

AMENDMENTS TO THE DECREE ON ENTERPRISE REGISTRATION: WHAT ENTERPRISES SHOULD KNOW

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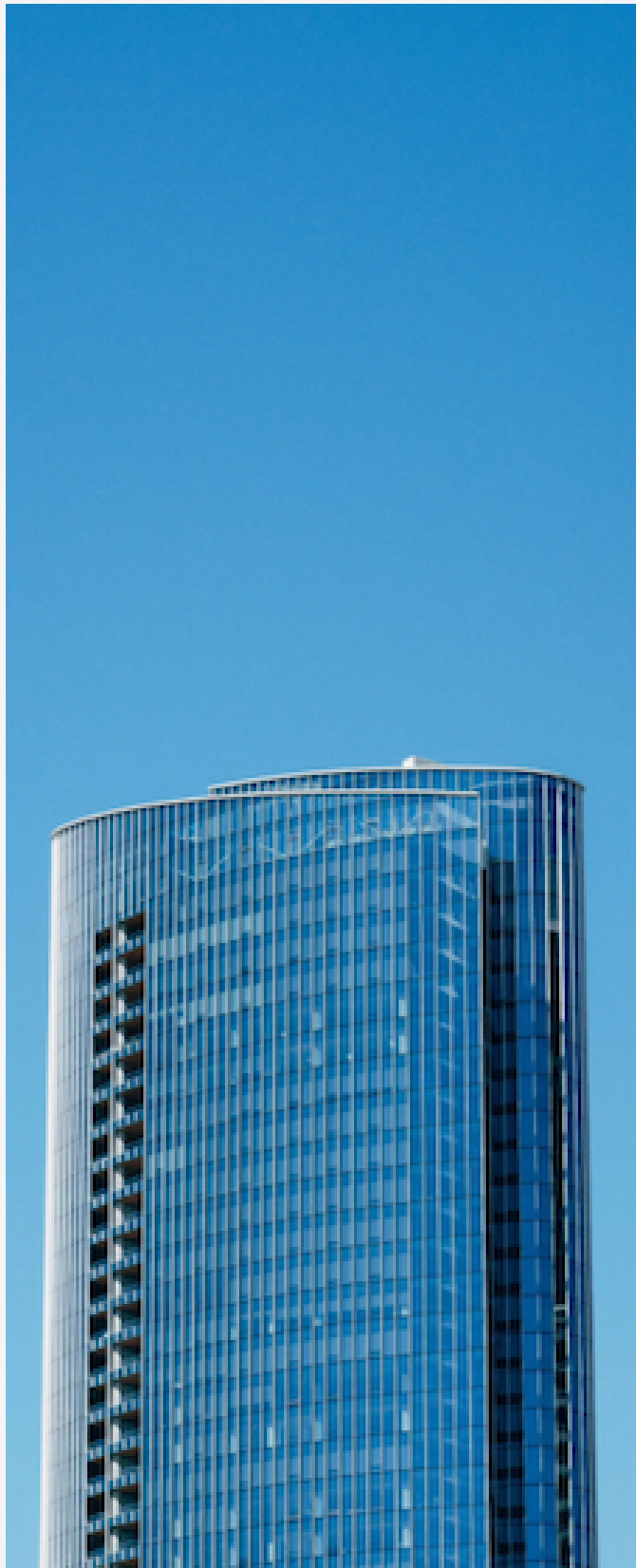
On June 30, 2025, the Government promulgated Decree 168/2025/ND-CP on enterprise registration (**Decree 168**), which officially takes effect from July 1, 2025 and replaces Decree 01/2021/ND-CP (**Decree 01**). Below is a detailed analysis of the key provisions in Decree 168 that enterprises should take note of:

Firstly, supplementing regulations on beneficial owners of enterprises

In response to the need to improve the legal framework, enhance transparency in business environment, prevent and combat money laundering, and remove Viet Nam from the Financial Action Task Force (FATF)'s grey list on preventing money laundering, terrorist financing, and the financing of proliferation of mass destruction weapons, the National Assembly, in amending the Law on Enterprises 2020, has supplemented the provisions on beneficial owners of enterprises. Specifically, under clause 6 Article 217 of the Law on Enterprises 2020 (as supplemented by clause 27 Article 1 of the Law amending the Law on Enterprises), the National Assembly assigns the Government to specify: (i) the criteria for determining beneficial owners; (ii) the declaration of beneficial owners' information; (iii) the information to identify beneficial owners; and (iv) the provision and retention of beneficial owners' information. These contents are stipulated in Decree 168 as follows:

With respect to the criteria for determining beneficial owners, enterprises should particularly note that a beneficial owner is always an individual (not a legal entity) who satisfies one of the following conditions:

- Directly holding 25% or more of the charter capital or 25% or more of the total voting shares of the enterprise;
- Indirectly holding (through another entity) 25% or more of the charter capital or 25% or more of the total voting shares of the enterprise;
- Having control over the approval of decisions on at least one of the following matters: appointment, removal, or dismissal of a majority or all members of the Board of Directors, Chairman of the Board of Directors, Chairman of the Members' Council; the legal representative, director or general director of the enterprise; amendment of the enterprise's charter; changes in the organizational structure; restructuring or dissolution of the enterprise.



The following is an example for determining the indirect ownership of a beneficial owner through another entity:

Individual A holds 70% of the charter capital of Company X. Company X holds 60% of the charter capital of Company Y. Company Y holds 80% of the charter capital of Company Z. Therefore, the indirect ownership ratio of Individual A in Company Y and Company Z is calculated as follows:

- In Company Y: 70% (A's ownership in Company X) x 60% (Company X's ownership in Company Y) = 42%
- In Company Z: 70% (A's ownership in Company X) x 60% (Company X's ownership in Company Y) x 80% (Company Y's ownership in Company Z) = 33.6%

With respect to the declaration of beneficial owners' information, declaration of information to identify beneficial owners, provision and retention of information about beneficial owners, in accordance with the criteria for determination under Decree 168, founders and enterprises must proactively declare and notify the business registration authority of their beneficial owners' information when carrying out enterprise registration procedures. Additionally, joint stock companies must declare the information of institutional shareholders holding 25% or more of the total voting shares (if any). Enterprises are responsible for retaining a record of the beneficial owners declared and notified the business registration authority in either hard copy or electronic form.

Secondly, specifying the documents required to prove the completion of a transfer or a capital contribution

Previously, Decree 01 did not have any specific provisions on these documents, leading to inconsistent application in the practical implementation of relevant procedures. To address this problem, clause 11 and clause 12, Article 3 of Decree 168 have expressly defined the documents evidencing the completion of a transfer and a contribution of capital, which include:

For documents evidencing the completion of a transfer, one of the following is required: (a) a copy or extract of the register of members or shareholders; (b) a copy or original of the transfer contract liquidation minutes; (c) a bank confirmation of completed payment; or (d) other documents evidencing the completed transfer of shares or capital contributions under applicable laws.

For documents evidencing a capital contribution, one of the following is required: (a) a copy or extract of the register of members or shareholders; (b) a copy of the capital contribution certificate; (c) a bank confirmation of funds transferred into the company's account; or (d)

other documents evidencing completed capital contribution under applicable laws.

Thirdly, permitting enterprises to carry out multiple registration procedures simultaneously with a single application dossier

Previously, Decree 01 explicitly permitted enterprises to simultaneously register for conversion of the enterprise form along with registration for other enterprise registration changes, or notification of changes in enterprise registration. However, Decree 01 has not yet addressed other circumstances, which leads to two different interpretations by business registration authorities in practice, specifically: (i) enterprises can proceed with several procedures at the same time because it is not prohibited by Decree 01; or (ii) enterprises are required to carry out each procedure separately, as Decree 01 does not expressly permit the concurrent implementation of multiple procedures. These two different interpretations have caused difficulties for both enterprises and the registration authority. To address this issue, clause 6 Article 4 of Decree 168 has expressly allowed enterprises to simultaneously carry out multiple procedures with a single application dossier, including: registration of changes to enterprise registration information, notification of changes, notification of updates or additions to enterprise registration information; and correction of registration information.

Generally, the new provisions of Decree 168 are developed to further simplify administrative procedures in enterprise registration, improve transparency in Viet Nam's business environment, attract investment, and promote the development of the private sector. While maintaining the effective and stable provisions from Decree 01, Decree 168 also addresses practical challenges encountered during the implementation of Decree 01. In addition to the aforementioned analyses, Decree 168 also has other notable contents, such as removal of the meeting minutes in the dossier for certain procedures, such as (i) company registration resulting from a split, merger, or consolidation, and (ii) changes to the company's head office, name, legal representative, etc. Should our Valued Clients and readers wish to learn more or request any advice regarding the new policies and regulations of Decree 168, as well as other matters concerning enterprise registration in general, NHQuang&Associates are willing to provide clarifications and relevant legal opinions.