

Vietnam

I. Brief Introduction to the Legal System of Vietnam

The Socialist Republic of Viet Nam (more commonly spelled as “Vietnam”) is a one-party State under the control of the Communist Party of Vietnam (the “Party”). As the “force leading the State and the society”¹, the Party, through a structure parallel to the Government’s² and established in line with the administrative apparatus from central to local communal levels, plays a central and critical role in shaping as well as maintaining a firm control over the Government and the country’s policies, and legal and social system. Thus, under the notion of “State management” of society, the State, based on the Party’s policy guidance, uses law as an instrument to “adjust social relations” and “govern society.”³

The State exercises its power through three branches, with the National Assembly exercising the legislative power,⁴ the Government serving as the executive arm⁵, and the People’s Courts forming the State’s judicial arm.⁶ Local-level governance mirrors the central-level State apparatus such that a Provincial People’s Council, an elected body akin to the National Assembly, and the People’s Committee, an executive body like the Government, administers each province or city, while a Provincial People’s Court and District People’s Court serve as the judiciary of the locality.

¹ Article 4, 1992 Constitution of the Socialist Republic of Vietnam, as amended by Resolution No.51/2001/QH10 of December 25, 2001

² Article 10, Charter of the Communist Party of Vietnam

³ Bui Thi Bich Lien, “*Legal Interpretation and the Vietnamese Version of the Rule of Law*” in 6 NATIONAL TAIWAN UNIVERSITY LAW REVIEW 321- 337 (2011), at 324.

⁴ Constitutionally the body of highest power, the National Assembly determines the policies of the country; approves the national budget; and supervises the activities of the Government, the People’s Courts and the People’s Prosecutor.

⁵ The Government comprises the Prime Minister, Deputy Ministers, and Ministers heading the Ministries and the Ministry-equivalent bodies. The Prime Minister is appointed by the National Assembly, and in turn, recommends nominees for the positions of Deputy Prime Minister and Ministers.

⁶ Vietnam has a two-tier court system consisting of the Supreme People’s Court, the Provincial People’s Courts (both as appeal courts) and the District People’s Courts (as courts of first instance). The Supreme People’s Court and the Provincial People’s Courts have specialized courts within themselves including a criminal, civil, economic, administrative, and labour court.

As a country within the civil law tradition, Vietnam's source of law is written legislation (commonly referred to as "legal documents"). All three branches of State power are entitled to produce legislation, along with the legislative and executive branches at the local level following decentralization.⁷ Under the Law on Promulgation of Legal Documents,⁸ there are twelve types of statutory instruments by different authorities. The primary laws⁹ set out a general framework of general rules and policies and have the highest validity while the secondary laws issued by other bodies¹⁰ provide guidance in the implementation of the primary laws.

Of note, since the judiciary does not have the power to interpret the law, court judgments are not a source of law and are not binding in subsequent cases. In addition, since a number of various bodies draft legislation, there is thus a "jungle of regulations"¹¹ that often leads to inconsistent and fragmented interpretations and applications of laws.¹²

II. Vietnam's Anticorruption Laws

Legal Framework

Improving on previous piecemeal enactments addressing corruption,¹³ Vietnam's anticorruption legal framework establishes a systemic approach to curbing corruption that is embodied under the Criminal Code,¹⁴ Anticorruption Law ("ACL"),¹⁵ National

⁷ Law No. 31/2004/QH11 of December 3, 2004 on the promulgation of legal documents of People's Councils and People's Committees

⁸ Law No. 17/2008/QH12 of June 3, 2008

⁹ These primary legal documents comprise the Constitution, and the laws and resolutions of the National Assembly.

¹⁰ These secondary regulations include ordinances and resolutions of the Standing Committee of the National Assembly, orders and decisions of the President, decrees issued by the Government, decisions of the Prime Minister, circulars of Ministers and Heads of Ministry-equivalent agencies, and resolutions of the Justices' Councils of the Supreme People's Courts.

¹¹ For instance, in the period of 2004-2005, the Government and ministerial-level agencies has to issue approximately 4,000 documents to provide implementing guidance for laws and ordinances.

¹² Bui, Vietnamese Version of the Rule of Law, at 326.

¹³ See generally, Anticorruption Ordinance of March 9, 1998; Decree No. 64/1998/ND-CP of August 17, 1998 detailing and guiding the implementation of the Anticorruption Ordinance; Law No. 48/2005/QH11 of November 29, 2005 on thrift practice and combating waste; Resolution No. 04/2006/NQ/TW of August 21, 2006 on empowering the Party's leadership to combat corruption and wastefulness

¹⁴ Law No. 15/1999/QH-10 of December 21, 1999, as amended by Law No. 37/2009/QH12 of June 19, 2009

Anticorruption Action Plan and Strategy to 2020,¹⁶ and a substantial body of subsequent implementing guidelines¹⁷ and other issuances on sectoral overhaul,¹⁸ institutional mechanisms,¹⁹ income and asset declaration requirements,²⁰ other transparency measures,²¹ “whistle-blowing”,²² and reform initiatives.²³

¹⁵ Law No. 55/2005/QH11 of November 29, 2005, as amended initially by Law No. 01/2007/QH12 of August 4, 2007 and recently by Law No. 27/2012/QH13 of November 23, 2012

¹⁶ Decision No. 30/2006/QD-TTg of February 6, 2006; Resolution No. 21/2009/NQ-CP of May 12, 2009

¹⁷ Decree No. 120/2006/ND-CP of October 20, 2006 (*on corrupt acts*)(“Decree 120”); Decree No. 107/2006/ND-CP of September 22, 2006 (*defining responsibilities of heads for corruption occurring in their agencies*); Decree No. 47/2207/ND-CP of March 27, 2007 (*role and responsibility of society in preventing corruption*) (Decree 47); Circular No. 11/2011/TT-TTCP of November 9, 2011 (*criteria and evaluation of corruption prevention*)

¹⁸ See for example, Law No. 22/2008/QH12 of November 28, 2008 (*public officials and civil servants*) (“Law 22”); Law No. 37/2005/QH11 of June 14, 2005 (*State audit*); Law No. 61/2005/QH11 of November 29, 2005 (*tendering*)

¹⁹ There is no single independent anticorruption enforcement body in Vietnam. Among the Vietnamese bodies having an anticorruption mandate are the Central Steering Committee against Corruption (“CSCAC”), Government Inspectorate, People’s Procuracy and State Audit of Vietnam.

See Resolution No. 1039/2006/NQ-UBTVQH of August 28, 2006 (CSCAC); Resolution No. 294A/2007/UBTVQH12 of September 27, 2007 (*Provincial Steering Committee Against Corruption*); Decision No. 13/2007/QD-TTg of January 24, 2007 (*Office of the CSCAC*); Decree No. 65/2008/ND-CP of May 20, 2008 (*Government Inspectorate*); Decision No. 1424/QD-TTg of October 21, 2006 (*anticorruption department under the Government Inspectorate*); Resolution No. 1046/2006/NQ-UBTVQH of September 30, 2006 (*department in charge of exercising the right of prosecution and inspection of corruption cases*); Joint Circular No. 12/2011/TTLT-TTCP-VKSNDTC-TANDTC-KTNN-BQP-BCA of December 15, 2011 (*exchange, management and use of information and data on anticorruption*)

²⁰ Decree No. 68/2011/ND-CP of August 8, 2011; Circular No. 2442/2007/TT-TTCP of November 13, 2007; Decree No. 68/2011/ND-CP of July 8, 2011

²¹ Decree No. 158/2007/ND-CP of October 27, 2007 (*rotation of working positions of civil servants*); Directive No. 20/2007/CT-TTg of August 24, 2007 (*salary payment through bank accounts*); Decree No. 64/2007/TT-g of May 10, 2007 (*on giving, receipt and hand-over of gifts by State budget-funded agencies, organization and units and cadres, public employees and servants*) (“Decree 64”)

²² Joint Circular No. 03/2011/TTLT-BNV-TTCP of May 6, 2011 (*rewarding whistleblowers*); Decree No. 76/2012/ND-CP of October 3, 2012 detailing a number of articles of the Law on Complaints and Denunciations

²³ Decision No. 137/2009/QD-TTg of December 2, 2009 (*scheme to introduce anticorruption contents into the training and education curricula*) or “Scheme 137”; Decision No. 30/QD-TTg of January 10, 2007 (*approving the scheme “Master Plan of Administrative Procedure Simplification in the Fields of State Management for the Period 2007-2010”*) or “Project 30”; Decision No. 07/QD-TTg of January 4, 2008 (*issuing the implementation plan for Project 30*)

For instance, the three-phase Project 30 has played a pivotal role in the strengthening of Vietnam’s anticorruption framework by reducing corruption opportunities through the simplification of more than 5,000 administrative procedures, which in turn helped citizens and businesses cut over 37% of their expenses, accounting for approximately 1.44 billion US\$/year. (Transparency International 2011, available at: <http://www.transparency.org/cpi2011/results>).

In addition, Vietnam has endorsed the Anti-Corruption Action Plan for Asia and the Pacific, joined the South-East Asian Parliamentarians against Corruption, signed the Memorandum of Understanding on Preventing and Combating Corruption in the ASEAN Region, ratified the UNCAC²⁴ with certain reservations,²⁵ and signed but not yet ratified the Convention against Transnational Organized Crime. It has yet to join (and has not prioritized joining²⁶) the OECD Convention, GRECO, and the International Anti-Corruption Academy.

Criminalization

Vietnam criminalizes corruption under the ACL and the Criminal Code.

Under the ACL, corruption covers any “conduct by a person with a position and/or powers by abusing his or her position and/or powers for self-seeking purposes,” which may comprise one of the following “corrupt acts:”

- embezzling or appropriating property
- taking a bribe
- taking advantage of a position or powers while working

Co-organized by the Government Inspectorate and the World Bank, with the support of bilateral donors, the bi-annual Vietnam Anti-Corruption Initiative (“VACI”) Programme recognizes community initiatives aimed at minimizing corruption, strengthening transparency and bringing a better living environment.

²⁴ Decision No. 950/2009/QD-CTN dated 30 June 2009 (*ratifying the UNCAC*) (“Decision 950”); *see also* Decision No. 31/2012/QD-TTg dated July 26, 2012 (*coordination in implementing UNCAC*)

²⁵ Pursuant to Decision 950, Vietnam shall (i) not be bound by UNCAC provisions on dispute settlement procedures, criminalization of acts of illegal enrichment and bribery and embezzlement in the private sector, criminal liability of legal persons, and special investigative techniques; (ii) not consider the UNCAC as the direct legal basis for extradition, which it will exercise based on Vietnamese law, extradition agreements and reciprocity; and (iii) implement the UNCAC provisions based on Vietnamese constitutional principles and law, signed treaties and reciprocity.

²⁶ To date, the Government’s efforts have been concentrated on ensuring Vietnam’s compliance with the UNCAC provisions; *see generally*, ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, “Compilation of Written Reports by Steering Group Members on Recent Developments and Activities at the 17th Steering Group Meeting” (2012), available at: <http://www.oecd.org/site/adboecdanti-corruptioninitiative/meetingsandconferences/SG17StepsTakentoImplementAnti-CorruptionPlan&UNCAC.pdf> (the “UNCAC Implementation Reports”); Anti-Corruption and Transparency Working Group, “Interim Reports on Implementation of APEC Anti-Corruption Commitments (2012), available at: http://www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Working-Groups/~/_media/Files/Groups/ACT/ACTWG-InterimReport-Anticorruption-Commitments_28052012.pdf (the “APEC Anticorruption Interim Reports”).

- taking advantage of a position or powers, passing oneself off while working, conducting harassment,²⁷ or failing to perform tasks or official duties²⁸
- giving a bribe or bribe brokerage by a person with a position and/or powers to resolve affairs of a body or a locality
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- taking advantage of a position or powers to influence another person or to illegally use state property²⁹ or to cover up a law offender, or hindering or intervening illegally in examination, inspection, auditing, investigation, prosecution, hearing or judgment execution³⁰

Depending on the nature and seriousness of the corrupt act, the violator may be subject to disciplinary action and/or prosecution for criminal liability, dismissal from position, and automatic loss of rights as a National Assembly member or People's Council representative, as appropriate.

The Criminal Code meanwhile categorizes the following “crimes of corruption”³¹ under “crimes relating to positions:”³²

- embezzling assets
- receiving bribes
- abusing position and/or power to appropriate property

²⁷ Defined in Article 3.3 of Decree 120 as acting with arrogance or authoritarianism, or an act of causing difficulties or trouble whilst working and aimed at demanding or forcing a citizen, enterprise and organization or other individual to pay improper expenses or to conduct other acts for the benefit of the person conducting harassment.

²⁸ Article 3.4 of Decree 120 clarifies this as being the intentional failure to perform responsibilities specified by law to prevent, to discover or deal with a breach of the law or failure to perform tasks or official duties in accordance with the order, procedures or time limit, for self-seeking purposes.

²⁹ The act may be through using State property for a private purpose, leasing out or lending State property, or using State property in excess of the regimes, limits or standards pursuant to Article 3.2 of Decree 120.

³⁰ Under Article 3.5 of Decree 120, this corrupt act comprises using one’s position, powers or influence to cover up or assist in mitigating a breach of another person, or to cause difficulties for examination, inspection, audit, investigation, prosecution, hearing or execution of a judgment or to falsify the result of the aforesaid activities.

³¹ Articles 278-284 of the Criminal Code

³² Crimes relating to positions are defined by Article 277 of the Criminal Code as “acts of infringing upon the legitimate activities of agencies and/or organizations, which are carried out by persons holding positions whilst they are on official duties” and comprise the “crimes of corruption” under Articles 278-284 of the Criminal Code and “other crimes relating to position” under Articles 285-291 of the Criminal Code.

- abusing position or and/or power during the performance of public duties
- misuse of power on performance of public duties
- misuse of position for personal benefits
- forgery in the course of performance of duties

Giving bribes (Article 289), acting as intermediaries for bribery (Article 290) and taking advantage of one's influence over persons with positions or powers to seek personal benefit (Article 291) are "other crimes relating to positions" (and not crimes of corruption) under the Criminal Code.

Depending on the nature and seriousness of the crime of corruption or the value of the bribe, the offender may be subject from six months imprisonment to life imprisonment or capital punishment, disqualification from holding certain posts for a determined period, fine between one and five times the value of the bribe, and/or confiscation of part or the whole of the official's property.

Elements, Defenses, Exceptions

1. *Commercial Corruption.* Although Article 21 of the UNCAC calls for the adoption of measures to establish bribery in the private sector as a criminal offence, Vietnam has yet to criminalize corruption in the private sector. Both the ACL and the Criminal Code apply only to acts of "persons with a position and/or power" who by definition of law include:³³

- State employees/civil servants (or those on the payroll of the State) and public officials (elected or appointed to office)
- officers, professional soldiers, defense workers in bodies or units of the People's Army; specialized officers or non-commissioned officers, and professional or technical officers or non-commissioned officers in bodies or units of the People's Police
- heads and managers of State-owned enterprises; heads and managers being representatives of any State-contributed capital in enterprises
- persons who are assigned tasks or official duties and have powers during performance of such tasks or official duties

³³ Article 1.3 of the ACL

- for purposes of applying Decree 64:³⁴ cadres, public employees and civil servants Law 22;³⁵ State agencies; political organizations; specified personnel of the People’s Army and the People’s Police; public non-business units; State enterprises and other agencies, organizations and units using State budget and assets; heads and managers representing the State’s shares in enterprises; holders of leadership and management posts in political organizations, socio-political organizations and other agencies or units funded by State budget

2. *Corrupt Purpose.* The corrupt purpose of an act determines whether such act constitutes a crime under the ACL or the Criminal Code. Thus, the ACL requires that not only is the act committed by a person in position or with powers, such act must also be committed by such person in position or with powers for “self-seeking purposes.”

Article 2.5 of the ACL defines self-seeking purposes as being “material or spiritual benefits which are obtained or which are obtainable through a corrupt act by a person with a position and/or powers”. By illustration, the corrupt act of the giving of a bribe or bribery brokerage by a person in position or with powers should have been committed to:³⁶

- be entitled to a favorable regime or policy
- have priority in allocation of a budget
- procure the approval of project from the approving body or officer
- be awarded a title in emulation or a title of honor of the State
- procure the permission or approval for numbers of employees to be recruited
- avoid examination, inspection, investigation or audit or to falsify an examination, inspection, investigation, or audit results to cover up a breach of the law
- receive other benefit

³⁴ The regulation, however, does not apply to senior officials and social policy beneficiaries and persons who rendered meritorious services to the revolution.

³⁵ While the ACL does not provide for the nationality qualification, Article 4.1 of Law 22 defines cadres or public officials as “Vietnamese citizens who are elected, approved and appointed to hold posts or titles for a given term of office in agencies of the Communist Party of Vietnam, the State, socio-political organizations at the central level, in provinces and centrally run cities, in districts, towns and provincial cities, included in the payrolls and salaried from the State budget.”

³⁶ Article 3.1 of Decree 120

Unlike the ACL, the Criminal Code provides a less ambiguous standard for acts of corruption, which is that the act must have been committed in order that the person of position and/or power performs or does not perform a certain job for the benefit or at the request of the bribe offeror or giver.

3. *Bribery of Foreign Officials and Officials of International Organizations.* Though Article 16 of the UNCAC calls for the adoption of measures to establish bribery of foreign officials or officials of public international organizations as a criminal offense, no such law has yet been enacted or issued in Vietnam. At the 17th Steering Group Meeting of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific in 2012, Vietnam has, however, reported that it will focus on the review, study and proposal of solutions to amend the anticorruption provisions of the Criminal Code and other regulations to meet the obligatory requirements of the UNCAC on criminalizing bribery of foreign officials and officials of public international organizations.³⁷

4. *Extra-territoriality.* The Criminal Code may only be applied outside of Vietnam (e.g. a foreigner who bribes a Vietnamese official outside the territory of Vietnam may be held criminally liable under Vietnamese law) in circumstances provided for in the international treaties which Vietnam has signed or acceded to.³⁸

5. *Corporate Liability.* There is no criminal liability for corporations, and as such, specific individuals must bear responsibility for any commission of corruption.³⁹

6. *Gifts.* Decree 64 defines “gifts” to Vietnamese officials as comprising:

- Vietnamese currency, foreign currencies, saving certificates, stocks, bonds, checks and valuable papers
- material items, goods and assets
- services of domestic or overseas sightseeing tours, travel, healthcare education-training, internship and refresher training and other kinds of services
- rights to buy assets, houses, land use rights and equipment use rights; non-state prescribed privileges; use of assets, houses, land and equipment of other persons, which is free of charge or undercharged

³⁷ UNCAC Implementation Reports, at page104; *see also* APEC Anticorruption Interim Reports, at 259

³⁸ Of note, in ratifying the UNCAC, Vietnam manifested that it will: (i) not consider the UNCAC as the direct legal basis for extradition, which Vietnam will exercise based on Vietnamese law, extradition agreements and reciprocity; and (iii) implement the UNCAC provisions based on Vietnamese constitutional principles and law, signed treaties and reciprocity.

³⁹ *See for example*, Decision 950 and one of Vietnam’s UNCAC reservations being the non-application of UNCAC provisions on corporate criminal liability as this is not provided for under Vietnamese law

7. *Acceptable and Prohibited Gifts.* Under Decree 64, a Vietnamese official shall only accept gifts less than VND 500,000 (about \$25), which are either:

- from a relative or entity not having any benefit or not being relevant to the public duties of the recipient
- given in case of sickness, accident or mourning, or on occasion of a wedding, traditional festival or *Tet* (Vietnamese New Year)

Conversely, gifts other than these, such as gifts from individuals or organizations under the management or involved in the activities under the authority of the official or those given without reason or intended for bribery (such as “facilitation” or “grease” payments) must be refused or reported by a Vietnamese official.

8. *De Minimis.* Although there are certain economic thresholds for criminal liability to attach under the Criminal Code, there are no *de minimis* exceptions or minimum thresholds for bribes under the ACL. Meanwhile, under the Criminal Code, a crime of corruption is deemed to have been made (and corresponding criminal liability shall attach) where the money, property, property rights, material benefits, interest in any form or any other material consideration being given or offered as a bribe is:⁴⁰

- more than VND 2,000,000 (about \$100)
- less than VND 2,000,000 (about \$100) but committed more than once or if causing “*serious consequences*”

Gifts below these thresholds fall outside the scope the Criminal Code; however, offenders may still be dealt with by way of administrative liability.

9. *Exemptions from Criminal Liability.* The Criminal Code exempts only the following offenders from criminal liability:

- persons who are not coerced to give bribes but take initiative in reporting the bribery before being detected⁴¹
- bribery intermediaries who take initiative in reporting the bribery before being exempted⁴²

⁴⁰ Articles 279.1 (*receiving bribes*), 289.1 (*offering bribes*), and 290.1 (*acting as intermediaries for bribery*) of the Criminal Code

⁴¹ Article 289.6 of the Criminal Code

⁴² Article 290.6 of the Criminal Code

The ACL meanwhile neither provides exemptions from administrative liability nor recognizes exempting or justifying defenses in cases of commission of corrupt acts.

III. Assessment

Although Vietnam's anticorruption legal framework has been deemed "strong"⁴³ and "the most wide-ranging in terms of thematic scope in Asia,"⁴⁴ corruption is nevertheless still "serious, sophisticated, complicated, and blatant occurring across many sectors, and at many levels."⁴⁵

Perceptions

The following results of the November 2012 survey jointly prepared by the Government Inspectorate and the World Bank bring important new dimensions in understanding and addressing corruption in Vietnam:⁴⁶

- the four sectors that were perceived to commit corruption the most include traffic police, land management, customs and construction⁴⁷
- corruption is one of the three issues of public interest in Vietnam, in addition to concerns about the cost of living and food safety⁴⁸
- many firms pay informal charges as an expedient means of getting things done,⁴⁹ thinking that these unofficial payments are a necessary

⁴³ Global Integrity, 2009, *Global Integrity's Vietnam Country Report*, available at: <http://report.globalintegrity.org/Vietnam/2009> (the "Global Integrity Vietnam Report")

⁴⁴ CECODES, Embassy of Finland, 2008, *Anti-Corruption in Vietnam: The Situation After Two Years of Implementation of the Law*, available at: <http://www.finland.org.vn/public/download.aspx?ID+38961&GUID=%7B96721A6B-F87E-4B53-9342-5FDACC26B097%7D>

⁴⁵ Le Van Lan, deputy office chief of the CSCACC during a July 2012 conference held by the National Assembly's Standing Committee; "Corruption in Vietnam is serious, blatant, rampant" available at: <http://tuoitrenews.vn/features-news/1411/corruption-in-vietnam-is-serious-blatant-rampant>

⁴⁶ The survey was done in collaboration with the Office of the CSCAC, Transformation and Change Consulting, the Asia-Pacific Institute of Management, United Kingdom's Department for International Development and UNDP. A total of 5,460 people, including 2,601 citizens, 1,058 entrepreneurs and 1,801 public officers in 10 provinces and 5 ministries participated in the survey. "Corruption from the perspective of citizens, businesses and public servants: Results of sociological surveys" (2nd edition, 2013), available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/03/13/000333037_20130313144107/Rendered/PDF/738070REVISED0000January02013000ENG.pdf (the "2012 Corruption Perceptions")

⁴⁷ 2012 Corruption Perceptions, at 37

⁴⁸ 2012 Corruption Perceptions, at 30

⁴⁹ 2012 Corruption Perceptions, at 43

cost of doing business⁵⁰, and in more than 70% of the cases, the unofficial payments were actively proposed by enterprises and in less than 30% of cases the unofficial payments were demanded⁵¹

- for many services or functions, citizens have to pay unofficially in order to use those services or interact with those officials⁵²
- many behaviors clearly known by public officers to be corrupt do not fall in the interface between state officials and the public, but are entirely internal to the system of public administration, thereby suggesting that there is still much to do in the area of public administration reform⁵³
- most of the three subject groups think that anticorruption measures have not been as effective as expected because corrupt people are not severely punished, or that not enough attention was paid to improving officials' ethics, or that anticorruption activities lacked focus⁵⁴
- as currently implemented, the system of assets and income declarations, the policy of holding the heads of agencies responsible for corruption within the agencies, the use of codes of conduct and professional ethics, and the payment of salaries via bank accounts appear to not be working very well and only very weakly associated with lower levels of corruption, suggesting that they should either be de-emphasized or revisited to attempt to make them work

⁵⁰ 2012 Corruption Perceptions, at 47

⁵¹ Firms unilaterally make unofficial payments when dealing with the tax, sector administration, and banking sectors, and traffic police while agencies that commonly demand unofficial payments include agencies in market management, police, natural resources and environment management, and construction; 2012 Corruption Perceptions, at 45

⁵² These unofficial payments are mostly made when interacting with traffic police, for school application and education service, when applying for a job in the State sector, or for healthcare service, housing construction or repair permit; 2012 Corruption Perceptions, at 47

⁵³ Among these common corrupt behaviors are the use of the agency's resources for personal purposes, taking money or presents for some action or decision giving preferential treatment to the giver, intentionally delaying making decisions when conducting duties in order to elicit bribes, and offering high ranking people vacations, meals, or entertainment for personal benefits; 2012 Corruption Perceptions, at 56

⁵⁴ Corruption Perceptions, at 64

The recently published results of the Vietnam Provincial Governance and Public Administration Performance Index (PAPI) 2012⁵⁵ also showed that many still perceive corruption to be widespread in the public sector while tolerance for small amounts of bribery tends to have increased.⁵⁶

Both these survey findings appear to be consistent with Vietnam's slip in ranking in Transparency International's Corruption Perception Index from 112th place in 2011⁵⁷ to 123rd place in 2012⁵⁸ out of 176 nations, notably a worse standing than [Sierra Leone](#) and Belarus.

Corruption Cases

In its report at the 18th Meeting of the CSCAC of August 22, 2012, Vietnam provided the following results in its investigation, prosecution and adjudication of corruption cases:

From 01/01/2012 until July 2012, the legal authorities initiated 153 cases of corruption, with 275 defendants; 183 cases/451 defendants were prosecuted; 116 cases/251 defendants went to court. The [CSCAC] is monitoring, directing, urging the settlement of 20 serious cases of corruption, including: instance trial of 2 cases; local courts handling trial preparation of 04 cases; Procuracy accepted 02 cases; suspended 02 cases; investigating agencies of all levels handling 10 cases, including prosecuting one new case of embezzlement and [intentional] violations.⁵⁹

As of the first quarter of 2013, government inspectors conducting a check of administrative offices have reported uncovering 14 corruption cases involving 37 offenders, of which they proposed administrative fines on six persons and criminal proceedings against 32 people in five cases. Some VND99 billion (\$4.7 million) embezzled in corruption cases has yet to be returned to the State budget, but only VND48.1 billion has been recovered. Among those subject of corruption include land use and mineral extraction in the central province of Binh Dinh from 2004-2011; firing on site in the northern province of Bac Giang; and land resettlement and planning in the Mekong Delta province of Vinh Long. Inspectors also uncovered many people in

⁵⁵ PAPI 2012 is based on the experiences of nearly 14,000 citizens through a survey done by the Center for Community Support and Development Studies and the Center for Research and Training of the Vietnam Fatherland Front, with support from the UNDP.

⁵⁶ Tu Hoang, "Petty corruption escalates: PAPI 2012" in The Saigon Times Daily, May 15, 2013.

⁵⁷ Available at: <http://www.transparency.org/cpi2011/results>

⁵⁸ Available at: <http://cpi.transparency.org/cpi2012/results/>

⁵⁹ UNCAC Implementation Reports, at 104

Son Ha and Ba To districts in the central province of Quang Ngai who took advantage of their position and power to make fake documents and wrongly used identities of soldiers.⁶⁰

Of note, since Vietnam has yet to criminalize bribery of a foreign official or official of an internal organization in accordance with Article 16 of the UNCAC, no investigation, prosecution or conviction has ever been made for criminal charges of this nature to date. It is interesting to note, however, that in two prominent corruption cases, foreign companies involved in bribing Vietnamese officials have already been prosecuted in their respective home countries, namely the US⁶¹ and Japan.⁶²

Issues

1. *UNCAC Implementation.* As have been discussed earlier, in relation to the amendment of certain anticorruption provisions in the Criminal Code⁶³ Vietnam will focus on the review, study and proposal of solutions to amend its current regulations to meet the obligatory requirements of the UNCAC on:⁶⁴

⁶⁰ "Government inspectors report corruption cases in first quarter" available at: <http://vietnamtimes.com.vn/govt-inspectors-report-corruption-cases-in-first-quarter/>

⁶¹ Three former employees (the "Nguyens") and a partner of Nexus Technologies Inc. ("Nexus"), a Philadelphia-based export company, were sentenced for their roles in a conspiracy to bribe Vietnamese officials in violation of the Foreign Corrupt Practices Act. In connection with the guilty pleas, Nexus and the Nguyens admitted that from 1999 to 2008, they agreed to pay, and knowingly paid, bribes in excess of USD 250,000 (falsely described as "commissions" in the company's records) to Vietnamese officials in exchange for lucrative contracts to supply high-tech equipment and technology (including third party underwater mapping and bomb containment equipment, helicopter parts, chemical detectors, satellite communication parts and air tracking systems) to Vietnamese government agencies. See <http://www.fbi.gov/philadelphia/press-releases/2010/ph091610a.htm>

⁶² Officials of Tokyo-based Pacific Consultants International ("PCI") were found guilty in Japan for bribing Huynh Ngoc Sy, the former deputy director of the Ho Chi Minh City Transport and Public Works Department and former director of the Ho Chi Minh City East-West Avenue and Water Environment Project Management Board, to win the public bidding for consultation work for a large-scale highway construction funded by official development assistance ("**ODA**") capital from Japan Bank for International Cooperation. Japan delayed new ODA loans to Vietnam after details of the scandal emerged in December 2008, and only resumed lending in March 2009 after seeing the Vietnamese Government taking action on the case. Sy was prosecuted for having taken bribes of a lesser amount of USD 262,000 (instead of the \$820,000 in bribes the former PCI executives admitted paying to Sy). Sy's life imprisonment sentence was later reduced to 20 years. See <http://www.vnexpress.net/GL/Phap-luat/2010/09/3BA205AD/>; <http://www.dtinews.vn/en/news/017002/16207/sentence-cut-for-ex-official-in-bribery-scam.html>

⁶³ The Prime Minister has approved on September 10, 2012 the master plan to review the implementation of the Criminal Code of 1999 (as amended in 2009).

⁶⁴ UNCAC Implementation Reports, at 104-105

- bribery of national officials (Article 15)
- bribery of foreign public officials and officials of public international organizations (Article 16)
- embezzlement, misappropriation or other diversion of property by a public official (Article 17)
- laundering proceeds of crime (Article 23)
- obstruction of justice (Article 25)
- freezing, seizure and confiscation (Article 31)

At the same time, Vietnam has also reported that it will continue to study the provisions on criminal liability of legal persons, especially in the prevention and fight against corruption (Article 26). It will also continue to review and study for revision and supplementation of the criminal procedural law as a result of its national self-assessment report in the implementation of the UNCAC, with immediate priority on the obligatory requirements such as measures to protect witnesses, experts and victims and cooperation in the investigation of criminal cases.

2. *Regulatory Gaps.* In addition to the UNCAC provisions yet to be complied with by Vietnam, the following are some of the other notable gaps in Vietnam's anticorruption legal framework:

- Vietnam's anticorruption policies and efforts have so far been focused extensively on public sector corruption as to have missed dealing with corruption in the private sector. Thus, bribery and embezzlement of property in the private sector have not yet been established as a criminal offense in Vietnam. Within the public sector, the Vietnamese society has shown significant tolerance towards the "small bribes" that are more akin to a processing fee and are seen as complement to the low wages of government employees.
- The inconsistency between the ACL and the Criminal Code on the definition of subjects of corruption acts,⁶⁵ as well as the non-application of current legal issuances in criminalizing "illicit enrichment"⁶⁶ have led to either lack

⁶⁵ For instance, the ACL and Criminal Code do not provide a standard or test for determining when the offender is deemed to be performing tasks or official duties when committing the offense.

⁶⁶ Article 20 of the UNCAC



of or lax implementation of anti-corruption measures (and often non-criminalization of the corrupt act).

- Inefficient reporting channels and data collection⁶⁷ as well as insufficient legal protection for whistleblowers have also prevented many citizens and public officials from reporting on corruption.⁶⁸
- While many articles of the ACL declare different documents to be public information, access to information is still limited. For instance, Article 31, covering the rights of organizations to request information, affords special status to State agencies, political organizations, socio-political and press agencies, but does not mention enterprises or other organizations. Also, Article 32, covering the rights of individuals to access information, affords special status to cadres and civil servants, while citizens are limited in their rights in terms of who they can submit their requests to and the content of their submissions.⁶⁹ Also, although the right to information is recognized and provided under the ACL, access to such information is never guaranteed.
- For a good system of income and assets declarations, there must be (i) a manageable number of filers, (ii) a good data management system for the filings, (iii) effective measures to sanction non-compliance, and (iv) disclosure of asset and income declarations to the public.⁷⁰

3. *Independence.* According to Global Integrity's 2009 Vietnam Country Report, agencies with anti-corruption mandate are very weak as they lack independence from the ruling Party, proper funding and well-trained or qualified officials. Thus, inspectorates can only "suggest" but cannot enforce their findings and conclusions. Inspection reports, which in many cases are not comprehensive to begin with, could also be changed or "improved", as they are not always available to the public.⁷¹

⁶⁷ While whistle-blowing protection is provided for in the ACL, there is no internal mechanism (e.g. phone hotline) for reporting corruption cases. Pursuant to Decree No. 47, whistleblowers must give their name and address, detail the corrupt practice and submit documentation to support it.

⁶⁸ It is noted that defining protections for whistle-blowers will only be credible if there are also provisions that ensure sanctions against those who inappropriately take revenge on whistle-blowers. 2012 Corruption Perceptions, at 105

⁶⁹ 2012 Corruption Perceptions, at 95

⁷⁰ 2012 Corruption Perceptions, at 100-101

⁷¹ See Global Integrity Vietnam Report

4. *Leadership.* Vietnam's fight against corruption needs to include unequivocal actions by the top leadership to show that the fight against corruption is serious. Also, while entrusting the enforcement of anticorruption laws to heads of agencies concerned presents a conflict of interest and could weaken enforcement, this should not mean that the heads of agencies should not be accountable for preventing corruption within their agencies.⁷²

5. *Liberties, Media and Civil Society.* In addition, as civil and political freedoms are limited, the capacity of media⁷³ and civil society organizations⁷⁴ to hold public officials accountable is likewise restricted.

IV. Texts

A. 1992 Constitution of the Socialist Republic of Vietnam, as amended by Resolution No. 51/2001/QH10 of the National Assembly dated December 25, 2001, available _____ at _____ :
http://vbqpl.moj.gov.vn/vbpg/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10450

B. Resolution No. 04/2006/NQ/TW of the Party's Central Standing Committee dated August 21, 2006

C. Law No. 15/1999/QH10 of the National Assembly dated December 21, 1999 on the Criminal Code, as amended by Law No. 37/2009/QH12 dated June 19, 2009, available _____ at:
http://vbqpl.moj.gov.vn/vbpg/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=610and
http://vbqpl.moj.gov.vn/vbpg/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10467

D. Law No. 55/2005/QH11 dated November 29, 2005 on Anti-Corruption (available _____ at: <http://www.oecd.org/site/adboecdanti-corruptioninitiative/46817414.pdf>), as amended by Law No. 01/2007/QH12 of the

⁷² 2012 Corruption Perceptions, at 106

⁷³ Almost all print media outlets are owned by or are under the control of the Party, Government organs or the army. According to the Global Integrity's 2009 Vietnam Country Report, issues such as religious freedom, human rights, political reforms or criticism of Government leaders are commonly targeted for official censorship.

⁷⁴ Good governance and anti-corruption organizations, for instance, are often required to join a government or Party-organized entity, which is usually affiliated to the Front for the Fatherland.

National Assembly dated August 4, 2007 (available at: http://vbqpl.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=333) and Law No. 27/2012/QH13 dated 23 November 2012

E. Resolution No. 21/2009/NQ-CP of the Prime Minister dated May 12, 2009 promulgating the National Strategy against Anti-Corruption

F. Law No. 22/2008/QH12 of the National Assembly dated November 28, 2008 on Public Officials and Civil Servants, available at: http://vbqpl.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10505)

G. Law No. 37/2005/QH11 of the National Assembly dated June 14, 2005 on State Audit, available at: http://vbqpl.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=6840

H. Law No. 61/2005/QH11 of the National Assembly dated November 29, 2005 on Tendering, available at: http://vbqpl.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=5968

I. Resolution No. 1039/2006/NQ-UBTVQH of the Standing Committee of the National Assembly dated August 28, 2006

J. Resolution No. 1046/2006/ NQ-UBTVQH of the Standing Committee of the National Assembly dated September 30, 2006

K. Decree No. 107/2006/ND-CP of the Government dated September 22, 2006, available at: http://vbqpl.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=4946

L. Decree No. 120/2006/ND-CP of the Government dated October 20, 2006, available at: http://vbqpl.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=4789

M. Decree No. 47/2007/ND-CP of the Government dated May 9, 2007, available at:

http://vbqpl.moj.gov.vn/vbpg/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=4015

N. Decree No. 102/2007/ND-CP of the Government dated May 14, 2007, available at:
http://vbqpl.moj.gov.vn/vbpg/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3653

O. Decree No. 30/2006/ND-CP of the Government dated October 31, 2006

P. Decision No. 1424/QD-TTg of the Prime Minister dated October 21, 2006, available at
http://vbqpl.moj.gov.vn/vbpg/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=4724

Q. Decision No. 64/2007/QD-TTg of the Prime Minister dated May 10, 2007, available at :
http://vbqpl.moj.gov.vn/vbpg/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3850

R. Decision No. 13/2007/QD-TTg of the Prime Minister dated January 24, 2007, available at:
http://vbqpl.moj.gov.vn/vbpg/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=4285

S. Decree No. 158/2007/ND-CP of the Government dated October 27, 2007, available at:
http://vbqpl.moj.gov.vn/vbpg/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3223

T. Directive No. 20/2007/CT-TTg of the Prime Minister (available at: http://vbqpl.moj.gov.vn/vbpg/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3352) and Joint Circular No. 03/2011/TTLT-BNV-TTCP of the Ministry of Home Affairs and Government Inspectorate dated May 6, 2011

U. Decision No. 31/2012/QD-TTg of the Prime Minister dated July 26, 2012

V. Law No. 03/2011/QH13 of the National Assembly dated November 11, 2011 on Denunciations



W. Decision No. 64/2007/QĐ-TTg of the Prime Minister dated May 10, 2007, available at:
http://vbqpl.moj.gov.vn/vbpg/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=3850

X. Decree No. 68/2011/ND-CP of the Government dated August 8, 2011, available at:
http://vbqpl.moj.gov.vn/vbpg/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10709

Y. Decree No. 47/2007/ND-CP of the Government dated March 27, 2007, available at:
http://vbqpl.moj.gov.vn/vbpg/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=4015

Z. Global Integrity, 2009, *Global Integrity's Vietnam Country Report*, available at: <http://report.globalintegrity.org/Vietnam/2009>

AA.CECODES, Embassy of Finland, 2008, *Anti-Corruption in Vietnam: The Situation After Two Years of Implementation of the Law*, available at:
<http://www.finland.org.vn/public/download.aspx?ID+38961&GUID=%7B96721A6B-F87E-4B53-93425FDACC26B097%7D>

BB. Transparency International, 2012, *Overview of Corruption and Anti-Corruption in Vietnam*, available at:
http://www.transparency.org/files/content/corruptionqas/315_Overview_of_corruption_and_anti-corruption_in_Vietnam.pdf