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## Legal Representatives: Ensuring the Interests of Minors Participating in Capital Contribution to the Company

Dr. Le Thi Tuyet Ha<sup>1</sup>

### Abstract

*Except in cases of establishment and management, minors are not legally prohibited from participating in capital contribution, purchasing shares, or acquiring contributed capital (referred to as capital contribution) in a company. In principle, regarding the constitutional right to freedom of business, minors may engage in capital contribution to a company under the supervision of a legal representative by consenting or refusing to ensure the minor's best interests. This has led to some legal consequences disadvantaging minors. The article applies various methods of legal analysis along with practical correlations to analyze, comment, and provide directional recommendations for legal improvement.*

**Keywords:** Minors, Legal Representatives, Business Market, Capital Contribution Transactions, Ensuring the Interests of Minors

### INTRODUCTION

Considering the fairness factor regarding passive civil legal capacity, every individual existing in the objective world is equal, enjoying the same civil rights and obligations. However, an individual must possess legally recognized behavioral capacity to exercise active civil legal capacity. Accordingly, in business activities, individuals lacking full active civil legal capacity can still participate. This is the case for individuals aged fifteen to under eighteen (minors) who contribute capital to a company. However, this right is not permitted by law to be exercised as that of individuals with full active civil legal capacity, meaning it requires the consent of the legal representative. The practicality of business activities involving minors' participation is imperfect, with disadvantages and risks arising from the legal representative's consent or refusal, extending to the entire business operation process, all of which fail to ensure the legal principle of “ensuring the interests of minors”. In this spirit, the author analyzes relevant legal provisions to highlight the shortcomings in maximizing the interests of minors participating in capital contribution to the company from the perspective of the role of the legal representative<sup>2</sup>.

### CAPACITY AND THE RIGHT TO PARTICIPATE IN CAPITAL CONTRIBUTION TRANSACTIONS OF MINORS

#### The Law Recognizes the Passive Capacity of Minors

The 2015 Civil Code officially recognizes the legal personality of individuals and legal entities. Accordingly, an individual is a specific human being, born and currently living. Determining the rights and obligations of each individual is equal before the law; however, it depends on the assessment result of the passive legal capacity of the legal subject, so not every individual necessarily has the same rights and obligations<sup>3</sup>.

The legal capacity of an individual is the legal ability of the individual to participate in civil relations as the subject of that relationship, including two factors: passive civil legal capacity and active civil legal capacity<sup>4</sup>.

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<sup>1</sup> Head of the Commercial Law Department, Faculty of Law, Ho Chi Minh City Open University, Viet Nam. Email: [ha.ltht@ou.edu.vn](mailto:ha.ltht@ou.edu.vn)

<sup>2</sup> There are two research perspectives on ensuring the interests of minors: (1) the role of legal representatives, and (2) the management and operation of business activities by the company concerning the capital contributed by minors. In this article, the author only examines the first perspective.

<sup>3</sup> Nguyen Ngoc Dien (2022), “*Analysis Method of Legal Writing*”, The National Political Publishing House, Ho Chi Minh City, p. 24.

<sup>4</sup> A. Akhmetyanova, Zamira and Garaeva, Gelyusa and Nizamieva, Olga, Civil Legal Capacity of Minors (2018). *The Journal of Social Sciences Research*, ISSN(e): 2411-9458, ISSN (p): 2413-6670, Special Issue. 5, pp: 25-28, 2018, Available at SSRN: <https://ssrn.com/abstract=3774484>, accessed on July 26, 2023.

Thus, an individual's passive civil legal capacity is considered under normal circumstances, meaning the individual can enjoy, assume, and independently fulfill all rights and obligations associated with the subject. From the recognized passive civil legal capacity, the issue of exercising rights and obligations is posed for the individual, and the active civil legal capacity is considered a means to realize passive civil legal capacity<sup>5</sup>. It can be said that passive civil legal capacity and active civil legal capacity are two necessary and sufficient factors to constitute the legal subject's capacity of an individual. Accordingly, passive civil legal capacity serves as the legal prerequisite for exercising active civil legal capacity, and active civil legal capacity is considered the means to actualize passive civil legal capacity<sup>6</sup>.

Assessing the results of legal subject capacity depends on various factors such as age, cognitive ability, health, socio-economic conditions, customs, or the influence of bad habits leading to personality and moral degradation<sup>7</sup>. In this regard, when evaluating from the perspective of age, individuals are distinctly categorized between those aged 18 and above, termed adults, and those under 18, referred to as minors. Under normal conditions, adults have full active civil legal capacity. They are allowed by law to participate in all civil transactions and are personally responsible for their actions in those transactions. Conversely, minors' cognitive abilities and control over their behavior depend on their level of maturity (age). Vietnam's legislature has thus determined three levels of active legal capacity for minors: (1) individuals under six years old, unable to control and master their behavior in any case, therefore lacking active civil legal capacity; (2) individuals aged six to under fifteen; and (3) individuals aged fifteen to under eighteen, both having cognitive abilities but only sufficient to control and master their behavior in some cases, hence recognizing their active legal capacity as not fully mature<sup>8</sup> (Article 21 of the 2015 Civil Code).

### **The Right to Participate in Capital Contribution Transactions of Minors**

Capital contribution transactions involve agreements among parties entering the business market with the aim of seeking profits. Capital contribution activities take various forms depending on the timing or the type of enterprise involved. Capital contribution is a general activity when a subject engages in the establishment or joins a business by contributing capital, purchasing shares, or acquiring contributed capital<sup>9</sup>. To confirm the legal procedures for entering the business market of entities, the capital contribution must go through a transaction known as a capital contribution transaction. Currently, in the spirit of concretizing the constitution and ensuring business principles in a market economy, capital contribution must be conducted in cases not prohibited by law<sup>10</sup>. This principle must be correctly understood, meaning that if the law does not prohibit, individuals are free to execute and are not compelled to do what the law does not impose<sup>11</sup>.

Regarding the scope of research, minors, as defined by law, are only prohibited from establishing and participating in the management of businesses (point d, Article 17 of the 2020 Enterprise Law). Therefore, based on the principle of business freedom, it can be inferred that minors, except for establishing and managing businesses, can enter the business market through forms such as capital contribution, buying shares, or acquiring contributed capital in enterprises (companies) to seek profits using their own assets. In this case, an obligation is established, manifested in the form of a capital contribution contract called a Bilateral Contract,

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<sup>5</sup> Ho Chi Minh City Open University and Nguyen Ngoc Dien (2022), *Civil Law Textbook - Volume 1*, University of Ho Chi Minh City National University Publishing House, Ho Chi Minh City, p. 66.

<sup>6</sup> Pham Van Tuyet (2017), *Civil Law Course Guide*, Volume 1, Justice Publishing House, Hanoi, p. 70.

<sup>7</sup> Ho Chi Minh City Law University (2021), *General Provisions on Civil Law Textbook*, Hong Duc Publishing House, Ho Chi Minh City, p. 115.

<sup>8</sup> Bui Thi Thu (2020), "Legal Capacity of Minors' Civil Behavior According to the Provisions of the Civil Code of 2015", Master's thesis in Civil Law, University of Economics and Law, Ho Chi Minh City National University, pp. 35-45.

<sup>9</sup> Hanoi Law University, Nguyen Thi Dung and others (2022), *Law on Contracts in Trade and Investment - Basic Legal Issues*, The National Political Publishing House, Hanoi, p. 191.

<sup>10</sup> According to Article 33 of the 2013 Constitution: "Everyone has the right to freely conduct business in fields not prohibited by law" and Article 17(1) of the 2020 Enterprise Law.

<sup>11</sup> Trieu Quoc Manh (2022), *General Principles of Law and the Rule of Law State*, Ho Chi Minh City General Publishing House, Ho Chi Minh City, p. 20.

giving rise to the obligations of members within the company<sup>12</sup> under the capacity as owners of the company (members, company shareholders)<sup>13</sup>.

The law allows minors to participate in the business market with the intention of ensuring business freedom rights as stipulated by the constitution. However, the execution of transactions with significant assets, along with the cognitive ability and control over behavior, such as analysis, evaluation, and risk control, is not fully developed. Therefore, legislators have established mechanisms to ensure minors can exercise this right to the best of their ability. This reinforces the significance of maximizing the utilization of human resources in a market economy. Transactions must have the consent of the legal representative, and naturally, minors under 15 years old are not allowed to participate in the business market by contributing capital to a company<sup>14</sup>.

It must also be understood that not all types of businesses are open to minors. The law does not specify and directly address this case. However, based on the legal regulations of each type of business and in practice, minors can only participate in capital contribution in limited liability companies with two or more members, joint-stock companies, and capital-contributing members of partnerships<sup>15</sup>.

## **CAPITAL CONTRIBUTION TRANSACTIONS OF MINORS THROUGH LEGAL REPRESENTATIVES**

### **Conditions for the Validity of Capital Contribution Transactions into a Company by Minors**

The capital contribution transaction of minors into a company is an agreement established through a capital contribution contract<sup>16</sup>. In legal science, a contract is an agreement between parties to unite their intentions to establish goals and fulfill legal rights and obligations. Based on the content agreed upon by the parties, the contract will be given a suitable name and meet the conditions of that type of contract, in addition to the basic conditions of a civil transaction and the fundamental principles of civil law under Article 3 of the 2015 Civil Code<sup>17</sup>.

As a type of civil transaction, a contract must meet four common conditions under Article 117 of the 2015 Civil Code: (1) The legal capacity of the subjects must be suitable for the type of contract established; (2) The parties entering the contract must do so completely voluntarily, meaning the consensus between the parties must express genuine and freely given intent; (3) The purpose and content of the contract must not violate social morality or legal prohibitions. This provision implies that the purpose and content of the contract can be executed as long as they do not violate legal prohibitions, but they may still be executed incorrectly according to legal regulations; (4) The form of the contract must comply with legal provisions<sup>18</sup>. These are general conditions a contract must ensure in the spirit of being a civil transaction. However, when considering contracts independently, the fifth condition to be ensured is that the object of the contract must be executable according

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<sup>12</sup> Can Tho University and Nguyen Ngoc Dien (2009), *Roman Law Textbook*, National Political Publishing House, Hanoi, p. 57.

<sup>13</sup> Hanoi Law University, Nguyen Thi Dung and others (2022), *ibid*, p. 191.

<sup>14</sup> According to Article 77(2) of the 2014 Law on Marriage and Family, minors aged 15 to under 18 may use their own property for business purposes, but it requires written consent from their legal representative (which may be the father or mother).

<sup>15</sup> Sole proprietorships managed by individual and one-member limited liability companies are not legally allowed to accept capital contributions. In the case of a one-member limited liability company, capital contributions are accepted, and the company is required to convert its business form. The individual owner of a partnership must be a subject with full legal capacity. Reference the legal provisions in the 2020 Enterprise Law regarding sole proprietorships (Article 188), one-member limited liability companies (Articles 75 and 87), and partnerships (Article 17 and Article 177), as well as Government Decree No. 01/2021/NĐ-CP dated January 4, 2021, on Enterprise Registration (Article 80).

<sup>16</sup> As analyzed, capital contribution agreements can take two forms depending on the timing of the capital contribution: capital contribution agreement for company establishment and regular capital contribution agreement. *See more*: Hanoi Law University, Nguyen Thi Dung and others (2022), *ibid*, p. 191 and the following pages.

<sup>17</sup> Ho Chi Minh City Open University and Nguyen Ngoc Dien (2021), *Civil Law Textbook - Volume 2*, University of Ho Chi Minh City National University Publishing House, Ho Chi Minh City, p. 30 and the following pages.

<sup>18</sup> Ho Chi Minh City Open University and Nguyen Ngoc Dien (2022), *ibid*, p. 154 and the following pages.

to Article 408, Paragraph 1 of the 2015 Civil Code: “If, from the time of conclusion, the contract has an object that cannot be performed, the contract is void”<sup>19</sup>.

Depending on the content and nature of each type of contract, there may be additional supplementary conditions to ensure effectiveness and enforcement in accordance with the law. For the capital contribution contract of minors, the following conditions must also be met:

### **Consent Based on the Minor's Own Assets**

Originating from the condition that the subjects participating in civil transactions must do so entirely voluntarily (point b, Clause 1, Article 117 of the 2015 Civil Code), the participation of minors aged 15 and above in the capital contribution transaction must be based on their own desire and expressed through public and voluntary intent. Legal representatives or others should not influence the minor's will (coercion, threat, persuasion). To realize this desire, the minor's own property is the object transferred in this capital contribution contract. Therefore, when the minor themselves wishes to participate in the business market (contribute capital to a company) voluntarily, the minor can independently establish and execute the civil transaction; however, the consent of the legal representative must be obtained.

### **Consent from the Legal Representative**

As mentioned, the law allows minors aged 15 and above to participate in capital contribution activities using their own assets in business operations, specifically through capital contribution transactions, to become members/shareholders of a company. However, the consent of the legal representative is required. Additionally, parental consent must be expressed in writing (Clause 2, Article 77 of the 2014 Law on Marriage and Family). In the research content, the author analyzes issues surrounding the legal representative being the parent (under standard conditions). If the parent is not qualified to act as the legal representative, the case will shift to guardianship, with a designated guardian overseeing the guardianship according to regulations<sup>20</sup>.

Several issues regarding the consent of one or both parents as legal representatives are analyzed:

*Firstly*, in cases where only one parent is qualified to be the legal representative, how is the requirement for the consent of the legal representative (either parent)<sup>21</sup> fulfilled in the minor's capital contribution transaction? Is it sufficient for either the father or the mother, acting as the legal representative, to provide consent, or is the consent of the guardian of the parent who is not qualified as the legal representative also necessary<sup>22</sup>? In this scenario, the guardian of the parent also serves as the legal representative of the minor. In this case, the consent of the guardian of the parent has no significance because it essentially represents the will of the legal representative of the minor.

To address this issue, the author applies the principle in Clause 1, Article 87 of the 2014 Law on Marriage and Family, which states, “*in case one parent is restricted by the Court in rights concerning the minor, the other parent exercises the right to care for, nurture, educate, manage the minor's own property, and act as the legal representative for the minor*”. Therefore, in cases where one parent is under guardianship, meaning the rights regarding the minor are restricted, the remaining parent becomes the full legal representative for the minor<sup>23</sup>.

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<sup>19</sup> Ho Chi Minh City Open University and Nguyen Ngoc Dien (2021), *ibid*, p. 85 and the following pages.

<sup>20</sup> Ho Chi Minh City Open University and Nguyen Ngoc Dien (2022), *ibid*, p. 67.

<sup>21</sup> Refer to Article 136(1) of the 2015 Civil Code and apply similar legal provisions from Article 47(2) of the 2015 Civil Code in cases involving parents, both parents act as legal representatives for the minor in civil transactions.

<sup>22</sup> Consider the legal scenario: A and B are C's parents and currently serve as C's legal representatives (16 years old). Subsequently, A is involved in a traffic accident and declared legally incapacitated. At this point, B becomes the legal guardian for A (Article 53(1) of the 2015 Civil Code). One year later, C receives a block of personal assets from their grandfather and wishes to contribute this as capital to Company X. In this situation, C's capital contribution transaction requires the consent of B (the legal representative of C) and B (who is simultaneously the legal guardian of C).

<sup>23</sup> Ho Chi Minh City Open University and Nguyen Ngoc Dien (2021), *ibid*, p. 67 and the following pages.

Thus, for capital contribution transactions of minors aged 15 and above into a company, the consent of either the father or the mother, or both parents<sup>24</sup>, who are qualified as legal representatives, is sufficient.

*Secondly*, in cases where the legal representative agrees, it must also be entirely voluntary and ensure the best interests of the minor. The legislative spirit when establishing regulations on the consent of legal representatives of minors aged 15 and above for civil transactions with real estate or property subject to registration, acknowledged from practice, all valuable assets managed by the state, and with high risks, runs counter to the factors related to the awareness and control of behavior by minors. Therefore, refusal to consent should not occur for personal interests, even if the rightful interests of the minor are clearly expressed and the conditions for participating in the transaction are met.

*Thirdly*, the capital contribution transaction into a company by a minor aged 15 and above may involve assets that are not directly registered with the competent state agency. However, when participating in the capital contribution to a company, the minor will be recorded as a member/shareholder in the company's register. This excludes cases where minors aged 15 and above participating in capital contribution to a company do not require the consent of the legal representative, as it involves assets not subject to registration according to Clause 4, Article 21 of the 2015 Civil Code, such as money?

It can be observed that according to Clause 4, Article 21 of the 2015 Civil Code, other civil transactions as regulated by law require the consent of the legal representative. Therefore, when minors aged 15 and above participate, the consent of the legal representative is required. Based on this, examining the provision in Clause 2, Article 77 of the 2014 Law on Marriage and Family, “*a child from 15 to under 18 years old has the right to decide on personal property, except in cases where the property is real estate or property with registered ownership, the right to use, or is used for business, where written consent from parents or guardians is required*”.

Applying the principles of general law and specialized law<sup>25</sup>, determining the applicable violations, it is established that in cases where other relevant laws have provisions that do not conflict with the basic principles of civil law in Article 3 of the 2015 Civil Code, they take precedence (in accordance with the retroactive reasoning in Clause 3, Article 4 of the 2015 Civil Code)<sup>26</sup>. Thus, the 2015 Civil Code, with its 'open door' provision, allows the application of specialized laws, and the 2014 Law on Marriage and Family has relevant provisions. Therefore, written consent from parents is required when a child uses their personal property to engage in business.

In summary, for minors aged 15 and above who wish to participate in the business market, certain conditions must be met: (1) They must have the desire to engage in the business market, and this desire must be expressed voluntarily and freely; (2) This desire must be manifested through a capital contribution contract, and that contract must satisfy all the analyzed conditions; (3) The consent of the parents regarding the use of the minor's own property to enter the market through a capital contribution contract. The parental consent is understood to be for and ensuring the minor's interests. The expression of consent must be in writing.

However, in reality, it is not feasible to control all capital contribution transactions by minors aged 15 and above under the consent of the parents as a voluntary act, considering the interests and ensuring the interests of the minor or the interests of the legal representative, within the scope of this study, the parents, due to various influencing factors. It can be observed that if the consent for minors aged 15 and above to use their own property to participate in the business market (capital contribution transactions) aligns with the legislative spirit, there should be no issues beyond the need to reinforce and promote. However, conversely, it may lead to legal consequences, causing disadvantages (losses) for the minor, simultaneously impacting the business activities of the company, and, on a larger scale, affecting the market economy.

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<sup>24</sup> In cases where both parents act as legal representatives of the minor but have differing opinions (father agrees, but mother disagrees), consideration is given to the opinion ensuring the interests of the minor.

<sup>25</sup> Le Thi Ngoc Mai (2020), “Legal Effectiveness Hierarchy and Principles of Application of Legal Normative Documents”, *People's Court Journal online*, <https://tapchitoaan.vn/thu-bac-hieu-luc-phap-ly-va-nguyen-tac-ap-dung-van-ban-quy-pham-phap-luat>, accessed on July 28, 2023.

<sup>26</sup> Nguyen Ngoc Dien (2022), “*Analysis Method of Legal Writing*”, The National Political Publishing House, Ho Chi Minh City, p. 165 and the following pages, p. 127 and the following pages.

## **Legal Consequences arising from Participating in capital Contribution Transactions by Minors through a Legal Representative**

The legal representative of minors aged 15 to under 18 (commonly referred to as minors), under normal circumstances, being parents or just one parent (referred to as parents), must fulfill their duties and rights<sup>27</sup>, acknowledged by society and the law<sup>28</sup>. According to the provisions of the 2015 Civil Code, parents must consider the civil transactions of minors on the principle of ensuring the best interests through the minor's expressed opinions about participating in the transaction and must express their consent or refusal in writing.

From the perspective of examining and obtaining the consent of parents for minors when participating in capital contribution to a company or entering the business market, the minor must be the one to establish, execute, and terminate that business activity. Analyzing two legal consequences that arise:

*The first consequence is that*, upon engaging in business activities, the minor will become a member/shareholder (referred to as a member) of the company. The minor must independently complete all procedures for joining, carry out business activities, and manage and analyze legal risks in business. Additionally, they will enjoy material benefits from the company's business operations. When participating in capital contribution to the company, the minimum purpose is to gain profits<sup>29</sup>. In this case, the minor, with the desire to use their own assets to enter the business market, demonstrates an entrepreneurial mindset with the primary goal of seeking profits<sup>30</sup> (Article 10, Law on Enterprises 2020). After a period of business, the capital contributed by the minor generates a certain profit, clearly, the generated profit becomes the minor's private property. The question arises: once the minor has entered the market and is conducting business successfully, can the minor, who is now in control of their business activities, use the generated profit or private property to buy shares or contribute capital to the company without the consent of the legal representative? In the case where there is no doubt that the minor has reached the age of 18 (legal adulthood with full active civil legal capacity), it is not a question. Conversely, under normal circumstances (when the minor is still underage), according to the law, purchasing shares or contributing capital to the company still requires the consent of the parents.

*The second consequence is that*, when parents agree to their child participating in the business market under the guise of the child being a member of the company, parents will have control and influence over all the child's activities in the company through the value of the child's contributed capital (capital contribution ratio or shareholding ratio in the company)<sup>31</sup>. It can be said that parents practically control through the obligation and right of care, ensuring the child's interests (natural obligation)<sup>32</sup>. From the beginning, parents consider their consent as the "key" to this practical control. Therefore, the principle of ensuring the rights of the minor has been excluded. Clearly, in reality, this capital contribution transaction remains effective because it is challenging to control the factor of "ensuring the interests of the minor" as the law does not define it. The assumption is that taking economic benefits obtained from capital contribution to the company (profit) and using the assets as the obtained profit to ensure the child's interests is a factor in ensuring the interests of the minor. Conversely, with other purposes, the assumption is negated. In addition, when influenced by the opinions of parents, decisions regarding the minor's capital contribution to the company lead to risks (beyond the initial intention of the minor) that contradict the principle of ensuring the interests of the minor. All these situations demonstrate that parents will determine the decision-making power over the issues of the minor in the company and will impact

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<sup>27</sup> Article 69, Marriage and Family Law of 2014.

<sup>28</sup> Ho Chi Minh City Open University and Nguyen Ngoc Dien (2022), *Marriage and Family Law Textbook: Family and Personal Relations - Volume 1*, University of Ho Chi Minh City National University Publishing House, Ho Chi Minh City, p. 164 and the following pages.

<sup>29</sup> Hanoi Law University, Nguyen Thi Dung and others (2022), *ibid*, pp. 202 - 203.

<sup>30</sup> Duong Anh Son và Tran Thanh Huong (2016), "Commentary on the Right to Business Freedom in the 2014 Enterprise Law", *Legal Science Journal*, 02 (96)/2016, pp. 25-32.

<sup>31</sup> Refer to points b and 1 of Article 49 and Article 115(1) of the 2020 Enterprise Law (this provision remains unchanged from the 2014 Enterprise Law regarding voting rights; See more: Pham Quy Dat (2022), "Corporate Governance Model of Joint Stock Companies under Current Vietnamese Law", Ph.D. thesis in Economic Law, Hanoi Law University, Hanoi, p. 78.

<sup>32</sup> In this case, it cannot be said that the parents are the actual controllers through the legal representation mechanism, as analyzed above.

the minor (the minor may act as a “figurehead”). The author refers to this as the actual control of parental power<sup>33</sup>. This issue can be seen as follows:

Firstly, according to the law, the right of a minor to participate in a company by contributing capital for profitable business activities is the prerogative of the minor. Apart from consenting or not consenting to the minor's participation, parents have no other rights in the minor's business activities. Therefore, if parents engage in any conduct influencing the minor's decisions, which may be acceptable if it is in the minor's interest (such as providing positive advice), aligning with the natural and legal obligations of parents towards the minor<sup>34</sup>, and affecting the minor's business activities, or if it is for the parents' personal gain, it contradicts the legal principle of “ensuring the interests of the minor”. Furthermore, this indicates that parents have violated the scope of representation of the legal representative<sup>35</sup>, and more significantly, engaged in actions that infringe upon the legal rights and interests of the minor.

Secondly, all of this indicates an abuse of power by the parents, wherein the parents are the ones behind the scenes coordinating and influencing the company's operations through the minor as a member of the company<sup>36</sup>. Whether the minor holds a large or small share of the capital, the company is still impacted<sup>37</sup>. This contradicts the principles of business law, which mandate that the status of a company member must be effectively exercised based on the individual's own will. In this case, if violated, it must lead to legal consequences as per the law.

Therefore, when parents, as legal representatives, consent to the minor's participation in the business market by contributing capital to the company but do not adhere to the legal principle of “ensuring the interests of the minor” or, even if they ensure the minor's interests, act against the minor's wishes, abuse their power, and impact the company's business activities, exercising “real control”, it results in legal consequences for the legal representatives. In such a scenario, the transaction (capital contribution contract) is unable to be declared void. The basis for the application is the failure to ensure the intended purpose of establishing the initial transaction (Article 117, Clause 1, Point C of the 2015 Civil Code). This means that the purpose is to ensure the minor's interests, but the activities do not fulfill that purpose. This argument is entirely contrary to the principles of establishing transactions under Vietnamese practical law<sup>38</sup>. It can be seen that:

Firstly, the contract must ensure the interests of the minor. The purpose of the capital contribution contract is the common purpose of the contracting parties, in this contract being the minor and the legal representative of the company. Any deviation from the original purpose of the contract to ensure the minor's interests is due to the influence of the legal representative; however, the intentions and desires of the parties in the contract remain unchanged.

Secondly, performing the contract that does not contradict the established initial purpose. Accordingly, the capital contribution contract's purpose in the minor's company is to seek profits, which entirely depends on the company's business activities. Unless there is evidence to the contrary, claiming that the company does not comply with legal regulations, the company's articles and conducts business activities contrary to its purpose,

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<sup>33</sup> 万育绪律师 (13/7/2020), *未成年人可以通过出资获得股东资格*, *未成年人可以通过出资获得股东资格 - 知乎 (zhihu.com)*, accessed on July 28, 2023. (Minors may qualify to become shareholders through capital contribution).

<sup>34</sup> Ho Chi Minh City Open University and Nguyen Ngoc Dien (2022), *Marriage and Family Law Textbook: Family and Personal Relations - Volume 1*, *ibid*, p. 164.

<sup>35</sup> Violations within this legal representation scope are not considered to exceed the legal representation scope under Article 143 of the 2015 Civil Code.

<sup>36</sup> 万育绪律师 (13/7/2020), *未成年人可以通过出资获得股东资格*, *未成年人可以通过出资获得股东资格 - 知乎 (zhihu.com)*, accessed on July 26, 2023. (Minors may qualify to become shareholders through capital contribution).

<sup>37</sup> In a two-member or more limited liability company, a member's voting rights are based on the proportion of contributed capital (point b of Article 49 of the Enterprise Law), and in a joint-stock company, the voting rights ratio can be determined through the shareholder group mechanism (the aggregation of minority shareholders). See more: Le Thi Xuan Hue (2017), “Protection of Minority Shareholders in Vietnam: Situation and Solutions”, *Economic and Forecast Magazine online*, <https://kinhtevadubao.vn/bao-ve-co-dong-thieu-so-o-viet-nam-thuc-trang-va-giai-phap-10504.html>, accessed on July 29, 2023.

<sup>38</sup> Nguyen Hien Phuong and others (2022), *Bilingual Monograph: Comparative Legal Perspectives on Contract Law*, People's Police Publishing House, Hanoi, p. 179.

causing damage to the contributed capital, leading to the consequence of not ensuring the minor's interests, the contract may be rendered void. Therefore, the failure to ensure the interests of the minor in business activities at the company under the influence of the legal representative is a violation beyond the capital contribution contract and will incur other legal responsibilities.

Thirdly, when the minor has sufficient grounds to prove that the actions of the legal representative have affected their business activities at the company, leading to consequences causing damage (failure to ensure interests), they must bear compensation responsibility. Additionally, the infringement of the legitimate interests of the minor due to improper execution of the representation scope may lead to the court declaring restrictions on parental rights (in case of dissipation of the minor's property according to Article 85, Clause 1b of the 2014 Law on Marriage and Family) upon request<sup>39</sup>.

## CONCLUSION AND RECOMMENDATIONS

In conclusion of the research topic “Legal Representatives: Ensuring the Interests of Minors Participating in Capital Contribution to Companies”, the author presents some directional recommendations with the goal of refining the legal framework for safeguarding the interests of minors participating in capital contribution transactions within companies, specifically, and participating in other transactions in general. These recommendations are derived from the legal consequences arising during the execution of capital contribution transactions by minors through their legal representatives.

Regarding the participation of minors in purchasing shares or contributing capital to another company after having already participated in capital contribution and engaged in business activities in a prior company, is the consent of the legal representative (parents) still necessary? As analyzed earlier, certain drawbacks may occur, affecting the legal rights and interests of the minor. Therefore, to address this issue comprehensively, legislators need to consider it from two perspectives:

*Firstly*, if the minor continues to use their personal assets to engage in business with another company, the parents must still exercise control and evaluate whether it is suitable and genuinely ensures the minor's interests. This means that if the minor purchases shares or contributes capital to another company<sup>40</sup>, the parental representative's decision to agree or disagree becomes significant. The parents should assess the minor's involvement in the business activities of this company to ensure it benefits the minor, considering the spirit of examining the minor's wishes and opinions.

*Secondly*, if the minor continues to participate in purchasing shares or contributing capital to the same company, the parents do not necessarily need to review and express their decision as legal representatives, whether they agree or disagree with the minor's continued participation. This implies that if the minor is involved in purchasing shares or contributing capital to the same company, the minor has the right to continue participating (establishing, implementing) without requiring the consent of the parents. This is because, during the time spent in the company, the minor understands their own desires, directions, and strategies within the company better than anyone else. In this scenario, the minor's decision to participate will be based on much more accurate research, observation, and evaluation than the parents, ensuring the minor's interests.

Therefore, it is evident that the role of the legal representative (parents) for minors is crucial, as exemplified by the case of considering whether to agree or disagree with the minor's participation in capital contribution to a company, despite the fact that capital contribution involves the use of the minor's personal assets./.

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<sup>39</sup> Ho Chi Minh City Open University and Nguyen Ngoc Dien (2022), *Marriage and Family Law Textbook: Family and Personal Relations - Volume 1*, *ibid*, p. 166.

<sup>40</sup> Nguyen Thanh Hung (2020), “Some Drawbacks and Limitations on the Establishment, Organization, and Operation of Enterprises under the 2014 Enterprise Law”, *Industry and Trade Journal*, <https://tapchicongthuong.vn/bai-viet/mot-so-bat-cap-han-che-ve-thanh-lap-to-chuc-va-hoat-dong-cua-doanh-nghieptheo-luat-doanh-nghiep-nam-2014-72708.htm>, accessed on July 28, 2023; and Pham Vu Phuong (2019), “Current Legal Situation of Transfer of Capital Contribution in Joint Stock Companies under the 2014 Enterprise Law”, *Industry and Trade Journal*, <https://tapchicongthuong.vn/bai-viet/thuc-trang-phap-luat-ve-chuyen-nhuong-phan-von-gop-trong-cong-ty-co-phan-theo-quy-dinh-cua-luat-doanh-nghiep-nam-2014-62271.htm>, accessed on July 28, 2023. (*The content related to the 2020 Enterprise Law remains unchanged compared to the findings presented in these documents*).



## REFERENCES

### A. Legal Documents

The 2013 Constitution

Civil Code of 1995

Civil Code of 2005

Civil Code of 2015

Enterprise Law of 2014

Enterprise Law of 2020

Marriage and Family Law of 2014

Decree No. 01/2021/NĐ-CP dated January 4, 2021, of the Government on enterprise registration

### B. Domestic Literature

Bui Thi Thu (2020), "Legal Capacity of Minors' Civil Behavior According to the Provisions of the Civil Code of 2015", Master's thesis in Civil Law, University of Economics and Law, Ho Chi Minh City National University.

Le Thi Xuan Hue (2017), "Protection of Minority Shareholders in Vietnam: Situation and Solutions", Economic and Forecast Magazine online, <https://kinhtevdubao.vn/bao-ve-co-dong-thieu-so-o-viet-nam-thuc-trang-va-giai-phap-10504.html>, accessed on July 29, 2023.

Le Thi Ngoc Mai (2020), "Legal Effectiveness Hierarchy and Principles of Application of Legal Normative Documents", People's Court Journal online, <https://tapchitoaan.vn/thu-bac-hieu-luc-phap-ly-va-nguyen-tac-ap-dung-van-ban-quy-pham-phap-luat>, accessed on July 28, 2023.

Nguyen Ngoc Dien (2022), "Analysis Method of Legal Writing", The National Political Publishing House, Ho Chi Minh City.

Nguyen Ngoc Dien (2010), Monograph: Subjects of Civil Legal Relations, National Political Publishing House, Hanoi.

Nguyen Hien Phuong and others (2022), Bilingual Monograph: Comparative Legal Perspectives on Contract Law, People's Police Publishing House, Hanoi.

Nguyen Thanh Hung (2020), "Some Drawbacks and Limitations on the Establishment, Organization, and Operation of Enterprises under the 2014 Enterprise Law", Industry and Trade Journal, <https://tapchicongthuong.vn/bai-viet/mot-so-bat-cap-han-che-ve-thanh-lap-to-chuc-va-hoat-dong-cua-doanh-nghieptheo-luat-doanh-nghiep-nam-2014-72708.htm>, accessed on July 28, 2023.

Pham Van Tuyet (2017), Civil Law Course Guide, Volume 1, Justice Publishing House, Hanoi.

Pham Quy Dat (2022), "Corporate Governance Model of Joint Stock Companies under Current Vietnamese Law", Ph.D. thesis in Economic Law, Hanoi Law University, Hanoi.

Pham Vu Phuong (2019), "Current Legal Situation of Transfer of Capital Contribution in Joint Stock Companies under the 2014 Enterprise Law", Industry and Trade Journal, <https://tapchicongthuong.vn/bai-viet/thuc-trang-phap-luat-ve-chuyen-nhuong-phan-von-gop-trong-cong-ty-co-phan-theo-quy-dinh-cua-luat-doanh-nghiep-nam-2014-62271.htm>, accessed on July 28, 2023.

Hanoi Law University, Nguyen Thi Dung and others (2022), Law on Contracts in Trade and Investment - Basic Legal Issues, The National Political Publishing House, Hanoi.

Can Tho University and Nguyen Ngoc Dien (2009), Roman Law Textbook, National Political Publishing House, Hanoi.

Ho Chi Minh City Open University and Nguyen Ngoc Dien (2021), Civil Law Textbook - Volume 2, University of Ho Chi Minh City National University Publishing House, Ho Chi Minh City.

Ho Chi Minh City Open University and Nguyen Ngoc Dien (2022), Marriage and Family Law Textbook: Family and Personal Relations - Volume 1, University of Ho Chi Minh City National University Publishing House, Ho Chi Minh City.

Ho Chi Minh City Open University and Nguyen Ngoc Dien (2022), Civil Law Textbook - Volume 1, University of Ho Chi Minh City National University Publishing House, Ho Chi Minh City.

Ho Chi Minh City Law University (2021), General Provisions on Civil Law Textbook, Hong Duc Publishing House, Ho Chi Minh City.

Trieu Quoc Manh (2022), General Principles of Law and the Rule of Law State, Ho Chi Minh City General Publishing House, Ho Chi Minh City.

Tuong Duy Luong (2018), "Subjects of Civil Legal Relations in the Civil Code of 2015", Legislative Research Journal, Issue 22 (374).

Duong Anh Son và Tran Thanh Huong (2016), "Commentary on the Right to Business Freedom in the 2014 Enterprise Law", Legal Science Journal, 02 (96)/2016.

### C. Foreign Literature

A. Akhmetyanova, Zamira and Garaeva, Gelyusa and Nizamieva, Olga, Civil Legal Capacity of Minors (2018). The Journal of Social Sciences Research, ISSN(e): 2411-9458, ISSN (p): 2413-6670, Special Issue. 5, pp: 25-28, 2018, Available at SSRN: <https://ssrn.com/abstract=3774484>, accessed on July 26, 2023.

万育绪律师 (13/7/2020), 未成年人可以通过出资获得股东资格, 未成年人可以通过出资获得股东资格 - 知乎 (zhihu.com), accessed on July 26, 2023. (Minors may qualify to become shareholders through capital contribution)..