

REGULATION ON ULTIMATE BENEFICIAL OWNER IN THE ENTERPRISE



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The amended Law on Enterprises 2025, effective from 01/07/2025, focusing on tightening corporate governance, enhancing information transparency and personal responsibility of company manager. One of notable regulation is the supplement of obligation on enterprises to collect, update, retain information on Ultimate Beneficial Owner (“UBO”) and to provide such information to competent authorities upon request.

The regulations on the identification of UBO are based on FATF Recommendation 24 (the Financial Action Task Force), concerning transparency in the beneficial ownership of legal entity.

On 30/06/2025, the Government officially issued Decree No. 168/2025/ND-CP (the “Decree”) replacing Decree No. 01/2021/ND-CP on enterprise registration. The new Decree concretizes the requirement to declare UBO in enterprise registration dossiers. This Decree also takes effect from 01/07/2025.

Who is defined as a UBO under the law?

According to FATF Recommendations (The FATF’s set of Recommendations)

“Legal ownership and beneficial ownership of a legal entity are two distinct concepts”

An individual may be considered as a UBO on the ground that they are the ultimate owner or have ultimate control over a legal entity, either through ownership interests or by exercising ultimate effective controlling interests through other means.

While legal ownership and beneficial ownership may coincide, legal ownership or controlling shares of a company may be nominally owned by an individual or another legal entity who is not the UBO—that is, not the person who truly controls the organization, whether directly or indirectly.

Accordingly, any individual who exercises ultimate and effective control over a legal entity must be identified as a UBO, irrespective of whether they meet the minimum ownership threshold.

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According to Article 17 of the Decree, UBO is defined as an individual who meets one of the following criteria:

1. An individual who directly or indirectly owns 25% or more of the charter capital or voting shares of the enterprise;

a) **Direct ownership** refers to an individual being officially and legally recorded as an owner, member, or shareholder in the enterprise registration.

b) **Indirect ownership** refers to an individual's ultimate ownership of capital via one or more intermediary legal entities.

Example: Individual A owns 90% of Company X, which holds 30% of Company Y. Therefore, A indirectly owns 27% of Company Y and qualifies as its UBO.

2. An individual who exercises controlling interest over any of the following decisions:

(i) Appointment, dismissal, or removal of the majority or all of :

- Members of the Board of Directors; and/or
- The Chairman of the Board of Directors/Board of Members; and/or;
- The legal representative and/or Director/General Director.

(ii) Amendment or supplementation of the company's charter;

(iii) Changing the company management structure;

(iv) Reorganization or dissolution of the company.

This criterion for identifying a UBO is based not on ownership percentage, but on actual controlling interest. An individual may be considered as a UBO without holding any shares if they have the authority to make decisions on the matters mentioned above.

The type of controlling interest, if identified, must be clearly specified in the form of registering of UBO in the enterprise.

Under this criterion, an individual may be identified as a UBO if they possess one of the controlling interest mentioned above. Accordingly, an enterprise may have multiple UBO based on this criterion.

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Guidance and Notes on Identifying UBO

1. Grounds, documents for verifying UBO

The amended Law on Enterprises and the Decree do not specifically require enterprises to have a complete set of documents when identifying an individual as a UBO of the enterprise.

According to the FATF, information of UBO must be adequate, accurate, and up-to-date, and the FATF defines these requirements as follows :

- Adequate information means *information sufficient* to identify the legal entities who are the beneficial owners, and the means and mechanisms through which they exercise beneficial ownership or controlling interest;
- Accurate information means *information that has been verified* to confirm its correctness, by verifying the identity and status of the UBO using reliable, independently sourced documents, data, or information. The extent of verification measures may vary depending on the level of risk;
- Up-to-date information means *current information and updated as promptly as possible*, and within a reasonable timeframe following any change.

Therefore, we consider that UBO information must be based on verifiable and reliable grounds, sufficient for competent authorities, reporting entities, and investigative agencies to inspect and confirm. It should not rely solely on assumptions or presumptions.

2. Not all individuals holding positions in a enterprise are deemed to have actual controlling interest as defined by the FATF.

Holding a title (e.g. Director, Chairman, Legal Representative) is considered actual control only if the individual in fact exercises decision-making power, direction, or control beyond their formal or statutory functions, or under the fallback mechanism described in Step 3 – Section 3 below.

Individuals in control of a parent company who in practice direct the operations of a subsidiary may also be identified as Beneficial Owners of the subsidiary, even if they do not hold any formal position or direct ownership in it.

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Guidance and Notes on Identifying UBO (to be continued)

3. Priority Order in Identifying UBO

Vietnam law has not yet specified whether UBO should be identified in a priority order (i.e., applying the next criterion only if the previous one does not apply) or on a parallel method (i.e., assessing all criteria simultaneously).

According to official FATF guidance, the identification of UBO follows a three-tiered, sequential approach (hereinafter referred to as “cascading approach”). The criteria must not be applied simultaneously; each subsequent step is to be applied only if the preceding step fails to identify a UBO.

- **Step 1 – Direct/Indirect Ownership:** Identify the natural person who ultimately own the legal entity. FATF does not prescribe a fixed ownership threshold, but many jurisdictions apply a threshold of more than 25% ownership to determine significant control. In Vietnam, this threshold is set at above 25%.
- **Step 2 – Control through Other Means:** If no individual satisfies Step 1, or there is reason to believe that the person(s) identified in Step 1 are not the UBO or do not represent all UBO, the next step is to identify individuals who exercise controlling interest over the legal entity through other means.
- **Step 3 (Senior Managing Official)** This step applies only when no individual can be identified under Steps 1 and 2. If a UBO has already been identified under Step 1 (or Step 2), Step 3 should not be applied, as it serves solely as a last- fallback measure in exceptional cases.

Enterprises shall not consider the Director/General Director as a UBO if one or more actual UBO have already been identified through ownership or control.

In addition, the FATF allows countries or organizations to adopt a “parallel approach” at Steps 1 and 2—i.e., identifying individuals with significant ownership and individuals with control through other means simultaneously, rather than sequentially—in order to avoid missing potential UBO. If this approach is adopted in Vietnam, enterprises will need to await further guidance from the competent authorities.

The interpretive note to FATF Recommendation 10 (paragraph 5(b)(i)) clearly outlines the cascading approach for identifying UBO “Measures (i.i) to (i.iii) are not alternative options, but are cascading measures, with each to be used where the previous measure has been applied and has not identified a beneficial owner.”

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Enterprises, regardless of whether they were established before or after 01/07/2025, are required to comply with regulations on the preparation, management, maintenance, and registration of the list of UBO with competent authorities, specifically as follows:

1. For enterprises established on or after 01/07/2025, the application for enterprise registration must include a list of UBO at the time of registration.
2. For enterprises established before 01/07.2025, if they submit an application for changes to their enterprise registration (e.g., changes to business lines, address, or legal representative), they are required to update the UBO information along with the application for registration change.
3. In all cases above, enterprises must also update UBO information upon any changes or upon request by competent authorities.

Recommendation

Enterprises are expected to proactively comply with regulations on the identification and declaration of Beneficial Owners, including the preparation of verification documents, timely updates of information, and proper retention of records as required by law.

In addition, enterprises are advised to seek legal advice to ensure that the identification of UBO reflects the actual control, thereby minimizing legal risks in business operations and transactions with partners.

Legal Disclaimer. This document has been prepared based on the applicable laws and regulations of Vietnam (including Decree No. 168/2025/ND-CP) and the recommendations of the FATF on the identification of UBO, combined with the professional perspective of Tin & Partners. The information contained herein is provided for general reference purposes only and does not constitute official legal advice. Enterprises are strongly encouraged to consult with qualified legal counsel or experienced legal professionals before applying any part of this document to specific situations, in order to ensure legal compliance and mitigate potential risks.