



<< Left
John Frangos
Consultant
john.fr@tilleke.com

<< Right
Thomas J. Treutler
Partner and Managing Director, Vietnam
thomas.t@tilleke.com

Anti-Corruption Law under Vietnam's New Penal Code

Vietnam's new Penal Code (the "New Penal Code"), which became effective on January 1, 2018, significantly bolsters Vietnam's anti-corruption laws with respect to the private sector. The New Penal Code sets out numerous corruption-related offenses, including the giving and promising of bribes, the receiving of bribes, the "brokerage" of bribes, and embezzlement. The most significant corruption-related change in the new law involves the criminalization of private-sector bribery. Individuals working for corporations, charities, and other nongovernmental organizations can now be criminally liable for bribery offenses even when they do not involve government officials.

The New Penal Code also introduces corporate criminal liability for a variety of crimes. Importantly, however, corporate criminal liability does not extend to corruption in the new law. For both private-sector and public-sector corruption offenses, only individuals can be punished. With that in mind, the law does provide corporate criminal liability for certain corruption-related offenses, such as money laundering, tax evasion, and terrorism financing.

Public- and Private-Sector Corruption

The underlying concept stated in the law that defines corrupt activities is "abuse of power." Public office-holders—as well as private ones—are liable for offenses relating to abuses of power under the law. The term "office-holders" is broadly defined as people who are granted duties and authority "through appointment, election, contract conclusion, or another method." The law also states that office-holders "might or might not receive salaries." This seemingly covers anyone who has some measure of authority within an organization, even if they are unpaid. Private-sector organizations that fall under the law would therefore not only include corporations or for-profit enterprises, but also charities, volunteer groups, and other NGOs.

Giving and Promising Bribes

The New Penal Code criminalizes the giving and promising of bribes to any office-holder, person, or organization, whether public or private. The bribery may be committed directly or through an intermediary. The penalty for giving or promising to give a bribe largely depends on the value of the benefit given or promised. The minimum value of tangible benefits to trigger a violation of the law is VND 2 million (about USD 88). Penalties range from relatively low fines of VND 20 million (about USD 880) and six months' imprisonment to 20 years' imprisonment. There is no death penalty or life sentence for giving bribes. Interestingly, the law introduces a prohibition on bribery involving foreign government officials and officials with public international organizations. This is relevant as Vietnam is a significant recipient of official development assistance from other countries, as well as loans from multilateral development banks and financial institutions.

The New Penal Code does not prescribe corporate criminal liability for giving bribes. As such, the law does not provide for any internal compliance-related measures that may mitigate liability. However, the law does state that any person who voluntarily reports giving a bribe before being discovered might be exempt from criminal liability, and have all or part of the bribe money/property returned. Furthermore, if someone is "forced" to give a bribe, but voluntarily reports the bribe before being discovered, that person may be acquitted and have the bribe money returned. This situation could apply to an employee acting under a manager's orders. The law, though, is ambiguous in this regard.

Receiving Bribes

Under the New Penal Code, government officials as well as individuals in the private sector are criminally liable for taking bribes. An offense is committed regardless of whether the bribe is received directly or via an intermediary. Penalties range from a minimum of two years' imprisonment, to life imprisonment and death. The penalty depends on the value of the bribe received. Similar to giving bribes, the law contains a VND 2 million minimum threshold at which receiving a bribe violates the statute.

Brokering Bribery

The New Penal Code criminalizes the act of "brokering" bribery. This provision in the law applies directly to the private sector. "Brokering bribery" means bribery by an intermediary (though the law does not expressly define the term). In other words, an intermediary between a bribe giver and bribe taker is criminally liable under the law, independent from the main transacting parties. If the bribery broker voluntarily reports the bribe before the crime is discovered, the broker may be exempt from criminal responsibility.

Embezzlement

The New Penal Code characterizes embezzlement as a corruption-related offense. Under the law, the crime of embezzlement occurs when a person abuses his/her power to embezzle property under that person's management. Similar to other corruption offenses, an act of embezzlement crosses the criminal threshold when it involves a minimum amount of VND 2 million. The severity of the penalty depends on the amount appropriated and additional factors, such as the number of times the offense was committed, the seriousness of the offense's impact on the organization, and others. The minimum penalty is two years' imprisonment; the maximum is the death penalty.

Deterrent for Wrongful Conduct

The New Penal Code's introduction of criminal liability for private-sector corruption should benefit investors doing business in Vietnam. The law will hopefully serve as a deterrent for those employees and managers who may be tempted to seek kickbacks, give and take bribes, abuse their positions to embezzle funds, or otherwise engage in wrongful conduct. The New Penal Code also helps organizations carry out internal investigations of wrongdoing. Employees who face the real possibility of criminal sanction may be compelled to cooperate and disclose the full extent of any wrongdoing in the hope of avoiding prosecution.

It is recommended that organizations in Vietnam should educate their employees on the new law as part of their overall internal anti-corruption training and compliance efforts. Organizations should also pay attention to any future implementing regulations that may further clarify corruption-related aspects of the New Penal Code. 🏠