

## Key Developments in Vietnam's New Anti-Corruption Law

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On 20 November 2018, the National Assembly of Vietnam updated its primary anti-corruption legislation with the passage of Law No. 36/2018/QH14 (“**2018 Anti-Corruption Law**”), replacing an earlier version of the law which had been effective since 2005. The 2018 Anti-Corruption Law will take effect on 01 July 2019. This article will provide an overview of key developments.

### Private Sector Bribery

The 2018 Anti-Corruption Law has extended its governing scope to the private sector, though the public sector remains its primary focus. It did this by broadly defining the term “officeholder” as “*a person that is designated, elected or employed [by an organization] under a contract or another form of employment, receiving or not receiving salaries...including...holders of managerial positions in organizations...[and] other persons assigned certain duties and authority to perform certain duties.*”<sup>1</sup> This broad definition of the term “officeholders” covers anyone who has some measure of authority within an organization, even if they are unpaid and/or are independent contractors. Organizations that seemingly fall under the law would include both for-profit and non-profit organizations, including charities, foreign non-profit organizations, volunteer groups, associations, and NGOs.<sup>2</sup>

In particular, officeholders in the private sector are explicitly prohibited from (i) embezzling, (ii) taking bribes, and (iii) bribing or brokering bribery by taking advantage of one’s influence over the operation of the enterprise or organization, or for personal gain<sup>3</sup>.

The application of bribery rules to the private sector in the 2018 Anti-Corruption Law is in line with the 2015 Penal Code which also made bribery applicable to the private sector<sup>4</sup>. In addition, 2015 Penal Code has criminalized the bribing of “a foreign official [and] an official of a public international organization.”<sup>5</sup>

### Code of Conduct

The 2018 Anti-Corruption Law requires all “non-state enterprises and organizations” in Vietnam to have some type of anti-corruption compliance program. As of 01 July 2019, they are obliged to develop, issue, and implement a code of conduct and an internal control mechanism addressing conflicts

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<sup>1</sup> See Article 3.2 of the 2018 Anti-Corruption Law.

<sup>2</sup> “Acts of corruptions” under Article 2 of 2018 Anti-Corruption Law include: (a) acts of corruption committed by officeholders in state organizations and acts of corruption committed by officeholders in non-state organizations. “Non-state organizations” is defined under Article 3.10 of 2018 Anti-Corruption Law as any enterprise or organization other than “state organizations” defined in Article 3.9 of 2018 Anti-Corruption Law.

<sup>3</sup> See Article 2.2 and Article 8.1 of the 2018 Anti-Corruption Law.

<sup>4</sup> See Article 354.6 and 364.6 of the 2015 Penal Code.

<sup>5</sup> See Article 364.6 of the 2015 Penal Code.

of interests and acts of corruption, as well as promoting an anti-corruption corporate culture<sup>6</sup>. Additionally, they are required to carry out an internal inspection to discover and report acts of corruption to the competent authorities<sup>7</sup>. Last, they are encouraged to issue regulations on business ethics and professional ethics applicable to their employees and members.<sup>8</sup>

## Conflict of Interest

2018 Anti-Corruption Law includes a provision on “conflict of interest” which is defined as “*a situation where the interests of an officeholder or his/her relative have or are likely to have an improper influence on the performance of his/her duties*”<sup>9</sup>.

The 2018 Anti-Corruption Law sets out certain obligations applicable to both public companies<sup>10</sup> and special non-state organizations<sup>11</sup>:

- (a) The obligation of officeholders who know or should know about a conflict of interest to report the conflict of interest to a competent person;
- (b) The obligation of third parties who have discovered a conflict of interest of an officeholder to inform the latter’s line manager or employer;
- (c) The obligation of line managers and employers to, among other things, supervise the performance of duties of officeholders, suspend officeholders from the performance of their duties, or temporarily reassign officeholders if they find that the integrity, objectivity or truthfulness of the said officeholders might be affected by such conflict<sup>12</sup>.

## Protection for Whistleblowers

The 2018 Anti-Corruption Law states that protection of anti-corruption informers shall comply with regulations of law on denunciation<sup>13</sup>. These provisions are not entirely new because they were previously introduced under Decree No. 59/2013/ND-CP elaborating some article of the 2005 Anti-Corruption Law (“**Decree 59**”)<sup>14</sup>. However, with the inclusion of these provisions in a law rather than a decree, the grounds for the protection of anti-corruption informers has been strengthened. The 2018 Anti-Corruption Law clearly states that an anti-corruption informant shall be given the same legal protection as a denunciator<sup>15</sup>.

## Impact on Corruption

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<sup>6</sup> See Article 79 and Article 4.2 of the 2018 Anti-Corruption Law.

<sup>7</sup> See Article 82.1 and Article 4.2 of the 2018 Anti-Corruption Law.

<sup>8</sup> See Article 78.2 of the 2018 Anti-Corruption Law.

<sup>9</sup> See Article 3.8 of the 2018 Anti-Corruption Law.

<sup>10</sup> “Public company” as defined under Article 25.1 of 2016 Law on Securities means a joint-stock company belong to one of the following three types: (a) has conducted a public offering of its stock; or (b) has its stock listed at a stock exchange or a securities trading center; or, (c) has its stock owned by at least one hundred investors, excluding professional securities investors, and has a contributed charter capital amount of VND 10 billion or more.

<sup>11</sup> “Special non-state organizations” means credit institutions, social organizations whose establishment are decided by the Prime Minister, the Minister of Internal Affairs or Presidents of the People’s Committees of provinces, and social organizations whose charter allow raising of charity funds from the people as listed under Article 80 of the 2018 Anti-Corruption Law.

<sup>12</sup> See Article 23 of the 2018 Anti-Corruption Law for control of conflict of interest requirements.

<sup>13</sup> See Article 67 of the 2018 Anti-Corruption Law.

<sup>14</sup> See Article 58 of Decree 59.

<sup>15</sup> See Article 67 of the 2018 Anti-Corruption Law.

By prohibiting private sector bribery and making other improvements in its anti-corruption legislation, Vietnam has taken another significant step towards strengthening its anti-corruption laws, bring it closer to the standards set out in the United Nations Convention against Corruption, to which Vietnam is a signatory. According to Transparency International, Vietnam currently ranks 117 out of 180 countries in its 2018 Corruption Perceptions Index. It remains to be seen whether Vietnam's upgraded anti-corruption laws will serve to accelerate improvement.

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