

# Vietnam

---

## VNA Legal

### 1 What is the source of anti-corruption laws/regulations and/or other related local regulatory guidance in relation to the following types of activity: gifts, meals, entertainment, travel, sponsored training/conferences and other similar hospitality events?

The principle law regulating corruption in Vietnam is the Law on Anti-Corruption together with its implementing legislation. Supplemental regulations are also issued by the Government and the Prime Minister. The Penal Code together with its implementing legislation also governs corruption. Further, Decision 64/2007/QĐ-TTg of the Prime Minister dated 10 May 2007, issues regulations on the giving of gifts to and receipt of gifts by State Officials (“Decision 64”).

### 2 Do the anti-corruption laws/regulations apply to the private sector or do they relate to the bribery of public individuals and/or bodies only?

Bribery offences under the Law on Anti-Corruption and the Penal Code relate to the bribery of persons with positions and/or powers, including:

- public servants;
- officers, professional army personnel, defence workers in agencies or units of the People’s Army; officers, non-commissioned officers, professional technical officers, non-commissioned officers in agencies or units of the People’s Police;
- leading, managerial officials in state enterprises; leading, managerial officials being representatives of any state contributed capital in an enterprise; and
- persons assigned tasks or official duties who have powers while performing such tasks or official duties.

Additionally, the head of a government/state-owned body, organisation or entity will also be directly responsible for the occurrence of any corrupt act by a person whom he or she directly manages or to whom he or she assigns duties.

Decision 64 also only relates to cadres, public employees and servants (as defined in the law on cadres and public employees) and state agencies, political organisations, people’s armed forces units, public non-business units, state enterprises and other agencies, organisations and units using state budget and assets. Further, the regulations apply to specified personnel within the People’s Army and the People’s public security forces; leaders and managers of state enterprises; leaders and managers representing the state’s share in enterprises; holders of leadership and management posts in political organisations, socio-political organisations and other state budget-funded agencies and units.

Further, pursuant to the Penal Code, bribe offerors can also be subject to criminal liability and/or monetary fines.

### 3 What is the definition of a public body? Would it include state-owned/controlled companies? Who is a public official/civil servant?

There is no single definition of what constitutes the “public sector”, “public body” or who is a “governmental official” in Vietnam and various laws provide different, although similar, definitions. However, according to the Ordinance on Civil Servants, civil servants are Vietnamese citizens who are on the state payroll and get paid from the state budget, including:

- people who are elected to hold posts for a given term in state agencies, political organisations and socio-political organisations;
- people who are recruited, appointed or assigned regular tasks in political and socio-political organisations;

- people who are recruited, appointed or assigned a regular public duty, are categorised according to their training degrees and professional specialty, are arranged in an administrative or non-business grade in state agencies, each grade reflecting a professional position and rank as well as title according to certain specific criteria;
- judges of the People's Courts and prosecutors of the People's Procurary;
- people who are recruited, appointed, or assigned regular tasks in offices and units of the People's Army but are neither officers, professional military personnel or defence workers; in offices and units of the People's Police but who are neither officers nor professional non-commissioned officers.

Cadres are effectively Vietnamese citizens, elected, approved or appointed to positions in agencies of the Vietnamese Communist party, of the Government or of political and social organisms at central, district or commune level. They are part of the government workforce and receive a salary from state budget.

Bribery offences do relate to state-owned/controlled companies. Generally speaking, and for the Law on Anti-Corruption, "bodies, organisations and entities" governed by the provisions will comprise state bodies, political organisations, socio-political organisations, people's armed force units, professional entities, state-owned enterprises and other bodies, organisations and entities using a budget and/or property funded by the state.

## 4 What constitutes a bribery/corruption offence under the relevant legislation? Does the Government issue internal regulations or codes of conduct applicable to public officials/civil servants?

Pursuant to the Law on Anti-Corruption and the Penal Code, corruption is defined to mean acts committed by persons with positions and/or powers abusing such position and/or powers for self-seeking interests. The specified corrupt acts are numerous, and include persons abusing their position to illegally use state property or appropriate other persons' property, to embezzle property, failing to perform official duties, to commit forgeries, to harass persons and to hinder investigations/prosecutions for self seeking reasons.

The bribery offences are as follows:

- Receiving bribes – persons who abuse their position and/or power by accepting or intending to accept, directly or through intermediaries, money, property or other material interests in any form in order to perform or not to perform certain jobs for the benefit, or at the request of, the bribe offeror.
- Offering bribes or bribe brokerage by persons with positions and/or powers to influence affairs of agencies, organisations, units or localities for self-seeking interests.
- Taking advantage of positions or powers to influence other persons for self-seeking interests – persons who abuse their positions and/or powers, having accepted or intending to accept directly or through intermediaries money, property or other material interests in any form, by using their influence to incite persons with positions or powers to do or not to do something within the sphere of their responsibility or directly related to their work or to do something they are not allowed to do.

Decision 64 specifically regulates the giving of gifts to state officials and regulates:

- the giving of gifts by organisations and individuals where the gifts are funded by the state budget;
- the receipt of gifts by state organisations and officials; and
- dealing with such gifts and the reporting regime.

Additionally, state bodies and each political organisation, socio-political organisation, professional entity and other body, organisation or entity using a budget funded by the state Budget must, pursuant to the Law on Anti-Corruption, provide guidelines for the application thereof. Alternatively they must co-ordinate with the competent state body in formulating, promulgating and publicising regimes, limits and standards applicable to their body.

## 5 Are there any additional requirements that apply to a bank/financial institution?

Pursuant to the Law on Credit Institutions and money laundering regulations, credit institutions and other organisations conducting banking activities must not conceal or provide any service relating to funds of which evidence of illegal origins have been established. Where funds are identified as having signs of illegality, such institutions must inform the relevant government authorities. Additionally, credit institutions are prohibited from providing loans, unsecured credit or preferential credit to certain “related persons” specified in the Law on Credit Institutions.

A Steering Committee has been established by decision of the State Bank of Vietnam for the prevention and control of corruption and crime in the banking service.

## 6 Are there any *de-minimis* exceptions to the anti-bribery legislation, in terms of gifts/value of service offered? What considerations will be taken into account, for example: the purpose and frequency of the gift/event; the cost to the organiser; the value of the benefit offered to the individual?

No minimum thresholds or *de-minimis* exceptions are specified in the Law on Anti-Corruption and, in theory, any monetary amount or form of gift could constitute a bribe, depending on the circumstances. However, the law does specify certain thresholds for penal sanctions and any gifts below these thresholds would fall outside the scope of the Penal Code and be dealt with by way of fine or administrative penalty.

Pursuant to Decision 64, “gifts” comprise the following:

- Vietnamese currency, foreign currencies, saving certificates, stocks, bonds, cheques and other 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; and
- 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.

Pursuant to Decision 64, state officials do not have to report gifts where the value of the gift is less than VND 500,000 (where USD 1 equals approximately VND 18,500) and where the gift is offered where the person falls sick, suffers an accident, is in mourning, for a wedding or for *Tet* (Vietnamese New Year). Conversely, gifts given outside of this must either be refused or reported in accordance with the provisions of Decision 64.

## 7 What kinds of gifts/entertainment/advantages will be considered acceptable?

As noted above, gifts under VND 500,000 are generally acceptable and do not need to be reported by state officials when given for permitted purposes. Other gifts must be reported.

It is not uncommon in Vietnam for foreign companies to sponsor and be asked to sponsor government officials to attend international training courses. The costs of such courses, travel expenses, accommodation and even a monetary allowance could all be acceptable provided no direct benefit is being returned for this and they are reported pursuant to Decision 64.

Inviting government officials for lunch, dinner or drinks is generally acceptable in Vietnam and is in fact customary practice provided no direct benefit is being exchanged for this. In practice, it is unlikely that such forms of entertainment are reported by such officials.

Further, it is not uncommon during Vietnamese New Year (“*Tet*”) for public servants and government officials to receive *Tet* presents (consisting of gifts of food and alcohol) and provided these do not exceed VND 500,000 they do not need to be reported.

## 8 What kinds of gifts/entertainment/advantages will be considered unacceptable?

Decision 64 specifically prohibits receipt of gifts by state organisations and officials in the following cases:

- agencies, units or individuals giving gifts in connection to public affairs under their management or under their handling responsibility or the handling responsibility of the person on whose behalf they receive gifts (before, during or after the handling of public affairs);
- the giving of a gift where there is no specific/legal reason; and
- the giving of the gift relates to corrupt behaviour as regulated by the Law on Anti-Corruption.

Additionally, any form of cash payment or gift above VND 500,000 would normally be seen as unacceptable if unreported or if a direct benefit is being returned for such payment or gift.

## 9 Does the law cover gifts/entertainment/advantages which are given to spouses/relatives of a public official/civil servant, and/or companies in which the public official/civil servant is a director/shareholder? What is the position in respect of charitable contributions to the Government and/or PEP-connected local charities?

As noted in Point 4 above, bribery is one form of corruption and covers persons who abuse their positions and/or power and have accepted or intend to accept directly or through intermediaries money, property or other material interests in any form in order to perform or not to perform certain jobs for the benefit or at the request of the bribe offeror.

Therefore, the law on Anti-Corruption does cover the giving of entertainment, gifts and advantages to relatives of persons with positions and/or powers or to companies in which the persons with positions of power are directors or shareholders (which includes government officials and state-owned or controlled company employees provided they fall into the category of “leading, managerial officials in state enterprises”, as noted in question 2 above).

There are no additional provisions to corruption in relation to charitable contributions to the Government and/or PEP-connected local charities.

## 10 Are there any exemptions, for example: “grease payments” defined as payments made to procure “routine governmental action” that “does not involve an exercise of discretion” (such as under the FCPA); payments “that are legal in the country in which they are offered”; and “reasonable and *bona fides* expenses directly relating to the promotion of products or services”?

There are no such exceptions specified under Vietnamese law. However, from a practical perspective, “reasonable and *bona fides* expenses directly relating to the promotion of products or services” are highly unlikely to fall within the definition of bribery/corruption.

## 11 Where proper disclosure is made to the employer/public body concerning the details of the gift or event being offered, would that be sufficient to avoid any potential liability under the relevant legislation? If so, what form should the disclosure take and what details should be included?

Gifts that are given for a permitted occasion (as noted in question 6 above) and are worth less than VND 500,000 do not generally need to be disclosed. However, gifts for other purposes or over this amount must be disclosed. Pursuant to Decision 64, when receiving gifts in contravention of regulations, cadres, public employees and servants must report to their immediate supervisor(s) and hand over the gifts to the relevant agency within five days of receiving the gift. Reports must be made in writing and include the nature and value of the gift; the time, place and specific circumstances of receiving the gift; the name, position, agency and address of the gift giver; and the purpose of the gift giving (if known). Disclosure is made by the recipient and not the gift giver and would not necessarily be sufficient to avoid potential liability under the legislation.

Additionally, and as noted above, state bodies and state funded bodies must provide guidelines for the application of the Law on Anti-Corruption. The regimes, limits and standards will differ for each body and it is highly likely that many such bodies have not specified any regimes, limits or standards. Unfortunately, it is not possible to access the various regimes, limits or standards issued by these bodies, however, clearly the more transparent a gift or benefit in kind, the less likely it would be to be deemed a bribe.

## 12 In practice, is it possible to obtain written/signed acknowledgement from the relevant supervisory level of the public body/state, that shows that the supervisor is aware of the advantage offered to an employee? Is there an official approval process available or channel to go through? How long would that take? Can it be done retrospectively?

Even if the guidelines required for each state body/state body as referred to above have been implemented, it is likely that they are inadequately enforced. Further, any approval process separate to the process specified under Decision 64 may be time consuming and potentially unachievable, depending on the body/entity in question.

In any event, any approval is likely to be for the state official to obtain rather than it being for the gift giver to request.

## 13 Do local laws/regulations have extra-territorial effect? Is bribery of foreign public officials prohibited?

The Penal Code applies to all acts of criminal offences committed in the territory of Vietnam. Additionally, Vietnamese citizens and foreigners who commit offences outside Vietnam may also be examined for penal liability. Whilst the Law on Anti-Corruption is silent on extra-territorial effect, by implication of it working in parallel with the Penal Code, it would almost certainly have extra-territorial effect, although enforcement against offenders outside Vietnam or for offences outside Vietnam would be very difficult and depend on international treaties or assistance of foreign governments.

Bribery of foreign public officials is not expressly dealt with under Vietnamese law.

## 14 What sanctions/sentences may be imposed?

Public servants who commit corrupt acts may, depending on the nature and seriousness of their violations, be disciplined or examined for both civil and penal liability. Where they are sentenced for corrupt acts they must be sacked from their positions. Offenders may also be banned from holding certain posts for one to five years, be subject to a fine of between one and five times the value of the bribe, and/or face the confiscation of part or the whole of their property.

Pursuant to the Penal Code, the sentences that may be imposed on a public servant for accepting a bribe range from two to seven years of imprisonment to 20 years of imprisonment, life imprisonment or capital punishment, depending upon, among other things, the value of the bribe.

The sentences that may be imposed on a bribe offeror range from:

- one to six years of imprisonment where the bribe has a value of between VND 2 million and under VND 10 million, or under VND 2 million but causes serious consequences or is committed more than once;
- six months to 13 years of imprisonment where the offence is committed in an organised manner, uses state property, the offence is committed more than once, the bribe has a value of between VND 10 million and under VND 50 million or causes serious consequences;
- 13 to 20 years of imprisonment where the bribe has a value of between VND 50 million and under VND 300 million or causes other very serious consequences; and
- 20 years of imprisonment or life imprisonment where the bribe has a value of VND 300 million or more or causes other particularly serious consequences.

Offenders may also be subject to a fine of between one and five times the value of the bribe. However, persons who are coerced to offer bribes but take initiative in reporting them before being detected may be exempt from penal liability and have part of or the entire property offered as bribes returned.

For offences below the set monetary thresholds, administrative penalties and fines, as opposed to imprisonment, will apply.

The head of a body, organisation or entity who is directly responsible for the occurrence of a corrupt act within such body, organisation or entity under his or her management or authority may be subject to disciplinary action or prosecution for criminal liability.

---

## VNA Legal

|          |  |
|----------|--|
| Contacts | <b>Konrad Hull, Partner</b><br>10th Floor Bitexco Office Building, 19-25 Nguyen Hue, District 1, Ho Chi Minh City, Vietnam |
| Phone    | +84 8 39140074   |
| Fax      | +84 8 39143820   |
| Email    | <a href="mailto:info@vnalegal.com">info@vnalegal.com</a>   |
| Website  | <a href="http://www.vnalegal.com">www.vnalegal.com</a>   |

VNA Legal is a full service law firm, headed by two Vietnam-based partners (1 Australian and 1 Vietnamese). The partners lead a team of foreign lawyers, foreign-trained lawyers, Vietnamese lawyers, law trainees, experienced legal translators and administrators. VNA Legal provides advice in all areas of industry and commerce to multi-national and Vietnamese corporate, financial and industrial clients for both local and cross-border commercial transactions. VNA Legal and its lawyers have extensive experience in foreign direct investment into Vietnam, Mergers and Acquisitions, general corporate/commercial and other areas of business law as well as large practices in employment law, real estate and land law, maritime law, tax, projects, oil and gas, energy and infrastructure, project finance, and banking and finance.