

Legal Support for Women-Owned Enterprises in Vietnam - Current Situation and Solutions

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Abstract

In Vietnam, women-owned enterprises play an increasingly important role in the economy. According to statistics from the Report of Vietnam Association for Women Entrepreneurs, the number of Vietnamese businesses owned by women has increased rapidly in recent years, from 4% in 2009 to 21% in 2011 and 25% in 2022, the highest percentage in Southeast Asia. The article analyzes the development trend and increasingly important role of women-owned enterprises, their difficulties raised by the business environment and pressure to balance between work and family life, prejudice society, etc. to emphasize the need to strengthen legal support for women-owned enterprises. The article reveals that although Vietnamese law has provisions to provide legal support for women-owned enterprises, some provisions are inappropriate, the implementation of these provisions is not effective. Therefore, it is necessary to continuously consult, amend and improve the legal system on support for women-owned SMEs, and improve the implementation of the support policies through associations and organizations for women.

Key words: Vietnam, legal support, women-owned enterprises

Introduction

Women-owned small and medium-sized enterprises are small and medium-sized enterprises having 51% or more of their charter capital owned by one or more women, including at least one woman as executive director of the enterprise¹. The number of women-owned enterprises has been on the rise recently. These enterprises are usually micro and small-sized enterprises (SMEs), operating mainly in the service sector². Women-owned enterprises face many obstacles in business, such as limited access to resources, low human capital, lack of knowledge and skills in information and communication technology, science and technology, and gender stereotypes in family and business. These obstacles prevent women-owned enterprises from exploiting their full development potential. The support, especially legal support, for women-owned enterprises is a goal of many countries, including Vietnam. Many legal policies are adopted to support SMEs, typically Law on Supporting Small and Medium Enterprises dated June 12, 2017, and Decree 55/2019/ND-CP on legal support for SMEs adopted by the Government on June 24, 2019, taking effect from August 16, 2019. Despite support from the State and reducing gender stereotypes in Vietnam, women-owned enterprises in Vietnam have to face many difficulties and obstacles caused by biased opinions. The article attempts to explore the characteristics of women-owned enterprises, and support legislation for women-owned enterprises. Through such an analysis, the article proposes some recommendations to improve the effectiveness of support for these enterprises. The central object of this article is SME - the important force making up the major percentage of businesses in Vietnam.

Research object and methodology

Until now, the number of direct studies on legal support for women-owned enterprises in Vietnam is limited. While most studies are on legal support for enterprises in general, some indirect studies are on legal support for women-owned enterprises, such as:

- ADB (September 2016), *Women-owned SMEs in Vietnam: Situation Analysis and Policy Recommendations*. The findings and recommendations of this study are based on: (i) opinions from women-owned enterprises from interviews, focus groups, and seminars on support policies for women-owned SMEs and female-dominated SMEs; and (ii) the results of the enterprise survey conducted by General Statistics Office. However, from 2016 to now, Vietnam has issued more new policies for these enterprises.

¹Article 3, SME Support Law 2017

² VCCI, Business report in Vietnam, assessment of women-owned enterprises, page 17
at: http://st.aus4reform.org.vn/staticFile/Subject/2021/01/15/vcci-comp4_bao-cao-mtkd_dn-nu-final_191617149_151414689.pdf retrieved on March 16, 2022

- IFC (2017), *Women-owned enterprises in Vietnam: Perception and Potential*. This study points to the potential of women-owned enterprises, a segment of businesses missed by banks and other financial service providers, and offers several recommendations for capturing this market segment.
- UN Women (December 2020), *Review of the implementation of small and medium enterprises (SMEs) support legislation and the capacity building needs and training services for women-owned SMEs and women entrepreneurs in Viet Nam, Hanoi*. The study is conducted within the framework of "Women's economic empowerment in Asia" (WeEmpower Asia), a program of the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), and Europe Union (EU) aims to enhance the economic empowerment of women in seven Asian countries. The main findings are grouped into three areas: (i) enforcement of SME support legislation with a focus on women-owned SMEs (ii) the need of women-owned SMEs for capacity building; and (iii) existing training services and the gap between demand and supply of capacity building and training services.

Within the scope of this article, the author uses the method of collecting data on the number of women-owned enterprises in Vietnam over time by industry, size, field and their contribution proportion to the national economy from the Enterprise Survey conducted annually by the General Statistics Office. Thereby, the characteristics of women-owned enterprises in Vietnam, their development trend, and their increasingly important roles are explored.

By analyzing the provisions in legal documents related to women-owned enterprises, the content and implementation of regulations on women-owned enterprises are reviewed to assess the responsiveness of these regulations in the current period. By that means, it points to the fact that Vietnam's regulations on legal support for women-owned enterprises are now few and vague. Moreover, the enforcement mechanism for these current regulations is not effective enough to achieve the desired effect.

The comparative method is used in some parts of the article to point out the similarities and differences between women-owned enterprises and men-owned enterprises, thereby clarifying some difficulties faced by women-owned enterprises related to business support actions. In addition, the comparative method is combined with the historical method to reveal the development trend of women-owned enterprises in Vietnam and the need to strengthen legal support for women-owned enterprises today.

Study results

1. Characteristics of women-owned enterprises in Vietnam and the need to strengthen legal support for these enterprises

Regardless of the small business scale, women-owned enterprises have increasingly developed and given a large contribution to both the economy and society. Specifically, in addition to the significant contribution to the national economy, women-owned SMEs often employ a higher number of female workers than men-owned SMEs do³. When their businesses face difficulties, such as the negative impact of the Covid 19 pandemic, with their perseverance, social responsibility, and a spirit of cohesion, women-owned enterprises tend to apply many flexible measures actively and effectively to protect and retain employees, especially female employees. Their employment and retention of female workers during a hard time has contributed significantly to ensuring the rights to women's employment, raising the status of women, and reducing gender inequality. Moreover, the emergence of women-owned enterprises makes the economy diversified and dynamic. For gender equality and the increasing trend of women-owned enterprises, Vietnam has issued many policies and laws to support women-owned SMEs, such as Law on Gender Equality No. 73/2006/QH11 adopted by the National Assembly of Socialist Republic of Vietnam on November 29, 2006 requests the integration of gender equality into legal documents. Decree 56/2009/ND-CP also expresses the need of supporting women-owned SMEs. These policies initially improve awareness of the role of women-owned enterprises in Vietnam. In addition to the general characteristics of an enterprise, a women-owned enterprise has the following specific characteristics:

Firstly, women-owned enterprises in Vietnam are mainly micro and small enterprises, operating mainly in the service sector, easily affected by economic, social, and external factors⁴. With a small size and a very modest amount of capital, women-owned enterprises are easily affected by the changes in economy, politics, national emergencies, such as the Covid-19 pandemic, new legal policies, etc.

³The proportion of female employees in women-owned SMEs is 43.4%, while that of male-owned SMEs is 36%.

⁴ VCCI, Business report in Vietnam, assessment of women-owned enterprises, page 21
at: http://st.aus4reform.org.vn/staticFile/Subject/2021/01/15/vcci-comp4_bao-cao-mtkd_dn-nu-final_191617149_151414689.pdf retrieved on March 16, 2022

In Vietnam, 87.2% of enterprises are affected by the Covid-19 pandemic⁵. Most studies show that the Covid-19 pandemic causes damage to women-owned SMEs much more than men-owned ones⁶. The number of women-owned SMEs that have to suspend some parts or entire of their business activities is twice as high as that of men-owned SMEs. Therefore, to protect and promote the development of women-owned enterprises, it is necessary to have multi-dimensional support from the government, including legal support for businesses, to help these enterprises adapt to and protect themselves from law and social changes.

Secondly, to comply with the law, manage the operation effectively, and minimize risks in business, understanding the law is a prerequisite for all enterprises. However, the scales of women-owned enterprises are too small to have a highly specialized internal legal department, thus they often face difficulties in complying with the law and suffer losses in disputes. The leaders of women-owned enterprises are hindered in equipping themselves with legal knowledge because they have to balance between time for business activities and time for performing their woman's spontaneity that is to take care of their family and children. While the rate of men-owned SMEs having difficulty in balancing between work and family is only 9.3%, this rate of women-owned SMEs is 17.7%⁷. Consequently, women entrepreneurs do not have enough time to research, learn and grasp the necessary legal issues; they often lack information in managing their businesses, operational efficiency is therefore low, and many business risks emerge.

Additionally, it is apparent that educational level also affects legal knowledge of entrepreneurs. The percentage of women business owners without a university degree is 28.1%, while that of men is 15.9%⁸. The percentage of women business owners with bachelor's and master's degrees in business administration is 68.8%, while this percentage is 71.9% for men business owners⁹. Women-owned SMEs, especially those in socially and economically disadvantaged areas, have more difficulties in improving legal knowledge for themselves and their employees. In addition, the PCI index 2016 of the Vietnam Chamber of Commerce and Industry (VCCI) also shows that micro and small enterprises get less legal advice due to a lack of resources to use legal advisory services.

Thirdly, although social awareness is gradually improved, gender stereotypes still more or less exist. Commercial banks consider women-owned SMEs as their potential customers rather than main customers; therefore, these enterprises receive no outstanding incentive¹⁰. Furthermore, as some banks believe that female entrepreneurs tend to be more reluctant to face the risk than male entrepreneurs, the access to finance of women-owned SMEs is not as favorable as that of men-owned SMEs. The difficulty rate of women-owned SMEs in accessing financial services is 41.1%, while this rate for men-owned SMEs is 32.6% (in the service industry)¹¹. Therefore, legal advice and assurance to access suitable loans and prove financial capacity to raise capital are important factors in promoting the operation of women-owned enterprises.

Women-owned enterprises face many difficulties in accessing and implementing support policies, thus legal support activities of the State have not achieved the desired effect. Vietnam has a number of policies to support women-owned and female-dominated enterprises, such as support for corporate income tax (Amendment on Corporate Income Tax Law 2013), state support for job creation (Job Law 2013), and support in bidding (Bidding Law 2013), etc. However, legal policies and measures to support women-owned enterprises have not produced the desired effect and met the requirements of the Government due to various reasons:

⁵ UNDP, COVID-19 Socio-economic Impact on Vulnerable Households and Enterprises in Viet Nam: A Gender-sensitive Assessment, 2020 page 18

⁶ Revenue of women-owned SMEs is affected by the Covid 19 pandemic much more than that of men-owned SMEs (revenue of women-owned SMEs is 17% compared to December 2019, while the figure for men-owned SMEs is 24% in April 2020)

⁷ UN Women, Research Summary, "Review of the implementation of small and medium enterprises (SMEs) support legislation and the capacity building needs and training services for women-owned small and medium-sized enterprises and female entrepreneurs in Vietnam" page 6, Hanoi 2017

⁸ ADB, Women-owned SMEs in Vietnam: Situation Analysis and Policy Recommendations, Hanoi. Vietnam (2016)

⁹ Report of Business Registration Management Agency, Ministry of Planning and Investment, 2019

¹⁰ UN Women, Research Summary, "Review of the implementation of small and medium enterprises (SMEs) support legislation and the capacity building needs and training services for women-owned small and medium-sized enterprises and female entrepreneurs in Vietnam" page 33, Hanoi 2017

¹¹ VWEC (04/2018), Report on needs assessment of women-owned small and medium-sized enterprises in Vietnam, Hanoi.

The limited knowledge and understanding of policies and laws lead to the unfortunate fact that some women-owned entrepreneurs still do not know the regulations and support policies to which they are entitled. Moreover, the budget for legal support activities is still limited.¹² Human resources for legal advisory activities are still with low quantity and not yet specialized. As the result, legal support activities for businesses are mainly on propaganda, not in line with the real needs of small and medium enterprises. Therefore, the effectiveness of State policies for these enterprises is not high. Because of the above limitations, supporting and creating favorable conditions for women-owned SMEs is now more important and urgent than ever. To achieve this goal, the first thing to do is to strengthen legal support for these businesses.

2. Current Vietnamese law on legal support for women-owned enterprises

Vietnam is one of the advanced countries in gender development in Asia¹³. This is partly reflected in the legal provisions. Legal provisions related to legal support for women-owned enterprises are directly recognized in SME Support Law 2017¹⁴. After that, the provisions of this Law continue to be specified in Decree 55/2019/ND-CP on legal support for SMEs dated 24/6/2019, effective from August 16, 2019; Decree No. 80/2021/ND-CP dated October 15, 2021 of the Government detailing and guiding the implementation of a number of articles of SME Support Law 2017. Accordingly, legal support for SMEs means that ministries, ministerial-level agencies, and provincial-level governments take actions, such as building, managing, maintaining, and updating a database of legal documents, developing and organizing the legal support implementation programs to improve knowledge, awareness, and habits of law compliance and reduce the risks as well as legal problems in business, etc., to improve business competitiveness and the effectiveness of law enforcement¹⁵. Legal support for women-owned SMEs is carried out by the State in two forms, including (1) building, managing, maintaining, updating, exploiting, and using the legal database, (2) building and implementing legal support programs for enterprises. In terms of the priority order of legal support, the group of women-owned SMEs are given the first priority¹⁶.

Specific supports for women-owned SMEs include:

- Financial support for consulting contracts: Reduce 100% of the consultancy contract value but no more than 50 million VND/year/enterprise for micro-sized enterprises or no more than 70 million VND/year/enterprise for women-owned micro-sized enterprises, female-dominated micro-sized enterprises, and social micro-sized enterprises; Reduce maximum of 50% of the consultancy contract value but no more than 100 million VND/year/enterprise for small businesses or no more than 150 million VND/year/enterprise for women-owned small-sized enterprises, female-dominated small-sized enterprises, and social small-sized enterprises; Reduce maximum of 30% of consultancy contract value but no more than 150 million VND/year/enterprise for medium enterprises or no more than 200 million VND/year/enterprise for women-owned medium-sized enterprises, female-dominated medium-sized enterprises, and social medium-sized enterprises.

- Free training on business administration for students of SMEs in socially and economically disadvantaged areas, women-owned SMEs, female-dominated SMEs, and social SMEs.

- Free training on production and processing for students of SMEs in socially and economically disadvantaged areas, women-owned SMEs, female-dominated SMEs, and social SMEs, but no more than 01 course/year/enterprise.

It is apparent that women-owned enterprises currently face many challenges. Vietnam has improved regulations on gender equality, SME Support Law prescribes the principle of priority support for women-owned enterprises.

¹²Survey results by the Ministry of Justice in collaboration with the Governance for Inclusive Growth (GIG) project: Recently, only 51% of surveyed state agencies have allocated funds for legal support for businesses according to Decree No. 66/2008/ND-CP

¹³ ADB, Women-owned SMEs in Vietnam: Situation Analysis and Policy Recommendations, Hanoi, Vietnam, 2016, pg. 40

¹⁴Clause 5, Article 5, SME Support Law 2017: "In case many small and medium-sized enterprises meet the conditions for support as prescribed in this Law, priority shall be given to women-owned small and medium-sized enterprises, and the enterprises employing more female workers".

¹⁵Clause 1, Article 3, Decree 55/2019/ND-CP

¹⁶the order of priority for legal support is a) Women-owned SMEs, female-dominated SMEs submit eligible applications; b) SMEs employing 30% or more people with disabilities according to the provisions of Law on Persons with Disabilities; c) The first SME that submits eligible applications shall receive the first support. Article 4 of Decree 80/2021/ND-CP detailing SME Support Law.

However, the legal supports for women-owned enterprises are merely training and general provision rather than satisfying the needs of the enterprises. There is no gender identity and sensitivity in these support activities. The reason comes from the limitations of regulations on legal support as follows:

- The definition of women-owned SMEs in Clause 1, Article 3 of SME Support Law 2017 is unable to accurately identify the right target beneficiaries. Specifically, the regulation that one or more women own 51% or more of charter capital is not reasonable in case the enterprise is a joint-stock company with regular stock trading transactions. Moreover, for the regulation "at least one woman manages the enterprise", there is no document guiding who the manager should be (general director, deputy general director, or chairman, etc.). Consequently, many enterprises do not have enough documents to prove when they want to apply for support of legal consultancy costs.

- The provisions on supporting women-owned enterprises are very few, the content of these provisions is ineffective and unable to accurately identify the right target beneficiaries. The provisions in the SME support law are mostly general support for all enterprises without specific provisions for women-owned enterprises. The current provisions on legal support for businesses are mainly for small and medium as a whole. However, according to the concept of SMEs in Article 3 of Decree 55/2019/ND-CP, most Vietnamese enterprises are SMEs. Therefore, women-owned enterprises in Vietnam are entitled to very few specific support provisions.

- Regulations on funding sources for legal support activities are very limited. As a result, it is even more difficult to allocate funds to legal support for women-owned enterprises.

- For many women-owned SMEs, the current support is too small and the procedures to get support are too complicated to encourage them to apply for the support.

Although Vietnam has advanced regulations on gender equality and SME support Law, which has set the principle of prioritizing the support for women-owned enterprises, these regulations are still general. Therefore, the accessibility of female entrepreneurs to the support and the implementation of policies by state agencies have not achieved the desired effect. Promulgating policies is difficult, but how implementing them in real life is even more difficult. This requires the participation of the whole society. In particular, improving the business environment should be a top priority of the Government, ministries, sectors, and localities, including the solutions to promote the development of women in general, and women-owned enterprises in particular.

3. Solutions to improve the law, increase the effectiveness of legal support for women-owned enterprises

Firstly, it is essential to accomplish the law to strengthen legal support for women-owned enterprises. First of all, by taking gender identity and sensitivity into account, it is necessary to study and supplement more provisions on supporting women-owned enterprises, such as legal consultancy, guarantees in accessing capital.

According to regulations, the funding source for legal support for businesses is the state budget of Ministry of Finance, ministerial-level agencies, provinces, and centrally-run cities, and voluntary support from organizations and individuals based on the annual action plans. The expenditure rules are specified in Circular No. 54/2021/BTC dated July 29, 2021 of the Ministry of Finance, in which, some expenditures for SME legal support have not been specified in the Circular, for example: Expenditures for specific activities in managing the operation of the legal consulting network for enterprises, Expenditures for expert meetings to deal with specific cases and answer the questions at the request of enterprises; Allowances for civil servants performing legal support task besides their main jobs, etc. As the expenditure on legal support for the enterprises is relatively large, it is necessary to promote the mobilization and diversify funding sources to support women-owned SMEs.

Thirdly, promote the role of associations and service providers to support women-owned SMEs. Women's business associations and SME associations should take part in policy-making and development of legal support by providing input data, sharing good experiences in implementing policy and providing comments on the draft regulation in multi-way discussions. Through these activities, the needs of enterprises could be communicated, thereby support activities could be more effective.

Fourthly, the legal consultancy network should be accomplished. As analyzed, the limited knowledge of laws and policies is responsible for the failure of women-owned enterprises to receive support. Even when they know the support, some enterprises are too confused to know where they should contact for advice and support.

Therefore, in addition to keeping women-owned SMEs updated with the information on legal support that is shared regularly through various means (workshops, communication, training, etc.) fostering and strengthening the network of legal consultancy is important. Some ministries and sectors have started to build a legal consultancy network according to the provisions of Circular No. 06/2019/TT-BKHDT. However, until now only Ministry of Industry and Trade sign and promulgate the regulations on recognizing organizations and individuals in the network of consultants to support SMEs. Therefore, in the future, all ministries and sectors should pay more attention to supporting and attracting the active participation of legal consultants, including lawyers, law firms, and legal consulting centers in legal support for women-owned SMEs.

Conclusion

Women-owned SMEs play an important role not only in economic development but also in ensuring gender equality. Therefore, legal support for women-owned SMEs is very important and essential. Current legal policies of Vietnam have a signal to pay attention to gender issues in general and women-owned SMEs in particular. However, some regulations are still inappropriate, the implementation of the regulations is not effective. Therefore, it is necessary to continuously consult, amend and improve the legal system on support for women-owned SMEs, and improve the implementation of the support policies through associations and organizations for women.

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