TNTP
ATTORNEYS AT LAW

LEGAL NEWSLETTER

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New regulations on beneficial owners of Enterprises

Provisions on beneficial owners of enterprises have been officially incorporated into Vietnam's corporate legal framework through the Law amending and supplementing some Articles of the Law on Enterprises No. 76/2025/QH15 and Decree No. 168/2025/ND-CP on enterprise registration. This marks a significant step in enhancing transparency in ownership structures in Vietnam and fulfilling the country's international commitments to combating money laundering, terrorism financing, and the proliferation financing of weapons of mass destruction. In the following article, TNTP presents an overview of the new regulations on beneficial owners of enterprises under current Vietnamese law.

1. Definition of beneficial owner of an enterprise

To ensure transparency of information on the beneficial owner of an enterprise in accordance with the recommendations of the Financial Action Task Force (FATF), the concept of a "beneficial owner of an enterprise" **("BO")** has been formally codified and incorporated into the corporate legal system of Vietnam according to the Law amending and supplementing some Articles of the Law on Enterprises No. 76/2025/QH15, which shall take effect as of 1 July 2025 **("the Law on amendments to Law on Enterprises")**.

Pursuant to Clause 35, Article 4 of the Law on Enterprises 2020, as amended by the Law on amendments to Law on Enterprises, the beneficial owner of an enterprise having legal entity status is defined as an individual who actually owns the charter capital or has controlling rights over such enterprise, except for the representative of the owner at a wholly state-owned enterprise or the representative of state capital in a joint-stock company or a two-member limited liability company, as prescribed by the laws on the management and investment of state capital in enterprises.

Accordingly, unlike the legal representative, who is the person whose name appears on legal instruments and documents relating to the business operations of the enterprise - the BO is determined based on actual control or ownership of charter capital, with the power to exercise control over the enterprise, regardless of whether such person's name appears in the enterprise's legal documentation.

Previously, many enterprises in Vietnam operated under so-called "nominee" or "front" arrangements, creating complex and non-transparent ownership structures. This legal facade concealed the true identity of individuals who actually exercised controlling power over the enterprises, thereby hindering the tracing of capital sources, particularly in illegal activities. In practice, enterprises have often been misused to conceal criminal identities, disguise illicit cash flows, or even facilitate unlawful cross-border money transfers. Therefore, to ensure transparency and security in the private sector, the disclosure of beneficial ownership is not only a domestic legal requirement but also reflects Vietnam's international commitment to combating money laundering and terrorism financing.

The codification of this concept marks a significant milestone in Vietnam's efforts to enhance transparency in corporate ownership structures, ensuring commitment and accountability in corporate transactions, while at the same time contributing to the prevention and suppression of money laundering and terrorism financing at the international level.

New regulations on beneficial owners of Enterprises

2. Criteria for determining a Beneficial Owner of an Enterprise

Government Decree No. 168/2025/ND-CP on enterprise registration **("Decree 168")** prescribes the criteria for determining a BO. Under Article 17 of Decree 168, a BO is an individual who satisfies any one of the following conditions:

> An individual who directly or indirectly owns at least 25% of the charter capital or 25% of the total voting shares of the enterprise.
>
> For this provision, an indirect owner is a person who holds at least 25% of the charter capital or voting shares through another legal entity.

> An individual who has the authority to decide or control the approval of at least one of the following matters:
>
> - Appointment, dismissal, or removal of the majority or all members of the Board of Directors, the Chairperson of the Board, or the Chairperson of the Members' Council; the legal representative, director, or general director;
>
> - Amendments to the company's charter;
>
> - Changes to the organizational and management structure;
>
> - Reorganization or dissolution of the company.

It is evident that these criteria are founded upon two fundamental principles: the percentage of charter capital ownership and the right to control the enterprise. The parallel application of these two criteria ensures comprehensive coverage of a wide range of practical scenarios in enterprise ownership and management structures.

New regulations on beneficial owners of Enterprises

3. Obligations to register, declare, and retain information on Beneficial Owners

The obligations concerning the registration, declaration, and retention of BO information are set out as follows:

Registration of the BO list:

- Under Clauses 6, 7, 9, 10, and 11 of the Law on Enterprises 2020, as amended by the Law on amendments to Law on Enterprises, when registering for enterprise incorporation, the company must submit a list of BOs (if any).

- The BO list must include, inter alia: full name; date of birth; nationality; ethnicity; gender; contact address; ownership percentage or controlling rights; and identification document details of each BO.

Declaration and notification of BOs:

Article 18 of Decree 168 requires the enterprise's founders and the enterprise itself to declare and notify the provincial-level business registration authority of its BOs, including:

- Individuals who are shareholders holding 25% or more of the total voting shares of the enterprise;

- Individuals who are members holding 25% or more of the charter capital of a partnership or a multi-member limited liability company;

- Individuals who are owners of single-member limited liability companies;

- Organizations that are shareholders holding 25% or more of the total voting shares of the enterprise.

For individuals who exercise control or decisive influence as defined in Point b, Clause 1, Article 17 of Decree 168, the founders or the enterprise are responsible for self-identifying, declaring, and notifying such information to the competent provincial authority (if applicable).

New regulations on beneficial owners of Enterprises

Retention of BO information:

Article 19 of Decree 168 requires enterprises to retain the list of their declared and notified beneficial owners, which has been submitted to the provincial-level business registration authority, in either paper or electronic form.

Notification of changes in BO information:

Clause 13, Article 1 of the Amended Law on Enterprises 2025 and Article 52 of Decree 168 stipulate that an enterprise must carry out the procedure for notifying changes within 10 days from the date of any change in the information of its beneficial owners or the declared ownership ratio, as previously submitted to the provincial-level business registration authority.

Additionally, under Clause 2, Article 1 of the Amended Law on Enterprises 2025, enterprises must provide BO information to competent state authorities upon request, particularly for inspections, examinations, investigations, or anti–money laundering and counter–terrorism financing purposes.

The introduction and refinement of regulations on beneficial ownership mark a significant step forward in enhancing transparency in corporate ownership structures in Vietnam, while also meeting integration requirements and aligning with international standards on anti–money laundering and counter-terrorism financing. Enterprises must fully understand and properly fulfill their obligations to declare, retain, and update information in order to ensure legal compliance, mitigate risks, and strengthen transparency in their business operations.

Maximum promotional value limits for goods and services effective from July 1, 2025

Effective from July 1, 2025, Circular No. 39/2025/TT-BCT of the Ministry of Industry and Trade will take effect, establishing a unified framework governing the maximum value limits and discount rates applicable to promotional goods and services nationwide. This Circular establishes an important legal foundation regulating promotional and marketing activities of traders engaged in the production and trading of goods and services. To better understand these new limits, TNTP invites you to refer to the analysis below.

1. Maximum value limit for promotional goods and services

Under Clause 1, Clause 2, Article 3 of Circular No. 39/2025/TT-BCT, which provides for the maximum value of goods and services used for promotional purposes and the maximum discount rate applicable to promotional goods and services that traders may apply **("Circular 39")**, the maximum promotional value limits are as follows:

> The material value of promotional goods or services provided for a single unit of the promoted item must not exceed 50% of its selling price immediately before the promotion period, except in the following cases:
>
> - Organizing cultural, artistic, entertainment, or other events for promotional purposes;
>
> - Other promotional forms approved by the competent state authority for commerce;
>
> - Providing free samples or trial services for customers to experience without payment;
>
> - Giving away goods or providing services free of charge without requiring purchase;
>
> - Selling goods or providing services accompanied by contest entry coupons, whereby winners are selected according to the published rules and prizes (or other equivalent forms of contests and prize-awarding activities);
>
> - Selling goods or providing services in connection with chance-based promotional programs, in which participation is tied to the purchase of goods or services, and the winning of prizes depends on the luck of participants in accordance with the published rules and prize announcements (chance-based promotional programs);
>
> - Organizing customer loyalty programs, under which rewards are granted to customers based on the quantity or value of goods or services purchased, as evidenced through membership cards, purchase records, or other equivalent forms.

Maximum promotional value limits for goods and services effective from July 1, 2025

The total value of promotional goods and services in a single promotional campaign must not exceed 50% of the total value of goods or services being promoted, except for the following forms:

- Organizing cultural, artistic, entertainment, or other events for promotional purposes;

- Other promotional forms approved by the competent state authority for commerce;

- Providing free samples or trial services for customers to experience without payment;

- Giving away goods or providing services free of charge without requiring purchase.

Accordingly, most promotional activities are capped at a maximum of 50% of the value of the goods or services being promoted.

Maximum promotional value limits for goods and services effective from July 1, 2025

2. Centralized promotional programs with a 100% value limit

Pursuant to Clause 4, Article 3 of Circular No. 39/2025/TT-BCT, the maximum value of goods and services used for promotional purposes may be increased to 100% in cases where traders organize centralized promotional programs.

Under this provision, centralized promotional programs eligible for the 100% promotional value limit fall into two main categories specified in Clause 5, Article 3 of Circular 39, specifically as follows:

First, programs organized under decisions issued by central and provincial state authorities. These programs are implemented to carry out national or local economic development policies with specific objectives. The State encourages the organization of such centralized promotional programs, and all traders are entitled to participate in these programs.

Second, promotional campaigns conducted during holidays and festivals as prescribed under labor laws, specifically:

- Lunar New Year (Tet): within 30 days prior to the first day of the Lunar New Year;

- Other public holidays and festivals. The duration of each promotional campaign conducted during these holidays and festivals must not exceed the corresponding statutory holiday period as prescribed by labor laws.

These periods typically coincide with increased consumer demand; therefore, allowing a maximum promotional rate of 100% serves to stimulate consumption and support commercial activities.

Participating in centralized promotional programs provides significant advantages to traders. It enables them to execute more impactful marketing strategies with higher promotional investments, while consumers benefit from large-scale, high-value promotional events during key festive periods.

Maximum promotional value limits for goods and services effective from July 1, 2025

3. Maximum discount rates for promotional goods and services

Clause 1, Clause 2, Article 4 of Circular 39 regulates the maximum discount rates applicable to promotional goods and services as follows:

> The maximum discount for promotional goods or services must not exceed 50% of the selling price immediately before the promotion period.
>
> For centralized promotional programs under Clause 5, Article 3, the maximum discount rate may reach 100%.
>
> The 100% discount cap also applies to promotional activities organized within trade promotion programs approved by competent central authorities.

In addition, according to Clause 3, Article 4 of Circular 39, certain goods and services when implementing price discount promotions are not subject to promotional discounts the maximum discount limit, including:

> Price-stabilized goods and services regulated by the State: Competent state authorities may require traders to apply unlimited price reductions in order to stabilize the market and protect consumers' interests during periods of economic difficulty.
>
> Perishable fresh food products: Due to their short shelf life and high perishability, traders are permitted to apply flexible discount rates to prevent waste and ensure food safety for consumers.
>
> Goods and services under liquidation as a result of business dissolution, bankruptcy, or relocation/restructuring: Businesses must liquidate inventory promptly. Therefore, allowing unrestricted discounts is consistent with business realities and helps enterprises recover part of their capital effectively.

Thus, the general maximum discount rate for promotional goods and services is 50%, except in special cases where 100% discounts or no limit apply. These rules aim to balance the interests of traders, protect consumers, and prevent unfair competition.

The new regulations on the maximum value and discount limits applicable to promotional goods and services effective from 1 July 2025 establish a clearer and more transparent legal framework for promotional activities, while helping ensure fair competition and protect consumer rights. A proper and thorough understanding of these provisions will enable traders to implement promotional programs effectively, lawfully, and in a manner that optimizes their commercial benefits.

Case law No. 09/2016/AL on the Determination of the average overdue interest rate on the market and the payment of interest on penalties for breach and compensation for damages

Case Law No. 09/2016/AL is a precedent adopted by the Council of Judges of the Supreme People's Court of Vietnam on October 17, 2016 ***("Case Law 09")****. This case law focuses on determining the average overdue interest rate on the market and the payment of interest on sums representing contractual penalties or compensation for damages. It took effect on December 1, 2016 and aims to clarify how interest should be calculated in civil and commercial disputes, thereby unifying the judicial application of law concerning late payment interest among the courts.*

1. Case facts

According to the statement of claim dated July 7, 2007, the application for amendment of the statement of claims dated October 10, 2007, the documents in the case and the presentation by the representative of the plaintiff – Viet Y Steel Joint Stock Company **("Viet Y Steel Company")** – the facts are as follows:

> Regarding Economic Contract No. 03/2006-HĐKT:
>
> On October 3, 2006, Viet Y Steel Company entered into Economic Contract No. 03/2006-HĐKT with Hung Yen Metal JSC ("Hung Yen Metal Company"). Under the Contract, Viet Y Steel Company ("Party A") purchased 3,000 tons ± 5% of continuously cast steel billets CTS-5SP/PS in bulk from Hung Yen Metal Company ("Party B") at a unit price of VND 6,750,000 per ton; delivery time from October 25 to 31, 2006; total contract value VND 20,250,000,000 ± 5%.
>
> To perform the contract, Viet Y Steel Company transferred the entire amount of VND 20,250,000,000 to Hung Yen Metal Company; however, Hung Yen Metal Company delivered 7.180 tons less than contracted, equivalent to VND 48,465,000.

> Regarding Economic Contract No. 05/2006-HĐKT:
>
> On December 20, 2006, the two parties executed Contract No. 05/2006-HĐKT. Under this contract, Viet Y Steel Company agreed to buy 5,000 tons of steel billets (with the same specifications and quality as in Contract No. 03). The total contract value was VND 36,450,000,000 ± 5%; delivery period from January 18 to 30, 2007. Viet Y Steel Company would advance VND 500,000,000 immediately after signing and the balance would be paid in two installments upon receipt of the goods. The contract also provided that Hung Yen Metal Company would be subject to a 2% penalty on the contract value if it failed to deliver the goods or delivered goods of incorrect specifications. According to Viet Y Steel Company, on December 21, 2006, it advanced VND 500,000,000 but Hung Yen Metal Company failed to perform the contract without justification.

Case law No. 09/2016/AL on the Determination of the average overdue interest rate on the market and the payment of interest on penalties for breach and compensation for damages

Regarding Economic Contract No. 06/2006:

Also on December 20, 2006, Viet Y Steel Company signed Contract No. 06/2006 with Hung Yen Metal Company to purchase 3,000 tons of steel billets. The total value was VND 21,600,000,000; delivery from January 5 to 15, 2007.

On December 22, 2006, Viet Y Steel Company transferred the full VND 21,600,000,000, but Hung Yen Metal Company delivered 7.640 tons short, equivalent to VND 55,008,000.

Regarding Economic Contract No. 01/2007:

On February 1, 2007, Viet Y Steel Company signed Contract No. 01/2007 with Hung Yen Metal Company to buy 5,000 tons of steel billets. The total value was VND 39,000,000,000 ± 5%. During performance, Viet Y Steel Company transferred VND 37,710,000,000 and Hung Yen Metal Company delivered 3,906.390 tons, worth VND 30,469,842,000. The undelivered quantity of 928.25538 tons corresponded to VND 7,240,158,000.

Viet Y Steel Company repeatedly sent official letters requesting Hung Yen Metal Company to perform the contracts, but the latter failed to do so, forcing Viet Y Steel Company to purchase billets from another supplier at a higher price to sustain its production and business.

Due to Hung Yen Metal Company's breach of the signed contracts, Viet Y Steel Company filed suit demanding that Hung Yen Metal Company pay and compensate all losses arising from the failure to deliver under Contracts No. 03/2006, 05/2006, 06/2006 and 01/2007. At the time of filing, the total claimed amount was VND 12,874,298,683, including: the value of undelivered goods (VND 11,181,662,503), penalty for breach (VND 1,316,490,480) and overdue interest (VND 376,145,700).

The case underwent three trials at first instance and three at appellate level.

On July 25, 2010, the People's Court of Bac Ninh Province issued Official Letter No. 110/2010/CV-TA requesting the Chief Justice of the Supreme People's Court to review the appellate judgment under cassation procedures.

In Decision on appeal No. 17/2012/KDTM-KN dated 25 June 2012, the Chief Justice of the Supreme People's Court requested that the Judicial Council of the Supreme People's Court to conduct the cassation procedures to set aside Appellate Commercial Judgment No.63/KDTM-PT dated 5 April 2010 of the Appellate Court of the Supreme People's Court of Hanoi; transfer the case to the Appellate Court of the Supreme People's Court of Hanoi for settlement following appellate procedures in accordance with the law.

Case law No. 09/2016/AL on the Determination of the average overdue interest rate on the market and the payment of interest on penalties for breach and compensation for damages

2. Certain findings of the Court

Since Hung Yen Metal Company failed to fulfill its commitments as agreed in the contracts (i.e. failure to deliver sufficient goods to Viet Y Steel Company), there is sufficient basis for Viet Y Steel Company to initiate a lawsuit against Hung Yen Metal Company to request Hung Yen Metal Company to return the received money (corresponding to the undelivered goods), the overdue interest for late payment, penalties for breach and compensation for damages (due to the non-delivery, Viet Y Steel Company had to purchase the goods from other sellers at higher price than that of Hung Yen Metal Company), which is in accordance with Article 34, Article 297.3, Articles 300, 301, 302, 306 and 307 of the Commercial Law 2005.

[1] As to the advance payments with regard to the undelivered goods in the 4 economic contracts, the first-instance court had correctly calculated the correct amount of money that Hung Yen Metal Company had to return Viet Y Steel Company. However, as to the overdue interest on the aforesaid amount, although the first-instance court applied Article 306 of the Commercial Law 2005, it did not apply the average overdue interest rate on the market of at least three local banks at the time of payment (at the first-instance hearing) to make the calculation, instead, the first-instance court was wrong in applying the basic interest of the State Bank at the time of the first-instance hearing at the plaintiff's request to determine the overdue interest (being 10.5%/year). In this case, the Court needs to apply the average overdue interest on the market of at least three local banks (Agribank, Vietcombank and VietinBank) to calculate the overdue interest in accordance with the law.

Case law No. 09/2016/AL on the Determination of the average overdue interest rate on the market and the payment of interest on penalties for breach and compensation for damages

> As to penalties for breach: both parties agreed that: party B shall be subject to a penalty equivalent to 2% of the value of the approved shipments when party B commits one of the following breaches: either failure to deliver conforming goods or failure to deliver the goods. As such, Hung Yen Metal Company, since Hung Yen Metal Company failed to deliver sufficient goods, it shall pay a contractual penalty equivalent to 2% of the value of the breached contractual obligation portion to Viet Y Steel Company in accordance with Article 300 and Article 301 of the Commercial Law 2005. **[2]** There is a basis for the first-instance court to accept theclaim for penalties for breach of Viet Y Steel Company; however, calculating interest over the penalties for contractual breach is not correct.

> As to the compensation for damages: According to Viet Y Steel Company's submissions, it was because Hung Yen Metal Company breached the contracts for not delivering sufficient goods, Viet Y Steel Company had to purchase steel billets at higher price from other manufacturers to ensure the continuity of the production and business of the Company. The first-instance court relied on only the contracts for sale of steel billets which Viet Y Steel Company signed with other manufacturers to compel Hung Yen Metal Company to pay Viet Y Steel Company the difference in value due to the purchase of the substitute goods at higher price, but the Court failed to determine whether the purchase of substitute goods from other manufacturers would serve for the purpose of substituting the undelivered and insufficient goods from Hung Yen Metal Company to ensure the continuity of the business operation as planned. In this regard, the Court should have equested Viet Y Steel Company to submit documents, evidence (such as goods orders from third parties, production and business plan...) to prove that the actual damage had occurred and from that there would be a basis to compel Hung Yen Metal Company to compensate the damages in a proper manner. **[3]** Besides, the first-instance court's calculations of interest on the damages are not compliant with Article 302 of the Commercial Law 2005.

3. Commentary on the Case Law 09

The content of the case law corresponds to items [1], [2] and [3] above. Case Law 09 establishes that when a party in a commercial transaction delays payment and there is no contrary agreement, it must pay interest at the average overdue rate of at least three commercial banks in the locality. At the same time, the debtor is not required to pay interest on sums representing contractual penalties or compensation for damages.

Case law No. 09/2016/AL on the Determination of the average overdue interest rate on the market and the payment of interest on penalties for breach and compensation for damages

Case Law 09 holds significant practical value in Vietnam's commercial adjudication because:

> It plays a crucial role in guiding and standardizing the determination of overdue interest rates in commercial disputes, preventing inconsistent or inappropriate applications. Using the average overdue rate of three banks better reflects market reality at the time of payment, ensuring equitable treatment for both parties.
>
> It clarifies the principle that no interest is payable on contractual penalties and compensation, consistent with the Commercial Law 2005, thereby avoiding unjustified financial burdens on the breaching party.
>
> The case law enhances legal predictability, helping businesses assess financial risks in cases of contractual breach.

However, practical difficulties remain:

> The case law requires using the "average overdue rate of at least three local banks" but gives no guidance on which banks, loan categories or maturities to use, leading to inconsistent application among courts.
>
> The "time of payment (first-instance trial)" is taken as the reference point, yet the case law does not clarify whether the rate should be updated if proceedings are prolonged or market rates fluctuate, causing controversy in practice.
>
> A key difficulty in applying the "average overdue interest rate on the market" is the lack of publicly available, uniform data from commercial banks. Most credit institutions do not publish their average overdue rates or apply different calculation methods and periods, resulting in disparities that complicate the courts' determination.

Case Law 09 represents a milestone in resolving commercial disputes in Vietnam, particularly concerning late-payment interest. It affirms that: (i) Late-payment interest shall be calculated at the average overdue rate of at least three local banks; and (ii) No interest shall accrue on sums representing contractual penalties or compensation for damages. Although certain aspects remain unclear (such as data sources, timing and scope of application), Case Law 09 continues to serve as a vital legal reference, promoting uniformity and fairness in commercial dispute resolution.

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