

Corporate Structuring and the UBO: Understanding Ultimate Beneficial Ownership Impacts in Vietnam

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The Strategic Impact of Ultimate Beneficial Ownership (UBO) and Corporate Restructuring in Vietnam

In recent years, enhancing transparency in corporate ownership and control structures has become a central focus of anti-money laundering (AML) frameworks worldwide. The recommendations of the Financial Action Task Force (FATF), particularly those relating to the identification of Ultimate Beneficial Owners (UBOs), have driven jurisdictions to strengthen obligations regarding the collection, updating, and disclosure of information concerning individuals who ultimately own or control legal entities.

In 2023, Vietnam was placed on the FATF grey list, prompting stricter regulatory control over AML and UBO matters. As a result, UBO identification has become a core compliance requirement. Vietnam's legal framework on UBO obligations has since been reinforced through AML legislation, governmental decrees, enterprise regulations, and banking guidelines. In this context, determining UBOs is no longer an administrative formality but an essential element of compliance, particularly during restructuring and M&A transactions.

Definition and identification of the UBO

Inherently, a UBO is a natural person who ultimately owns, controls, or benefits from a legal entity or a transaction, regardless of whether that individual is formally named on legal documentation. A UBO must always be a natural person; it cannot be a corporate entity.

A common misconception is the conflation of legal ownership with beneficial ownership. While a corporate entity may be the registered shareholder, UBO determination requires tracing through all intermediary layers to identify the individual who exercising ultimate ownership or ultimate control, whether through direct shareholding, differential voting rights, management appointment powers, contractual arrangements, or other substantive influence behind the corporate structure.

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The global trajectory is evident across various jurisdictions, for example FATF's beneficial ownership rules, Singapore's Register of Registrable Controllers (RORC), Vietnam's AML laws, Australia's substance and beneficial owner tax doctrines, and the Cayman Islands' centralized registry requirements. In particular:

- They aggressively apply the "Look-through approach" or "Piercing the corporate veil".
- They recognize that a corporate entity is merely a registered instrument.
- The individuals who actually reap the substantial profits from M&A transactions are the UBOs.

The strategic importance of UBOs in corporate restructuring

In Vietnam and comparable jurisdictions, strengthened AML and banking regulations demand a risk-based approach, with financial institutions and service providers required to proactively identify UBOs of their clients. While for corporate entities, UBO analysis must be embedded at all stages of incorporation or operations to ensure compliance remains uninterrupted.

That said, corporate restructuring, including intra-group capital transfers, the establishment of holding or operating entities, cross-border M&A, mergers, spin-offs, and the insertion of multi-jurisdictional intermediaries, can materially reshape the actual UBO even when the registered ownership remains unchanged. In practice, these shifts in effective control frequently arise not only from structural mechanisms such as voting preference shares, management appointment or removal rights, but also from contractual arrangements executed during the transaction process. Shareholder agreements or other undertakings between transaction parties may allocate decision-making power or economic benefit to individuals who do not appear as registered owners. These control-based shifts are frequently overlooked, causing enterprises to miss UBO changes and fail to update the required registers in a timely manner.

Moreover, from the buyer's perspective, acquiring a company without clear UBO oversight creates significant commercial exposure. In practice, UBO-related risks in M&A transactions generally arise in two forms:

Pre-M&A: Deal certainty

Opaque or complex ownership structures are treated as red flags for AML and sanctions risks. As a result, buyers may discount valuation, impose escrow or holdback arrangements, or require enhanced warranties and indemnities. In more serious cases, investors may withdraw entirely. Unidentified or hidden UBOs also expose the acquirer to inherited liabilities, such as legacy AML breaches or sanctions exposure, directly undermining transaction certainty.

Post-M&A: Regulatory & compliance exposure (banking, tax treaties, and legal liability)

In many transactions, parties focus primarily on the economic outcomes of the deal (purchase price allocation, corporate license updates, or changes to the legal representative) while overlooking deeper control-based changes that re-shape the UBO. This omission creates significant post-closing compliance vulnerabilities. Under Vietnamese law and global AML frameworks, any change in the ultimate controller triggers mandatory updates to multiple stakeholders, including business registration authorities, tax authorities, banks, credit institutions, and business partners subject to AML regulation (e.g., audit firms, law firms, corporate service providers).

Moreover, in jurisdictions such as Singapore, Australia, and Vietnam, failure to maintain accurate UBO records can trigger administrative sanctions or criminal liability, with regulators empowered to pierce the corporate veil and hold individuals directly accountable.

Compliance obligations triggered by UBO changes

(i) Business registration authorities

Under Vietnam's amended enterprise regulations, companies are required to collect, disclose, and maintain UBO information from incorporation throughout their entire operational lifecycle, and to provide full details upon request from competent authorities. Regulators must also retain UBO records for at least five years following the company's dissolution. Accordingly, upon completion of an M&A transaction, the enterprise must reassess its post-transaction ownership structure, determine whether the UBO has changed, and implement the necessary updates with the relevant authorities.

Enterprise laws mandate concurrent UBO updates during business registration amendments. Financial institutions must also recognize and update UBO data upon changes in corporate structure. Regarding business registration, statutory delays (e.g., beyond 10 days) result in administrative fines and mandatory remediation.

(ii) Banks and financial institutions

Financial institutions act as the most rigorous gatekeepers in the AML compliance system. Under AML legislation, credit institutions must implement enhanced monitoring and due diligence when a client's legal structure changes, particularly involving offshore elements or structural complexity. If an enterprise fails to provide complete or accurate UBO information, banks are legally obligated to enforce control measures:

- **Refusal or termination of transactions:** Banks must refuse transactions or terminate business relationships if the UBO cannot be identified.
- **Transaction delays:** Applying temporary holds on transactions (e.g., up to 3 working days) to facilitate verification and coordinate with competent authorities.
- **Suspicious transaction reports (STR):** Reporting to AML authorities upon detecting signs of concealment or opacity regarding the UBO.
- **Account suspension:** Executed immediately upon regulatory orders or upon detecting severe risks related to warning lists or sanctions.

Practically, these measures directly impact operational capabilities, including payment processing and maintaining banking relationships. Thus, proactive preparation and the provision of consistent, explainable UBO data are vital to ensuring smooth restructuring transactions.

(iii) Business partners and stakeholders

In commercial practice, transparency in ownership and control is a core expectation among counterparties. When a change in the UBO occurs, the company is expected to promptly notify its key business partners and stakeholders, especially those engaged in long-term contractual and where the counterparties fall within the scope of Vietnam's AML regulatory framework. Accordingly, timely disclosure of UBO changes enables such partners to refresh their internal KYC records, maintain compliance with their statutory obligations and avoid delays in ongoing transactions, suspension of services, or reassessment of the commercial relationship.

Best practices for UBO governance during restructuring

To facilitate transaction and mitigate legal risks, enterprises must institute a proactive and systematic UBO governance framework throughout the restructuring lifecycle. Recognized best practices include:

- **UBO mapping:** Enterprises are recommended to construct ownership charts depicting the entire chain, from operating companies and holding companies to the ultimate controlling individuals. Visualizing this structure enables legal and compliance teams to monitor direct and indirect ownership ties, pinpoint the ultimate controller, and mitigate the risk of UBO obfuscation behind intermediary layers.
- **Periodic reviews:** UBO governance is not a one-time exercise. Enterprises should conduct periodic compliance reviews to assess whether changes in ownership, management rights, or capital structure trigger updates to UBO registers or disclosures to banks, licensing authorities, and AML-regulated partners.
- **Substantive UBO verification:** Under AML standards, enterprises must go beyond collecting basic identification documents and verify whether the declared UBO is the true ultimate controller. This requires assessing both the individual's actual ability to influence strategic decisions and their entitlement to economic benefits, while also evaluating the possibility that any named owner may in fact be acting as a nominee for an undisclosed controlling party.
- **Pre-restructuring UBO due diligence:** From the buyer's perspective, UBO screening must be integrated into the overarching due diligence framework for restructuring or M&A. This will help shields investors from inheriting latent legal obligations, such as AML violations, sanctions breaches, or unfulfilled UBO disclosure requirements. Early detection of UBO issues permits parties to modify deal structures, reallocate acquisition costs, or design appropriate tax frameworks, ensuring an effective and favourable deal.

Best Practice in Action

UBO governance extends far beyond the administrative act of completing disclosure forms, it is turning into a commercial strategy that becomes especially critical in the execution of restructuring and M&A transactions. Compliance with both domestic and international AML/CFT standards demands continuous oversight of UBO developments. Any failure to track UBO changes throughout the transaction lifecycle exposes enterprises to material legal and commercial risks, including banking interruptions, delays in deal execution, diminished valuation, and potential regulatory sanctions. For businesses undertaking reorganizations, investments, or multi-layered ownership realignments, maintaining a robust and continuously updated UBO governance framework is fundamental to safeguarding transactional integrity and long-term compliance.

For any further questions or assistance, please reach out to us at vietnam@alitium.com


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