

Chapter 2

Types of Business Organization

Learning objectives

- Sole proprietorships.
- Limited liability company.
- Joint Stock Company.
- Partnerships.
- State-owned enterprises.
- Cooperative and Cooperative Union.

How many types of enterprise are there?

- Based on the Law on Enterprises in 2020, Vietnam currently has 05 types of enterprises:
 - ❖ Sole proprietorships.
 - ❖ Limited liability companies
 - Single-member limited liability companies.
 - Multi-member limited liability companies.
 - ❖ Joint stock companies.
 - ❖ Partnerships.
 - ❖ State-owned enterprises. They can be
 - Limited liability companies.
 - Joint stock companies.

1. Sole proprietorships

Sole proprietorships

- Based on Article 188 of Law on Enterprise, Sole proprietorship.
 - ❖ 1. A sole proprietorship is an enterprise owned by a single individual whose liability for its entire operation is equal to his/her total assets.
 - ❖ 2. A sole proprietorship must not issue any kind of securities.
 - ❖ 3. An individual may only establish one sole proprietorship. The owner of a sole proprietorship must not concurrently own a household business or hold the position of general partner of a partnership.
 - ❖ 4. A sole proprietorship must not contribute capital upon establishment or purchase shares or stakes of partnerships, limited liability companies or joint stock companies.

Advantages of Sole proprietorships

- Because a sole proprietorship is owned by only one individual, the owner has full authority to decide on all business activities within the enterprise.
- The capital of the enterprise can be registered by the owner himself and there is no need to carry out procedures to transfer ownership to the enterprise (*Article 189 of the Law on Enterprise*).
- Because the liability regime of a sole proprietorship is unlimited, it is easier to gain trust from customers and partners when cooperating.
- A sole proprietorship is less strictly bound by law and can control risks because there is only one person as the legal representative of the enterprise.

Disadvantages of Sole proprietorships

- Because a sole proprietorship is owned by only one individual, there is no capital contribution;
 - ❖ It is difficult to immediately meet the need for large capital for business.
 - ❖ There is only one person, so one-sided decisions can easily happen and lack of objectivity.
- The fact that a sole proprietorship is not allowed to issue any type of securities (*Clause 2, Article 188 of the Law on Enterprises*) is also a restriction for mobilizing the business capital of enterprises.
- The owner of a sole proprietorship cannot simultaneously be the owner of a business household, a member of a partnership, or the owner of another sole proprietorship (*Article 188 of the Law on Enterprises*).

Disadvantages of Sole proprietorships (Cont.)

- Sole proprietorships do not have a juridical person, so they are not allowed to carry out some transactions themselves as prescribed by law.
- Enterprise owners must be responsible before the law for all business activities of private enterprises.
- The owner has unlimited liability for all his assets.
 - ❖ if the company's assets are not enough to pay debts and other financial obligations, the owner will have to use his or her assets to settle these debts, even if the company has declared bankruptcy.

2. Limited liability company

Single-member limited liability companies

- Based on Article 74 of Law on Enterprise, Single-member limited liability companies.
 - ❖ 1. A single-member limited liability company is an enterprise owned by a single organization or individual ((hereinafter referred to as “owner”). The owner’s liability for the company’s debts and other liabilities shall be equal to the company’s charter capital.
 - ❖ 2. A single-member limited liability company has the status of a juridical person from the day on which the Certificate of Enterprise Registration is issued.

Single-member limited liability companies (Cont.)

- Based on Article 74 of Law on Enterprise, Single-member limited liability companies.
 - ❖ 3. A single-member limited liability company must not issue shares except for equitization.
 - ❖ 4. Single-member limited liability companies may issue bonds in accordance with this Law and relevant laws; private placement of bonds shall comply with Article 128 and Article 129 of this Law.

Advantages of single-member limited liability companies

- Owned by an organization or individual, the owner will have full authority to decide on all issues related to the company's operations and does not need to ask for opinions or suggestions from other entities.
- Having a juridical person, the enterprise is recognized as a legal entity and can independently participate in relationships on its behalf.
- The owner only has limited liability within the scope of the company's charter capital (*Clause 1, Article 74 of the Law on Enterprises*).

Advantages of single-member limited liability companies (Cont.)

- Having a strict organizational structure with a company President, Director, or General Director.
 - If a company is owned by an organization, it can also be organized according to the model of a Board of Members (which elects a person to be the Chairman of the Board of Members), Director, or General Director (*Article 79 of the Law on Enterprises*).
- The company owner has the full right to transfer all or part of the company's charter capital (*Article 76 of the Law on Enterprises*).

Advantages of single-member limited liability companies (Cont.)

- It is possible to increase charter capital by contributing additional capital from owner, mobilizing additional investment capital from other individuals and organizations (*Article 87 of the Law on Enterprise*), or issuing bonds.
- **Note:** In the event of mobilizing additional investment capital from other individuals or organizations, a single-member limited liability company must convert the business type to a limited liability company with two or more members or a joint stock company.

Disadvantages of single-member limited liability companies

- The legal system regulating single-member limited liability companies is stricter than that of sole proprietorships.
- Restricted in raising capital because the limited liability company is not allowed to issue shares.
- If there is a demand to mobilize additional capital from other individuals or organizations, procedures for converting the business type to multi-member limited liability companies or a joint stock company will have to be carried out.

Multi-member limited liability companies

- Based on Article 46 of Law on Enterprise, Multi-member limited liability companies.
 - ❖ 1. A multiple-member limited liability company means an enterprise that **has 02 – 50 members** that are organizations or individuals. A member's liability for the enterprise's debts and other liabilities shall be equal to the amount of capital that member contributed to the enterprise, except for the cases specified in Clause 4 Article 47 of this Law. The member's stake (contributed capital) may only be transferred in accordance with Articles 51, 52 and 53 of this Law.

Multi-member limited liability companies (Cont.)

- Based on Article 46 of Law on Enterprise, Multi-member limited liability companies.
 - ❖ 2. A multiple-member limited liability company has the status of a juridical person from the day on which the Certificate of Enterprise Registration is issued.
 - ❖ 3. Multiple-member limited liability companies must not issue shares except for equitization.
 - ❖ 4. Multiple-member limited liability companies may issue bonds in accordance with this Law and relevant laws; private placement of bonds shall comply with Article 128 and Article 129 of this Law.

Advantages of multi-member limited liability companies

- Having a juridical person (*Clause 2, Article 46 of the Law on Enterprises*), the enterprise is recognized as a legal subject and can independently participate in relationships on its behalf.
- Company members only have limited liability within the amount of capital contributed to the company (*Clause 1, Article 46 of the Law on Enterprise*).
- Charter capital can be increased by increasing member capital contributions, receiving additional capital contributions from new members (*Clause 1, Article 68 of the Enterprise Law*), or issuing bonds (*Clause 4, Article 46 of the Enterprise Law*).

Advantages of multi-member limited liability companies (Cont.)

- The transfer regime (*Article 52 of the Law on Enterprise*) and redemption of capital contributions (*Article 51 of the Law on Enterprise*) are strictly regulated so investors can easily control the change of members.
- There are more owners than sole proprietorships and limited liability companies, so they can have more capital.
 - ❖ Having a financial position creates growth potential for businesses.
 - ❖ Comprehensive management capabilities due to more people involved in running the business; etc.

Disadvantages of multi-member limited liability companies

- The number of members is limited from 02 to 50 members (*Clause 1, Article 46 of the Law on Enterprises*).
- Any increase or decrease in charter capital must be notified to the Business Registration Authority (*Clause 4, Article 68 of the Law on Enterprises*).
- The organizational structure and operations of multi-member limited liability companies are more strictly controlled by law than sole proprietorships and partnerships.
- The fact that multi-member limited liability companies are not allowed to issue shares (*Clause 3, Article 46 of the Law on Enterprise*) is also a restriction for mobilizing the business capital of enterprises.

3. Joint Stock Company

Joint Stock Company

- Based on Article 111 of Law on Enterprise, Joint Stock companies.
 - ❖ 1. A joint stock company is an enterprise in which:
 - a) The charter capital is divided into units of equal value called shares;
 - b) Shareholders can be organizations and individuals; the ***minimum number of shareholders is 03***; there is ***no limit on the maximum number of shareholders***;
 - c) A shareholder's liability for the company's debts and liabilities is equal to the amount of capital contributed to the company by the shareholder;
 - d) Shareholders may transfer their shares to other persons except for the cases specified in Clause 3 Article 120 and Clause 1 Article 127 of this Law.

Joint Stock Company (Cont.)

- Based on Article 111 of Law on Enterprise, Joint Stock companies.
 - ❖ 2. A joint stock company has the status of a juridical person from the day on which the Certificate of Enterprise Registration is issued.
 - ❖ 3. A joint stock company may issue shares, bonds and other kinds of securities.

Advantages of Joint Stock Company

- Shareholders only have limited liability for debt and other property obligations of the company within the scope of their capital contribution.
- The ability to raise capital is very high through issuing shares to the public.
- A joint stock company does not limit the number of shareholders and can mobilize capital all over the world.
- Shareholders can easily and freely transfer, buy, sell, and inherit shares based on the stock market;

Advantages of Joint Stock Company (Cont.)

- Large scale of operations and ability to expand business in most industry fields.
- The company's operations are highly effective due to the independence between management and ownership.
- A joint stock company allows the salaries and bonuses of shareholders with the role of management to be included in the company's operating expenses to reduce corporate income tax payable.
- All business decisions are collected with the opinions of shareholders, so management and operations are very transparent.

Disadvantages of Joint Stock Company

- The management and operation of a joint stock company is very complicated because the number of shareholders can be very large.
 - ❖ Many people do not know each other and there will even be division into opposing shareholder groups about benefits;.
- Business and financial security risk is limited because the company must disclose and report to shareholders.
- The management and operation of joint stock companies are also more complicated, especially the financial and accounting regime.

4. Partnerships

Partnerships

- Based on Article 177 of Law on Enterprise, Partnerships.
 - ❖ 1. A partnership is an enterprise in which:
 - a) ***There are least 02 partners*** that are joint owners of the company and do business under the same name ((hereinafter referred to as “general partner”). There can be limited partners in addition to general partners;
 - b) A general partner shall be an individual whose liability for the company’s obligations is equal to all of his/her assets;
 - c) A limited partner can be an organization or an individual whose liability for the company’s debts is equal to the promised capital contribution.

Partnerships (Cont.)

- Based on Article 177 of Law on Enterprise, Partnerships.
 - ❖ 2. A partnership has the status of a juridical person from the day on which the Certificate of Enterprise Registration is issued.
 - ❖ 3. A partnership must not issue any kind of securities.

Advantages of Partnerships

- A partnership company combines the personal reputation of many people.
 - ❖ Due to the partnership regime, the partnership members have unlimited liability.
 - ❖ Partnership companies easily create the trust of customers and business partners.
- Managing the company is not too complicated.
 - ❖ Due to the small number of members, they are reputable people who trust each other.
- Partnership members are usually individuals with high professional qualifications and reputations.

Advantages of Partnerships (Cont.)

- Banks are easier to lend capital and postpone debt due to the unlimited liability regime of partnership members.
- Compact and easy-to-manage organizational structure. Suitable for small and medium businesses.
- Having a juridical person (*Clause 2, Article 177 of the Law on Enterprises*).

Disadvantages of Partnerships

- Due to the unlimited liability (Point đ, Clause 2, Article 181 of the Law on Enterprise), the risk level of partnership members is very high.
- The general partners are the legal representatives of the company and jointly organize the company's daily business operations (*Clause 1, Article 184 of the Law on Enterprise*), so if they cannot agree on their opinions, will cause difficulties for business operations.
- Partnership members are not allowed to own private enterprises; Not allowed to be general partners of another partnership unless agreed by the remaining partners (*Clause 1, Article 180 of the Law on Enterprises*).

Disadvantages of Partnerships (Cont.)

- Partnership companies are not allowed to issue any type of securities (*Clause 3, Article 177 of the Law on Enterprise*).
- A general partner who withdraws from the company is still responsible for the partnership's debts arising before the date of termination of membership within 02 years (*Clause 5, Article 185 of the Law on Enterprises*).
- A partnership company does not have a clear distinction between company assets and personal assets, so even though it has a juridical person, the partnership company is not independent in being responsible for the company's debts.

5. State-Owned Enterprises

State-Owned Enterprises

- Based on Article 88 of Law on Enterprise, State-Owned Enterprises.
 - ❖ 1. State-owned enterprises shall be limited liability companies or joint stock companies, including:
 - a) Wholly state-owned enterprises (100% of charter capital of which is held by the State).
 - b) Partially state-owned enterprises (over 50% of charter capital or voting shares is held by the State, except the enterprises specified in Point a Clause 1 of this Article).

State-Owned Enterprises (Cont.)

- Based on Article 88 of Law on Enterprise, State-Owned Enterprises.
 - ❖ 2. Wholly state-owned enterprises specified in Point a Clause 1 of this Article include:
 - a) Single-member limited liability companies 100% of charter capital of which is held by the State that are parent companies of state-owned corporations or parent companies in groups of parent company – subsidiary companies;
 - b) Independent single-member limited liability companies 100% of charter capital of which is held by the State.

State-Owned Enterprises (Cont.)

- Based on Article 88 of Law on Enterprise, State-Owned Enterprises.
 - ❖ 3. Partially state-owned specified in Point b Clause 1 of this Article include:
 - a) Multiple-member limited liability companies and joint stock companies over 50% of charter capital or voting shares of which is held by the State that are parent companies of state-owned corporations or parent companies in groups of parent company – subsidiary companies;
 - b) Independent multiple-member limited liability companies and joint stock companies over 50% of charter capital or voting shares of which is held by the State.
 - ❖ 4. The Government shall elaborate this Article.

6. Cooperative and Cooperative Union

Cooperative and Cooperative Union

“Cooperative” means an organization that has the status of a juridical person, is voluntarily established by ***at least 05 official members*** who cooperate with and assist each other in production, business and job creation with the aim of meeting general economic, cultural and social demands of its members and making contribution to sustainable community and social development, and adheres to the principles of autonomy, equality and democracy.

Cooperative and Cooperative Union (Cont.)

“Cooperative union” means an organization that has the status of a juridical person, is voluntarily established by ***at least 03 official members*** who cooperate with and assist each other in production, business and job creation with the aim of increasing their production and business scale, improving their ability to compete in the market, and making contribution to sustainable community and social development, and adheres to the principles of autonomy, equality and democracy.

New Points of the Law on Cooperative

- Article 7, the Law on Cooperatives has added many prohibited acts compared to before:
 - ❖ Prohibited acts for State management agencies:
 - Support and incentives for cooperative groups, cooperatives, and unions of cooperatives that do not comply with the principles, objects, authority, content, order, and procedures according to laws;
 - Abusing authority to violate the law on support and incentives for cooperative groups, cooperatives, and unions of cooperatives;
 - Causing delay, inconvenience, obstruction, harassment of cooperative groups, cooperatives, cooperative unions... in registration, operation and implementation of support for cooperative groups, cooperatives, cooperative unions...

New Points of the Law on Cooperative (Cont.)

- Article 7, the Law on Cooperatives has added many prohibited acts compared to before:
 - ❖ Prohibited acts for cooperative groups, cooperatives, cooperative unions, and members:
 - Using support resources not for the committed purpose;
 - Abusing positions and powers for personal benefit or that of a group of members...

New Points of the Law on Cooperative (Cont.)

- In addition to the rights and obligations of cooperatives and cooperative unions previously recognized, Articles 8 and 9 of the Law on Cooperative have added the following rights and obligations:
 - ❖ Regarding the rights of cooperatives and cooperative unions:
 - Internal loans according to regulations; Mobilize capital according to regulations;
 - Separately track revenues and costs of internal and external transactions;
 - Participate in representative organizations of cooperatives, cooperative unions...

New Points of the Law on Cooperative (Cont.)

- In addition to the rights and obligations of cooperatives and cooperative unions previously recognized, Articles 8 and 9 of the Law on Cooperative have added the following rights and obligations:
 - ❖ Regarding the obligations of cooperatives and unions of cooperatives:
 - Disclose information to members according to the provisions of the Law on Cooperatives and disclose information according to relevant laws;
 - Compensate for damages caused by cooperatives and cooperative unions to members according to regulations and Charter;
 - Prepare, update, and store the register of official members, associate members contributing capital, etc.

New Points of the Law on Cooperative (Cont.)

- In particular, the Law on Cooperative Law in 2023 also adds new regulations, such as
 - ❖ Document Storage Regime (*Article 12*).
 - ❖ Disclosure of information to members of cooperatives and cooperative unions (*Article 14*).
 - ❖ Register of members of cooperatives and unions of cooperatives (*Article 15*).
- Add a Chapter II on policies for developing cooperatives and cooperative unions.
- Add conditions for foreign investors to become cooperative members (*Clause 1, Article 3*).
- Supplement internal lending regulations in cooperatives (*Article 83*).

In conclusion

- Sole proprietorships.
- Limited liability company.
- Joint Stock Company.
- Partnerships.
- State-Owned Enterprises.
- Cooperative and Cooperative Union.

Understand



**THANK YOU
FOR YOUR ATTENTION**

Q&A