

**International
Comparative
Legal Guides**



Business Crime

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Vietnam

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1 General Criminal Law Enforcement

1.1 What authorities can prosecute business crimes, and are there different enforcement authorities at the national and regional levels?

There are three main stages in Vietnamese criminal procedure, which are investigation, prosecution and adjudication. The investigation agency is in charge of investigation, the People's Procuracy is in charge of prosecution and the People's Court is in charge of adjudication.

The Procuracy is organised under a single bureaucratic system throughout the country and includes the following divisions:

1. The Supreme People's Procuracy.
2. The Superior People's Procuracies. There are three Superior People's Procuracies based in Hanoi, Ho Chi Minh City and Da Nang.
3. The Provincial-level People's Procuracies. There are 63 Provincial-level People's Procuracies in 63 provinces and provincial-level cities.
4. The District-level People's Procuracies. There are 710 District-level People's Procuracies in districts, towns and equivalent administrative divisions in Vietnam.
5. The Military Procuracies, including:
 - a. The Central Military Procuracy.
 - b. The Military Zones and Equivalent Procuracies (11 Procuracies).
 - c. The Regional Military Procuracies (28 Procuracies).

Each procuracy is led by a chief procurator. Chief procurators of procuracies at lower levels shall submit to the leadership of chief procurators of procuracies at higher levels. Chief procurators of all procuracies shall submit to the leadership of the Procurator General of the Supreme People's Procuracy. Chief procurators of procuracies at higher levels may revoke, suspend or cancel illegal decisions issued by chief procurators of procuracies at lower levels.

The Procurator General is appointed by the National Assembly based on recommendation from the President. The Procurator General appoints chief procurators of the Superior People's Procuracies, the Provincial-level People's Procuracies and the District-level People's Procuracies. The chief procurator of the Central Military Procuracy is appointed by the President based on joint recommendation from the Procurator General and the Minister of National Defense. The chief procurators of other Military Procuracies are appointed by the Procurator General based on recommendation from the chief procurator of the Central Military Procuracy.

Working for the Procuracies are procurators who have sufficient years of experience, meet other mandatory requirements and are appointed by the Procurator General after passing the

relevant national exam. Procurators act as public prosecutors and simultaneously supervise judicial procedures. Supporting the procurators with their tasks are examiners, who are also appointed according to law.

The investigation agency comprises three different bodies:

1. The Investigation Agency of the People's Public Security. This investigation agency is organised as part of the corresponding Police Departments at various levels:
 - a. The Security Investigation Agencies, which exist in the Ministry of Public Security ("MPS") and the Provincial-level Police Departments (63 provinces).
 - b. The Police Investigation Agencies, which exist in the MPS, the Provincial-level Police Departments (63 provinces) and the District-level Police Departments (710 districts).
2. The Investigation Agency of the People's Army. This investigation agency is organised as part of the corresponding military units at various levels:
 - a. The Security Investigation Agencies, which exist in the Ministry of National Defense and the Military Zones and equivalents.
 - b. The Criminal Investigation Agencies, which exist in the Ministry of National Defense, the Military Zones and equivalents and the Military Regions.
3. The Investigation Agency of the Supreme People's Procuracy:
 - a. The Investigation Agency under the Supreme People's Procuracy.
 - b. The Investigation Agency under the Central Military Procuracy.

Subordinate investigation agencies shall submit to the professional guidance and direction of their superior investigation agencies. Each investigation agency has a head and a number of deputy heads who shall report to the head of the superior investigation agency. Working in the investigation agencies are detectives who have sufficient years of experience, meet other mandatory requirements and are appointed after passing the relevant national exam. Detectives shall conduct investigations and verification operations under the jurisdiction of their investigation agencies as assigned by the heads or deputy heads of such agencies. Supporting the detectives with their tasks are investigation officers, who are also appointed according to law.

Other than the above-mentioned investigation agencies, there are other agencies tasked with conducting certain investigation operations. These agencies are organised as part of divisions and departments of the Border Guards, Customs Authorities, Forest Ranger Agencies, Coast Guards, Fisheries Surveillance Agencies and certain divisions and departments of the People's Public Security and People's Army. Depending on their specific scope of authority, these supporting agencies can issue a Decision on

Indictment for Criminal Cases and perform initial investigation operations before transferring the case files to competent investigation agencies, or perform investigation operations as requested by the competent investigation agencies in specific cases.

1.2 If there is more than one set of enforcement agencies, how are decisions made regarding the body that will investigate and prosecute a matter?

Investigation agencies of the People's Public Security have the authority to investigate all crimes, except those under the authority of the investigation agencies of the People's Army and the Supreme People's Procuracy. The investigation agencies of the People's Army shall inquire into crimes falling into the jurisdiction of military courts. Investigation agencies under the Supreme People's Procuracy and Central Military Procuracy shall probe violations of judicial operations, corruption and breach of positions in the judicial sector against offenders who are officials and employees of the investigation agencies, courts, procuracies and other law enforcement agencies and other individuals empowered to engage in judicial operations.

Investigation agencies can investigate cases that occur in their assigned territories. If crimes occur in various or unidentified places, the investigation agency of the offender's place of exposure, residence or capture shall carry out investigation operations.

The hierarchy of investigation is as follows:

1. Investigation agencies in the District-level Police Departments and the Military Regions shall investigate crimes within the jurisdiction of the district-level court and regional military court, respectively.
2. Investigation agencies in the Provincial-level Police Departments shall investigate crimes within the jurisdiction of the provincial-level court. If necessary, investigation agencies in the Provincial-level Police Departments can inquire into cases within the authority of the investigation agencies in the District-level Police Departments. Investigation agencies in the Provincial-level Police Departments also solve crimes that occur in various districts, towns and equivalents and that involve foreign elements. Investigation agencies in Military Zones and equivalents shall investigate crimes within the jurisdiction of the court of a Military Zone or equivalent. If necessary, investigation agencies in Military Zones and equivalents can inquire into cases within the authority of investigation agencies in the Military Regions.
3. Investigation agencies of the MPS or Ministry of Defence shall investigate severe felonies ordered by the Supreme People's Court for re-investigation. If necessary, these agencies can investigate severe and complex felonies involving several provinces or countries.

1.3 Can multiple authorities investigate and enforce simultaneously?

No. The commission of an offence can only be prosecuted either criminally or administratively by one competent authority.

1.4 Is there any civil or administrative enforcement against business crimes? If so, what agencies enforce the laws civilly and which crimes do they combat?

If an offence satisfies all elements of a crime, only the investigation agency can investigate and only the Procuracy can prosecute according to the Criminal Procedure Code 2015. If an offence is not a crime under the definition of the Criminal Code

2015, the organisation or person committing such offence can be sanctioned administratively according to applicable laws and regulations. In the business crime context, all violations of Vietnam's regulations of economic activities can be subject to administrative punishment, on the condition that such violations have been defined as offences and their sanctions have been provided for by a legal document.

For example, the definitions of tax evasion under the Criminal Code 2015 and Decree No. 125/2020/ND-CP providing for administrative sanctions in the tax and accounting sectors are the same. However, if, *inter alia*, the amount evaded is less than 100 million VND, the perpetrator would be sanctioned administratively instead of being prosecuted criminally.

All government agencies empowered by the relevant legal documents can administratively pursue the violations under their authority. Examples of these agencies in the business crime context include the State Securities Commission of Vietnam, the Tax Departments and Customs Departments at various levels, the Market Surveillance Agencies at various levels, etc.

1.5 What are the major business crime cases in your jurisdiction in the past year?

The past year has been notable for several criminal violations of Mr. Trinh Van Quyet, the Chairman of FLC Group. Trinh allegedly sold 74.8 billion FLC shares "underground" without reporting or disclosing information before performing the transaction. Upon revelation of the offence, the State Securities Committee decided to block the securities account of Trinh in order to prevent further acts that are not in accordance with law. Subsequently, Trinh was administratively fined 1.5 billion VND and suspended from securities trading activities for five months. The investigation agency conducted an investigation and verification against Trinh in relation to "manipulating [the] stock market" and "concealing information in securities activities" that occurred on 10 January 2022, which caused substantial loss to other investors and adversely affected the operation of Vietnam's stock market. On 29 March 2022, the investigation agency issued a Decision on Indictment against him. At the same time, the investigation agency searched his residences and workplaces at 21 locations.

The second notorious business crime case related to bond issuance and capital mobilisation from investors of Tan Hoang Minh Group in 2022. The investigation agency determined that from July 2021 to March 2022, Mr. Do Anh Dung, the Chairman, and other individuals of Tan Hoang Minh Group committed fraud by using three companies, namely Viet Star Real Estate Investment, Soleil Investment and Hotel Services, and Winter Palace JSC, and other related companies to make nine illegal private corporate bond issuances with a total value of 10,300 billion VND to raise money from investors. However, the proceeds were not used for business activities as represented in the bond documentation. On 5 April 2022, the investigation agency issued Decisions on Indictment against Mr. Do and six accomplices and arrested them. The investigation agencies also searched their residences and workplaces. The charge was Fraudulent Appropriation of Property under Article 174 of the Criminal Code 2015.

2 Organisation of the Courts

2.1 How are the criminal courts in your jurisdiction structured? Are there specialised criminal courts for particular crimes?

The system of the People's Courts in Vietnam includes:

1. The Supreme People's Court: The Supreme People's Court is the highest judicial adjudication body of Vietnam. The Supreme People's Court shall, *inter alia*, (i) review judgments and decisions of other courts that have taken legal effect but are protested against, and (ii) manage the organisation of People's Courts and military courts to ensure independence from one another. The Supreme People's Court has a Judicial Council comprising 13 to 17 justices. The Judicial Council shall conduct all hearings by a panel composed of five or all of its justices. There is no specialised criminal court in the Supreme People's Court.
2. The Superior People's Courts: There are three Superior People's Courts based in Hanoi, Ho Chi Minh City and Da Nang. These courts: (i) conduct appellate hearings with regard to trial judgments and decisions issued by the Provincial-level People's Courts situated within their territorial jurisdiction that have not yet taken legal effect and are appealed; and (ii) review judgments and decisions issued by the Provincial-level People's Courts situated within their territorial jurisdiction that have taken legal effect and are protested against. Each Superior People's Court has specialised courts of which one is the criminal court.
3. The Provincial-level People's Courts: There are 63 Provincial-level People's Courts in all provinces and equivalents. These courts conduct, *inter alia*, (i) trials, and (ii) appellate hearings with regard to trial judgments and decisions of District-level People's Courts that have not yet taken legal effect and are appealed. Each Provincial-level People's Court has specialised courts of which one is the criminal court.
4. The District-level People's Courts: There are 710 District-level People's Courts in all districts and equivalents. These courts conduct, *inter alia*, trials. These courts might have specialised courts, including a criminal court, depending on their particulars and needs.
5. Military courts (which do not have specialised criminal courts):
 - a. The Central Military Court.
 - b. The Military Zones and Equivalent Courts.
 - c. The Regional Military Courts.

All the courts handle criminal cases and there are no specialised courts for specific crimes. Where a People's Court has a specialised criminal court, such court will handle criminal cases.

2.2 Is there a right to a jury in business crime trials?

There is no jury under the judicial system of Vietnam. At trial, an adjudicating panel comprises either one judge and two lay assessors (*Hội thẩm*) or two judges and three lay assessors, unless summary procedures are implemented according to the Criminal Procedure Code 2015 where the panel includes only one judge. Judge(s) and lay assessors adjudicate independently and base their decision solely on law. An adjudicating panel tries collectively and renders decisions under majority rule, except for summary procedures according to the Criminal Procedure Code 2015.

2.3 Where juries exist, are they composed of citizens members alone or also professional jurists?

A lay assessor can be any citizen who meets the following requirements:

1. A Vietnamese citizen who is loyal to the Fatherland with good ethical qualities and a good reputation in the community and who is courageous, determined to safeguard justice, incorrupt and honest.

2. Have legal knowledge.
3. Be socially knowledgeable.
4. Be physically fit to fulfil assigned duties.

These conditions do not require that a lay assessor be a professional jurist. The lay assessors are elected by the People's Council at the same administrative level.

3 Particular Statutes and Crimes

3.1 Please describe the statutes that are commonly used in your jurisdiction to prosecute business crimes, including the elements of the crimes and the requisite mental state of the accused.

• Securities fraud

All crimes are provided for by the Criminal Code 2015. No one is criminally liable for an act that is not prescribed by the Criminal Code 2015.

Provision of false information or concealment of information in securities activities

Deliberately providing false information or concealing information in offering, listing, trading securities, market organisation, registration, depositing, clearing, or paying for securities in any of the following cases:

- a. the loss incurred by investors is at least 1 billion VND;
- b. the illegal profit reaped is at least 500 million VND; or
- c. the offender previously incurred an administrative penalty for the same offence.

Forging documents in offering or listing profile

Forging documents of the offering or listing profile and earning a profit of at least 1 billion VND or causing a loss to investors of at least 1 billion VND.

• Accounting fraud

Offences against regulations of law on accounting that lead to serious consequences

Abuse of one's position or power to commit any of the following acts and causing damage of at least 100 million VND, or causing damage of under 100 million VND but having been disciplined for the same offence:

- a. Forging or falsifying accounting documents or colluding with or forcing another person to do so.
- b. Inciting, colluding with, or forcing another person to provide or certify incorrect accounting information and data.
- c. Omitting assets of or related to the accounting unit from its accounting books.
- d. Destroying or deliberately damaging accounting documents before the expiration of the mandatory retention period.
- e. Making two or more accounting book systems to omit assets, capital sources, or funds of the accounting unit from its accounting books.

• Insider trading

Use of internal information for trading securities

Holding information about a public company or public fund that has not been published and could materially affect the securities price of that public company or public fund, using such information to deal in securities or disclosing it to or providing it for another person for trading securities, and earning an illegal profit of at least 300 million VND or causing a loss to investors of at least 500 million VND.

• Embezzlement

Abuse of one's position or power to embezzle property under one's management valued at a minimum of 2 million VND, or under 2 million VND in one of the following cases:

- a. The offender was disciplined for the same offence.
- b. The offender has a previous conviction for any of the corruption-related crimes that has not been expunged.

• Bribery of government officials

Taking bribes

Abuse of one's power to directly or through an intermediary receive or promise to receive any of the following benefits for oneself or for another person or organisation as a condition to act or not to act in the interests of or at the request of the bribe giver:

- a. Money, property, or other tangible benefit valued at a minimum of 2 million VND, or under 2 million VND if the bribe recipient was disciplined for the same offence or has a previous conviction for any corruption-related crime that has not been expunged.
- b. Intangible benefits.

Giving bribes

Directly or through an intermediary giving or promising to give any of the following benefits to an office holder or another person or organisation in order to influence that person to perform or not to perform certain tasks in the interests of or at the request of the bribe giver:

- a. Money, property or other tangible benefits valued at a minimum of 2 million VND.
- b. Intangible benefits.

Brokering bribery

Broker bribery in any of the following cases:

- a. The bribe is money, property, or another tangible benefit valued at a minimum of 2 million VND.
- b. The bribe is an intangible benefit.

• Criminal anti-competition

Violating regulations on competition

Committing one of the following acts, causing damage of at least 1 billion VND to other persons or gaining illicit profits of at least 500 million VND:

- a. Entering into an agreement to prevent or inhibit another enterprise from participating in the market or developing business.
- b. Entering into an agreement to exclude from the market another enterprise other than a party to the agreement.
- c. Entering into one of the following agreements to restrict competition when the parties to the agreement hold an aggregate share of 30% or more of the relevant market: fixing prices of goods or services in a direct or indirect manner; dividing the consumer market or supply sources of goods or services; limiting or controlling the quantity and volume of goods or services produced, purchased or sold; restricting technical and technological development or investment; or imposing conditions on another enterprise for signing a goods or service sale and purchase contract or forcing another enterprise to accept an obligation not directly related to the object of the contract.

• Cartels and other competition offences

Cartels are considered illegal when they have the purpose of preventing, limiting or distorting the normal rules of competition in the market. For more details, please refer to "*Criminal anti-competition*" above.

• Tax crimes

Tax evasion

Committing one of the following acts to evade a tax amount of at least 100 million VND, or a tax amount of under 100 million VND if such person has been administratively sanctioned for the act of tax evasion or convicted of this offence or another specific economic offence and such conviction has not been expunged:

- a. Failing to submit tax registration dossiers; failing to submit tax declaration dossiers; or submitting tax declaration dossiers 90 days later than the deadline or extended deadline for dossier submission as prescribed by law.
- b. Failing to record in account books revenues related to the determination of payable tax amounts.
- c. Failing to issue invoices when selling goods or providing services, or writing in sales invoices values lower than the values actually paid for the goods sold or services provided.
- d. Using unlawful invoices or documents to record goods and materials in tax-liable activities, thus reducing payable tax amounts and increasing exemptible, reducible, deductible or refundable tax amounts.
- e. Using other unlawful documents to wrongfully determine payable or refundable tax amounts.
- f. Making incorrect declarations as compared to the actually imported or exported goods but failing to make additional declarations after the goods have gone through customs procedures.
- g. Deliberately failing to make tax declarations or making incorrect tax declarations for imported or exported goods.
- h. Entering into collusion with goods consignors to import goods.
- i. Using goods not liable to tax or goods eligible for tax exemption or tax exemption consideration for improper purposes without informing tax administration agencies of the change in their use purposes.

• Government-contracting fraud

Violating regulations on bidding, causing serious consequences

Committing one of the following acts, causing damage of at least 100 million VND, or causing damage of under 100 million VND if such person has already been disciplined or administratively sanctioned for the same act:

- a. Illegally intervening in bidding activities.
- b. Conducting collusive bidding.
- c. Committing fraud in bidding.
- d. Obstructing bidding activities.
- e. Violating regulations on guarantee of fairness and transparency in bidding activities.
- f. Organising the selection of contractors for a bidding package while the sources of funding for such bidding package have not yet been determined, leading to debts owed to contractors.
- g. Illegally transferring bidding packages.

• Environmental crimes

Such crimes include: causing environmental pollution; offences against regulations on hazardous waste management; offences against regulations on prevention, response, and relief of environmental emergencies; offences against regulations on protection of irrigation works, embankments, and disaster protection works; offences against regulations on protection of river banks; bringing waste into Vietnamese territory; spreading dangerous, infectious human diseases; spreading dangerous infectious diseases in animals or plants; destruction of aquatic resources;

forest destruction; offences against regulations on management and protection of rare, endangered animals; offences against regulations on management of wildlife sanctuaries; and importing and spreading invasive species.

• **Campaign-finance/election law**

Infringement upon citizens' right to vote or self-nominate, or vote upon referendum

Using deception, bribery, coercion, or other tricks to obstruct a citizen from exercising their right to vote, self-nominate, or vote upon a referendum held by the State.

Falsification of election or referendum result

Being responsible for organising or supervising an election or organising a referendum but fabricating documents or votes or using other tricks to falsify the election or referendum result.

• **Market manipulation in connection with the sale of derivatives**

Manipulation of securities market

Deliberately committing any of the following acts and earning a profit of at least 500 million VND or causing a loss to investors of at least 1 billion VND:

- a. Using one or multiple accounts of the offender or another person, or colluding with another person, to continuously buy and sell securities in order to create false supply and demand.
- b. Colluding with another person to place orders for the purchase and sale of the same type of securities within a day, or selling and buying securities without actual transfer of ownership or only transferring ownership within the group in order to create false supply and demand.
- c. Continuously buying or selling securities with a controlling quantity at the opening or closing time of the market in order to create a new opening or closing price for such securities on the market.
- d. Trading securities by colluding with or persuading another person to continuously place securities purchase and sale orders to remarkably affect or manipulate the demand, supply, and securities prices.
- e. Offering opinions directly or via the media about a type of securities or securities issuer in order to affect the price of such securities or issuer after a transaction has been made in order to have an advantage from it.
- f. Using other methods or committing other acts to create false supply and demand in order to manipulate securities prices.

• **Money laundering or wire fraud**

Money laundering includes committing one of the following acts:

- a. Participating directly or indirectly in financial, banking or another transaction in order to conceal the illegal origin of money or property that is acquired from one's commission of a crime, or that one knows or has grounds to believe is acquired from another person's commission of a crime.
- b. Using money or property that is acquired from one's commission of a crime, or that one knows or has grounds to believe is acquired from another person's commission of a crime, for business or other activities.
- c. Concealing information about the origin, true nature, location, movement or ownership of money or property that is acquired from one's commission of a crime, or that one knows or has grounds to believe is acquired from another person's commission of a crime, or obstructing the verification of such information.
- d. Committing one of the above-mentioned acts towards money or property that one knows is acquired from the movement, transfer or conversion of money or property acquired from another person's commission of a crime.

• **Cybersecurity and data protection law**

Such crimes include: producing, purchasing or selling, exchanging or donating devices, equipment or software used for unlawful purposes; spreading software programs that harm the operation of computer networks, telecommunications networks or electronic devices; obstructing or disordering the operation of computer networks, telecommunications networks or electronic devices; illegally uploading information to or using information of computer networks and telecommunications networks; illegally accessing computer networks, telecommunications networks or electronic devices of other persons; using computer networks, telecommunications networks or electronic devices to appropriate property; illegally collecting, storing, exchanging, purchasing, selling or making public information on bank accounts; illegally using radio frequencies that are exclusively used for emergency, safety, search, rescue, salvage or national defence and security purposes; and intentionally causing harmful radio-frequency interference.

• **Trade sanctions and export control violations**

Stockpiling or transporting prohibited goods

Stockpiling or transporting prohibited goods in one of the following cases:

- a. Involving at least 50 kilograms or 50 litres of pesticides banned by the State from trading, sale or use.
- b. Involving at least 1,500 packs of illegally imported cigarettes.
- c. Involving at least 6 kilograms of firecrackers.
- d. Involving other goods banned by the State from trading, sale or use that are valued at a minimum of 100 million VND or gaining illicit profits of at least 50 million VND.
- e. Involving goods not yet permitted for sale or use in Vietnam that are valued at a minimum of 200 million VND or gaining illicit profits of at least 100 million VND.
- f. Involving goods with a weight, volume, quantity or value below the above-mentioned level but the offender has been administratively sanctioned for one of such acts or another economic crime, or convicted of one of these offences but not yet had such conviction expunged.

• **Any other crime of particular interest in your jurisdiction**

Obtaining property by fraud

Using deception to obtain another person's property that is valued at a minimum of 2 million VND, or property valued at under 2 million VND in any of the following circumstances:

- a. The offender has incurred an administrative penalty for appropriation of property.
- b. The offender has an unspent conviction for theft of property or another criminal offence relating to property ownership.
- c. The offence has a negative impact on social safety, order and security.
- d. The property illegally obtained is the primary means of livelihood of the victim and the victim's family.

Abuse of trust to appropriate property

Committing any of the following acts to obtain another person's property that is valued at a minimum of 4 million VND or under 4 million VND despite the fact that the perpetrator has incurred an administrative penalty for property appropriation or has an unspent conviction for this offence or another criminal offence relating to property ownership, or obtaining property that is the primary means of livelihood of the victim or has spiritual value to the victim:

- a. Taking a loan, borrowing or leasing property of another person or receiving property of another person under a contract, then using deception or running away to appropriate it or refusing to repay the loan or return the property when the repayment or return of such property is due despite being capable of doing so.

- b. Taking a loan, borrowing or leasing property of another person or receiving property of another person under a contract, then using it for illegal purposes that result in the offender's inability to repay the loan or return the property.

3.2 Is there liability for inchoate crimes in your jurisdiction? Can a person be liable for attempting to commit a crime, whether or not the attempted crime is completed? Can a person be liable for "misprision" by helping another avoid being located or discovered?

Preparation for a crime includes finding and preparing tools, equipment or other conditions for the crime or establishing or joining a group of criminals, except in certain crimes relating to national security where the preparation itself is a crime. In the business crime context, criminal liability for preparation is applicable only with regard to the following crimes:

1. Production, possession and transport of counterfeit money.
2. Money laundering.

Any person who, without prior promise and after knowing that a crime has been committed, harbours the criminal, conceals the traces or exhibits of the crime or commits other acts that obstruct the discovery, investigation and taking of action against the criminal shall be liable for concealment of the crime. In the business crime context, this crime only applies to concealment of crimes listed under Article 389 of the Criminal Code 2015, e.g. embezzlement, receiving bribes, giving bribes, brokering bribery, certain crimes relating to public tendering, taxation and banking, etc.

A person who conceals a crime will not be criminally liable if he is a grandparent, parent, child, niece/nephew, sibling or spouse of the offender, except for concealment of crimes against national security or other extremely serious crimes listed under Article 389 of the Criminal Code 2015.

4 Corporate Criminal Liability

4.1 Is there entity liability for criminal offences? If so, under what circumstances will an employee's conduct be imputed to the entity? Are there ways in which an entity can avoid criminal liability for the acts of its employees or agents?

A commercial juristic person ("CJP") shall be subject to criminal liability as follows:

A CJP shall only bear criminal liability if all of the following conditions are satisfied:

- The criminal offence is committed under the CJP's name.
- The criminal offence is committed in the CJP's interests.
- The criminal offence is carried out under the CJP's instruction or approval.
- The applicable statute of limitations has not passed.

A CJP can only be liable for the following crimes:

- Manufacture and trade: smuggling; illegal trafficking of goods or money across the border; manufacture or trading of banned commodities; possession or transport of banned commodities; manufacture or trading of counterfeit goods; manufacture or trading of counterfeit foods, foodstuff or food additives; manufacture or trading of counterfeit medicines for treatment or prevention of diseases; manufacture or trading of counterfeit animal feed, fertilisers, veterinary medicine, pesticides, plant varieties, animal breeds; and hoarding.
- Taxation: tax evasion; and illegal printing, issuance, or trading of invoices or receipts.

- Securities: deliberate publishing of false information or concealment of information in securities activities; use of internal information to deal in securities (insider trading); cornering the stock market; and commission of fraud in insurance business.
- Social insurance: evasion of social insurance, health insurance, or unemployment insurance payment for employees.
- Antitrust: violations against regulations on competition.
- Intellectual property: infringement of copyrights and relevant rights; and infringement of industrial property rights.
- Natural resources: violations against regulations on survey, exploration and extraction of natural resources; violations against regulations on forest extraction and protection; violations against regulations on management and protection of wild animals; destruction of aquatic resources; forest destruction; violations against regulations on management and protection of rare, endangered animals; violations against regulations on management of wildlife sanctuaries; and import and spread of invasive alien species.
- Environment: causing environmental pollution; violations against regulations on environmental emergency prevention, response and relief; violations against regulations on protection of irrigation works, embankments and works for protection against natural disasters; violations against regulations on protection of river banks; and import of waste into Vietnamese territory.
- Terrorism and money laundering: terrorism financing; and money laundering.

A CJP should make sure that its internal decision-making procedures do not allow for any illegal conduct. The CJP should also ascertain that no agreements entered under the name of the CJP are for illegal purposes and that it does not receive any interest from illegal sources.

4.2 Is there personal liability for managers, officers, and directors if the entity becomes liable for a crime? Under what circumstances?

The fact that a CJP is liable for a crime does not exempt its managers, officers and directors from criminal liability. The managers, officers and directors of a CJP are still liable for their acts if their acts satisfy all elements of any particular crime.

4.3 Where there is entity liability and personal liability, do the authorities have a policy or preference as to when to pursue an entity, when to pursue an individual, or both? Has the preference changed in recent years? How so?

No. There is no policy or preference as to when to pursue an entity and when to pursue an individual. If the elements are present for both the CJP and the CJP's personnel, both will be liable for criminal charges.

4.4 In a merger or acquisition context, can successor liability apply to the successor entity? When does successor liability apply? When does it not apply?

There is no clear guidance or precedent relating to criminal liability being transferred to a successor CJP. The most common type of CJP is an enterprise established and operating under the Law on Enterprise 2020. Under this law, the successor enterprise in cases of full or partial division, consolidation and acquisition will be (jointly) liable for all obligations of their predecessor(s).

Since the most common type of punishment applicable to a CJP is a fine, i.e. a financial obligation towards the State budget, it can be understood that the criminal liability will be carried forward, at least to the extent that the sentence is of a monetary nature.

5 Statutes of Limitations

5.1 How are enforcement-limitations periods calculated, and when does a limitations period begin running?

The limitations periods for criminal prosecution run for five, 10, 15 and 20 years for less serious crimes, serious crimes, very serious crimes and extremely serious crimes, respectively, counting from the day on which the crime is committed. Upon expiration of the limitations period, the offender no longer faces any criminal prosecution.

5.2 Can crimes occurring outside the limitations period be prosecuted if they are part of a pattern or practice, or ongoing conspiracy?

Yes. During the limitations period, if the offender commits another crime for which the maximum sentence is more than one year's imprisonment, the limitations period for prosecution for the previous crime resets and will begin from the day on which the new crime is committed.

5.3 Can the limitations period be tolled? If so, how?

If the offender deliberately evades capture and a wanted notice has been issued, the statute of limitations will begin when he turns himself in or gets arrested.

6 Initiation of Investigations

6.1 Do enforcement agencies have jurisdiction to enforce their authority outside your jurisdiction's territory for certain business crimes? If so, which laws can be enforced extraterritorially and what are the jurisdictional grounds that allow such enforcement? How frequently do enforcement agencies rely on extraterritorial jurisdiction to prosecute business crimes?

Enforcement agencies can investigate and prosecute all criminal acts, including business crimes, that are within the sphere of application of the Criminal Code 2015. The Criminal Code 2015 can be applied to acts committed outside the territory of Vietnam in three cases:

1. Vietnamese citizens, Vietnamese CJPs and stateless people residing permanently in Vietnam who commit crimes, as defined by the Criminal Code 2015, outside the territory of Vietnam.
2. Non-Vietnamese citizens and non-Vietnamese CJPs who commit crimes, as defined by the Criminal Code 2015, outside the territory of Vietnam when such crimes are in violation of legitimate rights and interests of Vietnamese citizens or interests of the Socialist Republic of Vietnam or when such crimes are within the sphere of application of the Criminal Code 2015 according to international treaties to which the Socialist Republic of Vietnam is a signatory.
3. Other crimes committed on aircraft or seacraft according to international treaties to which the Socialist Republic of Vietnam is a signatory.

With regard to criminal matters, only the Criminal Code 2015 can be enforced extraterritorially. Theoretically, the jurisdictional grounds are: (i) Vietnamese citizenship (for individuals) or place of registration in Vietnam (for CJPs); (ii) permanent domicile within the territory of Vietnam (for stateless people); (iii) violation of rights and interests of Vietnamese citizens or the Socialist Republic of Vietnam; and (iv) international treaties to which the Socialist Republic of Vietnam is a signatory.

Investigation agencies and People's Procuracies in Vietnam rarely rely on their "extraterritorial jurisdiction" to indict and prosecute business crimes. More often, the investigation stage of criminal cases involving foreign elements, i.e. having people or properties involved overseas, will depend on mutual legal assistance treaties between Vietnam and the relevant countries in order to gather evidence, extradite the suspects, etc. During the process of judicial entrustment, the cases are temporarily suspended.

6.2 How are investigations initiated? Are there any rules or guidelines governing the government's initiation of any investigation? Can third parties learn how the investigation began or obtain the initial file documents? If so, please describe them.

An investigation is officially initiated when the competent agency issues a Decision on Indictment for Criminal Cases. Such decision can only be issued if there are criminal elements that have been ascertained based on the following sources of information:

1. Denunciation from individuals.
2. Information disclosed by organisations and individuals.
3. Information obtained through mass media.
4. Governmental authorities' requisitions for indictment.
5. Competent procedural authorities' direct exposure of criminal elements, e.g. adjudicating panels discovering criminal elements during trials and then referring the matter to competent investigation agencies.
6. Perpetrators' confessions.

Initiating investigations must strictly follow the procedures regulated in the Criminal Procedure Code 2015. Third parties might learn that a criminal case has been initiated but cannot access initial file documents because they are classified.

6.3 Do the criminal authorities in your jurisdiction have formal and/or informal mechanisms for cooperating with foreign enforcement authorities? Do they cooperate with foreign enforcement authorities?

Vietnam participates in mutual legal assistance and extradition treaties with other countries. These treaties are the basis for the investigation agency, the People's Procuracy and the People's Court to cooperate with foreign authorities.

Vietnam promulgated the Law on Mutual Legal Assistance in 2007. Criminal authorities in Vietnam usually cooperate with foreign enforcement agencies based on this law, the treaties to which Vietnam is a signatory and also on a reciprocal basis.

7 Procedures for Gathering Information from a Company

7.1 What powers does the government have generally to gather information when investigating business crimes?

The investigation agency can carry out the following investigation activities in order to gather information and evidence:

1. Informally request documents and information from any parties and sources.
2. Formally subpoena relevant parties to give testimonies.
3. Confrontation between parties that have given conflicting testimonies.
4. Identification (via photos or in person) and voice recognition.
5. Search body, residence, workplace, areas and vehicles; seize mail, telegraphs and postal packages; documents and objects; and electronic media and data.
A search warrant is issued by the investigation agency and must be approved by the People's Procuracy at the same level.
6. Crime scene examination, autopsy, inspection of traces across a body, and experimental investigation.
7. Expert examination and valuation.
8. Special methods: secret recording by sound or sound and visual means; secret phone tapping; and secret collection of electronic data. Such methods are allowed only under special circumstances relating to, *inter alia*, organised crime, extremely severe felonies, corruption and money laundering.

Document Gathering:

7.2 Under what circumstances can the government demand that a company under investigation produce documents to the government, and under what circumstances can the government raid a company under investigation and seize documents?

The investigation agency, People's Procuracy and People's Court's ordinary scope of authority in collecting evidence allows them to demand any organisations or individuals to produce evidence, documents, items and electronic data that serve to solve the criminal case. The requested organisations and individuals must comply with such demand.

The investigation agency's search of residence, workplace, areas and vehicles is permissible when there is proof of the existence of criminal instruments, documents, items, property obtained by crime or other objects, electronic data, documents related to the case in the residence, workplace, area and vehicle. The search can also be conducted to seek wanted persons or find and rescue victims of crime.

If there is proof of the existence of criminal instruments, documents, items and property related to the case in mail, telegraphs, postal packages and electronic data, such items and data can be searched and seized at the premises of postal or telecommunications service providers.

All search warrants issued by the investigation agency must be approved by the People's Procuracy at the same level. The search must also be attended by a procurator. In urgent situations, the search can be carried out prior to the issuance of approval for the warrant.

7.3 Are there any protections against production or seizure that the company can assert for any types of documents? For example, does your jurisdiction recognise any privileges protecting documents prepared by in-house attorneys or external counsel, or corporate communications with in-house attorneys or external counsel?

Organisations and individuals must strictly comply with decisions and requests by investigation agencies during the criminal

investigation. Failure to comply that is not due to *force majeure* or objective obstacles is punishable according to law. Therefore, the only protection is *force majeure* or objective obstacles.

Vietnam law does not recognise any privileges protecting documents prepared by in-house attorneys or external counsel, or corporate communications with in-house attorneys or external counsel.

7.4 Are there any labour or privacy laws in your jurisdiction (such as the General Data Protection Regulation in the European Union) that may impact the collection, processing, or transfer of employees' personal data, even if located in company files? Does your jurisdiction have blocking statutes or other domestic laws that may impede cross-border disclosure?

The Civil Code 2015 provides for a general right of each individual in relation to one's private life, personal secrets and family secrets. In particular, private life and personal secrets of a person are inviolable and protected by law. The collection, preservation, use and publication of information about the private life of an individual must have the consent of that person, unless otherwise prescribed by law. The safety of mail, telephone, telegrams and other forms of electronic information of an individual is ensured and kept confidential. Contracting parties of a contract may not disclose information about each other's private life and personal secrets that they came to know during the formation and performance of the contract, unless otherwise agreed.

In 2023, the government promulgated Decree No. 13/2023/ND-CP about protection of personal data. Under this regulation, "personal data" includes electronic information in the form of symbols, letters, numbers, images, sounds, or equivalent associated with an individual or used to identify an individual. This regulation defines the following parties in relation to personal data:

1. Data Subject: an individual to whom the data relates.
2. Personal Data Controller: an organisation/individual that decides the purpose and means of processing personal data.
3. Personal Data Processor: an organisation/individual that processes data on behalf of the Personal Data Controller via a contract or agreement with the Personal Data Controller.
4. Personal Data Controller-Processor: an organisation/individual that performs the functions of both the Personal Data Controller and the Personal Data Processor.
5. Third Party: an organisation/individual other than the above-mentioned that is permitted to process personal data.

The Controller, Processor, Controller-Processor and Third Party must prepare a dossier on the assessment of the impact of the outbound transfer of personal data and submit the same to the MPS within 60 days after starting the processing of personal data. The applicant must amend the dossier upon request by the MPS or upon the occurrence of changes to the submitted dossier. The MPS decides on inspection of outbound transfer of personal data once per year. The MPS can suspend the outbound transfer of personal data in the following situations:

1. The transfer is used for activities that violate the interests and national security of the Socialist Republic of Vietnam.
2. The sender of personal data does not comply with assessment and reporting requirements.
3. Vietnamese citizens' personal data is leaked or lost. The law is silent on the extent of leak or loss that can trigger this provision.

7.5 Under what circumstances can the government demand that a company employee produce documents to the government, or raid the home or office of an employee and seize documents?

Please refer to answers to questions 7.2 and 7.3 above. There is no distinction between the employee and the employer in this respect. All organisations and individuals must comply with the demand for information and documents from the investigation agencies. The search/raid is subject to a prior warrant issued by the investigation agency that must be approved by the People's Procuracy at the same level.

7.6 Under what circumstances can the government demand that a third person or entity produce documents to the government, or raid the home or office of a third person or entity and seize documents?

Please refer to answers to questions 7.2, 7.3 and 7.5 above. All organisations and individuals must comply with the demand for information and documents from the investigation agencies.

Questioning of Individuals:

7.7 Under what circumstances can the government demand that an employee, officer, or director of a company under investigation submit to questioning? In what forum can the questioning take place?

When a company undergoes a formal criminal investigation, the investigation agencies' ordinary scope of authority allows them to demand any employee, officer or director of such company to submit to questioning. The investigation agencies usually serve "invitation letters" on relevant parties to have them voluntarily come to their office to give testimonies. If the invited parties refuse to come, they can be subpoenaed and escorted to the investigation agencies' offices. The questioning can take place at the investigation agencies' offices or the witness's residence, workplace or educational facility.

7.8 Under what circumstances can the government demand that a third person submit to questioning? In what forum can the questioning take place?

Any third person that might know about the crime can be subject to questioning. The questioning can take place at the investigation agencies' offices or the witness's residence, workplace or educational facility.

7.9 What protections can a person assert upon being questioned by the government? Is there a right to be represented by an attorney during questioning? Is there a right or privilege against self-incrimination that may be asserted? If a right to assert the privilege against self-incrimination exists, can the assertion of the right result in an inference of guilt at trial?

Protections afforded by laws to each person upon being questioned by the investigation agencies vary depending on such person's capacity in the criminal case. However, the following notable rights can be asserted:

Capacity	Not required to produce testimonies against himself; not required to confess. These can be considered equivalent to rights against self-incrimination	Have defenders, usually lawyers	Appeal decision and action of the procedural authorities
Denouncers, informants and individuals requisitioning for indictment			×
Persons denounced or facing requisitions for indictment		×	×
Persons held in emergency custody	×	×	×
Arrestees	×	×	×
Temporary detainees	×	×	×
Suspects	×	×	×
Defendants	×	×	×
Witness testifiers			×

The defenders of the arrestees, the temporary detainees and the suspects have the right to be present during the questioning.

The Criminal Procedure Code 2015 does not have any provision to the extent that assertion of rights against self-incrimination at trial will result in an inference of guilt. However, in practice, if a defendant is found guilty, the assertion will not play in his favour at sentencing. Assertion of rights against self-incrimination could cost the defendant one mitigating factor at the trial; that is, "*the offender expresses cooperative attitude or contrition*".

8 Initiation of Prosecutions / Deferred Prosecution / Civil Dispositions

8.1 How are criminal cases initiated?

A criminal case is initiated by a Decision on Indictment for Criminal Cases issued by a competent authority after such agency has found that there are sufficient criminal elements to indict. The competent authorities include the investigation agency, the People's Procuracy and the adjudicating panel of particular trials or hearings.

8.2 What rules or guidelines govern the government's decision to charge an entity or individual with a crime?

Please see answer to question 6.2 above. After or at the same time as a Decision on Indictment for Criminal Cases is issued, if the investigation agencies consider that there is enough evidence, they will issue a Decision on Indictment against Suspect on the individual who is charged with the crime. The Criminal Procedure Code 2015 and its guiding documents govern this process.

8.3 Can a defendant and the government agree to resolve a criminal investigation through pretrial diversion or an agreement to defer prosecution? If so, please describe any rules or guidelines governing whether pretrial diversion or deferred prosecution agreements are available to dispose of criminal investigations.

There is no legal basis for the defendant and the government to resolve a criminal investigation through pre-trial diversion or an agreement to defer prosecution. All crimes must be prosecuted in accordance with law. However, the law provides for cases where the criminal punishment might be exempted. In particular:

A criminal offender will be exempt from criminal liability in the following situations:

1. A policy or law is changed during the process of investigation, prosecution or trial and accordingly, the offender's act is no longer dangerous to society.
2. A general amnesty is granted.

A criminal offender might be exempt from criminal punishment in the following situations:

1. The situation changes during the process of investigation, prosecution or trial and accordingly, the offender is no longer dangerous to society.
2. The offender contracts a fatal disease during the process of investigation, prosecution or trial and no longer poses a threat to society.
3. The offender confesses his crime, contributes to the discovery and investigation, minimises the damage inflicted by his crime, or makes reparations or special contributions that are recognised by the State and society.

8.4 If deferred prosecution or non-prosecution agreements are available to dispose of criminal investigations in your jurisdiction, must any aspects of these agreements be judicially approved? If so, please describe the factors that courts consider when reviewing deferred prosecution or non-prosecution agreements.

This is not applicable.

8.5 In addition to, or instead of, any criminal disposition to an investigation, can a defendant be subject to any civil penalties or remedies? If so, please describe the circumstances under which civil penalties or remedies may apply.

Civil matters in criminal cases are resolved in the same proceeding as criminal cases. If a criminal case involves civil claims for damages but such claims are supported by insufficient evidence and have little bearing on the criminal case, the civil matters may be separated and settled in other civil proceedings. Civil claims are brought by the plaintiff in the criminal case in the same manner as a civil case.

Generally speaking, one violation cannot be punished twice, i.e. both criminally and administratively. However, when the seriousness of the violation has not reached the degree of a criminal charge, such violation can be sanctioned administratively if there is a legal document providing for such administrative charge. For example, many criminal and administrative charges are applicable to the same act. The question of whether the perpetrator would be charged criminally or administratively depends on the seriousness of the consequences of the act, the means and methods of committing the act, etc.

8.6 Can an individual or corporate commence a private prosecution? If so, can they privately prosecute business crime offences?

No. Neither an individual nor a corporate can commence private prosecution. An individual or a corporate can only denounce other persons to the investigation agencies.

9 Burden of Proof

9.1 For each element of the business crimes identified above in section 3, which party has the burden of proof? Which party has the burden of proof with respect to any affirmative defences?

Procedural authorities are responsible for proving guilt. An accused person is entitled to but is not obliged to prove his innocence. Procedural authorities, within the scope of their duties and authority, must use legitimate measures to determine the facts of a criminal case in an unbiased, thorough and complete manner and to reveal all the evidence that proves guilt or innocence and that proves aggravating and mitigating factors. In practice, the accused person must fully cooperate with the procedural authorities in order to prove his innocence and secure a lesser sentence.

9.2 What is the standard of proof that the party with the burden must satisfy?

An accused person is deemed innocent until his guilt is proven according to the procedures and formalities under the Criminal Procedure Code 2015 and a court passes a valid conviction.

When the procedural authorities do not have or cannot present sufficient grounds to convict as required by the procedures and formalities under the Criminal Procedure Code 2015, the procedural authorities shall adjudge the accused person not guilty. There is no clear standard of proof adopted by the Criminal Procedure Code 2015 as there is no guidance on what constitutes "do not have sufficient grounds or cannot present sufficient grounds to convict".

9.3 In a criminal trial, who is the arbiter of fact? Who determines whether the party has satisfied its burden of proof? If a jury or group of juries determine the outcome, must they do so unanimously?

See answer to question 2.2. The arbiter of fact in a criminal trial will either include a group of judge(s) and lay assessors or only one judge. The outcome of a criminal trial is determined under majority rule.

10 Conspiracy / Aiding and Abetting

10.1 Can a person who conspires with or assists another to commit a business crime be liable? If so, what is the nature of the liability and what are the elements of the offence?

Under the Criminal Code 2015, complicity is a situation in which two or more people deliberately commit the same crime. Accomplices of a crime include the perpetrator, the organiser, the instigator and the abettor. The perpetrator is the person who directly commits the crime. The organiser is the mastermind behind the commission of the crime. The instigator is the

person who entices or encourages other people to commit the crime. The abettor is the person who provides spiritual or material assistance in the commission of the crime. All accomplices of a crime will be liable for such crime. In this situation, only acts committed by the perpetrator are required to meet all the elements of the crime. Acts of other accomplices need only to satisfy the above-mentioned definitions.

However, accomplices shall not be punished for unjustified force used by the perpetrator. When imposing sentences upon accomplices, the adjudicating panel must consider the nature of complicity and the degree of participation of each accomplice. Mitigating and aggravating factors applicable to one accomplice shall apply to that accomplice only.

11 Common Defences

11.1 Is it a defence to a criminal charge that the defendant did not have the requisite intent to commit the crime? If so, who has the burden of proof with respect to intent?

A crime is an act that is, *inter alia*, committed deliberately or involuntarily. A deliberate crime exists when: (i) the offender is aware of the danger to society of his act, foresees consequences of such act and wants such consequences to occur; or (ii) the offender is aware of the danger to society of his act, foresees consequences of such act, does not want such consequences to occur but deliberately lets them occur. An involuntary crime exists when: (i) the offender is aware of the danger to society of his act but believes that consequences would not occur or could be prevented; or (ii) the offender is not aware of the danger to society of his act though he must and could have foreseen the consequences. By these definitions, all crimes under the Criminal Code 2015 are either deliberate or involuntary. Intent is thereby an element of all crimes, and lack of requisite intent results in a not guilty verdict, rather than a defence. The prosecutors must prove the intent as an element of the crime charged.

11.2 Is it a defence to a criminal charge that the defendant was ignorant of the law, i.e., that he did not know that his conduct was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant's knowledge of the law?

No, ignorance of the law is not a listed defence under the Criminal Code 2015.

11.3 Is it a defence to a criminal charge that the defendant was ignorant of the facts, i.e., that he did not know that he had engaged in conduct that was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant's knowledge of the facts?

No, ignorance of the facts is not a listed affirmative defence under the Criminal Code 2015. However, ignorance of the facts relates to the *mens rea* requirement. If ignorance of the facts helps to prove that the committed act lacks intent (see answer to question 11.1), it will result in a not guilty verdict for the defendant. In order to successfully charge a crime where the defendant is not aware of the danger to society of his act, the prosecutors must prove that the defendant had a duty to foresee and could have foreseen the consequences of his act.

12 Voluntary Disclosure Obligations

12.1 If a person or entity becomes aware that a crime has been committed, must the person or entity report the crime to the government? Can the person or entity be liable for failing to report the crime to the government? Can the person or entity receive leniency or "credit" for voluntary disclosure?

Generally speaking, any person or entity who is aware of a crime committed must report it to the investigation authorities. In the business crime context, any person who knows that a money laundering crime is being prepared or that any crimes listed under Article 389 of the Criminal Code 2015, e.g. embezzlement, receiving bribes, giving bribes, brokering bribery, certain crimes relating to public tendering, taxation and banking, etc., are being or have been carried out but fails to report it will be liable for misprision.

The defender of the defendant is not excluded from this scope. While performing a defender's duties, if the defender has knowledge of a crime that was committed or participated in by the defendant, the defender will be liable for misprision due to his failure to report if the relevant crimes are against national security or other extremely serious crimes listed under Article 389 of the Criminal Code 2015.

However, a person who fails to report a crime will not be liable for misprision if he is a grandparent, parent, child, niece/nephew, sibling or spouse of the offender, except for failure to report crimes against national security or other extremely serious crimes listed under Article 389 of the Criminal Code 2015.

A person who fails to report a crime but does try to stop the criminal or reduce the consequences of the crime might be exempt from criminal liability or punishment.

13 Cooperation Provisions / Leniency

13.1 If a person or entity voluntarily discloses criminal conduct to the government or cooperates in a government criminal investigation of the person or entity, can the person or entity request leniency or "credit" from the government? If so, what rules or guidelines govern the government's ability to offer leniency or "credit" in exchange for voluntary disclosures or cooperation?

A criminal offender might be exempt from criminal liability if the offender confesses his crime, contributes to the discovery and investigation, minimises the damage inflicted by his crime, or makes reparations or special contributions that are recognised by the State and society. An offender who involuntarily commits a less serious crime or a serious crime that causes damage to the life, health, honour or property of others will be exempt from criminal liability if the aggrieved person or his representative voluntarily seeks reconciliation with the offender and requests exemption from criminal liability for the offender.

The court shall decide on sentences in consideration of, *inter alia*, mitigating factors set out in the Criminal Code 2015, which include the following notable situations:

1. The offender has prevented or reduced the harm caused by the crime.
2. The offender voluntarily makes reparations, pays damages or relieves the consequences.
3. The offender confesses.
4. The offender demonstrates a cooperative attitude or contrition.

5. The offender arduously assists the agencies concerned in the discovery or investigation.
6. The offender has made reparations in an effort to atone for the crime.

The court may decide on a sentence lighter than the lower limit of the current sentence bracket if the offender has at least two mitigating factors. If there is only one sentence bracket or the current sentence bracket is already the most lenient, the court may switch over to a lighter sentence.

13.2 Describe the extent of cooperation, including the steps that an entity would take, that is generally required of entities seeking leniency in your jurisdiction, and describe the favourable treatment generally received.

Cooperation must satisfy the procedural authorities in order to be considered a mitigating factor under the Criminal Code 2015. The extent of cooperation and the steps that an entity would take depend on the nature of the crime. In most cases, cooperation includes producing evidence and appearing on time at the investigation agencies' office for questioning as required by the investigation agencies. Cooperation could then be recognised by the investigation agencies and recorded in the case file as a mitigating factor. For favourable treatment, see answer to question 13.1 above.

14 Plea Bargaining

14.1 Can a defendant voluntarily decline to contest criminal charges in exchange for a conviction on reduced charges, or in exchange for an agreed-upon sentence?

No. The concept of plea bargaining does not exist in the justice system of Vietnam.

14.2 Please describe any rules or guidelines governing the government's ability to plea bargain with a defendant. Must any aspects of the plea bargain be approved by the court?

This is not applicable.

15 Sealing

15.1 Are there instances where the court proceedings or investigation files are protected as confidential or sealed?

The courts try cases publicly and every person is entitled to attend the trial, unless otherwise stated in the Criminal Procedure Code 2015. For special cases involving State secrets, national traditions, protection of underage people (below the age of 18) or personal privacy, upon reasonable requests by the litigants, the courts may try in closed session but must announce its judgments publicly.

16 Elements of a Corporate Sentence

16.1 After the court determines that a defendant is guilty of a crime, are there any rules or guidelines governing the court's imposition of a sentence on the defendant? Please describe the sentencing process.

The courts shall impose sentences pursuant to the Criminal Procedure Code 2015 and shall consider the nature and danger

of the crime to society, record of the offender, and mitigating and aggravating factors. When imposing a fine, the courts shall also consider the offender's property and ability to pay the fine. The sentencing is carried out at the same time as the deliberation process. There is no separate sentencing proceeding. Rather, the adjudicating panel will decide whether the defendant is guilty and what the appropriate sentence is in the same hearing, i.e. the trial.

The presiding judge who chairs the deliberation session shall be responsible for stating each issue of the case that must be settled through the deliberation. The presiding judge himself prepares or assigns a member of the adjudicating panel to prepare a written record of deliberation. Members of the adjudicating panel must settle every issue of the case under majority rule. The votes shall be first cast by the lay assessors then by the judge(s). If the opinions do not win the majority vote, each of the adjudicating panel members' opinions shall be re-discussed and re-voted. The minority voters shall be permitted to state their opinions in writing, which are inputted into the case file.

16.2 Before imposing a sentence on a corporation, must the court determine whether the sentence satisfies any elements? If so, please describe those elements.

A CJP can be sentenced to the following punishment:

1. Imposing a fine as a primary punishment or additional punishment that must not be less than 50 million VND. The amount of a fine depends on the nature and level of danger of the criminal offence. The court shall consider the offender's financial capacity and fluctuation of prices in determining the fine.
2. Suspension of the CJP's activities in one or some sectors in which the offender harms human life, health, the environment, social security or order and in which it is feasible to repair the damage. The suspension period is from six months to three years.
3. Permanent shutdown of the CJP's activities in one or some sectors in which the offender causes damage or possibly harms the life or health of many people, causes environmental emergencies or negatively impacts social security or order and in which it is not feasible to repair the damage. A corporate offender that is established for the sole purpose of committing the criminal offence shall have all of its activities permanently terminated.
4. Banning the CJP from certain sectors if the convicted corporation might harm human life, health or society if it continues to operate in such sectors. The court shall decide the sectors from which the convicted entity is banned. The duration of the ban is from one to three years from the effective date of the judgment.
5. Prohibiting the CJP from raising capital if the convicted corporation might harm human life, health or society if it continues to raise capital. Raising capital can be prohibited through the following channels:
 - Taking loans from banks, credit institutions and/or investment funds.
 - Issuance and securities offering.
 - Raising capital from clients.
 - Cooperation and association both in Vietnam and overseas.
 - Establishing real estate trusts.
 The duration of prohibition from raising capital is from one to three years from the effective date of the judgment.

16.3 Do victims have an opportunity to be heard before or during sentencing? Are victims ever required to be heard? Can victims obtain financial restitution or damages from the convicted party?

A victim has, *inter alia*, the following rights during a trial that is also the sentencing hearing:

1. Present evidence, documents, items and requests.
2. Confer on relevant evidence, documents and items and request presiding persons to inspect and evaluate such.
3. Requisition expert examinations and valuation as per law.
4. Recommend punishment, amount of compensation and guarantees for compensation.
5. Attend the trial; provide opinions, request the presiding judge to question defendants and attendees at the trial; and engage in oral arguments at the trial to defend their legitimate rights and benefits.

The adjudicating panel always asks the victims for their opinions about the sentence and the amount of compensation. The victims can obtain financial restitution and damages from the convicted party and the matter will be decided in the judgment.

17 Appeals

17.1 Is a guilty or a non-guilty verdict appealable by either the defendant or the government?

Yes. Both the defendant and the People's Procuracy can appeal a guilty or non-guilty verdict.

17.2 Is a criminal sentence following a guilty verdict appealable? If so, which party may appeal?

Yes. Both the defendant and the People's Procuracy can appeal a criminal sentence in the same manner as an appeal of the verdict. This is because there is no separate sentencing hearing and the adjudicating panel decides the sentences in the same verdict judgments. The convicted defendant and the People's Procuracy can accept the verdict and only appeal the sentences.

17.3 What is the appellate court's standard of review?

Appellate review is a practice where the immediate superior court re-tries a case or reconsiders the decisions passed by the trial court, whose judgments and rulings are appealed before coming into force. An appellate court shall review the content of the judgment and rulings being appealed. It can review other parts of such judgment and rulings, which are not appealed, if it deems necessary.

17.4 If the appellate court upholds the appeal, what powers does it have to remedy any injustice by the trial court?

If upholding the appeal, the appellate panel can: (i) alter the trial court's judgments; (ii) annul the trial court's judgments and send the case back for re-investigation or re-trial; or (iii) annul the first-instance court's judgments and dismiss the case.



Tran Anh Hung is a co-founder and Managing Partner of BROSS & Partners LLC. Mr. Hung has over 20 years of experience in advising on and practising laws in Vietnam relating to: foreign and domestic investment (FDI) projects; M&A; corporate law; contracts; commercial; real estate and construction; TMT; securities and capital markets; arbitration; litigation and dispute resolution; and insurance and banking. Before jointly forming BROSS & Partner, Mr. Hung worked for prestigious foreign and local law firms in Vietnam, where he earned knowledge and experience in FDI projects, M&A, corporate, contract, commercial practice, securities and capital markets, arbitration, and litigation and dispute resolution. Mr. Hung has also achieved great success and was highly appreciated by clients for his advice on procedures of investment, contract, commerce, and dispute resolution. He is ranked as a Market Leading Lawyer and a Distinguished Practitioner in Vietnam by *Asialaw's* Leading Lawyers for Corporate and M&A, Real Estate and Construction, Banking and Finance, and Dispute Resolution. In addition, Mr. Hung is also ranked as a Litigation Star by *Benchmark Litigation Asia-Pacific*.

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BROSS & Partners LLC was founded in March 2008 via the merger of two law offices and two consulting companies in Vietnam, each of which had been established and in operation for over eight years, with lawyers having remarkable experience in the legal practice.

With a team of over 30 experienced lawyers, legal experts, dynamic and dedicated legal assistants and consultants in three offices in Hanoi, Da Nang and Ho Chi Minh City, BROSS & Partners has proved its strength and excellence in providing high-quality legal services to clients throughout the territory of Vietnam.

BROSS & Partners has built great trust and confidence from various clients who are large local and international companies and corporations in the

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