

By **NGUYEN T. DUNG (BRIAN)**
Senior Associate at
Herman, Henry & Dominic



FROM TRUST TO TRAGEDY **RETHINKING LEGAL REPRESENTATIVE** IN THE WAKE OF ABUSE

1. The Law

The position of a Legal Representative (LR) within a corporation is crucial in the Vietnamese corporate environment and is precisely specified by particular laws and regulations. The LR represents the company in all transactions and legal procedures; their authority includes the exercise of rights and the fulfillment of obligations on the company's behalf.

The present Enterprise Law requires LRs to perform out their duties with uncompromising honesty, prudence, and a firm dedication to the best interests of the company. This fiduciary duty entails remaining loyal to the company and refraining from using their position or corporate assets for personal gain or the benefit of third parties.



2. The Tragedy

However, when dealing with the scenario of a limited liability company with two members (equity stakeholders), the Enterprise Law creates a crucial gap when one of them, who also serves as the LR, is prosecuted and detained. In such instances, the company's LR is immediately assumed by the remaining equity stakeholder. While important, this shift poses a possible paradox because it fails to appropriately handle the safeguarding of the company's interests as well as the interests of the absent or prosecuted equity stakeholder. This becomes more troublesome when the new LR is also an equity stakeholder, putting them in a potential conflict of interest with the company.

Unfortunately, real-life examples abound in which such conditions have given birth to actions by the new LR that prioritize personal wealth over the wellbeing of the organization. They have used their power to orchestrate choices that directly benefit themselves or their linked entities, frequently attempting to accomplish asset transfers or alter the company's business activity while the other shareholder is unable to do so owing to legal procedures.

Consider the following real-life example: corporation X is a limited liability corporation with equity stakeholders Mr. A and Mr. B. Mr. A, who is also the LR, had provided millions of dollars in financial resources to Company X's ambitious construction project. One day, Mr. A was tragically held for a provincial law enforcement investigation, facing claims of "abusing trust to appropriate property." During his confinement, the company's seal and documentation were passed to Mr. B, who then completed the full transfer of Company X's project to one of his personal companies. Mr. A learned about the issue after his release when the provincial People's Procuracy concluded that there was insufficient evidence of criminal wrongdoing. He addressed Mr. B right away,



demanding the return of his large investment in the project. Mr. B, to his surprise, declined, leaving Mr. A devastated by the theft of the company and the embezzlement of his invested assets. Overwhelmed by bitterness and frustration, Mr. A resorted to violence by throwing acid at Mr. B, accidentally injuring Mr. B's son. This terrible episode led to Mr. A's prosecution and subsequent 13-year prison sentence for intentional infliction of injury, leaving a path of destruction in its wake.



3. The Prevention

To avoid such harrowing tragedies in the corporate landscape, it is critical that, if an equity stakeholder of a two-member limited liability company serving as the LR is detained, such equity stakeholder appoints a competent and legally astute individual from their circle of acquaintances or family to delegate some or all of their rights within the company. When the detained shareholder is unable to find a suitable proxy through personal relationships, hiring a respected and competent attorney to act as their proxy becomes a wise option of action. This arrangement serves as a safeguard to ensure that intervention is available if the other equity stakeholder engages in actions that are contrary to the interests of the company.

Furthermore, if the detained equity stakeholder has doubts or concerns, or has information indicating that the current LR (the other equity stakeholder) has engaged in actions detrimental to the company's welfare, they must promptly submit a written request to the court or the relevant authorities. This request should request the agency to temporarily halt changes to the LR position or to freeze the company's assets. Such safeguards are required to protect the LR's legitimate rights and interests against potential infringement, hence establishing a more equitable and secure corporate environment.

4. The Lesson

When a legal crisis occurs within a corporation, prompt and quick action is critical. The tragic experience of Company X emphasizes the significance of prompt action and vigilance. To preserve all stakeholders' rights and interests, it is critical to respond quickly, appoint competent proxies if necessary, and engage legal authorities when conflicts emerge. Proactive measures are not only advantageous; they are also required to avoid disastrous repercussions and safeguard the integrity of the organizational landscape.



