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Published in the Russian Federation
European Researcher. Series A
Has been issued since 2010.
E-ISSN 2224-0136
2020, 11(2): 64-70

DOI: 10.13187/er.2020.2.64
www.erjournal.ru



Articles

The Coordinating Mechanism Between the State Agencies and the Institutional Representatives of Enterprises in the Work of Legal Aid for Enterprises in Vietnam

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Abstract

This research focuses on analyzing and clarifying the content of current regulations on the coordinating mechanism between state agencies and the institutional representatives of enterprises in providing legal aid for enterprises in Vietnam today. At the same time, the article also assesses these regulations in practice in recent years to record the achieved results and detect the existed shortcomings. Based on the detected inadequacies, the article will propose solutions to amend and supplement the current legal provisions on the coordinating mechanism between state agencies and the institutional representatives of enterprises in legal aid for businesses in Vietnam to operate this mechanism effectively, thus contributing to the development of businesses in Vietnam today.

Keywords: coordinating mechanism, legal aid, enterprise.

1. Introduction

Currently, in Vietnam, according to Article 4.7 of the 2014 Law on Enterprises, enterprise means an organization that has its own name, assets, office, and is registered in accordance with law to do business. Enterprises include 04 types: (i) Limited liability companies include single-member limited liability companies and multi-member limited liability companies, (ii) joint-stock companies, (iii) partnerships, (vi)) private enterprise. In general, the enterprise is the main business entity in the economy and therefore plays a huge role in the economic development of Vietnam, as follows: “Currently, the enterprise sector is the largest contributor to the development scale of the economy, accounting for over 60 % of the GDP of the entire economy ... ” (General Statistics Office, 2018). Therefore, enterprises are the subjects which are encouraged by the State to develop production and business activities with many incentives and support on capital, market, science and technology, human resources... (Phu Dong, 2019). In the context when administrative procedures for businesses are still very large, cumbersome and complicated (Tram Anh, 2019), legal aid is an important content that contributes to solve difficulties and obstacles that enterprises encounter in business activities and pave the way for businesses to grow. Legal aid for enterprises

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in Vietnam is currently being prioritized to be carried out by many state agencies at central and local levels. The coordinating mechanism of these agencies in legal aid for enterprises will be presented in detail in this article.

2. Materials and methods

2.1. This study is conducted basing on the current provisions of Vietnamese law on legal aid for enterprises and previous legal provisions. Simultaneously, it is also executed based on the reference of published studies, such as: Các tổ chức đại diện doanh nghiệp trong công tác hỗ trợ pháp lý cho doanh nghiệp và một số đề xuất, kiến nghị Bộ Tư pháp [The institutional representatives of enterprises in the work of legal aid for enterprises and some recommendations and petition to Ministry of Justice] (Duy Lam, 2017); Hỗ trợ doanh nghiệp nhỏ và vừa Việt Nam phát triển trong giai đoạn hiện nay [Supporting Vietnamese small and medium-sized enterprises to develop in the current time] (Phu Dong, 2019); Tuân thủ nguyên tắc phối hợp là yếu tố quan trọng tạo nên hiệu quả trong công việc [Compliance with the principle of coordination is the important factor to create efficiency at work] (Hong Thanh, 2018)...

2.2. This research was completed based on the simultaneous use of many different research methods, including analysis, synthesis, dialectical materialism, interpretation, comparative, and history ... in analyzing and commenting on issues related to the law on coordinating mechanism between state agencies and the institutional representatives of enterprises in providing legal aid for enterprises in Vietnam currently.

3. Discussion and results

3.1. Overview about coordination in the work of legal aid for enterprises

- The concept of legal aid work for enterprises

To clarify the concept of coordination in legal aid work for enterprises, it is first needed to identify what is “coordination” and what is “legal aid for enterprises”. Coordination is the relationship between two or more different entities in the process of implementation and execution for mutual purpose. In other words, coordination is the working together of at least two or more subjects, acting on a common plan to achieve common goals (Hong Thanh, 2018).

Meanwhile, the concept of legal aid for enterprises is a term that has not been clarified in legal documents such as Decree No. 66/2008/ND-CP and Decision No. 585/ QĐ-TTg. However, the study of the content of current legal regulations and based on practice, it can be understood that legal aid for enterprises is the way the competent agencies and organizations implement free activities as prescribed by law in order to raise the legal knowledge and the sense of respect for law and observance of law from enterprises, thus contributing to ensure the principle of equality in business, preventing and limiting disputes and improving the efficiency of business operations of enterprises.

Therefore, the concept of “coordination in the work of legal aid for enterprises” can be introduced as follows: “Coordination in the work of legal aid for enterprises is the way that the subjects (which are assigned to the legal aid task for enterprises) discuss, build and implement activities in many different forms to achieve the common goal of improving legal knowledge and the sense of respect for law and observance of laws from enterprises, thus contributing to ensure the principle of equality in business, preventing, limiting disputes and improving the efficiency of business operations of the enterprise”.

- The need for coordination in the work of legal aid for enterprises

The coordination between the state management agencies and the institutional representatives of enterprises in the work of legal aid for enterprises is very necessary due to the following basic reasons:

Firstly, the activities of enterprises are very diverse, involving to the state management functions of many ministries, branches and localities and the representative functions of many business associations. It can be seen that, when an enterprise is formed and entered into the market, it will be governed by many different legal documents. For example: For companies listed on the stock market, besides the Law on Enterprise which is the original law on enterprises, companies are also subject to the Securities Law and guiding documents. In order to operate stably and limit unnecessary legal risks, the enterprise needs to understand the above-mentioned legal documents.

Hence, it is necessary to have the coordination of state management agencies to provide effective legal aid for enterprises. These agencies, within their functions and duties, will provide answers in their assigned fields; In case the problem involves many ministries and branches, such ministries and branches need to work together to solve them.

Secondly, each state management agency and the institutional representatives of enterprises has its own functions, duties and powers. The implementation of the state's management function and the function of representing the voice of enterprises is completely independent of each other. Therefore, in order to achieve the synchronism in legal aid for enterprises and towards a common goal, the state management agencies and related organizations need to coordinate with each other, avoiding overlap and duplication of authority.

3.2. The coordinating mechanism between state agencies and the institutional representatives of enterprises in the legal aid work for enterprises according to current law.

In order to carry out the coordination in legal aid activities for enterprises effectively, competent entities must base on the provisions of law including:

(1) Group of legal documents on legal aid activities for enterprises: Nghị định số 66/2008/NĐ-CP (Decree No. 66/2008/ND-CP), Quyết định số 585/QĐ-TTg (Decision No. 585/QĐ-TTg), Luật Hỗ trợ doanh nghiệp nhỏ và vừa năm 2017 (Provision of Assistance..., 2017); Nghị định số 39/2018/NĐ-CP (Decree No. 39/2018/ND-CP)...

(2) Group of legal documents regulating the functions, tasks and powers of entities such as: Luật Tổ chức Chính phủ (Organization of the Government Law, 2015), Luật Tổ chức chính quyền địa phương (Organization The Local Government, 2015) and other guiding documents for implementing (such as Decrees defining the functions, tasks and powers of ministries and branches)...

Based on the above-mentioned legal documents, the position, role and the coordinating mechanism between state agencies and the institutional representatives of enterprises in the legal aid for enterprises have been determined as follows:

- At central level

- About the focal agency of implementation: According to Article 2.1 of Decree No. 96/2017/ND-CP, the Ministry of Justice shall provide professional guidance and examination of legal work of ministries, branches, localities, state-owned enterprises and legal aid for enterprises; carry out legal aid activities for enterprises in accordance with the law. In addition, Article 13.1 of Decree No. 66/2008/ND-CP stipulates: "The Ministry of Justice shall assist the Government in performing the state management of the provision of legal aid for enterprises nationwide. Within the ambit of its responsibility, the Ministry of Justice has the following tasks and powers:

- a) To assume the prime responsibility for or take part in elaborating and submitting to competent authorities for promulgation or promulgate according to its competence legal documents on legal aid for enterprises;

- b) To take the initiative in organizing or coordinating with other agencies in conducting the provision of legal aid for enterprises under this Decree;

- c) To organize the provision of law knowledge training and professional guidance for legal aid workers;

- d) To coordinate with other ministries and provincial-level People's Committees in directing and inspecting the provision of legal aid for enterprises;

- e) To assume the prime responsibility for and coordinate with other ministries and provincial-level People's Committees in reviewing the provision of legal aid for enterprises and annually reporting it to the Prime Minister"

In addition, on the basis of Decision No. 585/ QĐ-TTg, the Ministry of Justice is assigned to coordinate with ministries, branches and localities to organize activities including: Legal information for enterprises in many different forms; formulating and organizing the programs on disseminating basic knowledge about business laws on the mass media for enterprises; organize the implementation of programs on fostering basic knowledge about business laws for enterprise managers; organize training and improving legal professional skills for legal officers of the enterprise; building a legal consultancy network for enterprises in difficult and extremely difficult socio-economic areas; formulating and organizing to implement of pilot projects on legal aid for

enterprises in a number of localities representing regions; formulating and implementing activities that support to enhance capacity for agencies and organizations that are responsible for providing legal aid to enterprises in accordance with the provisions of Decree No. 66/2008/ND-CP/...

About the coordinating agencies to implement: After the Decree No. 66/2008/ND-CP was issued, the ministries and ministerial-level agencies had assigned the Legal Department to be the focal point to organize the implementation of regulations on legal aid for enterprises. A number of ministries and ministerial-level agencies have completed a large number of legal aid activities within their functional areas in order to create favorable conditions for enterprises to enforce laws, in which, highlighting the role of Ministry of Finance in carrying out activities related to tax and customs; Ministry of Transport in the field of transport business of enterprises; Ministry of Defense in the field of defense and security enterprises... Awareness of enterprises in the field has been improved, helping enterprises of all economic sectors to master the law to implement and restrict the violations in production and business activities, and at the same time well serving the state management of ministries and branches.

It can be said that the legal aid for enterprises during the time has been implemented by the Ministry of Justice – the agency in charge of coordination with ministries, branches and provincial-level People's Committees continuously. As a result, it has brought positive results for enterprises, and are highly appreciated by the owners, business managers and representatives of the business community.

- At local level

According to the provisions of Decree No. 66/2008/ND-CP, the entities participating in the implementation of legal aid activities for local enterprises include: provincial-level People's Committees, Department of Justice, specialized agencies of provincial-level People's Committees and other relevant organizations. The positions, roles, functions and tasks of these entities in specific legal aid activities for enterprises are as follows:

Provincial-level People's Committee: The agency that presides and plays an active role in organizing or coordinating activities of legal aid for enterprises according to regulations; organizes the review of legal aid for enterprises and reports to the Ministry of Justice on an annual basis or upon request for the Ministry of Justice to synthesize and report to the Prime Minister.

Department of Justice: Acting as a focal agency for implementation, playing a role as an advisory agency to the provincial-level People's Committee on legal aid for local enterprises and also acting as a focal point in coordination with other specialized agencies of Provincial-level People's Committees to provide legal aid activities for enterprises as prescribed.

Other specialized agencies under the provincial-level People's Committee: Take the role of coordinating unit with the focal point to carry out legal aid activities for enterprises.

In compliance with the provisions of Decree No. 66/2008/ND-CP, the People's Committees of provinces and municipalities have directed specialized agencies to initiatively grasp the need of legal aid of enterprises, organize the implementation of legal aid activities for enterprises according to the provisions of Decree No. 66/2008/ND-CP. The statistics show that most of the provincial-level People's Committees have issued plans to implement legal aid activities for enterprises, some provincial-level People's Committees issued guiding documents and schemes and programs, which specify the responsibilities of departments, boards and branches in providing legal aid for enterprises in the province. Local authorities issued timely guidance documents as a legal basis and made a positive change for the implementation of legal aid activities for enterprises within their respective localities ([Report No. 42/BTP-PLDSKT, 2017](#)).

In general, Decree No. 66/2008/ND-CP has created a legal basis for the provincial-level People's Committees to direct, administer and manage the legal aid activities of the state agencies towards enterprises, ensured the compliance with laws and policies of the State. Through the specialized agencies under the provincial-level People's Committee, the legal aid activities are provided to all enterprises, irrespective of ownership form, size and field of operation. The legal aid for enterprises is implemented promptly, fully and accurately, meeting the needs of enterprises in production and business activities.

- The institutional representatives of enterprises

The roles, functions and tasks of the institutional representatives of enterprises are stipulated in Decree No. 66/2008/ND-CP. Specifically, according to Article 5 of Decree No. 66/2008/ND-CP,

the institutional representatives of enterprises have the responsibility to actively organize the implementation of legal aid activities for enterprises within the scope of their functions and duties as well as cooperate with the state management agencies and other related organizations in implementing legal aid activities for enterprises as prescribed. Therefore, the role of associations and social organizations of enterprises from the central to local levels is determined to be extremely important in the work of legal aid for enterprises. These organizations may be proactive or may be units that coordinate with state management agencies and other organizations involved in conducting legal aid activities for enterprises.

In fact, after the Decree No. 66/2008/ND-CP was issued, the institutional representatives of enterprises have actively researched documents and learned the policies and legal documents related to legal aid activities for enterprises, legal regulations related to production and business activities of their organizations. The majority of institutional representatives of enterprises have been very active in performing the representative functions of the business community in supporting the law, protecting the legitimate rights and benefits of members. According to the results of the Ministry of Justice's survey, it was found that after the Decree No. 66/2008/ND-CP was issued, the majority of the institutional representatives of enterprises had established specialized departments related to legal information, fostering legal knowledge, legal consultancy, developing subordinate human resources with the function of consulting the institutional representatives of enterprises in legal aid, protecting the rights and legitimate benefits of members. The institutional representatives of enterprises have implemented many seminars, forums, and seminars revolving around business law topics to encourage enterprises to enforce the law, thereby proposing to the authorities about the completion of policies and laws. At the same time, these organizations also regularly cooperate and interact with other institutional representatives of enterprises to create a sustainable network for supporting the benefits of members. A number of local business associations have actively proposed plans and held seminars and forums on learning, enforcing and proposing to complete the law, and simultaneously organized knowledge training courses for enterprises, including some legal knowledge training courses as required by enterprises ([Report No. 42/BTP-PLDSKT, 2017](#)).

3.3. Proposing solutions to improve the effectiveness of coordination between central and local authorities and the institutional representatives of enterprises in the process of legal aid for enterprises

It can be seen that ministries, branches, People's Committees of provinces and cities directly under the Central Government as well as the institutional representatives of enterprises have made great efforts in providing legal aid for enterprises. Accordingly, 100 % of ministries, agencies and 63 localities have issued plans to implement legal aid for enterprises ([Report No. 42/BTP-PLDSKT, 2017](#)). A number of ministries, branches and localities have issued legal aid programs for enterprises within their respective branches and localities according to Decree No. 66/2008/ND-CP. However, the effectiveness of the plans and programs is still not high, partly due to the limited coordinating mechanism between the central and local governments and the institutional representatives of enterprises in the process of organizing legal aid activities for enterprises. This has not yet created a unified resource to form a synergy strength in the work of legal aid for enterprises.

In order to further improve the coordination mechanism between the central and local governments and the institutional representatives of enterprises in the process of organizing legal aid activities for enterprises, in the coming time, it is necessary to implement a number of the following solution:

Firstly, at present, the most obvious drawback in the legal aid mechanism for enterprises is the lack of close coordination between organizations and agencies with the function of providing legal aid for enterprises. As a result, duplication of legal aid activities for enterprises has occurred. Hence, in order to improve the efficiency and avoid duplication, it is necessary to overcome the situation of isolation and not having close and smooth coordination between the institutional representatives of enterprises when conducting legal aid activities.

Secondly, in the legal support for enterprises, many business associations have not really considered the importance of the service factor. Specifically, in the process of implementing the methods of legal aid (such as conferences, seminars for fostering legal knowledge) that the Enterprise's Legal Club is the unit with the function to implement, many local associations of small

and medium-sized enterprises have clearly required on the amount that these units must be entitled. While funding for the work of legal aid for enterprises is still very limited plusing these units require a large fee, the implementation of the duties of the Enterprise's Legal Club faces many difficulties. Therefore, the central association of small and medium-sized enterprises needs to take measures to rectify this situation, in order to make the local associations of small and medium-sized enterprises to take the goal of serving the small and medium-sized enterprises as primarily, without too much considering about the benefit factor.

Thirdly, the study formulates a model of coordinating regulation on the implementation of legal aid for enterprises between the central and local levels, between relevant branches in legal aid for enterprises. On that basis, localities based on socio-economic conditions can issue coordinating regulations on legal aid for enterprises in their localities.

This article has analyzed and clarified the mechanism of coordination between state agencies and the institutional representatives of enterprises in providing legal aid for enterprises in Vietnam today. From the practical operation of this mechanism, the article has recorded the good results that have been achieved, discovered the limitations and proposed solutions to overcome this mechanism.

4. Conclusion

Legal aid for enterprises is essential to improve the business environment, promote business development in the current context of Vietnam. Vietnamese lawmakers have established a coordinating mechanism between state agencies and the institutional representatives of enterprises to provide legal aid for enterprises. In general, this mechanism has operated relatively effectively, making an important contribution to the implementation of legal aid for enterprises to be effective in practice. The inadequacies of the coordinating mechanism between state agencies and the institutional representatives of enterprises in providing legal aid to enterprises need to be overcome so that this mechanism can operate more effectively.

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