

# Vietnam

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## VNA Legal

### 1 What are the main bodies responsible for investigating and combatting corruption, money laundering and terrorist financing?

The main bodies responsible for investigating and combatting corruption, money laundering and terrorist financing are:

- The State Audit of Vietnam;
- The Government Inspectorate;
- The Central Steering Committee for Corruption Prevention and Combat (“CSCCPC”);
- The Provincial/Municipal Steering Committees for Corruption Prevention and Combat (“PSCCPC”);
- The Interdisciplinary Steering Committee for Anti-Money Laundering (“ISCAML”);
- The Anti-Money Laundering Information Centre (“AMLIC”);
- The State Bank of Vietnam (“SBV”);
- The Ministry of Police;
- The Supreme Public Prosecution Office; and
- The Supreme People’s Court.

### 2 What does each of these bodies investigate?

The State Audit is responsible for auditing agencies and organisations managing and/or using the state budget, money and property in order to prevent and detect corruption. Where corrupt acts are detected, it will request competent agencies or organisations to take appropriate actions.

The Government Inspectorate has the responsibility to organise, direct and guide the inspection of the observance of legal provisions on corruption prevention. Where corrupt acts are detected, it will request competent agencies or organisations to take appropriate action.

The CSCCPC is headed by the Prime Minister and has national responsibility for directing, coordinating and inspecting activities to prevent corruption.

PSCCPC’s are headed by the provincial/municipal People’s Committees presidents and have responsibility for directing, coordinating and inspecting activities to prevent corruption in their respective localities.

ISCAML primarily assists the Prime Minister on formulating strategies on anti-money laundering and anti-terrorist financing and works with relevant Ministries to implement such strategies.

AMLIC is a subsidiary unit of the SBV, and coordinates the receipt and processing of information in relation to money laundering. AMLIC assists the SBV Governor and has the right to require any body, organisation or individual involved to provide data, files or information on transactions over certain values specified in law and in relation to suspicious transactions specified in law.

The SBV has the prime responsibility for preventing money laundering and works with the Ministry of Police/police and other concerned bodies in formulating and implementing strategies, guidelines, policies and plans to prevent money laundering in Vietnam.

The Ministry of Police organises teams to investigate corruption, money laundering related crime and terrorism related activities. Both the Ministry of Police and Ministry of Defence, within the ambit of their powers, have the responsibility to direct the investigation of corruption related crimes and terrorist related activity.

The Supreme Public Prosecution Office organises and directs the prosecution of corruption cases, money laundering, related crime and terrorism related activities; to control investigations, adjudication and judgment executions against corruption, money laundering related crime and terrorism related activities.

The Supreme People's Court adjudicates, and direct the adjudication of, corruption, money laundering and terrorism related activities.

### 3 What is the source of anti-corruption regulations in Vietnam?

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. In addition, the Penal Code, together with its implementing legislation, also governs corruption.

### 4 What constitutes a bribery/corruption offence under the anti-corruption regulation(s) in Vietnam?

Under the Law on Anti-Corruption and the Penal Code, corruption means acts committed by persons with positions and/or powers abusing such position and/or powers for self-seeking interests. Corrupt acts include:

- embezzling property – persons who abuse their positions and/or powers to appropriate the property which they are responsible for managing;
- receiving bribes – persons who abuse their positions and/or power by accepting or agreeing 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 offerer;
- abusing positions and/or powers to appropriate properties – persons who abuse their position and/or powers to appropriate other persons' property;
- taking advantage of positions and/or powers while performing tasks or official duties for self-seeking interests – persons who, for self-seeking or other personal motivation, abuse their positions and/or powers to act contrary to their official duties, causing damage to the interests of the State and society and/or the legitimate rights and interests of citizens;
- abusing powers while performing tasks or official duties for self-seeking interests – persons who, for self-seeking or other personal motivation, act beyond their powers contrary to their official duties, causing damage to the interests of the State and the society, and/or to the legitimate rights and interests of citizens;
- taking advantage of positions and/or powers to influence other persons for self-seeking interests – persons who abuse positions and/or powers, have accepted or will accept directly or through intermediaries money, property or other material interests in any form to use their influence and incite persons with positions and 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;
- committing forgeries in work for self-seeking interests – persons who, for self-seeking or other personal motivation, abuse their positions and/or powers to commit amendment or falsifying contents of papers or documents, or to make and/or grant counterfeit papers, or to forge signatures of persons with positions and powers;
- offering bribes or bribe brokerage by persons with positions and/or powers to settle affairs of agencies, organisations, units or localities for self-seeking interests;
- taking advantage of positions and/or powers to illegally use state properties for self-seeking interests;

- harassment for self-seeking interests – acts of authoritarianism, causing difficulties or trouble when performing tasks or official duties with a view to demanding or compelling citizens, enterprises, organisations and other individuals to pay expenses against regulations or to perform other acts for the interests of the persons who commit acts of harassment;
- failure to perform tasks or official duties for self-seeking interests – deliberately failing to fulfil the responsibilities prescribed for persons with powers or position to prevent, detect or handle offences or failing to strictly observe the order, procedures and time limits prescribed for their task or official duties for self-seeking interests; and
- taking advantage of positions, powers to cover up law violators for self-seeking interests; illegally hindering, intervening in the examinations, inspections, audits, investigations, prosecutions, adjudications or judgment executions for self-seeking interests – using one’s position, power or influence to cover up or help lessen law-breaking acts of other persons, or to cause difficulties in examinations, inspections, audits, investigations, prosecutions, adjudications or judgment executions or to distort the results of the above activities.

## 5 Do local anti-corruption regulations have extra-territorial effect?

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, as it works in parallel with the Penal Code, by implication, 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.

## 6 Are there any statutory defences provided under relevant legislation, eg, *de minimis* exceptions, payments that are legal in the country in which they are offered etc?

No minimum thresholds, *de minimis* or other 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 that if the value of the gifts falls below certain thresholds, they will fall outside the scope of the Penal Code and be dealt with by way of fine or administrative penalty.

Pursuant to Decision 64/2007/QĐ-TTg issued by the Prime Minister (“Decision 64”), “gifts” comprise the following :

- Vietnamese currency, foreign currencies, saving certificates, stocks, bonds, cheques and other valuable papers;
- material items, goods and assets. Materiality is however, not defined in Decision 64;
- 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 VND500,000 (approximately USD27) and where the gift is offered where the person falls sick, suffers an accident or is in mourning, for a wedding or for Tet (ie, 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 powers of investigation do the relevant regulatory authorities have and what are the consequences of non-compliance?

The Government Inspectorate has the power to inspect the implementation of the Law on Anti-Corruption by ministries, ministerial-level agencies, government-attached agencies or provincial-level People’s Committees. Where corruption is detected, it will request competent agencies or organisations to take appropriate action. The Government Inspectorate has no specific powers to intercept communications and conduct covert surveillance.

The CSCCPC can request competent agencies and persons to report on corruption and the results of anti-corruption work. The CSCCPC can also request competent agencies to conduct examinations, inspections, audits and investigations. In serious or complex matters the CSCCPC may act unilaterally. The CSCCPC can suspend or dismiss persons holding the position of vice minister or equivalent, chairman or vice chairman, permanent members of People's Councils, presidents, vice presidents and other members of provincial/municipal People's Committees and persons holding other positions appointed by the Prime Minister when showing signs of corruption or committing acts or causing difficulties for the anti-corruption activities of agencies and organisation. The CSCCPC has no specific powers to intercept communications and conduct covert surveillance.

The PSCCPC can request competent agencies at provincial/municipal level to report on the situation of corruption and results of anti-corruption work and to request competent agencies at provincial/municipal level to conduct examinations, inspections and investigations. They can suspend or dismiss persons appointed by the Chairman of the People's Committee when showing signs of corruption or committing acts or causing difficulties for the anti-corruption activities of agencies and organisation. The PSCCPC has no specific powers to intercept communications and conduct covert surveillance.

ISCAML primarily assists the Prime Minister on formulating strategy on anti-money laundering and anti-terrorist financing and works with relevant Ministries to implement such strategies. It does not actively investigate offences and overseas relevant government authorities at a policy level. ISCAML has no specific powers to intercept communications and conduct covert surveillance.

The AMLIC can require any body, organisation or individual to provide data, files or information on transactions over limits specified in the law and in relation to suspicious transactions as stipulated in the law. When any individual or organisation with responsibilities for preventing or combatting money laundering commits a breach of the law against money laundering, such individual or organisation (or the relevant persons within the organisation) could, depending on the seriousness of the breach, be liable for criminal sanction or subject to administrative penalties including a warning, fines range from VND5,000,000 to VND3,000,000, deprivation for a definite or indefinite term of the right to use the operating licence or practising certificate used in the commission of the breach, compensation in accordance with law. The AMLIC has no specific powers to intercept communications and conduct covert surveillance.

The SBV has the right to examine and inspect banking activities, control credit; inspect, supervise and handle complaints and denunciations, and combat corruption and handle law violations in the field of monetary and banking activities according to its authority. The banking inspection body of the SBV may request the concerned parties to provide any documents and evidence or to answer questions. If any person/body obstructs an examination or inspection by the SBV, they may be subject to disciplinary, administrative or criminal penalty depending on the nature and seriousness of the breach. The SBV has no specific powers to intercept communications and conduct covert surveillance.

The Ministry of Police has the right investigate corruption, money laundering and terrorism-related activity. The Ministry of Defence also has rights and powers in relation to investigating corruption and terrorist-related activity. The Investigation Bodies of the Ministry of Police have the power to apply measures such as temporary detention of an offender, interrogation of the accused, distraintment of property and other measures in accordance with law during an investigation. The investigative powers of the Police (and People's Army depending on the circumstances) are very broad and include the power to intercept communications (by warrant) and conduct covert surveillance.

The Supreme Public Prosecution Office has the right to investigate and prosecute corruption cases, money laundering related crime and terrorism related activities as well as judgment execution against corruption, money laundering related crime and terrorism related activities. The investigative powers of the Supreme Public Prosecution Office are very broad and include the power (through other investigative agencies) to intercept communications (by warrant) and conduct covert surveillance.

## 8 What are the powers of arrest and detention of the relevant bodies?

Apart from the Ministry of Police/police, the Public Prosecution Office and the People's Court, other bodies have no authority to arrest and detain. Arrest and detention must be done through police investigation bodies, public prosecution offices or people's courts.

## 9 Do the relevant bodies have powers to freeze properties which may be proceeds of a bribery/corruption offence pending conclusion of its investigation?

Other than the Ministry of Police/police, the Public Prosecution Office and the People's Court, other bodies have no authority to freeze properties which may be the proceeds of bribery/corruption offences pending conclusion of an investigation. However, in the case of an investigation of criminal behaviour, the police investigation bodies, public prosecution offices or people's courts may distrain property in certain circumstances.

## 10 Are there any provisions requiring investigations or information disclosed during the course of investigating to be kept quiet?

Employees of regulatory bodies are required to keep information and documents relating to ongoing inspections secret, before any official conclusion has been made. If employees of regulatory bodies disclose such information, they will be disciplined or examined for civil or criminal liability. Further, pursuant to the Civil Procedure Code, investigators and procurators can oblige witnesses to keep matters under investigation secret and failure to comply can result in criminal liability.

## 11 Are there protections available when responding to investigations by the relevant bodies, eg, right to legal representative at interviews, privilege against self-incrimination and legal professional privilege?

Individuals and entities are required to co-operate with any investigation by supplying information or documents requested in a prompt, full and accurate manner, and will bear responsibility before the law for the accuracy and truthfulness of supplied information and documents. There are no exemptions from the duty to co-operate and provide information on the grounds of potential self-incrimination or legal professional privilege. Further, the right to legal representation at interviews is not available in investigations being conducted by such regulatory bodies other than the Ministry of Police/police, the Public Prosecution Office and the People's Court.

However, in the case of criminal investigations, an accused has the right to defend themselves individually or through a lawyer, during any detention, criminal proceedings or court proceedings, although not necessarily at any police interviews. They also have the right to request the change of procedure-conducting persons, experts and/or interpreters where criminal proceedings are commenced.

## 12 Do the relevant anti-corruption measures relate only to the bribery of "public" individuals and/or bodies?

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;
- managerial officials in state enterprises or 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 duties.

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

## 13 What sanctions/sentences may the relevant authorities impose?

Public servants who commit acts of corruption shall, depending on the nature and seriousness of their violations, be disciplined or examined for both civil and penal liability. In cases where they are sentenced for corrupt acts and the judgments or decisions have already taken legal effect, they must be removed from their position. National Assembly deputies or People's Council deputies will lose their rights as deputies.

The maximum sentences for corruption by public servants under the Penal Code are 20 years' imprisonment, life imprisonment or capital punishment. 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 confiscation of part or all of their property.

Any person guilty of a money laundering related crime will be dealt with in accordance with the Penal Code and, subject to fines or imprisonment. When an individual or organisation with responsibility to prevent or combat money laundering commits a breach of a provision but the breach does not constitute a criminal offence, such individual or organisation may be subject to a warning, and be fined from VND5,000,000 to VND30,000,000, be deprived for a definite or indefinite term of the right to use the operating licence or practising certificates used in the commission of the breach or have the objects and facilities used to commit the breach confiscated.

## 14 Is it possible to enter into a settlement to resolve any enforcement action/prosecution by the relevant bodies?

Under the Law on Anti-Corruption, persons who commit corrupt acts and then take the initiative in reporting them before they are detected, actively limit the damage caused by their illegal acts and/or voluntarily hand over corruption-related property can be considered for alleviation of disciplinary actions, penalties or exemptions from penal liability according to the provisions of law.

## 15 Are there provisions for persons to appeal against any enforcement action/prosecution taken against them?

Yes. If individuals are dissatisfied with the decision of any regulatory body, they have the right to make complaints to the relevant regulatory body for an administrative review. If a complaint is not settled within the specified time limits or the complainant disagrees with the first decision, he/she may lodge a further complaint to a higher body or initiate an administrative lawsuit at a court as prescribed by law.

In addition, a person found guilty of a corruption offence by the courts has the right to appeal against judgments and decisions of the courts and/or has the right to complain about procedural decisions and acts of the bodies and persons taking such procedural actions.

## 16 Do the police and other local regulatory authorities assist the relevant bodies in their investigations?

Not generally. However, the police will be involved in the investigation of cases of criminal behaviour and a case may be transferred by the regulatory body to the relevant police investigation bodies.

## 17 How do the relevant bodies interact with overseas regulators?

Vietnam has signed the United Nations Convention Against Corruption and is an official member of the Asian Ombudsman Association.

## 18 Are there any laws or regulations imposing obligations on persons to "whistle-blow" or disclose suspected corruption or money laundering within an organisation?

Yes. There are laws and regulations imposing obligations on person to "whistle-blow" or disclose suspected corruption or money laundering within an organisation. Any person who has a responsibility to disclose and does not do so will be subject to administrative or criminal liability.

Any person who knows a crime is being prepared, carried out or has been completed but fails to denounce it shall bear penal liability in accordance with the Penal Code for having failed to denounce it. Penalties include fines, imprisonment of between one and 15 years (depending on circumstances of the offence) and being banned from holding certain posts or practicing certain professions or performing certain jobs for between one and five years.

Those who conceal offences relating to corruption or money laundering may be sentenced to non-custodial reform for up to three years or between six months and five years imprisonment. Those with full knowledge of one of the crimes noted above who fail to denounce it may be subject to a warning, non-custodial reform for up to three years or a prison term of between three months and three years.

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