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GUIDES 2024**

The Legal 500 Country Comparative Guides Vietnam **BRIBERY & CORRUPTION**

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This country-specific Q&A provides an overview of bribery & corruption laws and regulations applicable in Vietnam.

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VIETNAM

BRIBERY & CORRUPTION



1. What is the legal framework (legislation/regulations) governing bribery and corruption in your jurisdiction?

Law on Prevention and Fighting against Corruption No. 36/2018/QH14 adopted by the National Assembly of Vietnam on 20 November 2018, amended in 2020, is the main legislation governing the anti-corruption practice in Vietnam ("**Anti-Corruption Law**"). This legislation provides for principles applied in anti-corruption practice (e.g. transparency, publicity, etc.); quota, allowance, limit, etc. on expenses, gifts, etc.; code of conduct; job rotation; administrative transformation; declaration and supervision of properties and incomes; detection of corruption; and international cooperation in prevention and fighting against corruption.

The Criminal Code No. 100/2015/QH13 adopted by the National Assembly of Vietnam on 27 November 2015, amended in 2016 and 2017, is the main legislation governing all crimes in Vietnam (the "**Criminal Code**"). Crimes relating to bribery and corruption are provided for in Chapter 23 of the Criminal Code. All crimes in Vietnam are investigated, prosecuted and adjudicated according to the Criminal Procedure Code No. 101/2015/QH13 adopted by the National Assembly of Vietnam on 27 November 2015, amended in 2015 and 2021 (the "**Criminal Procedure Code**").

Law on State Audit No. 81/2015/QH13, amended in 2019, providing for regulations of auditing State agencies and other public entities and Law on Inspection No. 11/2022/QH15 providing for regulations of inspecting State agencies, public entities and public officials are two other legislations closely linked to anti-corruption practice in Vietnam.

Further than the above legal documents, since almost all high-ranking public officials in Vietnam are members of the Communist Party of Vietnam ("**CPV**"), documents of the CPV also play a crucial role in the campaign against corruption in Vietnam, e.g. CPV's Charter, internal rules, regulations and decisions that Members of CPV are prohibited from performing, etc.

2. Which authorities have jurisdiction to investigate and prosecute bribery and corruption in your jurisdiction?

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 investigation agency comprises three different bodies: Investigation Agency of the People's Public Security; Investigation Agency of the People's Army; and Investigation Agency of the Supreme People's Procuracy. 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.

The Central Inspection Commission ("**CIC**") is an organ of the CPV responsible for combating corruption, disciplining members and wrongdoing in general. It is the only organ of CPV which can sentence or condemn CPV's members. It is common in Vietnam that after inspecting and/or disciplining a CPV-member public official, CIC refers the case to the Investigation Agencies to initiate official criminal procedures.

3. How is 'bribery' or 'corruption' (or any equivalent) defined?

The Anti-Corruption Law defines "corruption" as acts of people holding position, power who abuse such position, power for personal gain.¹ Corruption includes the

following:²

(a) Acts of corruption in the State sector committed by person holding position, power in agency, organization, units in the State sector:

- embezzlement;
- taking bribes;
- abuse of position, power for illegal appropriation of properties;
- abuse of position, power in performing tasks, official duties for personal gain;
- acting beyond authority in performing tasks, official duties for personal gain;
- abuse of position, power to influence others for personal gain;
- falsely impersonation while under duty for personal gain;
- giving bribe, brokering bribe in order to resolve tasks of agency, organization, units or local area for personal gain;
- abuse of position, power in order to illegally use public properties for personal gain;
- harassment for personal gain;
- failure to perform or incorrectly or inadequately performing tasks, official duties for personal gain; and
- abuse of position, power to screen violations of laws for person gain; illegally intervening, obstructing supervision, examination, inspection, audit, investigation, prosecution, adjudication, judgment enforcement for personal gain.

(b) Acts of corruption in non-State sector committed by person holding position, power in enterprises, organizations in the non-State sector include:

- embezzlement;
- taking bribes; and
- giving bribes, brokering bribe in order to resolve tasks of enterprise, organization for personal gain.

Under the Criminal Code, “corruption” can be understood as a group of crimes relating to official position including acts of infringement upon rightful operation of agencies, organizations committed by people holding position, power in performance of their official duties, tasks.

A person holding position, power means a person who, through appointment, election, contract or another method, receiving or not receiving salary, is given certain tasks and is entrusted with certain power in performing his/her official duties, tasks.³

Under the Criminal Code, no literal definition of “bribery” is provided for. However, “bribery” can be understood as a small group of crimes that are under the umbrella of “corruption”. “Bribery” covers the following crimes:

- *Taking Bribe*: An act of abuse of one’s power to directly or through an intermediary receive or promise to receive money, property, tangible or intangible benefits for oneself or for another person or organization in order to act or not to act in the interest of or at the request of the bribe-giver.⁴
- *Giving Bribe*: An act of, directly or through an intermediary, giving or promising to give money, property, tangible or intangible benefits to a person having position, power or another person or organization so that the person having position, power performs or does not perform certain tasks in the interests of or at the request of the bribe-giver.⁵
- *Brokering Bribe*: An act of brokering a bribe between a bribe-giver and a bribe-taker.⁶
- *Abuse of power or position to influence another person for personal gain (“Abuse of Power to Influence”)*: An act of abusing one’s position or power to directly or through an intermediary request, receive or promise to receive money, property, tangible or intangible benefits in order to use one’s influence to encourage another person having position, power to perform or not to perform a task that is under his/her responsibility or directly relating to his/her job or to commit a prohibited act.⁷
- *Abuse of influence over a person having position, power for personal gain (“Abuse of Influence”)*: An act of directly or through an intermediary receiving money, property, tangible or intangible benefits in order to abuse one’s influence to encourage a person having position, power to perform or not to perform a task that is under his/her responsibility or to commit a prohibited.⁸

Footnote(s):

¹ Anti-Corruption Law, Art. 3.1.

² Anti-Corruption Law, Art. 2.

³ Anti-Corruption Law, Art. 3.2; and Criminal Code, Art. 352.

⁴ Criminal Code, Art. 354.

⁵ Criminal Code, Art. 364.

⁶ Criminal Code, Art. 365.

⁷ Criminal Code, Art. 358.

⁸ Criminal Code, Art. 366.

4. Does the law distinguish between bribery of a public official and bribery of private persons? If so, how is 'public official' defined? Is a distinction made between a public official and a foreign public official? Are there different definitions for bribery of a public official and bribery of a private person?

There is no distinction between bribery of a "public official" and bribery of "private person". They are both subject to the same crime under the Criminal Code, i.e. Taking Bribe, Giving Bribe and Brokering Bribe. Abuse of Power to Influence or Abuse of Influence are applicable to public officials only. "Public official" includes the following:⁹

- elected officials, public servants, public employees;
- commissioned and non-commissioned officers, workers, employees in agencies, units of the People's Army and the People's Police;
- representatives of State capital in enterprises;
- people holding managerial titles, positions in enterprises, organizations in State sector;
- other people assigned tasks, official duties and hold power in performing such tasks, official duties in State sector.

In principle, all crimes committed within the territory of Vietnam can be prosecuted according to the Criminal Code, except for foreign individuals who enjoy diplomatic immunity according to treaties to which Vietnam is a signatory or according to usages of international laws. Criminal liabilities of these foreign individuals are resolved according to such treaties or usages or otherwise by diplomacy.¹⁰ In terms of extraterritorial jurisdiction, Vietnam claims that foreign individuals and organizations committing crimes outside the territory of Vietnam can also be prosecuted according to the Criminal Code if the offences infringe upon lawful rights and interests of Vietnamese citizens or the State of Vietnam or otherwise according to treaties to which Vietnam is a signatory. Although the Criminal Code provides for no definition of foreign public official, the Criminal Code considers giving or promising to give bribe to foreign public officials and officials of public

international organizations subject to the crime "Giving Bribe".¹¹ However, there is no similar provision regarding the crimes "Taking Bribe" and "Brokering Bribe". Therefore, it is likely that criminal liabilities of foreign public officials relating to "Taking Bribe" and "Brokering Bribe" will only be resolved by diplomacy.

Footnote(s):

⁹ Anti-Corruption Law, Art. 3.2.

¹⁰ Criminal Code, Art. 5.

¹¹ Criminal Code, Art. 364.6.

5. Who may be held liable for bribery? Only individuals, or also corporate entities?

A person holding position, power can be held liable for Taking Bribe and Abuse of Power to Influence while all individuals can be liable for Giving Bribe, Brokering Bribe and Abuse of Influence, provided that they are qualified for criminal liability (i.e. age, mental status, etc.). Corporate entities cannot be held liable for bribery.

6. What are the civil consequences of bribery and corruption offences in your jurisdiction?

Under the Law on Bidding No.22/2023/QH15 of the National Assembly dated June 23, 2023 (the '**Law on Bidding**'), bribery and other fraudulent behaviours in bidding are prohibited, and shall result in the bidding result being cancelled and the offenders being held liable for the cost incurred by the relevant parties.¹²

In contractual relationship, under the Civil Code No. 91/2015/QH13 of the National Assembly dated June 23, 2023 (the '**Civil Code**'), a contract that is fraudulently executed may be held invalid, and as a result of which, the parties shall "*restore to their original status, return what they have received*" and "*the party at fault shall compensate for the loss caused*".¹³

In the event a bribery or other corruption conduct harms the dignity, reputation, assets and other legal rights and interests of other persons or entities, the aggrieved person/ entity may claim damages for the total actual loss it suffers, under the rules on non- contractual compensation liability provided by the Civil Code.¹⁴

Footnote(s):

¹² Law on Bidding, Art. 16, 17.

¹³ Civil Code, Arts. 127, 131.

¹⁴ Civil Code, Chapter XX.

7. What are the criminal consequences of bribery and corruption offences in your jurisdiction?

Criminal consequences of bribery and corruption offences comprise of main punishment, i.e. imprisonment (from 1 to 20 years), life sentence, and death sentence; and additional punishment, i.e. monetary fines, injunction banning the offender from holding certain offices or from practicing or doing certain jobs for a defined period of time, and confiscation of part or all of the offenders' properties.

8. Are mechanisms such as Deferred Prosecution Agreements (DPAs) available for bribery and corruption offences in your jurisdiction?

There is no concept of DPA in Vietnam.

9. Does the law place any restrictions on hospitality, travel and entertainment expenses? Are there specific regulations restricting such expenses for foreign public officials? Are there specific monetary limits?

Hospitality, travel and entertainment expenditure of State agencies and other organizations receiving funds from the State budget must comply with, and must not exceed the monetary limits set out in, relevant regulations.¹⁵

There are no specific regulation restricting such expenses, nor any monetary limits, for foreign public officials.

Footnote(s):

¹⁵ Circular 71/2018/TT-BTC dated August 10, 2018 of the Minister of Finance on expenses for receiving foreign guests visiting Vietnam, expenses for organization of international workshops and meetings in Vietnam and expenses for receiving domestic guests, amended by the Circular 54/2021/TT-BTC dated July 6, 2021 of the Minister of Finance; Circular 40/2017/TT-BTC dated April 28, 2017 of the Minister of Finance on travel expenses and expenses for workshops and meetings.

10. Are political contributions regulated? If so, please provide details.

Vietnam does not have the concept of "*political contributions*". The State agencies, organizations, units and people holding position, power must not by all means receive any gifts from other parties that are related to their duties or that are under their management. If they cannot reject the gifts, they must report and surrender the gifts to competent authorities. The gifts will then be contributed to the State budget.¹⁶

Footnote(s):

¹⁶ Decree No. 59/2019/ND-CP, Art. 25, 26, and 27.

11. Are facilitation payments regulated? If not, what is the general approach to such payments?

Vietnam does not have the concept of "*facilitation payments*". In practice, it is likely that "*facilitation payments*" will be considered "bribes". In case "*facilitation payments*" are considered "gifts", please find question 10 above.

12. Are there any defences available to the bribery and corruption offences in your jurisdiction?

Normal defences that are available to all crimes under Chapter IV of the Criminal Code are applicable to bribery and corruption offences.¹⁷ However, for Giving Bribe and Brokering Bribe, the following special defences are available:¹⁸

- Any person who is forced to give bribes but voluntarily reports the bribery before being discovered shall be acquitted and have the money or property used as bribe returned.
- Any person who is not forced to give bribes but voluntarily report the bribery before being discovered might be exempt from criminal responsibility and have all or part of the money or property used as bribe returned.
- The bribe broker who voluntarily reports the bribery before being discovered might be exempt from criminal responsibility.

Footnote(s):

¹⁷ Criminal Code, Chapter IV.

¹⁸ Criminal Code, Art. 364.7, and 365.6.

13. Are compliance programs a mitigating factor to reduce/eliminate liability for bribery offences in your jurisdiction?

N/A because corporations are not subject to bribery and corruption.

14. Has the government published any guidance advising how to comply with anti-corruption and bribery laws in your jurisdiction?

Vietnam's government issues no non-legal, advisory guidance on how to comply with anti-corruption and bribery laws. All parties must comply with the Anti-Corruption Law, Criminal Code and their guiding documents.

15. Does the law in your jurisdiction provide protection to whistle-blowers? Do the authorities in your jurisdiction offer any incentives or rewards to whistle-blowers?

Whistle-blowing procedures are regulated by Law on Whistle-blowing No. 25/2018/QH14, amended in 2020, adopted by the National Assembly of Vietnam on 12 June 2018 ("**Whistle-blowing Law**"). If there are grounds to believe that position, job, life, health, property, honour and dignity of the whistle-blowers are being infringed upon or threatened to be immediately infringed upon or the whistle-blowers are victimized due to the whistle-blowing, the competent authority shall decide to adopt necessary protection measures.¹⁹ A whistle-blower could be afforded with the following protection:²⁰

(i) measures for protecting information:

- keep the whistle-blower's full name, address, autograph and other personal information secret;
- remove the whistle-blower's full name, address, autograph and other personal information from the documents; and
- arrange a time and place and use appropriate methods to protect the whistle-blower's information when working with the whistle-blower and relevant parties.

(ii) measures for protecting position and job:

for whistle-blowers who are officials, public officials and public employees:

- suspend, partially or totally invalidate the decision to impose disciplinary penalties or other decisions that infringe upon legitimate rights and interests of the whistle-blower;
- restore whistle-blower's position, job, incomes and other legitimate interests;
- consider reassigning whistle-blower to another authority with their consent in order to avoid victimization; and
- take actions against the people who take revenge on or threaten the whistle-blower;

for whistle-blowers who are working under an employment contract include:

- request employers to stop violations; restore the whistle-blower's position, job, incomes and other legitimate interests;
- take actions against violations against the law.

(iii) measures for protecting life, health, property, honour and dignity:

- take the whistle-blower to a safe place;
- provide personnel, vehicles and instruments to directly protect life, health, property, honour and dignity of the whistle-blower in important areas;
- adopt necessary measures to prevent and take actions against any infringement upon or threat to life, health, property, honour and dignity of the whistle-blower;
- request people who infringe upon or threaten life, health, property, honour and dignity of the whistle-blower to stop doing so.

There are no monetary incentives and rewards for the whistle-blowers. Almost all incentives and rewards are written certificates of merits.

Footnote(s):

¹⁹ Whistle-blowing Law, Art. 47.3.

²⁰ Whistle-blowing Law, Art. 56, 57, and 58.

16. How common are government authority investigations into allegations of bribery? How effective are they in leading to prosecutions of individuals and corporates?

Corruption is a major problem in Vietnam, impacting all aspects of administration and law enforcement. In 2016,

Mr. Nguyen Phu Trong, CPV's general secretary, started the "blazing furnace" anti-corruption campaign. Since then, many high-ranking public officials of Vietnam has been prosecuted for corruption. Due to unique justice system of Vietnam, rate of prosecution and conviction in bribery cases is 100%.

17. What are the recent and emerging trends in investigations and enforcement in your jurisdiction?

In the recent years, the defendants in corruption and bribery cases, mostly high-ranking officials and high-profile entrepreneurs, tend to confess and fully cooperate with the Investigation Agencies in the very early stage. They usually proactively surrender money, properties and other benefits illegally received in order to enjoy mitigating factors and the courts' mercy.

18. Is there a process of judicial review for challenging government authority action and decisions? If so, please describe key features of this process and remedy.

There is no process of judicial review for challenging government authority action and decisions in Vietnam. However, Vietnam has a body of administrative litigation of which the procedures allow private parties to initiate actions against the action/inaction and decisions of the State agencies and the public officials. This is currently Law on Administrative Litigation No. 93/2015/QH13 dated 25 November 2015, as amended in 2019. This procedural law is distinct from criminal and civil procedures although its process resembles that of the civil procedures. In practice, cases involving bribery and corruption have hardly been challenged according to the procedures of this law.

19. Have there been any significant developments or reforms in this area in your jurisdiction over the past 12 months?

Although there have not been any new regulations issued for the past 12 months, Vietnam's ongoing anti-corruption campaign "Blazing Furnace" has recently led to the resignations and removals of many high-ranking officials including 2 former presidents, and the head of Vietnam's parliament. In April 2024, the trial court sentenced Mrs. Truong My Lan, chairwomen of the notorious Van Thinh Phat Group, to death in a high-profile case involving 12.5 billion USD financial fraud and bribery.

20. Are there any planned or potential developments or reforms of bribery and anti-corruption laws in your jurisdiction?

There is no immediate known plan at the moment. However, the Ministry of Public Security is implementing a massive campaign against corrupted senior-ranking officials. A lot of investment projects and corporation have been investigated for violation of economic regulations. Almost all of the cases involve bribery and abuse of power.

21. To which international anti-corruption conventions is your country party?

Vietnam is a member of the United Nations Convention Against Corruption.

22. Do you have a concept of legal privilege in your jurisdiction which applies to lawyer-led investigations? If so, please provide details on the extent of that protection. Does it cover internal investigations carried out by in-house counsel?

Vietnam does not have a concept of legal privilege in general and one that might apply to lawyer-led investigation in particular.

As a general rule, any person who is aware of a crime committed must report it to the competent authorities. In the corruption and bribery context, any person who knows that a crime is being prepared or is being or have been carried out but fails to report it will be liable for misprision.

An exception is that a defender who has knowledge of a crime that was committed or participated in by the defendant while performing the defender's duties will not be liable for misprision or failure to report that crime. However, this "privilege" is not applicable in the case the relevant crimes are against national security or other extremely serious crimes, and does not extend to in-house counsel and other situations where the lawyers are not acting as defending lawyers in a case.

23. How much importance does your government place on tackling bribery and corruption? How do you think your jurisdiction's approach to anti-bribery and

corruption compares on an international scale?

Vietnam's government in general and the Ministry of Public Security and the Central Inspection Commission of the Communist Party of Vietnam in particular have been implementing strong measures against bribery and corruption. As mentioned above, the number of high-profile corruption cases has gone up rapidly in recent years. Not only the incumbent officials but also those who have retired have been prosecuted and convicted. This demonstrates commitment of Vietnam's government and the CPV in tackling the corruption and bribery. However, Vietnam's approach is unique because almost all the defendants are CPV's members. This leads to a combination of both legal actions implemented by official authorities of the government, i.e. the Ministry of Public Security, and internal disciplinary measures initiated by the CPV, i.e. the Central Inspection Commission.

24. Generally how serious are organisations in your country about preventing bribery and corruption?

Perpetrators committing bribery and corruption face serious criminal liabilities, many large organisations are serious about preventing bribery and corruption. They usually develop their compliance programs and enact policies relating to gifts and external affairs' expenses. However, small and middle enterprises might not have such commitment in combatting bribery and corruption due to their size and scope of business.

25. What are the biggest challenges enforcement agencies/regulators face when investigating and prosecuting cases of bribery and corruption in your jurisdiction? How have they sought to tackle these challenges?

The perpetrators are usually high-ranking officials and CPV's members so that the Investigation Agencies need to seek comments, opinions from various State and CPV's agencies. The criminal acts are usually committed for a long time so that the gathering of evidence is not always feasible. In recent years, the Investigation Agencies, the Procuracy and the Courts have been focusing more on remedying the consequences of the crimes by retrieving money and properties. However, the convicted defendants and their family might not have resources or do not want to surrender all the benefits received.

One of the thorny issues that the regulators face in combatting against corruption is making the process of declaration and supervision of properties of public officials more transparent and effective. In practice, self-declaration by the public officials and supervision conducted by competent authorities usually proves unsuccessful in preventing and detecting unusual/unjustified assets.

26. What are the biggest challenges businesses face when investigating bribery and corruption issues?

Internal investigation of bribery and corruption conducted by businesses usually leads to two results: (i) the corporation refers the matter to the Investigation Agencies; and (ii) the corporation terminates the relevant employees and seeks compensation through litigation or arbitration. The biggest challenges businesses might face is how to properly gather evidence. It is often difficult for corporates to collect enough evidence to have a criminal case. For some cases, the corporates do not want to risk its reputation and only fire the employees. For some cases where the employees hold high-rank office of the corporates, the companies often end up wrongfully terminating them before having sufficient evidence.

27. How have authorities in your jurisdiction sought to address the challenges presented by the significant increase of electronic data in either investigations or prosecutions into bribery and corruption offences?

The Criminal Procedure Code grants the Investigation Agency authority to require production of electronic data and documents from relevant parties. The Investigation Agencies usually do not face resistance in exercising this power.

28. What do you consider will be the most significant bribery and corruption-related challenges posed to businesses in your jurisdiction over the next 18 months?

Except for cases where corporations intentionally use bribes to gain advantages, most businesses have been reported that without "facilitation fees", they cannot get it done with the State administrative procedures. This results in a "petty corruption" environment in Vietnam. The notorious "repatriation flight" case occurred during

the COVID-19 pandemic has demonstrated this situation.

From April 2020, with motto “no one is left behind”, Vietnam allowed flights to be conducted to repatriate citizens from COVID-19-hit countries. Passengers only had to pay for flight tickets while medical quarantine after arrival was free of charge. As demand rose, Vietnam also allowed the so-called “combo flights” with passengers voluntarily paying for all costs.

Businesses conducting “combo flights” need permission from the People’s Committees of the provinces and cities where repatriated citizens would be quarantined. After that, the application was submitted to the Foreign Ministry’s Consular Department that would then collect comments from various ministries of public security, foreign affairs, transport, health, and national defence.

It turned out that some officials at the Immigration Department of the Ministry of Public Security and a

secretary of a deputy health minister asked businesses to pay 50 – 230 million VND (2,100 – 9,800 USD) for the procedures they handled for each flight. As a result, 20 businesses with over 100 legal entities raised flight ticket prices and “invent” many expenses to charge the passengers.

29. How would you improve the legal framework and process for preventing, investigating and prosecuting cases of bribery and corruption?

One of the keys to tackle bribery and corruption is transparent. Vietnam needs to reform the current self-declaration of properties and supervision of unjustified enrichment of public officials. The current legal framework for this practice is actually abundant but the implementation in practice is not really effective.

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