

Research Article

LAWS AND REGULATIONS ON LOBBYING LEGAL POLICY OF BUSINESS: A CASE STUDY OF VIETNAM

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Received 10th June 2021; Accepted 11th July 2021; Published online 13th August 2021

ABSTRACT

In recent years, the lobbying legal policy of business has been quite active in Vietnam. Many foreign and domestic investors have been trying to lobby for policies to competent state agencies to reach consensus to bring maximum benefits to both enterprises and the state. In this article, the author will analyse the basic issues related to trade - policy advocacy activities in some countries around the world such as the United States, Europe, etc., thereby drawing lessons from the international experience and propose solutions to further improve regulations and policies on trade policy advocacy in Vietnam in the next period.

Keywords: Law and regulation; lobbying; legal policy of business; facts; international experience; Vietnam

INTRODUCTION

The world has acknowledged the existence of legal advocacy activities and there are many regulations for this activity to ensure that they are conducted transparently, openly and not abused. others. Depending on the political practice level of each country, the field as well as the methods of conducting, policy advocacy activities are also different.

In recent years, since Vietnam officially opened to integrate with the international economy, domestic trade and import-export activities have developed rapidly. In order for the law to be suitable for this integration process, besides building an appropriate business strategy, enterprises and associations need to accompany the State in making policies and laws to ensure that international commitments as well as domestic legal regulations are fully developed and implemented. They are most suitable to the interests of enterprises, the industry as well as the national economic system. In addition, proactively carrying out activities to influence the legislative bodies of the partner country so that their legal policies create favorable conditions for the business activities of Vietnamese enterprises in foreign markets. This field is also very important. While such business and trade policy advocacy activities have been strongly and effectively implemented by enterprises and associations in many countries. In Vietnam, this activity is still relatively limited both in terms of magnitude and effectiveness.

In Vietnam, legal advocacy is a new activity that has not been fully formalized in the law. Currently, the new law only provides for public comments, especially enterprises, for high-level legal documents. However, economic associations and other organizations are also gradually familiarizing themselves with this activity in order to best protect their legitimate interests. Therefore, it is very necessary to research, understand and evaluate business law advocacy activities. From there, it is possible to propose solutions to increase the efficiency of this activity in the future.

LITERATURE REVIEW

General about lobbying

The old origin of the word "lobbying" is British. The word came from the phenomenon of voters gathering in the main lobby of the British House of Commons and interest groups gathering in the lobby of the Willard Hotel to exchange ideas with the President and MPs late eighteenth century. Policy advocacy is a word that is used quite commonly in political activities in general and in the process of planning and discussing policies or laws in particular in many countries. This activity is also known under many other names such as lobbying, public affairs. Broadly understanding, advocating for legal policies of business including all activities carried out by different individuals and organizations in order to influence State agencies and other entities with authority in promulgating and implementing legal policies on business. Thereby, it is affecting the activities and decisions of these agencies. In general, advocacy for legal policies of business is the act of influencing competent authorities in different ways to get legal policies of business in line with the desires of people (citizens and enterprises).

Characteristics of advocacy (lobbying)

The theory and practice of legal advocacy in general and legal policy on business in particular are very diverse with many distinct characteristics in different countries. Firstly, about the subjects conducting legal policy of business advocacy include: enterprises; business associations and chambers of commerce; labor unions (including unions); consumers association; national and international social activities groups; research institutes, universities. Secondly, the subjects that are mobilized include competent agencies and organizations in the process of drafting, promulgating and implementing legal policies of business. With a wide audience and range of subjects to be mobilized, this may include: the competent state agency of the campaigner; foreign competent state agencies; agencies and units of international organizations or representatives of countries in those organizations have the authority to issue legal policies on business within the framework of international organizations.

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Thirdly, because the target object is very wide and diverse, the scope of business law advocacy activities is also very wide, covering all three areas: within the domestic country; campaigning abroad; advocate for legal policies of business within the framework of international trade organizations related to the negotiation, building or adjustment of trade agreements within the framework of such organizations. Advocacy carried out within the scope must comply with the principles required for advocacy activities within that framework. The lobbying skills for legal policies of business may also vary between the areas of advocacy to suit the political practice of each country or the negotiating style of international organizations related to economy.

The role of advocacy on business legislation

In fact, the enterprises or associations implement legal policy of business advocacy has gained a lot of benefits commensurate with the effort and resources they have invested as following:

- Business activities of enterprises can be strongly supported from the State's legal policies of business that enterprises have lobbied for.
- Business strategies in the short, medium and long term of the enterprise are better implemented with information on future legal policies of business.
- The image of the business and the industry is widely propagated and promoted among the public.

In addition, the advocacy of legal business also contributes to promoting the transparency of legal policies of competent state agencies through the publicity of draft business legal policies. It collects comments and social criticism from organizations and individuals in the process of promulgating legal documents. Advocating for business legislation shows the positivity and democracy in the management and administration of a country. An important contributing factor to strengthening the relationship between the State and civil society, creating high social consensus. This is also a condition for improving the quality of legal policies of business, helping legal documents better represent the actual needs of society and be able to better enforce them in practice, bringing appropriate benefits to many subjects in society. Enterprises, individuals and associations are subjects that the regulation and direct impact of legal policies of business. Therefore, their participation in advocacy during the welding process these laws will contribute to protecting their rights and interests in society.

Advocating for legal policies on business in foreign countries or international organizations contributes to protecting enterprises and traders from international competition as well as promoting free competition in order to gain market access stronger and more favorable foreign market.

METHODOLOGY OF RESEARCH

In this paper, the authors use many kinds of researching methodologies to analysis international and national legal policy and documents (law and regulations) related to the lobbying. Besides, the authors base on the hypotheses developed in the study show how to use law and regulation to laws when implementing activities of the lobbying. To examine these relationships, the authors developed some hypotheses and tested these hypotheses using some empirical models. The developed models confirm the assumptions and demonstrate legal mechanism of the lobbying. Moreover, statistic and survey are also used to finish this research. The authors used the poll to survey the Vietnamese citizens, enterprises and associations in Vietnam. The authors also sent the questionnaires to ask them some

question related to the law and the lobbying. The authors combined all of methodologies above to do this research. However, because of time and finance limitation, the working-paper cannot cover inclusive aspects of issues related to the topic. Thus, the authors look forward to taking the opinions of readers and reviewer to do better in future.

FINDINGS AND DISCUSSION

The process of promulgating legal policies on business in Vietnam

In Vietnam, the Law on Promulgation of Legal Documents 2020 stipulates the promulgation procedures for each type of document separately. In general, the most complex process is the process of promulgating legal documents and resolutions of the National Assembly. For lower-level legal documents (Decree, circular, ...) the process is shortened. However, basically, this process usually includes 04 steps with the following basic contents:

Step 1. Initiative

For documents promulgated by the National Assembly (Laws, Ordinances), initiatives on the new formulation or amendment of documents must be included in the Law-making Program, Ordinances for each term of the National Assembly and the annual Program approved by the National Assembly. The annual program is decided at the first meeting of the preceding year.

Step 2. Compose the text

According to regulations, projects of laws and ordinances submitted by the National Assembly (deputies to the National Assembly or agencies of the National Assembly) or related to many branches and fields at the same time, the Standing Committee of the National Assembly shall preside over the drafting of laws and ordinances. Other bills and ordinances will be drafted by a single ministry as assigned by the Government. In fact, since most of the law and ordinance projects in Vietnam are submitted by the Government, the drafting of these legal documents is mainly done by the ministries.

Step 3. Appraisal and verification of the draft document

All draft laws and ordinances must be appraised by the Ministry of Justice and submitted to the Government for discussion and decision on submission to the National Assembly (with law and ordinance projects). Law and ordinance projects, when submitted to the National Assembly by the Government, will continue to be examined by specialized committees/councils of the National Assembly.

Step 4. Approval the draft

Law and ordinance projects, after being examined by the National Assembly's Specialized Committee and discussed by National Assembly deputies, will be adjusted and submitted to the National Assembly for vote and approval.

Lobbying activities can be applied in the process of the Vietnam National Assembly promulgating business laws/ordinances

At each step, depending on the provisions of law, the ability of the public to participate in the drafting process and promulgating policy documents has different characteristics and forms. The channels of movement are therefore also different as follows details: The first stage is in the process of formulating a program to develop laws and ordinances when the President, the Standing Committee of the National Assembly, the Government, the Supreme People's Court, the Supreme People's Procuracy, the Vietnam Fatherland Front and its member organizations, the National Assembly deputies submit a proposal to the National Assembly. If a law or ordinance is proposed

before the National Assembly, the Association can lobby for legal proposals or recommendations on business policies or propose or propose legislation containing legal policies of business. The form of sending proposals and recommendations can be written comments on draft laws and ordinances or through conferences and seminars held to collect comments on draft laws and ordinances related to the business sector. The second stage is during the examination of proposals and recommendations on laws and ordinances. The Law Committee of the Vietnam National Assembly shall assume the prime responsibility, and other Committees of the National Assembly shall coordinate in verifying proposals and recommendations on laws and ordinances. During this period, associations and enterprises that want to participate in lobbying must send written opinions and petitions for legal action on business to the Vietnam Fatherland Front. Members should give recommendations and suggestions on draft of laws and ordinances when the Ministry of Justice, Committees of the National Assembly, especially the Legal Committee of the National Assembly hold meetings. Drafts of laws and ordinances are prepared to be submitted to the National Assembly for discussion and vote on approval of draft laws and ordinances. The third stage is for the decision-making of the law and ordinance Program. The Standing Committee of the Vietnam National Assembly prepares a draft of the Program, then submits it to the National Assembly for discussion and returns it to relevant agencies for amendments and supplements before voting to approve the Program. In this process, individuals, enterprises, and associations can conduct lobbying activities such as petitions and legal proposals containing legal policies of business that they support in order to gain access to legal rights approved by actions such as sending written comments, opinions, presentations, debates to the National Assembly deputies and competent agencies. The fourth stage is the establishment of a Drafting Committee for Bills and Ordinances. During this period, the Government will assign a Ministry to assume the prime responsibility for drafting and establish a drafting committee if this law project is submitted by the Government, the agency or organization that submits the law project is responsible for presiding over the drafting and finalization of the law setting up a drafting committee. The Standing Committee of the National Assembly shall set up a drafting committee and assign an agency in charge of drafting for the case of a law project submitted by a member of the National Assembly, the Standing Committee of the National Assembly, or a project involving many branches. In this process, individuals and organizations such as enterprises and associations can conduct advocacy activities to have a representative on the drafting committee, to have a representative on the editorial team or to have someone express the views of the association as a representative of an interested agency or an expert. Fifth stage is drafting the content of the proposal law/ordinance. The Drafting Committee carries out activities such as developing a draft outline, discussing basic policies, draft contents, summarizing implementation, assessing the current situation, researching information, and relevant international treaties; elaborating the Draft, Proposal, Detailed Notes, Explanatory Content and receiving opinions of other subjects; study and assess the impact of the Draft (each problem, solution, cost and benefit assessment of each solution). In this phase, individuals and organizations (enterprises, associations) can campaign so that the actions in the drafting process take into account the business and commercial policies that individuals or organizations have. The organization wishes by participating in the drafting committee, the editorial team and sending comments, opinions, evaluations and proposals for the draft law/ordinance to the Drafting Board, the editorial team. Sixth stage is collecting opinions on the Law/Ordinance Project. At this period, the Drafting Board will raise issues that need to be consulted in accordance with each object; posting draft documents; concerned organizations and individuals, those directly affected give comments; synthesis of

research, assimilation of those opinions. In this stage, individuals or organizations (enterprises, associations, ...) can carry out lobbying activities through giving direct opinions, mobilizing related subjects for opinions to regulate adjust the draft content in line with legal policies of business that the association supports by submitting comments, participating in events (seminars, conferences, forums, ...) to consult, organize media events of the Drafting Board and the editorial team. The seventh stage, appraise the law/ordinance project and submit it to the Government. The Ministry of Justice appraised before submitting to the Government. The drafting agency receives comments on appraisal and revision of the draft and submits them to the Government. The Government Office holds a meeting with representatives of relevant ministries, organizations and individuals in case the document has many different opinions. The Government discusses and votes on the submission of the Law and Ordinance Project. The project is not submitted by the Government, the Government comments on the Draft file within 20 days with the support of the assigned ministry and the Ministry of Justice. In this cycle, individuals or associations can carry out advocacy activities so that the legal policy of business contents which they support are taken into account by the appraising agency by submitting opinions, consultations, etc.; participating in consultation events (workshops, forums, ...) to organize media events of the Ministry of Justice and the Government Office. The final stage is to approve a draft of law/ordinance and a resolution of the National Assembly. This is the stage where relevant agencies of the National Assembly examine the draft of law/ordinance. The Standing Committee of the National Assembly gives opinions, and the National Assembly considers and approves the draft of law/ordinance. Committees of the National Assembly shall assume the prime responsibility for and participate in project verification, invite representatives of the same verifying agency, relevant organizations, experts and affected subjects to give opinions and request the drafting agency to submit submissions, present, organize seminars to survey the issues of the draft content, make verification reports. Then, the Standing Committee of the National Assembly meets to consider and give opinions on the draft after listening to the presentation by the drafting agency, verification agency, participating organizations and individuals, and the drafting agency adjusts the draft according to the opinions of the Standing Committee of the National Assembly. Finally, the National Assembly considers and approves the draft law in one or two sessions. The project is sent to the National Assembly deputies; at the meeting, the agency submits the draft presentation, verification report, discussion in the group and plenary session. The Standing Committee of the National Assembly shall organize the adjustment, receive opinions and report to the National Assembly. The National Assembly voted to approve the draft. In this final process, individuals and associations can participate in lobbying by submitting opinions, participating in consultation events, organizing media events, working directly with others, meeting with National Assembly deputies and National Assembly delegations.

Advocating for international commercial law policies in Vietnam

In Vietnam, the competence and procedures for negotiating international commitments, treaties, agreements and agreements are generally stipulated in the 2016 Law on International Treaties. Specifically, according to this law, the main competence in negotiation is signed international treaties including treaties on international economic opening of Vietnam, including the following competent state agencies:

- The President or the Government have the right of decision on acceptance of Proposals for accession or negotiation of international treaties. Opinions of the Standing Committee of

the National Assembly or the National Assembly must be sought if an international treaty contains provisions contrary to or not yet provided in legal documents.

- President or Government have right of signing and ratification international treaty. If an international treaty contains provisions contrary to or not yet provided for in legal documents, it must be ratified by the National Assembly.

For the case of negotiating commitments to open business and trade markets, Vietnamese law has its own process to meeting the specific requirements and characteristics of these commitments in Decision 30/2003/QĐ-TTg dated February 21, 2003 promulgating the Working Regulations of the Government Negotiating Delegation on international economic. According to this document, the Government Negotiating Delegation on international economy and trade (the Government Negotiating Delegation) is tasked with preparing and conducting negotiations for Vietnam to join or sign international treaties on trade under the Prime Minister's decision. The actual implementation is assigned to the Ministry of Industry and Trade as the focal point with the participation of relevant ministries and branches in the Government. In fact, within the Negotiating Delegation, the assignment of work in the field of negotiation is usually done as follows:

- Ministry of Industry and Trade: to assume the prime responsibility for, and focal point, to gather negotiation plans in all fields and negotiate trade-related services (distribution, import and export, etc.)
- Ministry of Finance: Negotiating on tariffs
- Ministry of Planning and Investment: Negotiation on investment and settlement of disputes related to investment.
- Ministry of Science and Technology: Negotiation on intellectual property.
- Other ministries: negotiate on issues in their respective fields (the Ministry of Information and Communications is responsible for formulating plans and negotiating on opening the postal and telecommunications markets, etc.)

Internal assignment in the Negotiating Delegation is quite flexible. Therefore, in order to ensure the highest effectiveness, the right target audience in the process of legal policy advocacy of businesses, the association needs to approach the following agencies:

- Ministry of Industry and Trade Management,
- The ministry is assigned to preside over the relevant negotiation section
- Government negotiation team (National office for international economic cooperation located at the Ministry of Industry and Trade)

Regarding the mechanism for enterprises and associations to participate in the Government's trade negotiation process, Vietnam's current law provides for this issue as follows¹:

"1. The proposing agency is responsible for preparing for the negotiation of the international treaty and performing the following tasks:

- Preliminary assessment of political, defense, security, socio-economic impacts and other impacts of the international treaty;
- Preliminary review of current law provisions and international treaties to which the Socialist Republic of Vietnam is a contracting party in the same field, comparing with the main contents of the international treaty to be negotiated. judge;

- Collect opinions from the Ministry of Foreign Affairs, the Ministry of Justice and relevant agencies and organizations before submitting to authority agencies for decision on the negotiation of a treaty.

2. The agency or organization that is entitled to receive opinions specified at point C, Clause 1 of this Article shall reply in writing within 15 days from the date of receipt of a complete dossier of opinion collection."

Decision 06/2012/QĐ-TTg on consulting the business community on international trade agreements stipulates another rather specific mechanism for coordination between the negotiating body and the business community in the field of international trade. The process of feasibility study as well as negotiation of international trade agreements includes: responsibilities of the negotiating agency in providing information, receiving and processing opinions of enterprises. The right is consulted by the enterprise (the form of opinions) and the responsibility to keep information confidential. The Vietnam Chamber of Commerce and Industry (VCCI) is the focal point to gather and reflect the opinions of the business community to the negotiating agencies. Accordingly, organizations and associations under VCCI conduct investigations and research on important economic and commercial legal policies and send the results to relevant agencies; actively participate in seminars/forums to collect business opinions organized by relevant agencies; organize media events (forums, conferences) to direct public attention to these legal policies; research and respond in detail to consultation documents on international economic and trade legal policies from relevant agencies.

RECOMMENDATION

From the above research and analysis results, it is possible to make some notes and recommendations related to economic and commercial law advocacy activities of individuals, enterprises and professional associations as follows:

- It is necessary to focus on persuading competent state agencies in the process of legal policy advocacy. Although the right to participate in opinions of organizations and individuals (especially those directly affected by relevant policies) as well as the commenting mechanism has been recognized, the Vietnamese law has not yet had an adequate mechanism to ensure that these opinions are taken into account in the process of competent authorities reviewing policies and laws of Vietnam. In addition, many competent State agencies and officials in the process of drafting legal policies and especially when negotiating still do not have the habit or positive attitude towards consulting outside the State. Therefore, compared to developed countries, the advocacy of legal policies on business in Vietnam is still a process of persuading policy-making agencies to pay more attention to and accept their proposals. It is the process of using power or putting pressure on these agencies.
- It is necessary to be persistent and persistent in the process of policy and law advocacy. Advocating for economic and commercial legal policies is always a long process, with many subjects needing to mobilize and influence macro issues, so it takes a long time to see results and effectiveness. Therefore, besides having a large enough resource (human and financial), the advocate also needs calm and patience to be able to complete this process. In Vietnam, this is even more necessary because legal advocacy is still new and difficult and challenging. Because the socio-economic legal policies in

¹The 2016 Law on International Treaties, in Article 9

Vietnam are only initially transparent, sometimes it is impossible to predict the legal policy directions. It is not clear. It is easy to change over time. It is influenced by the subjective opinion of an organization or individual. In addition, the competent authorities are not always ready to listen and are really open to the opinions and comments of enterprises and associations. Advocacy for business legislation has not yet been regulated by a complete and transparent legal framework. Thus, there are still underground lobbying activities, which can lead to policy corruption, which can easily cause problems, pressing concerns for legal advocates honestly and legally. Therefore, the advocacy of legal policies in Vietnam needs perseverance and persistence throughout the process in order for the desire and goal of policy advocacy to come true.

- It is necessary to prepare sufficient financial resources to be able to reach the final results in the process of implementing legal advocacy activities. In many countries, where lobbying has become a “service,” where lobbying regulations and practices are complex and varied. It is difficult to talk about lobbying without money. However, in Vietnam, legal policy of business advocacy is still an activity that enterprises and associations can carry out with a small financial source but still bring high efficiency and practicality such as through giving opinions in writing, discussing related issues at conferences/forums organized by law drafting agencies, etc. However, if there is a certain budget and approved effective use such as the use of financial budgets to conduct research to have convincing arguments, organize campaigns using the media and call for public support, the campaign results will be more efficient.
- There should be cooperation between authority agencies, individuals and associations in the process of legal policy advocacy. Like other developing countries, policy advocacy in Vietnam is still not really popular and paid enough attention and not really as effective as the actual needs of society. Part of this is due to the limited capacity of legal advocates. Therefore, in order to achieve better efficiency in the future, there should be coordination between individuals and organizations, including enterprises and associations with competent state agencies in the process of issuing regulations and law enforcement. This cooperation will create complementarily and support for each other, save human resources and create a stronger influence and impact on the promulgation of legal policies of the government.

CONCLUSION

In conclusion, the act of lobbying for business legislation is a popular activity, existing in many countries. Although this activity is still new in Vietnam, it has been increasingly used by enterprises and associations to have a positive impact on Vietnam's policy-making process. In order to make legal policy advocacy more effective in the next period, the National Assembly of Vietnam needs to promulgate a law to regulate this activity. Besides, enterprises and associations need to develop a strategy to train a team of professional legal advocates.

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