



Special Alert

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New Penal Code and Corporate Criminal Liabilities

The National Assembly of Vietnam passed Penal Code No. 100/2015/QH13 (the “**New Penal Code**”) on 27 November 2015. However, due to technicalities and modifications by the issuance of Law No. 12/2017/QH14 on amendments to the Penal Code on 20 June 2017, the New Penal Code came into effect on 1 January 2018. Among the other changes, the New Penal Code introduced new provisions on crimes of commercial legal entities. This is a new concept of corporate criminal liability besides individual criminal liability. The New Penal Code repeals the current Penal Code, which was issued in 1999 and amended in 2009.

Identification of commercial legal entities

The New Penal Code does not provide a definition of a commercial legal entity. It is however defined under the current 2015 Civil Code as follows:

- Commercial legal entities are legal entities whose main purpose is to seek profits that shall be distributed to its members.
- Commercial legal entities include enterprises and other business entities.
- The establishment, operation and termination of commercial legal entities shall comply with the regulations of the Civil Code, Enterprises Law and other relevant laws.

Noncommercial legal entities, such as state agencies, army units, political organizations, socio-political organizations, political-socio-professional organizations, social organizations, socio-professional organizations, social funds and other non-commercial organizations, are excluded from criminal liability.

Types of criminal offenses

There are seven main offenses for which a commercial legal entity may be criminally liable:

- **Counterfeiting and related crimes:** (i) smuggling (Article 188); (ii) illegal trafficking of goods or money across the border (Article 189); (iii) manufacture or trading of banned commodities (Article 190); (iv) storage or transport of banned commodities (Article 191); (v) manufacture or trading of counterfeit goods (Article 192); (vi) manufacture or trading of counterfeit foods, foodstuff or food additives (Article 193); (vii) manufacture or trading of counterfeit medicines for treatment or prevention of diseases (Article 194); (viii) manufacture or trading of counterfeit animal feeds, fertilizers, veterinary medicine, pesticides, plant varieties, animal breeds (Article 195); (ix) hoarding (Article 196); (x) tax evasion (Article 200); and (xi) illegal printing, distribution and trading of invoices and receipts (Article 203);
- **Intellectual properties crimes:** (i) infringement of copyrights and relevant rights (Article 225); and (ii) infringement of industrial property rights (Article 226);
- **Competition crimes:** violations against regulations on competition (Article 217);
- **Insurance crimes:** (i) fraudulence in insurance business (Article 213); and (ii) evasion of social insurance, health insurance, and unemployed insurance payment for employees (Article 216);
- **Securities crimes:** (i) deliberate publishing of false information or concealment of information in securities activities (Article 209); (ii) use of internal information to deal in securities (Article 210); and (iii) crimes cornering the stock market (Article 211);
- **Environmental crimes:** (i) violations against regulations on survey, exploration and extraction of natural resources (Article 227); (ii) violations against regulations on forest extraction and protection (Article 232); (iii) violations against regulations on management and protection of wild animals (Article 234); (iv) causing environmental pollution (Article 235); (v) violations against regulations on environmental emergency prevention, response and relief (Article 237); (vi) violations against regulations on protection of irrigation works, embankments and works for protection against natural disasters; violations against regulations on the protection of river banks (Article 238); (vii) importation of wastes into Vietnam's territory (Article 239); (viii) destruction of aquatic resources (Article 242); (ix) forest destruction (Article 243); (x) violations against regulations on management and protection of endangered, rare animals (Article 244); (xi) violations against regulations on management of wildlife sanctuaries (Article 245); and (xii) importation and spread of invasive alien species (Article 246);
- **Other crimes:** terrorism financing (Article 300); and money laundering (Article 324).

Applicable sanctions and other remedies

If a commercial legal entity is found committing any of the above criminal offenses, the courts may apply the following penalties:

- **Restraining measures:** suspension of operation for a period ranging from six months to three years of the corporate legal entity's activities (Article 78); permanent shutdown or termination of the corporate legal entity's activities (Article 79); prohibition of operation in certain fields for a period ranging from one to three years from the effective date of the judgment (Article 80); prohibition on capital raising in certain fields for a period ranging from one to three years from the effective date of the judgment (Article 81);
- **Pecuniary fines:** A fine is imposed as a primary punishment or additional punishment against corporate legal entities committing crimes provided that the fine must not fall under VND 50 million (Article 77);
- **Judicial measures:** The courts may decide to take judicial measures against a corporate legal entity committing criminal offenses in order to remedy damages or to increase the punishment imposed against the offenders, such as confiscation of property and money directly related to the crime committed; return of property, repair or compensation for damages, or compensation in the form of public apology; compulsory dismantlement of works or parts of works constructed without a permit or at variance with the permit; compulsory relief of environmental pollution or spread of diseases; removal of infringing products and goods being circulated on the market; etc.

The courts may apply other interim measures including cease and desist orders and bans and confiscatory measures under the 2015 Criminal Proceedings Code.

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