

LEGAL FRAMEWORK GOVERNING CAPITAL CONTRIBUTION BY INTELLECTUAL PROPERTY RIGHTS OF FOREIGN INVESTORS INTO VIETNAM

QUADRO JURÍDICO QUE REGE A CONTRIBUIÇÃO DE CAPITAL POR DIREITOS DE PROPRIEDADE INTELECTUAL DE INVESTIDORES ESTRANGEIROS NO VIETNÃ

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Abstract

This article examines the legal provisions, analyzes, and evaluates the current legal framework governing capital contribution by intellectual property rights (IPRs) by foreign investors into Vietnam in the contemporary context. By employing qualitative research methods in combination with descriptive statistical analysis based on secondary data collected from existing legal documents related to capital contribution by intellectual property rights of foreign investors, the article identifies several positive aspects as well as certain shortcomings and limitations in the legal regulation of this form of capital contribution. On that basis, the article proposes a number of recommendations aimed at addressing these shortcomings and limitations, thereby improving the effectiveness of legal implementation in capital contribution activities by intellectual property rights of foreign investors in Vietnam.

Keywords: Capital Contribution. Intellectual Property Rights. Foreign Investors.

Resumo

Este artigo examina as disposições legais, analisa e avalia o atual quadro legal que rege a contribuição de capital por meio de direitos de propriedade intelectual (DPI) por investidores estrangeiros no Vietnã, no contexto contemporâneo. Utilizando métodos de pesquisa qualitativa em combinação com análise estatística descritiva baseada em dados secundários coletados de documentos legais existentes relacionados à contribuição de capital por meio de direitos de propriedade intelectual de investidores estrangeiros, o artigo identifica diversos aspectos positivos, bem como certas deficiências e limitações na regulamentação legal dessa forma de contribuição de capital. Com base nisso, o artigo propõe uma série de recomendações visando sanar essas deficiências e limitações, aprimorando, assim, a eficácia da implementação legal das atividades de contribuição de capital por meio de direitos de propriedade intelectual de investidores estrangeiros no Vietnã.

Palavras-chave: Contribuição de Capital. Direitos de Propriedade Intelectual. Investidores Estrangeiros.



1 INTRODUCTION

Intellectual assets constitute an important component of the system of intangible assets within enterprises. Unlike tangible assets, which are often subject to limitations in exploitation and are difficult to reproduce, intellectual assets are characterized by their outstanding capacity for reproduction and repeated exploitation across various business contexts (Luong, M, L., 2023). When lawfully established and properly managed, intellectual assets can be assigned a commercial value or fair value at a given point in time and are expected to generate future economic benefits for enterprises. Accordingly, such assets have increasingly assumed a significant role in investment activities, as well as in mergers and acquisitions.

From a legal perspective, intellectual assets are intrinsically associated with intellectual property rights. In legal research and practice, terms such as “intellectual assets,” “intellectual property,” and “intellectual property rights” are often used interchangeably, and in some cases are even treated as conceptually identical. Based on this approach, within the scope of this article, intellectual assets are examined as synonymous with intellectual property rights, understood as a special category of proprietary rights capable of participating in investment and business relations.

In the context of accelerating industrialization, modernization, and deepening international integration, capital contributions by foreign investors play a particularly important role in Vietnam’s economic development. As a developing country, Vietnam not only seeks to attract investment capital in terms of quantity but also increasingly emphasizes the quality of investment inflows. In this regard, forms of capital contribution associated with inventions, patents, technologies, and scientific and technological achievements carry strategic significance, as they represent resources capable of generating high value-added outcomes, promoting innovation, and enhancing the competitiveness of the national economy. Therefore, effectively attracting and utilizing capital contributions in the form of intellectual property rights by foreign investors not only contributes to economic growth but also facilitates profound transformations in Vietnam’s economic structure and social development in the current period.

2 LITERATURE REVIEW

To date, a number of studies have directly or indirectly addressed issues related to capital contribution by intellectual property rights by foreign investors into Vietnam, including the following:

In her article *“The Current Status of Legal Regulations on Contributed Assets of Foreign Investors”* (2023), Le Thi Dung clarifies the legal basis, valuation requirements, and obligations to prove ownership of intellectual assets used as capital contributions. However, the study adopts a general approach to contributed assets and does not provide an in-depth analysis of the specific legal characteristics of capital contribution by intellectual property rights in relation to investment law and intellectual property law, particularly with respect to intellectual property rights of foreign origin.

The article *“Difficulties in Capital Contribution by Intellectual Assets for Enterprise Establishment and Recommendations for Legal Improvement”* by MSc. Luong My Linh (2023), published in the *Journal of Democracy and Law*, highlights practical challenges in using intellectual property rights as capital contributions, focusing primarily on issues of asset valuation and proof of lawful ownership. Nevertheless, the article mainly approaches the issue from the perspective of enterprise law, without situating it within the context of foreign investors’ capital contributions or analyzing its intersection with investment law.

The article *“Improving the Law on Capital Contribution by Industrial Property Rights for Trademarks”* by Tran Cao Thanh (2021), published in the *Hue University Journal of Science: Social Sciences and Humanities*, focuses on analyzing legal regulations governing capital contribution by industrial property rights in respect of trademarks. It also raises important legal issues related to the establishment, protection, and exploitation of the value of industrial property rights over trademarks, providing useful references for the study of capital contribution by intellectual assets.

From the above studies, it can be observed that although intellectual property rights as contributed capital have been examined from various perspectives, there remains a lack of in-depth, direct, and systematic research on the legal framework governing capital contribution by intellectual property rights by foreign investors into Vietnam. This research gap is precisely what the present article seeks to address.

3 THE CURRENT LEGAL FRAMEWORK OF VIETNAM GOVERNING CAPITAL CONTRIBUTION BY INTELLECTUAL PROPERTY RIGHTS OF FOREIGN INVESTORS INTO VIETNAM

3.1 Provisions of the intellectual property law on capital contribution by intellectual property rights

The Law on Intellectual Property 2005 (as amended and supplemented in 2009, 2019, and 2022) does not explicitly employ the term “capital contribution by intellectual property rights.” However, through its provisions on proprietary rights and the right of disposition of right holders, the Law implicitly recognizes the possibility of using intellectual property rights as a category of assets participating in investment and business relations.

Pursuant to Clause 1, Article 4 of the Law on Intellectual Property¹, intellectual property rights are defined as the rights of organizations and individuals to intellectual assets, including copyright and related rights, industrial property rights, and rights to plant varieties. From a civil law perspective, these rights are inherently proprietary in nature and may be disposed of in accordance with the law. Specifically, provisions governing the assignment of industrial property rights, the licensing of industrial property objects, as well as the transfer of copyright and related rights allow right holders to enter into transactions that give rise to, modify, or terminate their proprietary rights.

In cases of capital contribution by intellectual assets, particularly copyrights, only proprietary rights may be transferred, whereas moral rights are non-transferable. This principle is explicitly stipulated in Clause 2, Article 45 of the Law on Intellectual Property 2005², which provides that: “Authors may not assign the moral rights stipulated in Article 19, except for the right of publication of works; performers may not assign the moral rights stipulated in Clause 2, Article 29 of this Law.” With respect to lawful owners of intellectual assets, the capital-contributing party must have been granted a protection title by a competent state authority or fall within the category of subjects entitled to lawful use of the intellectual assets intended for contribution and must not be subject to any statutory restrictions on transfer under intellectual property law.

¹ The Law on Intellectual Property 2005 (as amended and supplemented in 2009, 2019 and 2022)

² The Law on Intellectual Property 2005 (as amended and supplemented in 2009, 2019 and 2022)

Another legal issue concerns the relative and time-limited nature of capital contribution by intellectual assets. This stems from the fact that intellectual property rights are subject to temporal and territorial limitations of protection. For example, under Clause 6, Article 93 of the Law on Intellectual Property 2005, trademarks may, in principle, be protected indefinitely, provided that the owner renews the protection consecutively, each renewal being valid for a period not exceeding ten years. Accordingly, if the protection term expires without renewal, the company receiving capital contribution in the form of trademark rights will lose its rights to the contributed intellectual property. This situation poses significant challenges in the valuation of intellectual assets and in determining the scope of rights of capital-receiving entities. Nevertheless, given the civil-law nature of such transactions, the parties may reach agreements on capital contribution by intellectual assets through limitations on use, primarily based on contractual arrangements between them.

However, the Law on Intellectual Property currently confines itself to regulating the content of rights and the forms of rights transfer, without providing any provisions that directly govern the transfer of intellectual property rights for the specific purpose of capital contribution. As a result, the application of law in practice requires a combined interpretation of the Law on Intellectual Property, enterprise law, and investment law, thereby increasing the complexity of identifying the appropriate legal basis.

For foreign investors, a particularly important legal issue arises with respect to the scope of protection of intellectual property rights in Vietnam. In accordance with the principle of territoriality, only intellectual property rights that have been established and protected in Vietnam, or recognized pursuant to international treaties to which Vietnam is a party, may constitute lawful objects of capital contribution. Meanwhile, the Law on Intellectual Property lacks specific guidance on how to address cases where foreign investors contribute capital using intellectual property rights that are protected abroad but have not been registered or protected in Vietnam. This legal gap gives rise to considerable legal risks in practical implementation.

3.2 Provisions of the enterprise law on capital contribution by intellectual property rights

Compared with the Law on Intellectual Property, the Enterprise Law 2020 (as amended in 2025) constitutes the core legal instrument governing corporate matters, including capital contribution for enterprise establishment. This statute most directly and explicitly recognizes the use of intellectual property rights as capital contributions. Pursuant to Article 34³ of the Enterprise Law, contributed assets include cash, gold, land use rights, intellectual property rights, technologies, technical know-how, and other assets that can be valued in Vietnamese dong. This provision affirms that intellectual property rights constitute a lawful and independent category of contributed assets, without distinction between intellectual property owned by domestic or foreign investors, provided that the requirements set out in Article 34 of the Enterprise Law are satisfied.

With respect to the valuation of intellectual assets contributed as capital, Article 36⁴ of the Enterprise Law 2020 stipulates that assets contributed in forms other than Vietnamese dong, freely convertible foreign currencies, or gold must be valued by the founding members or shareholders, or by a valuation organization, and such valuation must be expressed in Vietnamese dong. Article 36 provides for two methods of asset valuation: (i) valuation conducted by founding members or shareholders based on the principle of consensus; or (ii) valuation conducted by a professional valuation organization. Under current law, entities providing valuation services for intellectual property rights (including the valuation of industrial property rights in respect of trademarks) are classified into two categories subject to different legal regimes: valuation enterprises and science and technology service organizations authorized to conduct intellectual asset valuation.

Clause 2, Article 34 of the Enterprise Law 2020 provides that: “Only individuals and organizations that are lawful owners or have lawful rights to use the assets specified in Clause 1 of this Article are entitled to use such assets as capital contributions in accordance with the law.” In this context, the rights referred to include intellectual property rights over protected subject matter. Accordingly, the contributing party must

³ The Enterprise Law 2020 (as amended in 2025)

⁴ Tran Cao Thanh. “Improving the Law on Capital Contribution by Industrial Property Rights in Respect of Trademarks.” *Hue University Journal of Science: Social Sciences and Humanities*, vol. 130, no. 6C, 2021, pp. 149–165.

have been granted a protection title by a competent state authority or fall within the category of subjects having lawful rights to use the trademark or other intellectual property intended for contribution, and must not be subject to statutory restrictions on transfer under intellectual property law. It can thus be observed that the Enterprise Law 2020 has revised this provision in a manner that is more reasonable. Specifically, Clause 1, Article 35 of the Enterprise Law 2014 limited capital contribution strictly to “lawful owners.” By contrast, the Enterprise Law 2020 broadens the scope of eligible contributors by allowing not only lawful owners but also lawful users of intellectual property rights, in general, and trademarks, in particular, to contribute capital.

In addition, the contributing party must be among those legally entitled to establish enterprises or contribute capital to existing enterprises. Clauses 2 and 3, Article 17 of the Enterprise Law 2020 enumerate various categories of entities prohibited from contributing capital. Notably, foreign individuals and organizations are not included among the prohibited subjects. In other words, foreign investors are fully entitled to contribute capital to Vietnamese enterprises in accordance with the constitutional principle of freedom of enterprise in industries and trades not prohibited by law, as enshrined in the 2013 Constitution. It should also be noted that the Investment Law 2014 does not impose restrictions on foreign investors’ capital contributions to enterprises in Vietnam.

However, the Enterprise Law does not prescribe specific evaluation criteria, valuation methodologies, or professional competency requirements applicable to organizations conducting intellectual property valuation. For foreign investors, this limitation results in the valuation of contributed assets being largely dependent on contractual arrangements between the parties or the subjective capacity of valuation organizations. This, in turn, entails risks of inaccurate valuation, internal corporate disputes, and legal risks relating to the obligation to fully contribute charter capital.

3.3 Provisions of the investment law on capital contribution by intellectual property rights

The Investment Law 2020 approaches the issue of capital contribution by foreign investors primarily from the perspective of investment management and the protection of national security and public interests. Accordingly, foreign investors are permitted to

contribute capital, purchase shares, or acquire capital portions in economic organizations in Vietnam, provided that they satisfy market access conditions and comply with investment registration procedures in cases prescribed by law.

With respect to the right of foreign investors to contribute capital and market access conditions, the Investment Law 2020 affirms the principle that foreign investors are entitled to contribute capital, purchase shares, and acquire capital portions in Vietnamese economic organizations, as stipulated in Clause 2, Article 24. However, the exercise of this right is subject to compliance with market access conditions set out in Article 9 on business lines and market access conditions applicable to foreign investors, as well as the cases requiring capital contribution registration procedures under Article 26. These provisions focus primarily on controlling the identity of investors and the sectors of investment, while failing to establish specific requirements addressing the distinctive nature of contributed assets in the form of intellectual property rights, particularly those involving foreign elements or core technologies.

Regarding the regulatory approach to intellectual property rights as contributed assets, the Investment Law does not explicitly specify the categories of assets permitted for capital contribution. Instead, it implicitly recognizes such assets through references to the application of enterprise law and other specialized legislation. Pursuant to Clause 2, Article 24, foreign investors contributing capital, purchasing shares, or acquiring capital portions must comply with relevant laws. While this legislative approach provides a degree of flexibility, it does not clearly define the legal conditions applicable to cases where intellectual property rights constitute the contributed assets, especially with respect to the scope of protection in Vietnam, the transferability of rights, and the relationship between capital contribution and technology transfer.

3.4 Other relevant legal instruments

In addition to the Law on Intellectual Property, the Enterprise Law, and the Investment Law, capital contribution by intellectual property rights by foreign investors is also governed by several related legal instruments, particularly those concerning technology transfer, investment procedures, and asset valuation.

First, Decree No. 76/2018/ND-CP dated 15 May 2018 on technology transfer provides regulations on the registration of technology transfer contracts in certain cases.

Pursuant to Article 9, technology transfer contracts involving technologies subject to restricted transfer or transfers from foreign countries into Vietnam are required to be registered with a competent state authority. However, this Decree primarily treats technology transfer as an independent commercial transaction and does not clearly distinguish cases where technology transfer is conducted for the purpose of capital contribution to establish or increase the charter capital of an enterprise. The absence of specific provisions governing capital contribution through technology results in practical difficulties in determining registration obligations, the scope of transferred rights, and the legal relationship between capital contribution agreements and technology transfer contracts.

Second, Decree No. 31/2021/ND-CP dated 26 March 2021 guiding the implementation of the Investment Law directly addresses the documentation required for capital contribution by foreign investors. Pursuant to Article 65, in cases where capital contribution is made in the form of assets other than cash, investors are required to submit “documents evidencing lawful ownership of the contributed assets.” However, the Decree does not clarify the scope or content of the term “documents evidencing lawful ownership,” nor does it provide specific guidance for intellectual property rights established under foreign law. This regulatory gap creates difficulties for both investors and investment registration authorities in assessing the completeness and validity of application dossiers and leads to inconsistent law enforcement practices across different localities.

Third, although the Law on Prices 2023 recognizes intangible assets as objects eligible for valuation, it has not yet established a dedicated valuation standards system specifically applicable to intellectual property rights. Existing provisions are limited to setting out general valuation principles under Article 5 of the Law on Prices, without providing specialized guidance for specific types of intellectual property rights such as patents, trademarks, or trade secrets. As a result, valuation organizations apply divergent valuation methods in practice, leading to significant discrepancies in valuation outcomes. Notably, many valuation organizations in Vietnam currently lack sufficient professional expertise and practical experience in intellectual property valuation, thereby increasing the risk of substantial misvaluation compared to actual market value. This directly affects the legitimate interests of foreign investors and capital-receiving enterprises.

4 PRACTICAL IMPLEMENTATION AND EMERGING ISSUES FOR FOREIGN INVESTORS CONTRIBUTING CAPITAL IN THE FORM OF INTELLECTUAL PROPERTY RIGHTS IN VIETNAM

In the context of the continued strong growth of foreign direct investment (FDI) inflows into Vietnam in recent years—with newly registered capital, adjusted capital, and capital contributions through share purchases exceeding USD 21.51 billion in the first six months of 2025, representing an increase of 32.6% compared to the same period in 2024, together with 1,708 capital contribution and share acquisition transactions conducted during the same period—it can be observed that Vietnam’s investment environment continues to maintain its attractiveness to foreign investors.⁵ However, in practice, capital contributions in the form of intellectual property (IP) rights still face numerous obstacles, resulting in a very limited number of projects adopting this form compared to the total number of capital contribution transactions in general. Although Vietnam has recognized intellectual property rights as assets that may be valued, transferred, mortgaged, and contributed as capital, as emphasized by the head of the Ministry of Science and Technology—who affirmed that intellectual assets should be regarded as legitimate resources for capital contribution rather than merely as objects of legal protection—practical challenges remain significant.

First, the regulations governing eligible contributors of capital in the form of intellectual property assets remain restrictive, particularly with respect to trademarks.⁶ Under the current legal framework on capital contribution to establish enterprises using industrial property rights over trademarks, the contributor must be the owner of the protected trademark. However, in order to become the lawful owner of a trademark, certain entities are required by law to carry out registration procedures to establish rights over the relevant intellectual property objects. These procedures must be completed within prescribed statutory timeframes, typically ranging from 12 to 14 months. Consequently, during this period, applicants for the establishment of rights are not yet regarded as owners of the proprietary rights over the trademark and therefore are not

⁵ Nguyet Thuong. (2025). *Vietnam has entered the stage of prioritizing the development of intellectual assets*. Phap Luat Newspaper. Retrieved December 9, 2025, from <https://baophapluat.vn/viet-nam-da-den-giai-doan-uu-tien-phet-trien-tai-san-tri-tue.htm>

⁶ Tran, C. T. (2021). *Improving the legal framework on capital contribution by industrial property rights in trademarks*. Hue University Journal of Science: Social Sciences and Humanities, 130(6C), 149–165.

permitted to use such rights for capital contribution purposes, as they are not legally recognized as owners of the relevant industrial property rights. This represents a practical legal shortcoming, causing substantial difficulties for organizations and individuals seeking to exercise their right to contribute capital using their industrial property rights in trademarks.

Second, there are notable inadequacies in the regulations on the valuation of intellectual property assets⁷. First, shortcomings in valuation methods. Clause 5, Article 2 of Circular No. 45/2013/TT-BTC on the management, use, and depreciation of fixed assets provides that the initial value of intangible fixed assets is determined as “the total costs incurred by an enterprise to acquire the intangible fixed asset up to the time it is put into use as expected.” Accordingly, under this provision, the valuation of intellectual property rights is conducted using a historical cost-based approach. Similarly, Circular No. 127/2014/TT-BTC stipulates that the valuation of “brands” for the purpose of determining the actual value of enterprises undergoing equitization is based on historical costs, providing that “brand value shall be determined on the basis of actual costs incurred for the creation and protection of trademarks and trade names during the enterprise’s operation within five years prior to the valuation date.”

Thus, Circular No. 127/2014/TT-BTC merely provides a method for calculating the value of a “brand” based on the value of “trademarks” and “trade names,” and likewise relies on the historical cost method. It can be seen that, under the current Vietnamese legal framework, the valuation of intellectual property rights is primarily based on historical cost methods. The advantage of this approach lies in enabling intellectual property rights to be recorded in enterprises’ accounting books as recognized assets, thereby enhancing corporate awareness of the economic value of intellectual property rights. Nevertheless, the cost-based method reveals substantial limitations, which has resulted in its limited application in practice for intellectual property valuation. Its most significant drawback is that it relies on a single factor—historical costs—to determine the value of intellectual property rights, while completely disregarding the future economic benefits that such rights may generate. Consequently, valuing intellectual property rights solely on the basis

⁷ ThS. Lương Mỹ Linh (2023), Vương mắc về góp vốn bằng tài sản trí tuệ để thành lập doanh nghiệp và kiến nghị hoàn thiện, Tạp chí dân chủ và pháp luật, link:<https://danchuphapluat.vn/vuong-mac-ve-gop-von-bang-tai-san-tri-tue-de-thanh-lap-doanh-nghiep-va-kien-nghi-hoan-thien-3084.html>, truy cập: 09/12/2025

of past costs incurred in creating or developing such rights fails to adequately reflect their future economic potential. Moreover, the legal framework governing capital contribution still lacks specific provisions on documentation requirements and accounting treatment for industrial property rights in trademarks during business operations, as well as sanctions applicable in cases where enterprises record costs that exceed, by multiple times, the actual value of the industrial property rights used for capital contribution.

Second, the allocation of liability for inaccurate valuation of intellectual property rights remains unreasonable:

Article 36 of the 2020 Law on Enterprises recognizes intellectual property rights as a type of asset eligible for capital contribution to enterprises and specifies the entities authorized to conduct the valuation of intellectual property rights contributed as capital.

Pursuant to Clause 2, Article 36 of the 2020 Law on Enterprises, founding members or founding shareholders are the entities directly responsible for valuing the contributed intellectual property rights. Such valuation may not necessarily be based on specific calculations derived from market factors, costs, or expected profits generated by the intellectual property rights in question. This may result in two scenarios: (i) the intellectual property rights are undervalued compared to their actual value at the time of contribution; or (ii) the intellectual property rights are overvalued relative to their actual value at the time of contribution.

Clause 2, Article 36 of the 2020 Law on Enterprises further provides for liability in cases where intellectual property rights are valued higher than their actual value. The Law distinguishes between two points in time: (i) for capital contributions at the time of enterprise establishment, liability is jointly borne by the founding members or founding shareholders; and (ii) for capital contributions made during the operation of the enterprise, liability rests with the capital contributor, the owner, members of the Members' Council in limited liability companies and partnerships, or members of the Board of Directors in joint-stock companies. These sanctions apply in relation to debts and financial obligations in cases where the enterprise incurs losses or becomes insolvent. However, the above provisions make no reference to valuation organizations, which may result in a lack of accountability on the part of such organizations in determining the value of intellectual property rights. Meanwhile, company members or capital contributors often lack sufficient expertise in intellectual property valuation and therefore tend to accept the values proposed by valuation organizations. In other words, valuation organizations are

the entities that should bear direct responsibility for the outcomes of their valuations. From this perspective, the failure to include valuation organizations among those subject to joint liability constitutes a significant omission in Vietnam's enterprise law framework.

5 INTERNATIONAL EXPERIENCE IN CAPITAL CONTRIBUTION BY INTELLECTUAL PROPERTY RIGHTS

In the context of the development of the knowledge-based economy and the globalization of investment, many countries have early recognized intellectual property rights as a distinct category of assets possessing independent economic value, which may be used as capital contributions for the establishment of or participation in enterprises. International experience demonstrates that successful legal systems have established relatively coherent legal mechanisms that integrate intellectual property law, corporate law, and standards for the valuation of intangible assets. Such integration provides a stable legal foundation for investors, particularly foreign investors.

5.1 Experience of the United States

The United States represents a leading example in recognizing and exploiting intellectual property rights as investment assets. U.S. law does not provide a separate legal regime specifically governing "capital contribution by intellectual property rights." Instead, through corporate law and contract law, intellectual property rights are fully recognized as transferable and valuable assets.

Under state corporate laws (most notably the Delaware General Corporation Law) shares or equity interests may be issued in exchange for "property" or "services," with the term "property" interpreted broadly to include intangible assets such as patents, copyrights, trademarks, and trade secrets.⁸ At the federal level, intellectual property statutes, including the Patent Act, the Copyright Act, and the Lanham Act, expressly recognize the assignability and licensing of intellectual property rights, thereby providing a clear legal basis for using such rights as capital contributions.

⁸ Robert W. Emerson, John W. Hardwick (1997), *Business Law*, Barron's educational series Inc., USA, 1997, p.08

A distinctive feature of the U.S. model lies in the development of an intellectual property valuation market driven primarily by market mechanisms. Rather than mandating a specific valuation method, the law emphasizes duties of good faith, legal accountability, and verifiability in the valuation process. Disputes arising from the valuation or capital contribution of intellectual property rights are mainly resolved through judicial mechanisms, with case law playing a central role in shaping practical standards and guiding future transactions.

5.2 Experience of the European Union

Within the European Union, capital contribution by intellectual property rights is regulated through a combination of the corporate laws of Member States and the EU-wide legal framework for intellectual property protection. Although the EU has not enacted a unified legal instrument specifically addressing capital contributions by intellectual property rights, several key company law directives establish guiding principles in this regard.

Pursuant to Directive (EU) 2017/1132⁹ on certain aspects of company law, contributions in kind are permitted, provided that such assets are valued by independent experts and transparently recorded in the company's documentation. On this basis, many EU Member States, including Germany, France, and the Netherlands, allow intellectual property rights to be used as capital contributions, while imposing stringent requirements concerning valuation reports and the liability of founders.

Notably, EU law places strong emphasis on clarifying the legal scope of protection of intellectual property rights contributed as capital, including territorial coverage, duration of protection, and commercial exploitability. These requirements serve to mitigate legal risks for enterprises and investors, while also preventing formalistic valuations that fail to reflect the actual economic value of intellectual property assets.

⁹ European Commission. (2023). *New Unitary Patent system: Pioneering a new era of patent protection and enforcement in the EU*. Retrieved December 9, 2025, from https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_23_3004/IP_23_3004_EN.pdf

5.3 Experience of Japan

Japan represents a prominent Asian example of a legal model that closely integrates intellectual property rights with national economic development strategies. Japanese law permits the use of intellectual property rights as capital contributions to enterprises, based on the provisions of the Companies Act of Japan and specialized intellectual property legislation.

Under the Companies Act of Japan¹⁰, non-cash contributions are recognized, including intangible assets, provided that such assets are properly valued and clearly recorded in the documentation for incorporation or capital increase. In parallel, statutes such as the Patent Act, Trademark Act, and Copyright Act of Japan allow for the assignment and licensing of intellectual property rights, thereby establishing a solid legal foundation for their use as capital contributions.

A distinctive characteristic of the Japanese model is the proactive role of the State through intellectual property intermediary institutions. These agencies and organizations provide consultation, valuation support, and assistance in the commercialization of intellectual property rights, particularly in high-technology projects. This approach helps reduce investment risks while enhancing the efficiency of intellectual property exploitation in capital contribution activities.

6 RECOMMENDATIONS FOR IMPROVING VIETNAMESE LAW ON CAPITAL CONTRIBUTION BY INTELLECTUAL PROPERTY RIGHTS FOR FOREIGN INVESTORS

Based on the analysis of the existing legal framework, practical implementation, and international experience, it can be concluded that improving Vietnamese law on capital contribution by intellectual property rights for foreign investors is both necessary and urgent. On that basis, this article proposes the following recommendations.

First, it is necessary to improve legal provisions governing the legal conditions of intellectual property rights used as capital contributions. Current law merely recognizes

¹⁰ Patent Act (Act No. 121 of 1959). (n.d.). *Patent Act (Act No. 121 of April 13, 1959)*. Japanese Law Translation. Retrieved December 9, 2025, from <https://www.japaneselawtranslation.go.jp/en/laws/view/3118>

intellectual property rights as a category of assets eligible for capital contribution under Articles 35 and 36 of the 2020 Law on Enterprises, without clarifying specific legal conditions applicable to such rights, particularly those involving foreign elements. Accordingly, it is essential to supplement regulations clarifying the relationship between intellectual property law and investment law in recognizing the legal validity of intellectual property rights used as capital contributions. For intellectual property objects subject to registration for the establishment of rights, such as trademarks and patents, consideration should be given to mechanisms allowing rights under pending registration to be used as conditional capital contributions, accompanied by appropriate safeguards. This solution would not only address practical obstacles but also ensure legal certainty for enterprises receiving capital contributions, while remaining consistent with the principles of intellectual property protection under the Law on Intellectual Property.

Second, a unified valuation mechanism for intellectual property rights should be established, closely linked to their economic value and future commercial potential. Existing regulations on the valuation of intangible assets primarily rely on historical cost approaches, as reflected in Circular No. 45/2013/TT-BTC and Circular No. 127/2014/TT-BTC, which fail to adequately capture the true economic value of intellectual property rights. Therefore, it is necessary to amend and supplement price and valuation laws by promulgating a specific set of valuation standards for intellectual property rights, allowing for flexible application of modern valuation methods such as the income approach and the market approach, in addition to the cost approach. To ensure accurate valuation of industrial property rights in trademarks, Vietnamese law must establish clear and rigorous regulations concerning intellectual property rights in general, their classification and recognition, and intellectual asset valuation methodologies. According to Guidance No. 4 of the International Valuation Standards Council, three principal methods are recognized for valuing intangible assets, namely the cost approach, the income approach, and the market approach. However, the direct application of these methods may not always be suitable for Vietnam's economic conditions. Accordingly, Vietnam should develop intellectual property valuation methods that draw upon and adapt international valuation standards while remaining compatible with domestic realities. Vietnamese law should further establish a national set of standards for the valuation of intangible assets, including intellectual property, consistent with Vietnam's valuation standards, to serve as a legal basis for activities related to the valuation of industrial

property rights. Improving the valuation mechanism would not only protect the legitimate interests of foreign investors but also enhance transparency, reduce disputes, and mitigate risks arising from inaccurate valuation in capital contribution activities.

Third, it is essential to complete the legal liability framework and strengthen state management coordination in relation to capital contribution by intellectual property rights. Under the 2020 Law on Enterprises, liability for overvaluation of contributed assets is primarily imposed on members, shareholders, or capital contributors, while the role and responsibility of valuation organizations remain insufficiently regulated. Accordingly, the law should be supplemented to establish proportionate legal liability for valuation organizations with respect to the outcomes of intellectual property valuations. At the same time, coordination mechanisms among investment registration authorities, enterprise registration authorities, intellectual property management agencies, and science and technology authorities should be strengthened in reviewing capital contribution dossiers. This approach would ensure consistency in legal application, enhance the effectiveness of state management, and create a stable and transparent investment environment for foreign investors.

7 CONCLUSION

Capital contribution by intellectual property rights by foreign investors represents an inevitable trend in the context of Vietnam's development of a knowledge-based economy and its deepening international integration, contributing to the attraction of financial resources closely linked to technology and innovation. Although Vietnamese law has taken initial steps in recognizing intellectual property rights as assets eligible for capital contribution, the existing regulatory framework remains fragmented and insufficiently clear with respect to legal conditions, valuation mechanisms, and procedural requirements applicable to foreign investors, thereby giving rise to numerous practical difficulties. On the basis of an analysis of current legislation, practical application, and international experience, continued improvement of the legal framework governing capital contribution by intellectual property rights is essential to ensure legal certainty, enhance investment attraction, and promote the sustainable development of Vietnam's economy.

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Authors' Contribution

All authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

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