THE LAW ON CAPITAL CONTRIBUTION WITH PROPERTY MEANS INDUSTRIAL PROPERTY RIGHTS IN BUSINESS ACTIVITIES OF ENTERPRISES: CURRENT SITUATION AND SOME RECOMMENDATIONS

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ABSTRACT

Industrial property rights are one of the objects of intellectual property rights and are governed by the Law on Intellectual Property of Vietnam. Industrial property rights are one of the types of property rights established by organizations and individuals through administrative procedures to request competent state agencies to protect their property rights. For intellectual property objects contributing capital with industrial property rights, although recognized in the legal system, has not been really concretized in Vietnam, causing difficulties for entities. The reality in Vietnam shows that the deals of capital contribution are not much, mainly the capital contribution with the value of industrial property use rights in large enterprises, state economic groups, and investment capital enterprises foreign investment. On the basis of analyzing the inadequacies of the law on capital contribution with industrial property rights, this study provides solutions to improve the legal regulations.

Keywords: Law on capital contribution, property, industrial property rights, business activities of enterprises, current situation, some recommendations, Vietnam

I. INTRODUCTION

Capital contribution means the contribution of assets to form the company’s charter capital, including capital contribution to the establishment of a company or additional contribution to the charter capital of an established company (Clause 18, Article 4 of the Law on Enterprises 2020). From there, we can see, the capital contribution is done two times: when the business is established and after the establishment of the business. Capital contribution will increase the company’s charter capital and how much will increase will depend on the value of assets that organizations and individuals use to contribute capital. The Law on Enterprises 2020, effective from January 1, 2021, inherits the provisions of the Law on Enterprises 2014 on assets contributed as capital, Article 35. Assets contributed as capital: “Assets contributed as capital can be Vietnam Dong (VND), freely convertible foreign currencies, gold, and the value of land use rights, the value of intellectual property rights, technology, technical know-how, and other assets that can be valued in VND”.

Intellectual property rights used for capital contribution include copyrights, copyright-related rights, industrial property rights, rights to plant varieties, and other intellectual property rights in accordance with the provisions of law intellectual property law. Only individuals and organizations that are legal owners of the aforementioned rights have the right to use those assets to contribute capital”, but there are also some breakthrough changes and additions in the regulations on assets contributed as capital. Thus, industrial property rights are a part of intellectual property rights and can contribute capital to production and business enterprises.

II. LAW ON INDUSTRIAL PROPERTY RIGHTS

2.1. What are industrial property rights? Concepts and characteristics

Industrial property rights are one of the subjects of intellectual property rights and are governed by the Law on Intellectual Property of Vietnam. So what is the concept of industrial property rights? How do you understand this kind of right?
Science, technology, and technology are human creations and have become an integral part of the production force that is decisive to labor productivity. However, “scientific, technical” assets that man creates have characteristics unlike other assets, which are intangible assets that the creator himself cannot possess for themselves, they are very easy to be taken away and appropriated.

Protecting the fruits of creative activity takes many different forms. In today’s era, diversified and diversified industrial property activities are not only confined to a country but also global. The State’s regulations on intellectual property in general and industrial property rights, in particular, are aimed at protecting the rights of persons operating in special domains of social and economic significance. Industrial property rights are understood in two main ways:

*Industrial property rights are understood in an objective sense:*

Industrial property rights are the laws of industrial property or in other words, the synthesis of legal regulations governing social relations arising after human creation of intellectual products and considered by the law are industrial property objects. In this sense, industrial property rights are property rights to intangible assets, on the other hand, industrial property rights also include the provisions of international treaties to which Vietnam is a signatory. Laws on intellectual property rights can be broadly divided into the following groups:

First, the group of provisions related to the standard definition of an innovative result is the object of industrial property rights, the types of protected industrial property objects, criteria for defining it;

Second, the group of regulations related to the competence, order, and procedures for establishing creative results is considered to be the subject of protected industrial property;

Third, the group of provisions related to the content of the rights of the subjects to the subjects of co-ownerships (including the rights and obligations of the owner, the author, and the other subjects towards the subjects of co-owner. industrial property has been established);

Fourth, the Rules relating to the displacement of industrial property objects;

Fifth, the Rules relating to the protection of the rights of entities over industrial property objects.

In this sense, industrial property rights are not only provisions of civil law, but also belong to many different legal documents, in many different law branches, forming a unified entity governing inter-social relations related to industrial property objects. In addition, industrial property rights are not only governed by national laws but also by bilateral and multilateral international treaties.

*Under the subjective sense of industrial property rights:*

Industrial property rights are the ownership of individuals and legal entities over industrial property objects. According to the provisions of Clause 4, Article 4 of the 2005 Intellectual Property Law: “Industrial property rights are the rights of organizations and individuals to inventions, industrial designs, layout designs of semiconductor integrated circuits, trademarks, trade names, geographical indications, trade secrets they create or own and their right to oppose unfair competition”.

In this sense, industrial property rights are the rights and obligations of entities related to the use and transfer of industrial property objects. These subjective rights must be consistent with the law in general and the law on industrial property rights in particular; includes the personal and property rights of actors in the domain of industrial property; the right to prevent infringements or unfair competition against the rights of their creators or legitimate users.

**2.2. Industrial property rights are understood in terms of legal relations**

Industrial property rights are also understood in terms of legal relations with all converging elements such as subjects, objects, and content. Industrial property rights are only formed on the basis of the impact of the legal regulations on industrial property on the results of creative activities in the fields of production, business, and service.
Thus, the subject of industrial property rights is all individuals and organizations such as the author or owner of industrial property objects or organizations or individuals that are assigned public property rights by the owner. Karma. Objectives of industrial property rights are the results of intellectual creation applied in production and business activities such as inventions, utility solutions, industrial designs, and layout designs, registration of trademarks, geographical indications, trade names, and business secrets. The content of industrial property rights is the synthesis of rights and obligations of industrial property rights holders recognized and protected by law.

III. LAW ON CAPITAL CONTRIBUTION

3.1. Types of assets used to contribute capital

Capital contribution is the contribution of assets to form a company’s charter capital. Capital contribution includes a capital contribution to establish an enterprise or to contribute additional capital to an already established enterprise. According to Article 34 of the Enterprise Law 2020, Assets contributed as capital include:

Contributed assets can be VND, freely convertible foreign currencies, gold, and the value of land use rights, the value of intellectual property rights, technology, technical know-how, and other identifiable assets. Prices are in Vietnamese Dong.

Only individuals and organizations that are legal owners or have the right to use lawfully the property specified in Clause 1 of this Article have the right to use such property to contribute capital as prescribed by law.

3.2. Transfer ownership of assets to contribute capital

Pursuant to Article 35 of the Law on Enterprises 2020, a member of a limited liability company, a partnership, and shareholders of a joint-stock company must transfer ownership of assets contributed as capital to the company in accordance with the following provisions:

For property with ownership registration or land use right value: For property with ownership registration or the value of land use rights, the capital contributor must carry out the procedures to transfer the ownership of such property or land use rights for the company at a competent state agency. The transfer of ownership of assets contributed as capital does not incur registration fees.

For property without ownership registration: For property without ownership registration, the capital contribution must be made by delivery and receipt of the property to be contributed as capital with written confirmation. Minutes of delivery and receipt must contain the following details:

The name and address of the company’s head office;

Full name, permanent address, number of Citizen Card, Identity Card, Passport or other legal personal identification, number of the establishment decision or registration of the capital contributor;

Type of asset and number of units of the asset contributed as capital;

The total value of assets contributed as capital and the ratio of the total value of such assets in the company’s charter capital;

Delivery date;

Signature of the capital contributor or authorized representative of the capital contributor and the company’s legal representative.

Some note:

Shares or contributed capital shares with assets other than VND, freely convertible foreign currencies, gold are only considered to be paid off when the legal ownership of the assets contributed as capital has been transferred to the company;

Assets used in the business activities of the owner of a private enterprise are not required to carry out the procedures for transferring ownership rights to the enterprise;
Payment for all activities of buying, selling, transferring shares and contributed capital, and receiving dividends from foreign investors must be made through the investor’s capital account opened at a bank in Vietnam. Except for payments by property.

IV. LAW ON THE VALUATION OF ASSETS CONTRIBUTED AS CAPITAL

The valuation of assets contributed as capital is specified in Article 36 of the Law on Enterprises as follows: Contributed assets other than VND, freely convertible foreign currencies, gold must be found by founding members, shareholders, or groups appraisers are professionally priced and expressed in VND. As follows:

4.1. For assets contributed as the capital when establishing a business

Assets contributed as the capital when establishing an enterprise must be valued by founding members and shareholders on the principle of unanimity or by a professional valuation organization. In case the professional valuation organization conducts valuation, the value of assets contributed as capital must be approved by a majority of members, founding shareholders.

In case the assets contributed as capital are valued at a higher price than the actual value at the time of capital contribution, the founding members and shareholders jointly contribute by the difference between the valued value and the real value economics of the assets contributed as capital at the end of the valuation; at the same time, to be jointly liable for losses caused by the intentional valuation of the assets contributed as capital higher than the actual value.

4.2. For assets contributed as capital during the operation

Assets contributed as capital in the course of operation by the owner, the Members’ Council, for limited liability companies and partnerships, the Board of Directors, for joint-stock companies and capital contributors or priced by a professional valuation organization. In case the professional valuation organization conducts valuation, the value of the assets contributed as capital must be approved by the capital contributor and the enterprise.

If the value of the assets to be contributed as capital is higher than the actual value at the time of capital contribution, the contributor, the owner, or a member of the Members’ Council, for a limited liability company and a partnership, members of the Board of Directors, for joint-stock companies to contribute additionally by the difference between the valued value and the actual value of the assets contributed as capital at the end of the valuation; at the same time, to be jointly liable for damages caused by the intentional valuation of the assets contributed as capital higher than the actual value.

4.3. Regulations on the valuation of assets contributed as capital by industrial property?

As analyzed above, industrial property rights are one of the objects of intellectual property rights and are governed by the Law on Intellectual Property of Vietnam. Industrial property rights are one of the types of property rights established by organizations and individuals through administrative procedures to request competent state agencies to protect their property rights. The 2014 Law on Enterprises provides for capital contribution with intellectual property rights as follows:

IP rights are used to contribute capital. Including copyrights, copyright-related rights. Industrial property rights, rights to plant varieties. And other intellectual property rights in accordance with the law on intellectual property;

For properties with ownership registration. Or the value of land use rights, the capital contributor must carry out the procedures to transfer the ownership of the property. Or land use rights for the company at a competent state agency (Article 36);

For property that is not registered for ownership. The capital contribution must be made by delivery and receipt of assets contributed as capital with written confirmation. With full content and signature of the capital contributor. And the legal representative of the company in accordance with the law (Article 36).

4.4. Conditions for capital contribution with industrial property rights

The capital contributor must be the owner of industrial property objects;
Contributed intellectual property objects must be disputed assets. No collateral or guarantee anywhere;

This capital contribution only applies to moral rights associated with property rights and property rights. In copyright to literary, artistic, and scientific works (Except for capital contribution by the right to use the content of scientific works, which are basic research. And applied research in the field of social sciences and humanities); Property rights of the owner of related rights; Industrial property rights to inventions. Trademarks, industrial designs. Layout design, business secret. Trade name (only in the case of capital contribution with the ownership of a trading name). And this capital contribution must be accompanied by the business establishment. Rights to plant varieties.

In addition, industrial property rights are also understood in terms of legal relations with all the converging elements such as an object, subject, and content. Industrial property rights are only formed on the basis of the impact of the legal regulations on industrial property on the results of creative activities in the fields of business, production, and service.

Thus, the subject of industrial property rights is all organizations and individuals such as the author or the owner of the industrial property object or individuals or organizations that have been assigned industrial property rights by the owner. Industrial property rights objects are the results of intellectual creation applied in production, utility solutions, and business such as inventions, industrial designs, trademark registration, and geographical indications management, layout design, business secret, trade name. The content of industrial property rights is the synthesis of rights and obligations of industrial property rights holders that are recognized and protected by law.

4.5. Procedures for capital contribution with industrial property rights on the valuation of assets contributed as capital

Procedures for capital contribution with industrial property rights go through the following steps:

Step 1: Before contributing capital, organizations and individuals that contribute capital with industrial property rights are required to carry out the procedure. Specifically, applying for a protection title for its industrial property object.

Step 2: Make registration for capital contribution with intellectual property rights. An application for registration of capital contribution with an intellectual property includes the following documents:

Identification papers of the two parties (the capital contributor and the capital contributor);

Capital contribution contract;

The record of valuation of the property to be contributed as industrial property;

Applications are declared in the form of the state management agency in charge of industrial property. The capital contribution contract must be notarized at a competent state agency. Coffee must be registered at the state management agency in charge of industrial property.

Step 3: Submit the application to a competent state agency.

V. SOME RECOMMENDATIONS TO IMPROVE THE LAW ON BUSINESS CAPITAL CONTRIBUTION WITH INDUSTRIAL PROPERTY RIGHTS

First, we propose the appropriate and optimal valuation method of industrial property rights recommended by experts to prioritize application is the group of valuation methods using the income approach, the valuation method. According to this group of methods, this method has been specified in quite detail in Circular No. 06/2019/TT-BTC. In addition, it is necessary to amend Article 36 of the Law on Enterprises 2020 in the direction: Regarding the valuation competence of intellectual property rights in general and industrial property rights in particular, when contributing capital, it is required to be regulated by a price appraisal organization professionally done.

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Second, the difficulty in recording industrial property rights is mainly the problem in trademark accounting. Accounting Standard No. 04 does not recognize that trademarks created internally from enterprises are intangible assets, so they have no basis for accounting and are inconsistent with the provisions of Circular No. 45/2018/TT-BTC, thereby making businesses and authorities confused in whether accounting is allowed or not? Therefore, it is necessary to amend, supplement or issue an alternative document to the Standard accounting No. 04 in the direction of recognizing marks as intangible assets when all conditions specified in Circular No. 45/2018/TT-BTC are met.

Third, it is necessary to amend and supplement Clause 1, Article 34 of the 2020 Law on Enterprises as follows:

“For assets without ownership registration, the capital contribution must be made by the delivery and receipt of the property to be contributed as capital, certified in writing. If a well-known trademark, trade name, trade secret, and other property rights are established without registration procedures, a capital contribution contract is only required in writing, without making a delivery record asset”.

In the Law on Enterprises, Article 36. “Valuation of assets contributed as capital”, there is no content related to the valuation of intellectual property rights in general (including industrial property rights). Therefore, in this law, it is necessary to add: “Valuation of intellectual property rights”.

Fourth, the documents guiding the implementation of the Law on Enterprise 2020 need specific guidance on the termination of membership (if the member-only contributes capital to the company with industrial property rights), it is necessary to guide procedures for reducing charter capital when the contract (or agreement) for the capital contribution which is an intellectual property (including industrial property rights) is no longer in effect. For industrial property rights contributed as capital at the end of the protection term, if it does not fall into a case where use is prohibited, it is necessary to specify that the recipient of such industrial property rights is the continued value of the industrial property right. Because by now industrial property rights have run out of monopoly status. In case the capital contribution contract expires and this industrial property right is still protected, the contributor may not continue to use the industrial property right (unless otherwise permitted by the obligee).

VI. CONCLUSION

In the comprehensive renovation in Vietnam, many legal provisions have been formed, or amended and supplemented, to solve problems arising in practice. Capital contribution with intellectual property rights in general and industrial property rights, in particular, is one of those contents. This is not a completely new issue in Vietnamese law, but not all contents have been comprehensively and effectively understanding and resolved. On the contrary, at present, there are still many contradictory views on some content related to this issue. This article has studied to clarify the theory and practice of the concepts of capital contribution, industrial property rights, and capital contribution with industrial property rights to production and business.

From these basic concepts, this research has approached the current situation of the law on capital contribution with industrial property rights in Vietnam, especially the provisions of the current law on the subjects of capital contribution, conditions for capital contribution capital, capital contribution procedures, and other contents on capital contribution with industrial property rights. The basic contents of capital contribution with industrial property rights have been analyzed and compared to draw conclusions about the advantages and disadvantages of the legal provisions on capital contribution to establish enterprises with ownership industry in Vietnam, then propose solutions to continue improving this law to suit the reality of the country and the world.

REFERENCES