



LEGAL ARTICLE

**ATA'S PROPOSALS FOR ADMENDING
LEGAL DOCUMENTS IN ACCORDANCE
WITH RESOLUTION NO.68-NQ/TW ON
PRIVATE ECONOMIC DEVELOPMENT**

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On May 4, 2025, the Politburo issued Resolution No. 68-NQ/TW (“**Resolution 68**”) on private economic development. Resolution 68 includes many specific and groundbreaking contents, demonstrating the determination to build and develop the private economy in the current. As a law consulting firm with many years of experience accompanying businesses and entrepreneurs, ATA Legal Services (“**ATA**”) has prepared this article to provide our clients and readers with insights into the impact of Resolution 68 on Vietnam’s legal system in the coming time. In this article, we will analyze the contents, assess the impacts, and propose some recommendations for adjusting legal documents in accordance with Resolution 68 to improve and elevate the investment and business environment and promote the growth of the business community.

I. CORE CONTENT OF RESOLUTION 68

1. Affirming the private economy as one of the most important drivers of the national economy

In Resolution No. 68-NQ/TW dated June 23, 2020, of the 12th Central Committee of the Communist Party of Vietnam, the private economy was only considered “an important driving force of the economy” However, as of now, after nearly 40 years of implementing the “Đổi mới” (Renewal) policy (since 1986), for the first time, the Party has officially affirmed that the private economy is one of *the most important driving forces* of the economy. This marks not only an acknowledges of the significant contributions made by the private sector over the years, but also a strong affirmation and determination by the political system to build and reform mechanisms, institutions, and policies to facilitate the development of the private economy in Vietnam in the coming time.

2. Major orientations and policies for improving the legal system

Resolution 68 sets out two fundamental, breakthrough principles in the development and enactment of laws, including:

- a) Affirming that enterprises and individuals are free to conduct business in sectors not prohibited by law; private enterprises shall have equal access to business opportunities and resources of the economy, especially capital, land, technology, human resources, data, and other lawful resources in accordance with legal regulations.

b) Timely development and completion of laws, mechanisms, and breakthrough policies to encourage private sector development, with particular priority given to high-tech sectors, small and medium-sized enterprises (SMEs), and innovative start-ups.

Accordingly, based on the two core principles mentioned above, Resolution 68 outlines a series of solutions and tasks to promote the development of the private economy, notably:

Affirming the principle of giving priority to the protection of enterprise's legitimate rights and interests

- The State shall not administratively interfere with production and business activities contrary to market principles.
- Citizens and enterprises are free to do business in industries and sectors not prohibited by law. The right to do business may only be restricted for reasons of national defense, national security, public order, social morality, environmental protection, and public health, and such restrictions must be prescribed by law.
- Strictly handle acts that restrict competition, abuse dominant or monopoly positions, and engage in unfair competition.
- Eliminate overlapping, duplicative, and prolonged inspections and audits; ensure the principle of conducting inspections/audits only once per year for each enterprise, except in cases with clear evidence of legal violations; strictly sanction abuse of inspections to harass or cause difficulties for businesses.
- Amend the laws on criminal, civil, criminal procedure, and civil procedure to ensure the principle that in handling violations in civil and economic matters, civil, economic, and administrative measures shall be prioritized first, allowing enterprises and entrepreneurs to proactively remedy violations and losses.
- Clearly distinguish between legally acquired assets and assets obtained through illegal acts, as well as other assets related to the case; between the assets, rights, and obligations of the enterprise and those of individuals in management positions.

These policies are expected to give businesses, entrepreneurs, and investors greater confidence when investing and conducting business in Vietnam, reducing apprehension and fear stemming from the recent surge of economic-related legal cases.

2025 is determined as the target year for completing the reform of administrative procedures applicable to business operations

- In 2025, complete the review and elimination of unnecessary business conditions, overlapping or inappropriate regulations that hinder private enterprise development; reduce administrative procedure processing time by at least 30%, compliance costs by at least 30%, and business conditions by at least 30%, and continue strong reductions in the following years.
- Minimize interference and eliminate administrative barriers, "ask-give" mechanisms, and the mindset of "if it cannot be managed, it must be banned."

- Strongly shift from pre-check to post-check mechanisms with enhanced inspection and supervision. Transition the management of business conditions from licensing/certification to public disclosure and post-check, except for a few sectors that must comply with licensing procedures under regulations and international practices.
- Ensure the full online implementation of procedures for the establishment of industrial property rights, and minimize the time required for intellectual property registration procedures, in line with international norms.
- Shorten the time required to process land lease and land use right certification procedures.

In general, to achieve the above targets, 2025 will continue to be a year where the entire political system must work intensively and rapidly to revise a series of legal documents related to the Law on Enterprises, Law on Investment, Law on Intellectual Property, and specialized legal documents regulating business conditions in various sectors. The policy of shifting management activities from pre-check to post-check, once implemented in practice, will not only facilitate and resolve difficulties for businesses in seizing opportunities and conducting business activities but also help avoid superficial enforcement, while improving the sense of responsibility of entrepreneurs and enterprises towards clients and society at large throughout their development journey.

Reducing and abolishing various tax and financial obligations for enterprises, particularly small and medium-sized enterprises ("SMEs")

- Abolish the business license tax; exempt corporate income tax for small and medium-sized enterprises during the first three years of establishment.
- Implement policies to reduce at least 30% of land rental fees for SMEs, innovative start-ups, and high-tech enterprises for the first five years from the date of land lease agreement signing.
- Allow enterprises to count 200% of actual R&D expenditures as deductible expenses for corporate income tax calculation. Provide support policies for investment in machinery, technology innovation, digital and green transformation, sustainable and circular business practices through corporate income tax deductions or subsidies from relevant funds.
- Offer tax exemption and reduction policies for innovative start-ups, venture capital fund management companies, and intermediary organizations supporting innovation and entrepreneurship from the time corporate income tax becomes applicable. Exempt personal and corporate income tax for individuals and organizations on income from the transfer of capital contributions or the right to contribute capital to innovative start-ups. Provide personal income tax reductions or exemptions for experts and scientists working at innovative start-ups, R&D centers, innovation hubs, and intermediary support organizations.

These policies can be considered groundbreaking as they go beyond the limits of current legal principles. They are expected to significantly ease the financial burden on enterprises, especially SMEs – the dominant force in the private economic sector.

II. ATA'S PROPOSALS FOR AMENDING LEGAL DOCUMENTS IN ACCORDANCE WITH RESOLUTION 68

To realize the orientations set out in Resolution 68-NQ/TW, in the coming period, the State will need to amend and synchronously improve relevant legal documents. Based on our knowledge and regular experience in handling and consulting on legal issues for businesses and entrepreneurs, ATA would like to propose several recommendations regarding the amendment of essential legal documents that significantly affect the business community as follows:

1. Legal documents directly regulating the activities of enterprises

1.1. The Law on Enterprises and the Law on Investment

Although the current Law on Enterprises and the Law on Investment are relatively “open” and “facilitative” in terms of business registration and amendment procedures, in practice, local departments and authorities tend to be more “cautious” and impose stricter controls than prescribed by law. As a result, businesses still face difficulties in completing relevant administrative procedures.

In our opinion, legislators should consider amending the Law and its subordinate regulations in the following ways:

- (i) Add a provision clearly stating the principle that enterprises are allowed to engage in any business activities not prohibited by law.
- (ii) Include clear rules affirming that business registration procedures are to be handled based on the principle of enterprise autonomy and self-responsibility. It should be strictly prohibited to add more document requirements, procedures, or responsibilities for businesses or entrepreneurs. Inspection and evaluation of legal compliance should be handled in the post-check phase.
- (iii) Clarify the timeframe and maximum number of times allowed to process procedures, ensure feedback mechanisms, and provide a monitoring system for applicants to track progress. Introduce a “silent means consent” mechanism for cases where authorities must provide feedback or coordinate but fail to meet the prescribed deadlines.

(iv) Amend investment and business conditions that currently act as barriers, and expand the list of business sectors eligible for investment incentives, especially for the private sector.

(v) Add the responsibility of investment and business authorities to issue official and clear guidance on investment and business conditions to serve as a basis for implementation and/or compliance by businesses.

1.2. The Land Law

The 2024 Land Law was passed swiftly and contains many progressive provisions that facilitate access for citizens and businesses. However, implementation still faces numerous challenges. Therefore, the Government should soon issue detailed guiding decrees, especially those ensuring fair access to land among different economic sectors and resolving obstacles in land allocation and leasing for private businesses.

1.3. The Law on Bidding and related public investment regulations

There are still issues in the Law on Bidding, the Law on Public Investment, and the Law on Public-Private Partnership (PPP), making it hard for private businesses—especially small and medium-sized ones—to compete with state-owned enterprises. Specifically:

- The Law on Bidding includes overly strict criteria on experience and capacity, often requiring proof of having implemented similar-scale projects, effectively excluding SMEs and startups unless they form joint ventures with qualified firms.
- The Law on Public Investment does not allow private businesses to proactively propose public investment projects, limiting innovation and reducing the appeal of public projects to the private sector.
- The PPP Law caps the State's contribution to 50% of a project's total investment. Though Decree No. 71/2025/ND-CP has raised this to 70% for projects in difficult and especially difficult socio-economic areas, it still does not offer a revenue guarantee mechanism or strong legal policy consistency, causing concern for private investors.

Thus, the Government should revise or eliminate current provisions that are unfavorable to the private sector as outlined above.

1.4. The Law on Supporting Small and Medium-Sized Enterprises (SMEs)

Resolution 68 offers many orientations and solutions to support SMEs. Accordingly, the Law on Supporting SMEs should be amended to reflect these directions, including:

- Mechanisms to support access to non-budget funding sources such as ODA, concessional international loans, venture capital, and crowdfunding.

- Preferential mechanisms for SMEs in public procurement and simplification of bidding requirements.
- Policies to support SMEs in digital capacity development and technological innovation.
- Provisions to help SMEs integrate into value chains with large enterprises and participate in domestic and international supply chains.
- Supportive policies and incentives on taxes, finance, and access to production and business infrastructure.

1.5. The Intellectual Property Law

Currently, weak enforcement and insufficient sanctions make the Intellectual Property Law ineffective in protecting IP rights, which negatively affects Vietnam's investment environment. Therefore, strengthening this law is crucial to supporting private sector development. Necessary amendments include:

- Increasing sanctions, not only in terms of monetary fines and compensation but also additional measures such as confiscation of illegal gains, banning violators from holding relevant positions, and recalling infringing products.
- Simplifying the registration process for IP rights by reducing review times and clarifying deadlines and responsibilities of competent authorities.
- Creating a mechanism for IP valuation and allowing IP rights to be used as collateral for loans or capital mobilization.

1.6. Other areas

Other related areas such as taxation, finance, insurance, labor, and technology transfer also need to be adjusted to align with Resolution 68 and ensure systemic consistency.

2. Legal Documents Establishing Mechanisms for Protecting the Lawful Rights and Interests of Enterprises

As previously mentioned, a key focus of Resolution 68 is emphasizing the protection of the lawful rights and interests of entrepreneurs and businesses, and preventing the criminalization of economic and civil relations. Accordingly, this orientation will have significant impact and needs to be concretized in relevant legal documents, particularly in areas of judicial law such as criminal law, criminal procedure, and civil procedure.

2.1. Amendments to the Criminal Code to Prevent the Criminalization of Economic and Civil Relations

- Article 3 of the Criminal Code on Principles of Criminal Handling should be supplemented with the following:
 - (i) Economic and civil relations shall not be criminalized;

- (ii) Priority should be given to the application of civil, economic, and administrative measures, allowing enterprises and entrepreneurs to proactively remedy violations and damages;
- (iii) Prohibition of the retroactive application of laws to impose adverse consequences on enterprises.
- Clearly distinguish between breaches of contract or management errors and acts constituting criminal offenses (e.g. Article 219 – Offenses against economic management regulations causing serious consequences; Article 200 – Tax evasion).
- Clearly distinguish between cases involving loans or investment cooperation that face repayment difficulties and acts with signs of criminal offenses (e.g. Article 174 – Fraudulent appropriation of property; Article 175 – Abuse of trust to appropriate property).

2.2. Amendments to the Criminal Procedure Code to Ensure Lawful Rights and Encourage Enterprises to Remedy Violations

- Ensure the rights of businesses and entrepreneurs who are denounced or subject to criminal complaints, especially the right to legal counsel from the earliest stage, the right to remain silent until the lawyer is present, and the lawyer's full right to access case files and meet with clients during the investigation phase.
- Add specific provisions or guiding documents clarifying the legal basis for determining that a violation lacks criminal elements, thereby serving as a ground for not initiating a criminal case.
- Add provisions allowing and encouraging the use of civil or economic measures to remedy damages. For cases that have been initiated, allow for temporary suspension or termination of investigation if the business has fully remedied the consequences.

2.3. Amendments to the Civil Procedure Code to Ensure Party Autonomy and Improve Dispute Resolution Efficiency

- Permit simplified procedures and shortened trial timeframes for straightforward commercial cases with low dispute value, simple facts, and minimal verification procedures.
- Add provisions for the use of digital technology in civil procedure, such as online submission and receipt of petitions; access to evidence and case files via digital platforms; inter-agency data sharing to reduce processing time for verification procedures; and promote online trials to reduce costs and save time for businesses

2.4. It is necessary to supplement inter-ministerial circulars issued by the Supreme People's Court, the Supreme People's Procuracy, and the Ministry of Public Security, as well as resolutions of the Judicial Council of the Supreme People's Court, to clarify and provide guidance on the criteria for identifying and/or

excluding criminal elements, serving as a basis for non-initiation, suspension, or temporary suspension of criminal investigations.

It can be said that Resolution 68 is a strategic step, reflecting a comprehensive shift in the mindset of the Communist Party of Vietnam regarding the development of the private economy. The Resolution not only reaffirms the private sector's role as a driving force of the economy, but also sets forth urgent requirements for institutional reform, legal system improvement, and ensuring a fair competitive environment. To realize the Resolution, there must be close coordination among the legislative, executive, and judicial branches, the active participation of the business community, and the oversight of society. Only then can the private sector truly develop in a robust and sustainable manner, making a positive contribution to the cause of national industrialization and modernization.

ABOUT US

ATA GLOBAL LEGAL LIMITED COMPANY (ATA Legal Services) is established and operated by acknowledged and experienced lawyers. Our operational goal is to become a law firm providing flexible and comprehensive legal services to both organizations and individuals, and both local and international clients. Of which, one of our core service is in-depth corporate consultancy.

All partners, lawyers, advisors, consultants, and even paralegals of ATA Legal Services are well-trained and have years of experience in the areas they are in charge of. In particular, the partners of ATA Legal Services have all consulted for and worked with renowned economic groups, banks or securities companies such as Vingroup, FLC, DNP, Tasco, Techcombank, SHB, SHS, VPS, etc.

With a serious and professional working attitude along with the dedication of the team always trying to put ourselves in the position of clients to understand their needs and aspirations, we are committed to bringing the most effective and appropriate services for Valued Clients.

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