clause 1, Article 13, The 2008 Law on Health Insurance of Viet Nam - amended and supplemented in 2014).

Thirdly, in the Field of Environment

One of the environmental protection principles stipulated in the 2020 Law on Environmental Protection is that *"Environmental protection is harmoniously linking with social security, children's rights, gender equality, ensuring everyone's right to live in a healthy environment"* (Clause 3, Article 4, The 2020 Law on Environmental Protection of Viet Nam). This principle has demonstrated human security ensuring which business activities of business entities must be responsible for complying with. To ensure this principle and other principles in the field of environmental protection, the Law sets out a series of prohibited acts for individuals, agencies, organizations in general and business entities in particular, such as: Transporting, burying, filling, dumping, discharging, burning solid waste and hazardous waste in contravention of technical processes and regulations of law on environmental protection; Discharging

wastewater and air emission which has not been untreated to meet environmental technical regulations into the environment; Dispersing and discharging into the environment noxious substances, harmful viruses capable of infecting humans, animals, and microorganisms that have not been tested, animal carcasses that have died due to epidemics and other agents toxic to the health of human and animals, and nature; Causing noise and vibration in excess of the permitted levels according to environmental technical regulations; Discharging smoke, dust, gas with noxious smell into the air; Executing investment projects or waste discharge when the conditions are not satisfied according to the provisions of the law on environmental protection; Importing, temporarily importing, re-exporting or transiting waste from abroad in any form; Illegally importing used vehicles, machinery and equipment for demolition and recycling; Failing to carry out works, measures and activities to prevent, respond to and remedy environmental incidents in accordance with the law on environmental protection and other relevant laws; Concealing acts of polluting the environment, obstructing or falsifying information or deceiving in environmental protection activities, leading to harmful consequences for the environment; Producing and trading in products that are harmful to human health, animals and nature; Producing and using raw materials and construction materials containing toxic elements in excess of the permitted levels according to environmental technical regulations; Producing, importing, temporarily importing, re-exporting and consuming ozone-depleting substances in accordance with the provisions of the international treaty, on substances that deplete the ozone layer, of which the Socialist Republic of Vietnam is a member; Illegally destroying or encroaching on natural heritage; Destroying and invading works, equipment and means for environmental protection activities (Article 6, The 2020 Law on Environmental Protection of Viet Nam)... Especially on July 7, 2022, the Government issued Decree No. 45/2022/ND-CP on regulations on sanctioning administrative violations in the field of environmental protection (effective from August 25, 2022) to ensure adequate sanctions on environmental protection in sync with the 2020 Law on Environmental Protection and the Law amending and supplementing the 2012 Law on Handling of Administrative Violations. One of the new points applied towards responsible business activities is to increase the level of punishment for the group of acts of intentionally and surreptitiously discharging and sneaking untreated waste into the environment, causing environmental pollution such as construction, installation of equipment, pipes or other waste lines to discharge untreated waste into the environment, failure to construct environmental protection works... Those acts can result in fines of up to 02 billion Vietnamese dong for organizations.

RECOMMENDATION

Legal Framework for Business Investment

The 2020 Investment Law in Vietnam is the primary legal framework for business investment. It aims to establish a transparent and predictable investment environment, encourage responsible practices, and promote sustainable development. The Law includes provisions related to investment procedures, investment incentives, and dispute-resolution mechanisms. While the Investment Law is a positive step towards attracting foreign investment and promoting responsible business practices, further measures can be taken to align it with international standards on human rights and responsible business practices.

One key recommendation is to strengthen human rights due diligence requirements for businesses. Human rights due diligence refers to identifying, preventing, mitigating, and accounting for the potential human rights risks and impacts of business activities. By enhancing the investment law to require companies to conduct comprehensive human rights due diligence, including assessing potential human rights risks and impacts throughout their operations, supply

chains, and investment projects, Vietnam can ensure that businesses operating within its borders uphold international human rights standards.

Another important aspect is promoting stakeholder engagement. Meaningful engagement with affected communities, civil society organizations, and other relevant stakeholders during the investment decision-making process is crucial. This can help ensure that these stakeholders' concerns and human rights considerations are taken into account, particularly in cases where investment projects may have significant social and environmental impacts. Encouraging stakeholder participation through public consultations, impact assessments, and grievance mechanisms can contribute to more responsible investment practices and enhance human rights protection.

Legal Framework for Labor Practices

The 2019 Labor Code in Vietnam governs labor practices, ensuring the protection of workers' rights and promoting fair employment. The code covers various aspects, including employment contracts, working hours, wages, occupational safety and health, and the resolution of labor disputes. While the Labor Code provides a solid foundation for responsible labor practices, certain areas can be further improved to enhance worker protection and promote responsible business conduct.

One recommendation is to strengthen occupational health and safety regulations. While the Labor Code includes provisions related to workplace safety, it is essential to ensure that adequate occupational health and safety standards are in place, regular inspections are conducted, and effective mechanisms are available for workers to report safety concerns without fear of retaliation. By strengthening occupational health and safety measures, Vietnam can create a safer and healthier work environment for all employees.

Another important recommendation is to foster social dialogue. Encouraging collective bargaining and effective social dialogue between employers and workers is essential for promoting fair working conditions, addressing labor disputes, and protecting workers' rights. Vietnam can further enhance social dialogue mechanisms, such as facilitating the establishment of trade unions and promoting their active participation in decision-making processes within the workplace.

The legal framework for labor practices in Vietnam is primarily governed by the 2019 Labor Code, which provides a comprehensive set of regulations to protect workers' rights, ensure fair employment practices, and promote decent working conditions. The Labor Code is supplemented by other legal instruments, including decrees, circulars, and guidelines, which provide specific guidance on implementing labor laws in different sectors and industries. The 2019 Labor Code recognizes the fundamental rights of workers, including the right to freely choose employment, fair remuneration, safe and healthy working conditions, and the right to form and join trade unions. It prohibits discrimination based on gender, race, ethnicity, religion, disability, or social status and ensures equal opportunities and treatment for all workers.

One of the key aspects of the legal framework for labor practices is protecting occupational health and safety. The Labor Code mandates employers to provide their employees with a safe and healthy working environment. It sets out specific workplace safety requirements, including providing appropriate protective equipment, regular inspections, and risk assessments. Employers must also inform and train workers on occupational health and safety measures and establish mechanisms for workers to report safety concerns or accidents.

The Labor Code also emphasizes the importance of fair working conditions and provides regulations on working hours, rest periods, and leave entitlements. It sets the standard working hours at 8 hours per day and 48 hours per week, with provisions for overtime work. The Code

also guarantees paid annual leave, sick leave, and maternity leave, ensuring that workers have sufficient time for rest, recuperation, and personal obligations.

Furthermore, the Labor Code establishes mechanisms for resolving labor disputes and protecting workers' rights. It encourages collective bargaining between employers and employees to negotiate terms and conditions of employment, including wages, working hours, and benefits. In cases of labor disputes, the Code promotes mediation and arbitration as alternative means of resolution, with access to labor courts as a last resort. To enforce the labor laws, Vietnam has established administrative agencies responsible for labor inspection and enforcement. These agencies conduct regular inspections to ensure compliance with labor regulations, including occupational health and safety standards, minimum wage requirements, and employment contracts. Employers found to be in violation of labor laws may face penalties, fines, or other disciplinary actions.

However, despite the existing legal framework, challenges persist in effectively implementing and enforcing labor laws in Vietnam. Limited resources, capacity constraints, and inadequate awareness among workers and employers contribute to gaps in compliance. There is also a need for greater transparency and accessibility of information related to labor rights and obligations, ensuring that workers are aware of their rights and can exercise them without fear of retaliation. Several areas can be addressed to strengthen the legal framework for labor practices in Vietnam. First, efforts should be made to enhance occupational health and safety standards, including regular inspections, effective enforcement mechanisms, and provision of adequate training and resources for employers and workers. Ensuring that workers are protected from occupational hazards and have a safe and healthy working environment is essential for their well-being and productivity.

Second, promoting social dialogue and collective bargaining is crucial to creating a fair and harmonious labor environment. Facilitating the establishment of strong and independent trade unions and encouraging employers to engage in meaningful negotiations with workers' representatives can lead to better working conditions, fairer remuneration, and more equitable employment practices. Additionally, there is a need to strengthen mechanisms for resolving labor disputes in an efficient and timely manner. Improving access to mediation, arbitration, and labor courts can help resolve conflicts and protect workers' rights, ensuring that disputes are addressed fairly and expeditiously.

Legal Framework for Social Insurance

The 2014 Law on Social Insurance in Vietnam establishes a comprehensive system to provide social insurance coverage for workers. It aims to protect workers against various risks, including sickness, maternity, occupational accidents, and retirement. While the Law represents a significant step towards social protection, there is room for improvement to ensure adequate protection and inclusion of all workers.

Expanding social insurance coverage and accessibility is a key recommendation. Currently, the social insurance system primarily covers formal sector workers, leaving informal workers, self-employed individuals, and other vulnerable groups without adequate social protection. To address this gap, Vietnam should consider extending social insurance coverage to these groups, ensuring that all workers have access to essential social security benefits.

Strengthening social insurance benefits is also essential. The changing needs of workers, along with factors such as inflation and rising living costs, should be continuously considered in the review and adjustment of social insurance benefits. By periodically assessing and adapting the benefits provided, Vietnam can ensure that social insurance adequately supports workers in maintaining their livelihoods and improving their quality of life.

Legal Framework for Health Insurance

The 2008 Law on Health Insurance in Vietnam establishes a universal health insurance system to provide access to quality healthcare services for all citizens. While the Law has made significant progress in expanding health insurance coverage, challenges remain in ensuring equitable access to healthcare services across the country.

Addressing regional disparities in healthcare is a crucial recommendation. There are significant gaps in healthcare infrastructure, resources, and access to services between urban and rural areas and among different regions in Vietnam. To promote equitable access to healthcare, targeted measures should be developed to address these disparities, focusing on improving healthcare infrastructure and ensuring the availability of qualified healthcare professionals in underserved areas.

Enhancing health literacy is another important aspect. Promoting health education and awareness programs can empower individuals to make informed decisions about their healthcare and improve overall health outcomes. By investing in health promotion initiatives and disseminating accurate and accessible information, Vietnam can enhance the understanding of health-related issues among its population and encourage preventive measures that contribute to better health and well-being.

Legal Framework for Environmental Protection

The 2020 Law on Environmental Protection in Vietnam establishes mechanisms to prevent and control environmental pollution, promote sustainable development, and protect natural resources. While the Law demonstrates the Government's commitment to environmental protection, further efforts are required to strengthen responsible environmental practices.

One recommendation is to strengthen enforcement and penalties for environmental violations. Ensuring the effective enforcement of environmental regulations and imposing stringent penalties for non-compliance is crucial. By doing so, Vietnam can create a strong deterrent against environmental violations and promote responsible environmental practices among businesses.

Promoting sustainable practices is another key aspect. Encouraging businesses to adopt sustainable practices, including resource conservation, waste management, and environmentally friendly technologies, can contribute to environmental protection. The Government can incentivise and support businesses that prioritize sustainability and incorporate environmental considerations into their operations.

CONCLUSION

In conclusion, Vietnam has made commendable progress in establishing a legal framework for responsible business practices that guarantee human rights. The country has enacted laws addressing business investment, labor practices, social insurance, health insurance, and environmental protection. However, there are several areas where further improvements can be made to enhance responsible practices and protect human rights.

Regarding business investment, aligning the 2020 Investment Law with international standards on responsible practices and human rights due diligence is essential. Strengthening the requirement for companies to conduct comprehensive human rights due diligence and promoting stakeholder engagement can help identify and mitigate potential risks and impacts on human rights throughout the investment process.

Regarding labor practices, while the 2019 Labor Code provides a solid foundation, there is a need to strengthen occupational health and safety regulations to ensure worker protection and well-being. Enhancing standards, conducting regular inspections, and facilitating effective mechanisms for workers to report safety concerns can contribute to safer working conditions. Furthermore, promoting social dialogue and collective bargaining can foster fair employment practices and protect workers' rights.

In terms of social insurance, expanding coverage and accessibility is crucial. Including informal workers, self-employed individuals, and other vulnerable groups in the social insurance system can provide them essential protection and social security. Additionally, continuously reviewing and adjusting social insurance benefits to meet workers' changing needs will ensure the system's effectiveness and relevance.

The 2008 Law on Health Insurance establishes a universal health insurance system in Vietnam, yet challenges remain in achieving equitable access to quality healthcare services. Addressing regional healthcare infrastructure and resource disparities is vital, especially in rural and remote areas. Furthermore, promoting health literacy through education and awareness programs can empower individuals to make informed decisions about their health and well-being.

The 2020 Law on Environmental Protection plays a crucial role in preventing pollution and promoting sustainable development. However, robust enforcement of environmental regulations and imposing stringent penalties for non-compliance are necessary to deter environmental violations. Encouraging businesses to adopt sustainable practices such as resource conservation and waste management can contribute to responsible environmental practices.

To ensure the effective implementation of these recommendations, it is important to foster collaboration between the Government, businesses, civil society organizations, and relevant stakeholders. Regular monitoring and evaluation of the legal frameworks should be conducted to identify gaps and address emerging challenges promptly. Additionally, raising awareness about responsible practices and human rights among businesses and the general public can create a culture of accountability and social responsibility.

Vietnam can strengthen its commitment to human rights, sustainable development, and inclusive growth by continuously enhancing its legal framework for responsible business practices. These efforts will benefit the well-being of individuals and communities and contribute to the country's overall social and economic progress. Vietnam must promote responsible practices, align with international standards, and adapt to emerging global trends to ensure a bright and sustainable future for all its citizens.

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