INTRODUCTION

1. Rationale of the thesis

The lack of consistency between regulations and the uncertainty about theoretical model applied with too many criminal liability *(hereinafter referred to as CL)* conditions of legal person but lack of legal interpretation are the most basic limitations of the regulations in the Penal Code 2015. These limitations are cause of limitations in other provisions, the most obvious limitation being the attempt to separate CL of legal person from CL of individual, which makes some regulations both redundant, lacking and inaccurate. In addition, practical application shows that, since the Code took effect, criminal cases involving commercial legal persons are very few, with only two cases brought to trial. Therefore, the author researches the topic *"Scope and conditions of criminal liability of commercial legal person in Vietnamese Criminal Law"* as the doctoral thesis topic.

2. Research purpose and tasks

The purpose is to contribute to the development of theory on the scope and conditions of CL of legal person; analyze and evaluate legal regulations on the scope and conditions of CL of legal person; therefore, providing solutions to improve and ensure the application of these regulations. To achieve this purpose, the thesis solves the following tasks: clarifying theoretical issues about the scope and conditions of CL of legal person; analyzing regulations on the scope and conditions of CL of commercial legal person in the Code; clarifying the practical application of the law on these regulations; proposing solutions to improve and ensure the application of the law on the scope and conditions of CL of commercial legal person.

3. Subjects and scope of the thesis

Research subjects: Researching theoretical issues on the scope and conditions of CL of legal person, legal provisions of Vietnam and some countries and practical application of the law in Vietnam.

Research scope: The thesis approaches and studies the topic from

the perspective of criminal law.

4. Research methods

In addition to being based on the methodological foundation of dialectical materialism and historical materialism, the thesis uses methods of analysis, synthesis, comparison of jurisprudence, historical methods, classification, etc.

5. Scientific contributions of the thesis

Research results contribute to the development of general theory such as: clarifying concept of CL of legal person, scope and conditions of the CL; presenting personal viewpoint on the nature of the CL; showing and analyzing models of the CL; providing grounds for determining the scope of the CL; overviewing the content of the scope of the CL and the conditions of the CL. Thesis's analysis and assessment of the current status of regulations on the scope and conditions of CL of commercial legal person in the Penal Code are basis for improving these regulations. The solutions proposed have practical significance in solving the limitations and shortcomings in Vietnamese law on the scope and conditions of CL of commercial legal person. The thesis will be a meaningful source of information for individuals, relevant agencies, and for teaching and research process.

6. Structure of the thesis

In addition to the introduction, literature review, conclusion, bibliography, and appendices, the main content of the thesis is structured into 03 chapters as follows:

Chapter 1: Theoretical issues about the scope and conditions of criminal liability of legal person

Chapter 2: Regulations on the scope and conditions of criminal liability of commercial legal person in Vietnamese Criminal Law and practical application

Chapter 3: Orientations and solutions to improve and ensure the application of legal regulations on the scope and conditions of criminal liability of commercial legal person.

OVERVIEW OF THE RESEARCH SITUATION RELATED TO THE THESIS

1. Domestic and foreign research situation

Domestic and foreign research works on the scope and conditions of CL of legal person are divided into the following basic contents: (1) Theoretical research works on the CL of legal person: viewpoint on the nature of regulations on CL of legal person; theoretical models of CL of legal person; (2) Theoretical research works on the scope and conditions of CL of legal person; (3) Research works related to legal regulations on the scope and conditions of CL of legal person; (4) Research works related to solutions to improve legal regulations on the scope and conditions of CL of legal person.

2. Evaluation of research situation

2.1. Knowledge inheritance

The thesis has inherited previous scientific research works: viewpoints on the nature of CL regulations of legal person; some popular theoretical models of the CL; basis for determining the scope of CL of legal person, classification of legal person subjects to CL and approaches to crimes for which legal person is subject to CL; content of CL conditions of legal person; analyzing the provisions on CL of commercial legal person in the Code; solutions to improve regulations on the scope and conditions of CL of commercial legal person.

2.2. Issues continue to be researched in the thesis

Issues continue to be researched in the thesis include: awareness of the nature of CL regulations of legal person; core content of theoretical models of CL of legal person and new approaches; introduction of the concept of CL of legal person, scope of CL of legal person and conditions of CL of legal persons; basis for determining the scope of CL of a legal person, the content of the scope of CL of a legal person and the conditions of CL of a legal person; analyzing legal regulations on the scope and conditions of CL of commercial legal persons in the 2015 Penal Code; solutions for choosing a

theoretical model of CL of legal persons and amending legal regulations on the scope and conditions of CL of commercial legal persons; Practical application of the law and solutions to ensure the application of the law on CL of commercial legal persons in Vietnam.

3. Research question and hypothesis

3.1. Research question

- Awareness of the nature of CL regulations of legal persons? Theoretical models of CL of legal persons? What is the scope of CL of a legal person? What are the bases to determine the scope of CL of a legal person? What does the scope of CL of a legal person include? What are the CL conditions of legal persons? What are the contents of the CL conditions of a legal person?

- How does Vietnamese criminal law regulate the scope and conditions of CL of commercial legal persons? What are the limitations and shortcomings in these legal regulations?

- How is the practical application of criminal law provisions on CL of commercial legal persons in Vietnam shown? What are the orientations and solutions to improve and ensure the application of legal regulations on the scope and conditions of CL of commercial legal persons?

3.2. Research hypothesis

- The regulation of CL of legal persons is necessary based on the theoretical basis of fundamental theories and theoretical models of CL of legal persons.

- Awareness of the nature of CL regulations of legal persons is not consistent.

- Legal regulations on the scope and conditions of CL of commercial legal persons in Vietnam still have many shortcomings and limitations.

- Legislative experience of other countries contributes to helping Vietnam improve legal regulations on the scope and conditions of CL of commercial legal persons.

RESEARCH RESULTS

Chapter 1

THEORETICAL ISSUES ABOUT THE SCOPE AND CONDITIONS OF CL OF LEGAL PERSON

1.1. Concept and viewpoint of the nature of the regulation of criminal liability of legal persons

1.1.1. Concept of criminal liability of legal persons

The concept of CL of legal persons is defined as follows: *"Criminal liability can be understood as detrimental legal consequences that the State imposes on legal person for crimes happening, when this legal person satisfies the conditions for criminal liability of legal person provided by criminal law".*

1.1.2. Two fundamental theories and viewpoint on the nature of regulations on criminal liability of legal person

1.1.2.1. Two fundamental theories on criminal liability of legal person

Nominalist theory of corporate personality states that the CL of legal person is considered derivative liability or extended CL in relation to the CL of an individual for the same crime committed by the individual. On the contrary, realist theory of corporate personality holds that legal person is an existing legal person, possessing a will and this will does not belong to any individual. Accordingly, the CL of legal person does not need to be attributed to individual issues and is built according to direct approach.

1.1.2.2. Viewpoint on the nature of regulations on criminal liability of legal person

Based on the above two fundamental theories, there currently exist two viewpoints on the nature of regulating the CL of legal persons: *First viewpoint:* The regulation of CL of legal persons only means adding a second possible subject bearing CL for crimes committed by individuals. This addition does not affect the basic principles of traditional criminal law. *Second viewpoint:* Legal persons are the subject of crime, because they can directly bear CL without any

connection with the individual CL. Recognizing the CL regime of legal persons changes traditional thinking about crime and punishment.

In our opinion, legal persons are the subject of crime but are "special" subjects of crime. At the same time, the addition of this regulation does not affect the criminal reasoning of individuals. Current criminal theories need to be researched and applied flexibly; In addition, it is necessary to develop some specific theories for the CL of legal persons.

1.2. Theoretical models of criminal liability of legal person

1.2.1. Anthropomorphic models

1.2.1.1. Vicarious liability mode

On the basis of this model, the criminal acts and errors of the employee are automatically attributed to the legal person and the legal person bears CL for the crime committed by this employee.

1.2.1.2. Identification liability mode

This model identifies directing will of a typical group of individuals - agencies, leaders, senior managers of a legal person - as the will of the legal person itself; this is the legal basis for attributing CL to legal persons.

1.2.1.3. Extended - identification liability mode

This model is a variation of the identification liability model. This model expands the opportunities for attributing CL of legal persons in two ways: (1) Explanation to expand the scope of people considered to be directing will of legal person; (2) The person considered to be directing will of the legal person failed to take due diligence to prevent crimes committed by subordinate employees.

1.2.1.4. Aggregation model

Acts of employees combined to result in damage and combination of their will or negligence elements will constitute the will element of a crime and the legal person will be liable for the crime.

1.2.2. Organizational models or corporate fault modes

1.2.2.1. Corporate policy mode

Legal persons express a special type of will being *"corporate policy"*. The will hidden behind its policy is more appropriate to attribute to the legal person than to any individual.

1.2.2.2. Corporate culture mode

Corporate culture creates favorable and positive conditions for committing crimes; or the culture has provided moral support for the commission of crime by encouraging or condoning this behavior.

1.2.2.3. Mode of reactive corporate fault

This approach focuses not so much on the individual criminal behavior but on the legal person's response or non-response to the individual criminal behavior.

1.2.2.4. Preventive-fault mode

The preventive-fault mode attributes CL to legal person when this legal person fails to build and implement an appropriate internal control system to prevent the commission of crimes.

1.2.3. General review

Theoretically, there is a clear distinction between the theoretical models of CL of legal persons, but in reality these models are applied quite flexibly and are highly practical. These models are quite diverse, many countries do not apply a single model but choose to apply them in parallel; or there exists a main model and a sub-model; or apply in order of priority; or mixed model; or “open” model.

1.3. Concept, basis for determining and content of the scope of criminal liability of legal persons

1.3.1. Concept of the scope of criminal liability of legal persons

Concept of the scope of CL of legal persons is defined as follow: *“The scope of criminal liability of legal persons is understood as limitation of the scope of the legal persons responsible for criminal liability and limitation of the scope of crimes for which these legal persons may be criminally responsible as provided by criminal law”.*

1.3.2. Basis for determining the scope of criminal liability of legal persons

Basis for determining the scope includes: popularity; practicality; possibility; education and deterrence; novelty, prudence and compliance with international agreements

1.3.3. Content of the scope of the legal persons responsible for criminal liability

This content is considered on the basis of three classifications: legal persons with legal status and without legal status; profit and non-profit organizations; legal persons under public law and under private law. The scope of legal persons responsible for CL regulated by countries are quite diverse; but all exclude CL for State. In principle, they exclude CL for state agencies, their units, and local governments, with some exceptions.

1.3.4. Content of the scope of crimes for which legal persons may be criminally responsible

Determining this content is based on the following three approaches: crimes list-based approach; all crimes approach; crime categories approach. Scopes regulated by different countries are quite diversely, with different widths and narrownesses.

1.4. Concept and content of conditions of criminal liability of legal persons

1.4.1. Concept of conditions for criminal liability of legal persons

Concept of conditions for CL of legal persons is defined as follow: *"Conditions of criminal liability of legal person are the legal basis of the criminal liability of legal person and are expressed through the legalization of the relationship between legal person and individual committing crime as well as the relationship between this legal persons and crime committed by this individual"*.

1.4.2. Content of conditions for criminal liability of legal persons

1.4.2.1. Condition of the relationship between legal person and individual committing crime

This condition determines which individuals' acts and faults can

impose CL on legal persons, determined at the following levels: persons are considered directing will of legal person; senior managers of legal person; all employees of legal person. In the indentification model, there is no complete unity and wide scope for different interpretations of who represents directing will of the legal person. Critics of the model say that the introduction of this model has led to difficulties and complications; at least identifying those whose position is identical to legal person.

1.4.2.2. Condition of the relationship between legal person and crime committed by individual

This condition is expressed at the following levels: the individual's criminal acts are committed within the scope of operations of legal person; criminal acts committed on basis of general interest; criminal acts committed for real benefit or highly probable benefit of legal person; leaders and senior management failed to take due diligence to prevent criminal behavior committed by employees. In fact, the condition of committing a crime for the benefit of legal person is commonly applied in many countries, but the understanding and explanation are different, some countries even have no explanation, leading to inconsistent perception and problems in practical application.

1.4.3. General review

The conditions of CL of legal persons are rich, diverse and inconsistent across countries. Countries applying the anthropomorphic models basically point out persons whose actions and faults can attribute CL to legal persons. In the identification model, it is necessary for legal interpretation of the range of persons who can be identified with legal person. This benefit condition is expressed by formulas: in name of legal person; or for general benefit of legal person; or for direct benefit of legal person. This condition needs to be explained by law.

Chapter 2
REGULATIONS ON THE SCOPE AND CONDITIONS OF CRIMINAL OF COMMERCIAL LEGAL PERSON IN VIETNAMESE CRIMINAL LAW AN PRACTICAL APPLICATION

2.1. Regulations on the scope and conditions of criminal liability of commercial legal person in Vietnamese Criminal Law

2.1.1. Basis of criminal liability for commercial legal persons

Legal basis of CL for commercial legal persons is the conditions of CL of commercial legal persons provided in clause 1 Article 75 of the 2015 Penal Code.

Theoretical model of CL of legal persons applied in Vietnam belongs to the group of anthropomorphic theoretical models, but specifically which theoretical model is unclear.

2.1.2. Regulations on the scope of criminal liability of legal persons

2.1.2.1. The scope of legal persons responsible for CL

This scope is limited by the 2015 Penal Code to only commercial legal persons. A number of issues are raised: legal status of the investment fund; cooperative is or is not a commercial legal person; single-member limited liability companies and off-budget state financial funds are commercial or non-commercial legal persons.

2.1.2.2. The scope of crimes for which legal persons may be criminally responsible

According to Article 76 of the 2015 Penal Code, commercial legal persons are subject to CL for 33 crimes belonging to 03 groups of crimes. Vietnam chooses the crime categories approach, but combined with crimes list-based approach. One shortcoming is that commercial legal persons are not subject to CL for the crimes of active and passive bribery.

2.1.3. Regulations on conditions of criminal liability of commercial legal persons

2.1.3.1. Condition for criminal acts to be committed on behalf of commercial legal person

Currently, Vietnamese law does not have any explanation on the condition for crimes to be committed on behalf of of legal person. Many authors believe that this condition is used to determine the range of individuals whose acts and faults can attribute CL to legal person. This understanding has led to a number of inadequacies and inconsistencies, and is not consistent with common international understanding.

2.1.3.2. Condition for criminal acts to be committed for benefit of commercial legal person

The basic limitation of this condition is lack of legal explanation of what constitutes criminal act committed for benefit of commercial legal person, leading to different perceptions in terms of legal science and potential inconsistencies in practical application.

2.1.3.3. Conditions for criminal acts to be committed with direction, control or approval of commercial legal person

This third condition can be understood in the following two ways: *First,* criminal act is committed by leadership team or leader, executive, or manager. *The second understanding* is that crime is committed by another member of legal person. Some authors believe that the factor "having direction, administration or approval of commercial legal person" is associated with role of individuals with leadership and management positions and authority of the legal person. Thus, legal person bears CL from attribution of criminal acts to its employees, but attribution of fault to senior managers who are considered identical to the legal person.

Another problem is that, in order to impose CL on commercial legal person, all three conditions specified in clause 1 Article 75 of the 2015 Penal Code must be satisfied, but the combination of these three conditions will lead to following paradoxes: Those who direct or manage commission of criminal acts under their own direction,

control or approval to satisfy the third condition; or simple addition of models leads to both redundant and deficient content. As final issue, this condition can be understood as applying the corporate culture model. If we understand it this way, the above paradoxes can be avoided, but it leads to complications in both theory and practice when combining the identification model or the vicarious model with the corporate culture model.

2.1.3.4. Condition for the statute of limitations for criminal prosecution has not expired

Condition for that the statute of limitations for criminal prosecution has not yet expired is unnecesssary and can be removed.

2.1.3.5. General review

Regulation of too many CL conditions of commercial legal persons, even conflicts between conditions; the lack of legal explanations as well as too few cases related to this regulation lead to these conditions becoming complicated in theory and potentially causing many difficulties and problems in practical application.

2.1.4. Regulations on criminal liability of commercial legal persons in the Part of Crimes

2.1.4.1. Some crimes that constitute crimes specifically for commercial legal persons

There are 07 crimes that demonstrate the application of legal regulations specifically for commercial legal persons when these crimes stipulate two separate objective acts for individuals and legal persons.

2.1.4.2. Regarding form of fault in crimes for which commercial legal persons are criminally responsible

Some authors believe that commercial legal persons are only subject to CL for intentional crimes. However, commercial legal persons can bear CL for intentional and unintentional crimes. Because the purpose of bringing benefits to the legal person is not a mandatory sign of the subjective aspect, unless prescribed by criminal law.

2.1.5. Evaluating consistency between the provisions on criminal liability conditions of commercial legal persons with other provisions in the 2015 Penal Code

The 2015 Penal Code was built according to the spirit of "what an individual has, a legal person must have", trying to separate the CL of legal persons from the CL of individuals through the development of specialized regulations for legal persons. However, the most important law in Clause 1, Article 75 is built based on the anthropomorphic theoretical model. Accordingly, legal person subject to CL on the basis that this legal person must have a certain relationship with individual committing crime; but cannot be isolated, without connection.

2.2. Practical application of regulations on the scope and conditions of criminal liability of commercial legal persons

2.2.1. Regarding the results of applying regulations on the scope and conditions of criminal liability of commercial legal persons

Basically, since the 2015 Penal Code took effect, the number of criminal cases involving commercial legal persons has been very few. Up to now, there have been only two criminal cases on CL of commercial legal persons brought to trial.

2.2.2. Regarding limitations and causes of limitations in applying regulations on the scope and conditions of criminal liability of commercial legal persons

Very few commercial legal persons are considered for CL. The cause of this limitation comes from perception; limitations of the law; lack of legal explanation of the CL regulations of legal persons; qualifications and experience of officers working in investigation, prosecution and adjudication; this regulation is a new and complicated issue;...

Chapter 3
ORIENTATION, SOLUTIONS TO IMPROVE AND ENSURE THE APPLICATION OF REGULATIONS ON THE SCOPE AND CONDITIONS OF CL OF COMMERCIAL LEGAL PERSONS IN VIETNAMESE CRIMINAL LAW

3.1. Orientation for proposing solutions to improve legal regulations on the scope and conditions of criminal liability of commercial legal persons in Vietnamese Criminal Law

First, amending the regulations on CL of legal persons must be consistent with the criminal law tradition, level of legal awareness, level of economic development and international integration of Vietnam.

Second, setting the principle of only recommending content that is directly related to the research scope of the topic.

Third, it is necessary to have a full awareness of the fundamental theories, theoretical models of CL of legal persons, the nature of CL regulations of legal persons and the legislative experience of countries.

Fourth, we need to learn from the 2015 Penal Code when we tried to follow the direction of "what an individual has, a legal person must have", separating the CL of legal persons from the CL of individuals.

Fifth, the CL regime of legal persons is applied by countries quite flexibly and is highly practical; there needs to be an open and flexible perception of the CL of legal persons.

Sixth, choosing a clear and accurate theoretical model of legal person liability. Do not stipulate too many CL conditions of legal persons; avoid duplication and contradiction; it is necessary to separate and simplify this condition.

Seventh, there needs to be guidance and legal explanations on the CL regulations of commercial legal persons.

3.2. Solutions to improve legal regulations on the scope and conditions of criminal liability of commercial legal persons in

Vietnamese Criminal Law

3.2.1. Choosing a theoretical model of criminal liability of legal persons for Vietnam

Recommendation to choose ***the expanded identification model*** as a foundation for building CL regulations of commercial legal persons, especially the CL conditions of legal persons. This model overcomes the limitations of the traditional identification model when it expands the ability to attribute CL of legal persons in two ways: *first*, explanation to expand the scope of people considered to be directing will of legal person; *second*, these people failed to take appropriate precautions, leading to failure to prevent crimes committed by subordinate employees.

3.2.2. Improving regulations on the scope of criminal liability of legal persons

3.2.2.1. Improving regulations on the scope of legal persons responsible for criminal liability

I agree that investment funds, cooperatives and cooperative unions are commercial legal persons. To amend Clause 1, Article 75 and Clause 1, Article 76 of the 2015 Civil Code to affirm that single-member limited liability companies are commercial legal persons, and off-budget state financial funds are non-commercial legal persons.

Adding a clause in the Penal Code defining commercial legal entities in this Code is refered to Clause 1, Article 75 of the Civil Code; or this provision stipulates the content of the clause.

3.2.2.2. Improving regulations on the scope of crimes for which legal persons may be criminally responsible

Proposal to remove Article 76 of the 2015 Penal Code, which lists crimes for which commercial legal persons are subject to CL; because the legal person's CL for any crime will be specifically determined in the law on that crime.

On approach, it is recommended that Vietnam choose an approach based on crimes list-based approach. Accordingly, the selection and

addition will not be limited to certain groups of crimes and will ensure more accuracy when each selected crime will be evaluated and analyzed independently.

On content, it is proposed to add for the crimes of active and passive bribery based on the grounds of popularity, practicality, compliance with international commitments and international integration.

3.2.3. Improving regulations on conditions of criminal liability of commercial legal persons

3.2.3.1. Option 1: Expanding the scope of people considered to be directing will of legal person

a) Regarding the first question about condition of the relationship between legal person and individual committing crime

Expanding the scope of leaders and managers whose actions and faults can attribute CL to legal persons in a flexible manner and reflect the diversity of the legal person's organizational system. Replacing the concept of a person who is considered directing will of legal person with the concept of leadership and senior management. Accordingly, those responsible for managing an important area of legal person are also considered to have the will to operate the legal person (extended scope). These leaders and senior managers are understood as representatives of the legal person in law or in fact or persons authorized to represent the legal person.

In addition, the interpretation of the phrase "leaders and senior managers" requires attention to the following issues: leaders and senior managers include or do not include leadership and supervision agencies of legal persons; leadership and management bodies of legal persons have a collective nature such as general meeting of shareholders, board of directors, council of members, board of directors, etc. and have an individual nature such as chairman of director board, general director or director, partnership member,...; issue of representative of the legal person in fact; issue of authorized

person representing the legal person;…

b) Regarding the second question about condition of the relationship between legal person and crime committed by individual

Proposal to choose the condition of the relationship between legal person and crime committed by individual is a crime committed for benefit of legal person with broad connotations according to the explanations below; because proposed theoretical model is the extended indentification model, this condition must represent a degree of "looseness".

Explaining how "criminal acts are committed for benefit of commercial legal persons" requires attention to the following issues: leaders and senior managers of legal persons commit criminal acts on behalf of legal persons, this act can be understood as being for the benefit of the legal person; these benefits are not only material benefits but sometimes also include non-material benefits; benefits obtained by legal person may be direct or indirect benefits; legal person benefits can be actual benefits or benefits that are highly likely to occur *(ex-post benefits)* but can also include expected benefits that may occur *(ex-ante benefits)*; criminal act only needs to bring partial benefits to legal person, not entire benefit to legal person; criminal acts associated with carrying out purposes and activities of legal person or associated with protecting these purposes and activities.

c) Proposal to amend Clause 1, Article 75 following the Option 1

Proposal to amend Clause 1, Article 75 of the 2015 Penal Code as follows: *"Commercial legal person is criminally responsible for crimes committed by its leaders and senior managers for benefit of the legal person"*.

3.2.3.2. Option 2: Expanding cases in which CL can be attributed to commercial legal persons

The scope of individuals triggering CL of legal persons is only top level leaders and managers, but the attribution of CL of legal persons is expanded in following cases.

a) In the first case, top level leaders and managers of commercial legal person commits crime

Regarding the first question about condition of the relationship between legal person and individual committing crime: The top level leaders and managers are those whose positions are considered to be directing will of legal person or whose position is identical to this legal person; specifically, these are people who have broad decision-making authority in management and administration of legal person or who play an important role in building policies of legal person.

Regarding the second question about condition of the relationship between legal person and crime committed by individual: Selecting the condition for crime committed for benefit of legal person is similar to the notes of Option 1.

Proposal to amend Clause 1, Article 75 of the 2015 Penal Code related to the first case as follows: *"Commercial legal person is criminally responsible in case, top level leaders and managers of this legal person commit criminal act for benefit of the legal person"*.

b) In the second case, top level leader or manager directed or approved commission of criminal act by subordinate employee.

Regarding the first question about condition of the relationship between legal person and individual committing crime: A crime committed by any employee may trigger CL of legal person if this crime is committed in order to implement resolution, direction, order or consensus from top-level leaders or managers; or the leaders or managers influence subordinate employees or facilitate them in committing crimes.

It can be divided into two types of consent: active consent and passive consent. Active consent is when top-level leaders and managers express, indirectly or implicitly authorize or permit criminal acts of subordinate employees or they are aware of criminal acts of employees but they still accept this behavior, this is a policy that "tacitly" supports criminal behavior. Passive consent is when top-level

leaders and managers do not know about the criminal act of their subordinates, but after knowing, they still accept benefits derived from this criminal act.

Noting that top-level leaders and managers have directed their subordinates to commit criminal acts or approved this act, accordingly, signs of the legal person's fault are attributed to the fault of the leaders and managers. Therefore, an employee commits a criminal act under the direction of top-level leader or manager, even if this employee does not know that it is a criminal act, they do not have will to commit a crime, or do not commit a crime. If there is a mistake and is not prosecuted for CL, the legal person will still be subject to CL on the basis of will to commit the crime or the fault of the leaders and managers.

Regarding the second question about condition of the relationship between legal person and crime committed by individual: Selecting the condition for crime committed for benefit of legal person is similar to the notes of Option 1.

Proposal to amend Clause 1, Article 75 of the 2015 Penal Code related to the second case as follows: *"Commercial legal person is criminally responsible in cases where top-level leaders or managers of this legal person, for benefit of the legal person, have directed or approved commission of criminal act by subordinate employee"*.

c) In the third case, top-level leaders and managers failed to prevent criminal acts committed by subordinate employees, including failure to supervise this employee or failure to take appropriate measures, appropriate internal controls and appropriate compliance and ethics programs - collectively known as due diligence

Legal person is subject to CL in the most obvious case that top-level leaders and managers of this legal person have failed to develop employee supervision measures, internal control measures and compliance programs. and ethics, or the lack of one of these measures, is cause of top-level leaders and managers' failure to prevent criminal

behavior by lower-level employees.

Next case is unreasonable and unwarranted failure of top-level leaders and managers to detect and implement measures to prevent criminal acts committed by subordinate employees, or top-level leaders and managers have clearly demonstrated failure to comply with, or disregard, required standards of prevention or reasonable care that resulted in failure to prevent crime.

The most difficult case is that top-level leaders and managers of legal person have developed measures to prevent violations and applied these measures in practice, but crimes committed by lower-level employees still occur. The following two situations will occur:

- If top-level leaders and managers of legal person are assessed to have developed and implemented appropriate and effective preventive measures and have strict sanctions to prevent crimes, but an employee carrying out independent activities have succeeded in "overcoming" the control system of the legal person to commit a crime, in this case the legal person will not bear CL for the crime that occurred.

- On the contrary, if top-level leaders and managers of legal person are assessed to have developed and implemented inadequate or ineffective preventive measures, that legal person will be subject to CL. It means that the top-level leaders and managers failed to take adequate precautions to prevent criminal acts.

Next, an important question is what are criteria to evaluate the failure of top-level leaders and managers to take adequate precautions to prevent criminal acts? To answer this question more clearly, litigation agencies can use an indirect approach, that is, based on assessing the effectiveness of preventive measures. If, after assessment, prosecution agency believes that preventive measures are not effective, then there is a high possibility that the top-level leaders and managers have failed to implement appropriate preventive measures to prevent crimes. . The criteria for evaluating effectiveness, in our opinion, can refer to the criteria for evaluating the effectiveness

of the US compliance and ethical conduct program and the criteria for evaluating systems to prevent and detect corruption or profiteering according to France's Sapin II Law of 2016 (Law No. 2016-1691 on Transparency, Fighting Corruption and Modernising Economic Life).

Proposal to amend Clause 1, Article 75 of the 2015 Penal Code related to the third case as follows: *"Top-level leaders and managers failed to take due diligence, leading to failure to prevent crimes committed by subordinate employee"*.

d) Proposal to amend Clause 1, Article 75 following the Option 2

Based on the three analyzed cases mentioned above, it is proposed to amend Clause 1, Article 75 of the 2015 Penal Code as follows: *"Commercial legal person is criminally responsible in the following cases:*

a. Top-level leaders and managers of this legal person commit criminal act for benefit of the legal person;

b. Top-level leaders or managers of this legal person, for benefit of the legal person, have directed or approved commission of criminal act by subordinate employee;

c. Top-level leaders and managers failed to take due diligence, leading to failure to prevent crimes committed by subordinate employee".

3.2.3.3. Proposing priority options

Proposed Option 2 is the priority option. Because of the fact, countries expand the ability to impose CL on legal persons in many ways, especially towards large-scale legal persons, complex organizational structures, decentralized management and dispersion of power; but at the same time building conditions for attributing CL to ensure the promotion and encouragement of legal persons to take appropriate preventive measures to prevent and detect violations and coordinate with competent authorities in detect and handle violations. Furthermore, choosing Option 2, specifically the third case, will avoid "unending" debates about agreeing on the scope of individuals who

can trigger the CL of legal persons in the identification model, nor does it require legal interpretation of the connotation of the condition that a criminal act is committed for benefit of a legal person.

3.2.4. Complete regulations on criminal liability of commercial legal persons in the Crimes section

- Proposal to amend 07 crimes that have their own CL according to the legal model in the remaining 25 articles of law on crimes for which legal persons are subject to CL. For example, Clause 4, Article 225 of the 2015 Penal Code is amended as follows: Commercial legal person that commits a crime specified in this Article shall be punished as follows: a) Committing a crime in the case specified in Clause 1 of this Article, then be fined from 300,000,000 VND to 1,000,000,000 VND.

- Regarding the form of fault in crimes for which commercial legal persons are subject to CL, legal persons can bear CL for crimes with subjective elements including intentional and unintentional faults, not only crimes with the subjective factor is intentional fault.

3.2.5. Improving the law to ensure consistency between the provisions on criminal liability conditions of commercial legal persons and other provisions in the Penal Code

To ensure consistency, it is proposed to remove Clause 2, Article 2 on the basis of CL for commercial legal persons; remove Clause 2, Article 3 on principles for dealing with commercial legal persons; remove the phrase "commercial legal person" from the concept of crime in Clause 1, Article 8; remove Clause 2, Article 9 on the classification of crimes committed by commercial legal persons; remove Article 76 on the scope of crimes that legal persons are subject to CL.

3.3. The solution ensures the application of regulations on the scope and conditions of criminal liability of commercial legal persons

Solutions to ensure the application of regulations on the scope and

conditions of CL of commercial legal persons include: raising awareness of the application of regulations on CL of commercial legal persons; promulgating documents guiding the application of regulations on CL of commercial legal persons; strengthening leadership, direction, administration and interdisciplinary coordination for the application of CL regulations of legal persons; for CL cases of commercial legal persons, it is necessary to arrange investigators, prosecutors and judges with expertise, experience and professional spirit; improving qualifications and awareness of fighting crimes related to commercial legal persons; developing plans for selection, training, retraining, and organization of training, refresher courses, and specialized professional training; strengthening international cooperation and learn from countries' experiences in preventing and combating crimes related to commercial legal persons.

CONCLUSION

To contribute to improving the regulations on the scope and conditions of CL of commercial legal persons, the thesis focuses on the following contents:

1. On theoretical: analyzing and clarifying the concept and nature of the provisions on CL of legal persons; theoretical models of the CL; providing the concept of scope of the CL, bases for determining and content of the scope of CL of legal persons; introducing the concept of CL conditions of legal persons and analyzing these conditions.

2. Regarding the legal situation: analyzing the basis of the CL; the scope of the CL; analyzing CL conditions of commercial legal persons, point out limitations, contradictions and overlaps, lack of legal explanation; analyzing the lack of consistency between the CL regulations of commercial legal persons;...

3. Solutions to improve the law: providing direction; choosing the extended identification model; identifying investment funds, cooperatives, and single-member companies limited as commercial legal persons, and off-budget state financial funds as non-commercial legal persons; adding active and passive bribery crimes; amending Clause 1, Article 75 according to two options: (1) expanding the scope of leaders and managers who can trigger the CL; (2) expanding the cases in which the CL can be attributed; removing clause 2 of Article 2; Clause 2, Article 3; the phrase "commercial legal person" from the concept of crime in Clause 1, Article 8; Clause 2, Article 9.

4. The thesis points out limitations in practical application and offers solutions to ensure the application of legal regulations on CL of commercial legal persons.

Based on the presentation and analysis of theoretical issues, legal regulations on CL of commercial legal persons as well as practical application, the thesis has proposed solutions to improve and ensure the application of legal regulations on the scope and conditions of CL of commercial legal persons in Vietnamese Criminal Law.