

Beneficial Owners In The Draft Amendment To The Law On Enterprises (2025): Opportunities For Transparency And Challenges For Businesses

The Draft Amendment to the Law on Enterprises (2025) (the “Draft”) marks a significant step forward in improving the legal framework for corporate governance in Vietnam, particularly by introducing regulations on beneficial ownership – aiming to enhance transparency regarding actual control over enterprises.

However, this regulation also raises several concerns for foreign investors, especially in cases involving nominees or control agreements such as convertible loan contracts, veto rights, or charter control. Mechanisms that once served to bypass legal barriers may now be regarded as indicators of actual controlling power, thereby triggering obligations for disclosure and declaration, and potentially resulting in the enterprise being classified as a foreign-invested entity.

The Draft opens opportunities for transparency and legalization of investment structures, but at the same time introduces new legal risks if investors fail to promptly review and adjust their arrangements. Therefore, it is essential to conduct an in-depth analysis of the connections between the Draft and sector-specific laws in order to assess its practical implications.

Key Takeaways

- The concept of "beneficial owner" is not solely based on official ownership percentage, but also includes actual control through agreements or indirect investment structures. Investors should review the ownership structure, control rights, and management agreements of the target enterprise.
 - Nominee models such as name-holding arrangements, lending for capital contribution, leasing or controlling most of the company's assets, profit-sharing beyond ownership ratio, or any structures designed to establish control mechanisms may be regarded as signs of actual control over the enterprise. Investors should reassess the legality and legal risks of their current structures.
 - Failure to disclose the beneficial ownership may result in serious consequences, such as reclassification as a foreign-invested enterprise, invalidation of transactions, or administrative penalties. Investors should proactively prepare documentation and fulfill disclosure obligations in accordance with regulations.
 - Legal liability may not fall on the actual controller if their control is not transparent, but rather on the nominal holder. Investors must ensure consistency between actual control and legal status to protect both themselves and their partners.
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1. “Beneficial Ownership” – Who Exercises Real Control Over the Enterprise?

According to the Draft, a “beneficial owner” is an individual who, in substance, meets one of the following criteria:

- (a) Directly or indirectly holds 25% or more of the charter capital;
- (b) Directly or indirectly receives more than 25% of the dividends or profits of the enterprise;
- (c) Is the ultimate individual who exercises control over the enterprise, including:
 - (i) holding more than 50% of the charter capital; (ii) having the direct or indirect right to appoint or remove members of the Board of Directors, Chairperson of the Members’ Council, Director or General Director; (iii) having the right to amend the charter; and/or (iv) deciding on critical matters as stipulated in the charter.

This provision clarifies the distinction between legal ownership and actual ownership – a concept currently unaddressed under the current Enterprise Law, which has led to various disputes related to capital contributions, profit distribution, or share transfers. In practice, nominee arrangements are still commonly used – where the actual contributor of capital does not directly register ownership, but authorizes another individual to hold shares or capital on their behalf. This results in the actual owner not being legally recognized as a shareholder/member, and thus lacking legal rights to vote, receive profits, or claim protection under the law. In many cases, the nominee abuses this position, unilaterally transferring shares, voting against the will of the actual investor, or misappropriating capital.

On the other hand, the actual owner may commit unlawful acts in the name of the legal nominee (such as money laundering, illegal profit transfers abroad, or tax evasion), while the nominee bears the legal responsibility.

Now, enterprises will be required to identify, record, and disclose information about those who “truly control” the business – moving beyond the mere list of shareholders on paper.

2. Structured Capital Transactions and the Thin Line Between Legality and Regulatory Circumvention

One of the key impacts of the beneficial ownership provisions under the Draft is the potential to deconstruct and reassess the legality of complex investment structures, particularly transactions that may indicate attempts to circumvent foreign ownership restrictions.

In practice, many foreign investors have employed nominee arrangements, established intermediary entities, or signed control agreements to maintain influence over companies operating in sectors with investment access conditions or investment limitation. Although not officially named in legal documents, these investors can still exercise de facto control and enjoy actual economic benefits, creating a disconnect between nominal ownership and actual control.

By codifying the concept of “*beneficial ownership*”, regulators are equipped with a clear tool to trace individuals or entities that truly control a business. When a person or organization is found to exert control without proper disclosure, authorities may retroactively apply foreign investment conditions, including ownership caps, sector-specific requirements, approval procedures, and permitted investment forms. Particularly for projects previously licensed, the discovery of concealed control elements may raise serious concerns over the validity of such licenses, potentially jeopardizing the continuity and legal security of the investment.

Beyond the initial licensing phase, this regulation also affects M&A transactions, internal transfers, or capital restructuring. Transactions that create control over a business through financial contracts, rights to lease key assets, veto powers, or nomination rights – without holding shares – may be considered indications of actual control. In such cases, the parties involved may be required to disclose the beneficial owners, and provide supporting documentation. Failure to comply could result in transaction delays, rejections, or classification under regulatory scrutiny for tax, antitrust, or conditional investment compliance. In some cases, transactions could even be invalidated if deemed to conceal true control.

From a corporate governance perspective, enterprises with foreign elements or complex ownership structures must review their ownership charts, off-charter commitments, update internal records, and revise decision-making processes to ensure transparency and compliance. Without timely action, critical resolutions—such as profit distribution, capital increases, or share transfers—may be subject to legal uncertainty regarding their validity.

3. The Legal Validity of Nominee Agreements in the Context of Beneficial Ownership Regulation

A practical legal issue receiving growing attention is the validity of nominee agreements (i.e., name-lending arrangements) in light of the forthcoming codification of beneficial ownership regulations.

In practice, although not formally recognized under the Vietnamese legal system, nominee arrangements have been widely used – particularly in foreign capital contribution transactions – to circumvent ownership caps or market access restrictions.

However, in the absence of clear legal provisions protecting this model, the legal risks are substantial. Under current laws, a party may petition the court to declare a nominee agreement invalid if it is deemed a “sham transaction”. In such cases, the transaction would carry no legal effect, the parties would be required to return what they have received, and the true nature of the investment would be subject to scrutiny. The risks escalate significantly if regulatory authorities determine that the nominee arrangement was intended to conceal foreign investment in a conditional sector. The transaction may then be considered unlawful, potentially triggering serious consequences such as forced divestment, administrative sanctions, project suspension, restrictions on profit repatriation, tax reassessments, and loss of access to investment incentives.

That said, it is worth noting that in jurisdictions such as Singapore and Hong Kong, nominee agreements are deemed lawful if the beneficial owner is fully disclosed to the competent authorities. Vietnam is gradually aligning with this approach by legislating the concept of beneficial ownership. This creates an opportunity for nominee agreements to be recognized—provided that enterprises fully disclose their ownership structure and comply with beneficial ownership reporting obligations.

In this context, investors should exercise caution when adopting nominee structures, especially in sectors subject to foreign investment conditions. It is essential to ensure that the nominee agreement is clearly drafted, includes provisions on beneficial ownership disclosure, defines the rights and obligations of the parties, and that the ownership structure is reviewed with supporting internal documentation that is transparent and legally compliant.

4. A Necessary Yet Complex Reform

It is undeniable that the inclusion of beneficial ownership regulations is a necessary step toward fostering a transparent, fair, and internationally aligned investment environment. At the same time, however, this also presents a significant test of the compliance capacity and governance systems of Vietnamese enterprises.

The first challenge lies in identifying who truly qualifies as a beneficial owner. Although the concept of “actual controlling power” is relatively well defined in the Draft, pinpointing such individuals is far from straightforward.

Indirect rights – such as the right to receive profits or the right to make appointments indirectly – may arise from off-charter agreements, financial commitments, or service contracts, which are difficult to trace or formally categorize. For instance, a person who holds no registered equity interest but has signed an exclusive contract to provide management, financial, or HR services could exert substantial influence over the company's operations without appearing in any official legal documentation.

The second challenge is that businesses will need to exercise much greater caution when structuring capital transactions – arrangements that were once considered flexible and permissible. Models such as nominee arrangements, lending combined with share pledges, agreements granting appointment rights to key leadership positions, or the provision of essential services or assets that create near-total dependency on a single party – as well as situations where non-voting shareholders receive disproportionately high dividends – could all fall under regulatory scrutiny to determine who truly controls the enterprise.

Going forward, enterprises must adopt a more careful and transparent approach in designing ownership strategies and internal control frameworks. There is no longer room for “creative structuring” as before – actual control must now be fully disclosed. The Draft signals a new chapter in ownership transparency within Vietnam's business landscape. However, with this opportunity comes a host of compliance challenges, including restructuring internal legal systems and managing risk in equity and investment transactions. Thorough preparation, combined with sound legal counsel, will be essential for businesses seeking to adapt and thrive under the new legal framework.

The article contains general information which is of reference value, in case you want to receive legal opinions on issues you need clarification on, please get in touch with our Lawyer at info@cdlaf.vn



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/cdlaflawfirm



info@cdlaf.vn



+84 909 668 216



cdlaf.vn