



TRACING THE BENEFICIAL OWNERS THROUGH OWNERSHIP REGISTRATION

Shedding light on who actually benefit from companies is considered a key defence for stopping and preventing corruption, money laundering and terrorist financing. However, a loophole is that the current Law on Enterprises¹ (“**LOE**”) does not require any report or disclosure on who ultimately controls a company. Consequently, the Financial Action Task Force (FATF) has placed Vietnam on the grey list² due to its deficiencies in its anti-money laundering (AML) and counter-financing of terrorism (CFT) efforts. This poses risks, including a potential decrease in foreign investment capital, the increased scrutiny of cross-border financial transactions, or even the possibility that the country may further be placed on the blacklist.

The Vietnamese administrative authorities’ latest actions on amending the LOE represent an attempt to shrink this loophole and to ensure the transparency of companies and legal arrangements.

BUILDING A BENEFICIAL OWNERSHIP FRAMEWORK

Proposing definitions relevant to “beneficial owner”

A beneficial owner of a company is an individual who (i) directly or indirectly, holds 25% or more of the charter capital of the company; or (ii) is, directly or indirectly, entitled to more than 25% of the dividend or profit of the company; or (iii) is the ultimate individual having the right to control the company.

The right to control a company refers to the ability of an individual, an organization or a group of individuals and organizations to control the operations of a company by way of ownership, acquisition of shares or equity, or decision-making.



¹ No. 59/2020/QH14 effective from 1 January 2021

² <https://www.fatf-gafi.org/en/countries/black-and-grey-lists.html>



Proposing obligations to disclose and retain information on beneficial owners applicable to both companies and the administrative authorities

Companies are required to disclose to the enterprise registration body the beneficial owners at the time of their incorporation and during their course of operations; and retain such information at headquarters or another place as specified in the company charter.

The enterprise registration body must also retain on its database such information at least until the expiry of 5-year term from the date the relevant company is dissolved or bankrupt. The draft proposals also suggest a scheme enabling the sharing of such information between the enterprise registration bodies and other competent authorities for the purpose of prevention and detection of crime.

AND ROCKING THE NOMINEE ARRANGEMENTS?

Investment through a nominee is not rare in Vietnam.

Under a nominee arrangement, an individual nominee may be registered as an owner of a company without any benefit and hold shares for and on behalf of the beneficial owner; and the beneficial owner is the natural person who, directly or indirectly, ultimately owns, controls or benefits from a company and the income it generates.

This controversial method is explored, by both foreign and local investors, in several cases e.g. the investment being prohibited from foreign investment or subject to limits, or for the purpose of facilitating the licensing process.

Although still arguable, an investment through a nominee arrangement may have potential characteristics of a false civil transaction and may face a risk of being terminated by the competent authority.

Where parties enter into a civil transaction falsely for the purpose of concealing another civil transaction, such false transaction shall be deemed invalid; notwithstanding, the transaction which is concealed shall be valid, unless it is also deemed invalid under the Civil Code or other relevant laws³.

Additionally, the investment registration body may terminate a part or the entire investment project if the investor conducted the investment activities on the basis of a false civil transaction in accordance with the civil laws⁴.

Under the new scheme of the LOE, the disclosure of a company's beneficial owners may trigger a review of its shareholding structure, raising doubts about whether or not the investment involves nominee arrangements. However, the draft proposals remain unclear on the actions likely to be taken by the administrative bodies to deal with such investment projects.

³ Article 124 of Civil Code No. 91/2015/QH13

⁴ Article 48(2)(e) of Law on Investment No. 61/2020/QH14



In order to avoid economic disruption, too extreme actions, e.g. terminating all such projects, should be proceeded with caution. Instead, a middle- ground approach may be considered, e.g. measures may be applied selectively by the State and targeted at projects which have foreign beneficial owners in sectors Vietnam has not committed to allowing foreign investment, or projects threatening the national security, or those involving money laundering.

CONCLUSION

Building an effective beneficial ownership framework that enables the identification of beneficial owners is essential to promptly address the international recommendations before May 2025⁵. In the future, further guidance to LOE and amendments to other laws may be expected for the purpose of interpretation and application of laws.



⁵- Recommendation 10 - Asia/Pacific Group on Money Laundering. (2025). Mutual Evaluation of Vietnam: 1st Follow-Up Report. APG.

Link: <https://www.fatf-gafi.org/content/dam/fatf-gafi/fsrb-fur/Vietnam-FUR-2023.pdf.coredownload.inline.pdf>.

- Action 8 of the Annex of Decision No. 194/QĐ-TTg dated 23 February 2024 on the issuance of the national action plan to implement the commitments of the Government of Vietnam on anti-money laundering, counter-terrorist financing, and counter-financing of proliferation of weapon of mass destruction

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LEGAL UPDATE *March 2025*

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