

# LIMITING BUSINESS DISPUTES WITHIN ENTERPRISES

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**Abstract:** Disputes can arise at any time during business operations. So, what is a business dispute? How can we identify a business dispute? When disputes occur, how can they be resolved? How do business disputes involving foreign elements differ from regular disputes?

Key words: enterprises, business, economic

## Introduction

Nowadays, as society develops, the demand for establishing enterprises is increasing, leading to a rise in internal business disputes. One of the primary reasons is that investors, when establishing a business, often focus only on issues such as capital, business conditions, and business orientation, while paying little attention to the regulations on control, management, and internal organization of the company. This negligence leads to disputes that significantly affect the enterprise.

Especially in the challenging economic situation caused by the prolonged COVID-19 pandemic, business owners often make decisions to maintain the enterprise. However, these decisions often impact the rights and interests of shareholders and members of the company. Therefore, to help investors better understand internal disputes within businesses and to provide appropriate resolution methods, it is necessary to address the legal issue of “Common internal disputes in companies and solutions when disputes occur”.

## Types of Common Internal Business Disputes within Enterprises

In reality, internal business disputes are among the common issues that arise during the establishment and operation of enterprises, alongside other disputes such as civil, labor, and commercial business disputes with external entities. Common types of internal business disputes include:

*First:* Disputes between the company and its members, or among the members themselves, related to the establishment, operation, dissolution, merger, consolidation, division, separation, or conversion of the company's organizational form. These can be categorized as follows:

*Second:* Disputes between the company and its members, which involve issues such as the members' capital contributions to the company (usually in monetary terms but can also be in kind or the value of industrial property rights); the par value of shares and the number of shares issued by each joint-stock company; ownership rights over a portion of the company's assets corresponding to the capital contributions; the right to profit distribution or the obligation to bear losses corresponding to the capital contributions; requests for the company to convert or settle debts, liquidate assets, and liquidate contracts signed by the company upon its dissolution; and other issues related to the establishment, operation, dissolution, merger, consolidation, division, separation, or conversion of the company's organizational form.

*Third:* Disputes among the members of the company themselves, which include disputes over the value of capital contributions among members; the transfer of capital contributions among members or to non-members; the transfer of bearer and registered shares; the par value, number of shares issued, and bonds of joint-stock companies; ownership rights over assets corresponding to the number of shares owned by members; the right to profit distribution or the obligation to bear losses, debt settlement of the company; asset liquidation, debt distribution among members in case of company dissolution; and other issues among members related to the establishment, operation, dissolution, merger, consolidation, division, separation, or conversion of the company's organizational form.

*Fourth:* When implementing the above guidelines, if there are disputes between the company and its members or among the members themselves that do not relate to the establishment, operation, dissolution, merger, consolidation, division, separation, or conversion of the company's organizational form but only to other relationships such as labor relations, civil relations (e.g., disputes over social insurance, employee benefits, labor contracts, loan contracts, asset borrowing, etc.), these disputes are not considered business or commercial disputes. Depending on the specific case, it should be determined whether the dispute is civil or labor-related.

Thus, internal business disputes primarily pertain directly to the establishment, operation, dissolution, merger, consolidation, division, separation, or conversion of the company's organizational form. Other disputes, even if arising between the company and its members or among the members themselves, are not considered internal business disputes if they involve different types of relationships.

### **Causes, Especially Subjective Causes, of Internal Business Disputes within Enterprises**

To find solutions and prevent internal disputes from occurring, investors and business owners need to understand the causes leading to internal disputes. There are several causes of internal disputes as follows:

*First*, due to a lack of understanding of legal regulations: Typically, business owners and investors focus only on issues related to establishing a business, capital contribution, business conditions, and business orientation, while neglecting the management, control, and internal organization of the enterprise, which leads to disputes. The business model in Vietnam is mainly small and medium-sized enterprises. Initially, these businesses are easy to manage. However, over time, as the enterprise grows and expands its management scope, issues related to personnel and business scope arise. If the enterprise does not adapt and address these issues in a timely manner, it will fail to manage and control arising problems, causing disputes and economic losses, and damaging the enterprise's reputation.

*Second*, as analyzed above, the business model in Vietnam is primarily small and medium-sized enterprises. Therefore, investors often tend to collaborate with relatives or acquaintances to establish a business. Due to familiarity and personal relationships, they often work superficially and without clear agreements. Consequently, when issues arise, the parties often lack specific regulations to apply and act according to their own interests, affecting the rights and interests of other parties and leading to disputes.

*Third*, in the current difficult economic situation, exacerbated by the prolonged COVID-19 pandemic, business owners and investors may make inappropriate decisions to maintain the enterprise's operations. However, these decisions often affect the rights and interests of shareholders and other members of the company. This leads to conflicts, disagreements, and disputes.

### **Discussing and Proposing Solutions and Policies to Limit Internal Business Disputes within Enterprises**

#### *Discussing and Recognizing the Issues to Limit Internal Business Disputes within Enterprises*

To limit internal business disputes within enterprises, it is essential to delve into the causes and limitations to thoroughly address and remedy the issues.

*First*: Lack of understanding of legal regulations: Vietnamese enterprises often neglect legal regulations, which poses a potential risk for unnecessary disputes. For example, failing to send meeting invitations to company members can result in members being unaware of meetings or lacking proof of invitation. This can render decisions made by the Board of Members, the Board of Directors, or the General Meeting of Shareholders legally ineffective. Understanding legal regulations not only helps business owners avoid unnecessary disputes but also helps establish standard procedures that save time and operating costs. Therefore, enterprises should seek legal counsel from lawyers to ensure compliance with the law and prevent internal disputes.

*Second*: Investor complacency within the company: Investors often refrain from verifying and cross-checking the company's documents and records out of politeness, which can result in losing entitled benefits. Additionally, a lack of evidence-based thinking and documentation practices can make it difficult to resolve arising issues. Proper documentation and record-keeping are crucial for addressing and resolving potential disputes effectively.

*Third*: Reasons affecting the rights and obligations of shareholders in the company: In joint-stock companies, due to the nature of capital-contributing companies and the typically large number of members, minority shareholders are often at a disadvantage; their votes are insufficient to veto decisions made by shareholders with higher capital contributions. For instance, shareholders holding less than 1% of the company's charter capital do not have the right to sue the decisions of the Board of Directors, the Director, or the General Director on behalf of themselves or the company. Furthermore, according to Clause 2, Article 115 of the Law on Enterprises 2020, only shareholders or groups of shareholders holding at least 5% of the shares, or a lower percentage as stipulated by the company's charter, have the right to inspect the company's books and records and request the Supervisory Board to examine management and operational issues. Additionally, pursuant to Clause 5, Article 115, shareholders or groups of shareholders owning 10% of the company's shares, or a lower percentage as stipulated by the charter, have the right to nominate members to the Board of Directors and the Supervisory Board.

#### **Methods for Resolving Internal Disputes within Companies**

Recognizing the issues that can easily lead to internal disputes within companies, business owners should choose approaches and measures to resolve these issues with minimal impact. Below are effective methods for resolving disputes:

##### *First*: Negotiation and Mediation Methods

As previously stated, dispute resolution methods can be agreed upon by the members in the company's charter. Negotiation is often chosen as the first method for dispute resolution, reflecting the parties' goodwill in resolving the issue. The procedures, voting, and decision-making methods for negotiation should be clearly defined by the company members to establish a standard dispute resolution process that conserves the company's resources. Regarding mediation, company

members can agree on a mediation method to resolve disputes as stipulated in the company's charter (Article 6 of Decree 22/2017/ND-CP). This method is confidential, ensures autonomy, and provides a quick resolution for the parties involved.

*Second: Arbitration Method*

Similar to mediation, for arbitration to be applicable, the parties must agree in advance to resolve disputes through arbitration (Clause 1, Article 5 of the Commercial Arbitration Law 2010). The advantages of this method include confidentiality, ensuring the parties' initiative in presenting evidence, and quick resolution. Unlike mediation, arbitration involves resolving the issue through an arbitral award, which is final and cannot be appealed or protested.

*Third: Court Resolution Method*

Even if the parties do not specifically outline a dispute resolution method in the company's charter, company members can still file a civil lawsuit in the People's Court, except for shareholders or groups of shareholders holding less than 1% of the company's shares, who may have limited rights to initiate a lawsuit in certain cases (Clause 1, Article 166 of the Law on Enterprises 2020). A party believing their rights have been violated has the right to file a lawsuit with the competent People's Court to resolve the matter.

**Recommendations**

Understanding the importance of resolving internal disputes within a company is crucial. In a market economy, to protect the legitimate rights and interests of business entities, business dispute resolution must meet the following basic requirements: speed, convenience, cost-effectiveness, non-interference with business activities, confidentiality of business secrets, preservation of the parties' business reputation, and restoration and maintenance of trust and cooperative relationships between the parties in business activities. When internal business disputes occur within a company, the enterprise should remain calm and understand the causes of the dispute to choose the appropriate resolution method that fits the actual situation the company is facing. Only then can the root of the dispute be effectively addressed.

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