

Lex Mundi Global Anti-Corruption Compliance Guide

Vietnam

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What is the key anti-bribery and corruption legislation in your jurisdiction?

The primary laws that cover corruption are:

- The *Penal Code No. 100/2015/QH13 (2015)*, as amended by *Law No. 12/2017/QH14 in 2017 ("the **Penal Code**")*;
- The *Law on Anti-Corruption No. 55/2005/QH11 (2015)*, as amended in 2007 and 2012 ("**the Anti-Corruption Law**");
- *Decree No. 59/2013/ND-CP*, guiding the implementation of the **Anti-Corruption Law**; and
- *Decision No. 64/2007/QD-TTg (2007)*, concerning the giving of gifts to and receipt by state officials, as amended by *Decree No. 29/2014/ND-CP*, the *Gift Regulations*.

Other laws also apply, such as the laws governing tendering and administrative violations. Both the **Penal Code** and the anti-corruption laws prohibit bribery and acts facilitating bribery, such as intermediaries transferring funds for bribers. Vietnam also passed legal instruments governing anti-money laundering activities:

- The *Law on Prevention and Combat of Money Laundering No. 07/2012/QH13 (AML)*;
- *Decree No. 116/2013/ND-CP of the Government (2013)*, detailing the Implementation of a number of *Articles of AML Law*;
- *Circular No. 35/2013/TT-NHNN of the State Bank of Vietnam (2013)*, guiding provisions on *Prevention and Combat of Money Laundering* (as amended by *Circular No. 31/2014/TT-NHNN of the SBV (2014)*; and
- The **Penal Code** cited above.

Has there been a specific anti-bribery and corruption law enacted in your jurisdiction in the last ten years?

Vietnam's new **Penal Code** became effective within the last year and is the most significant law enacted in the last ten years which addresses anti-bribery and corruption-related crime. Decrees and other issuances of notices continue to provide clarification on the larger law enactments as well.

Is a bribe payment to domestic government officials prohibited by the legislation?

The **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 two million. An offense is committed regardless of whether the bribe is received directly or via an intermediary.

Is a bribe payment to foreign government officials prohibited by the legislation?

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.

Is requesting or accepting a bribe prohibited by the legislation?

Under the *Penal Code*, government officials as well as, individuals in the private sector are criminally liable for taking, requesting, or soliciting bribes. An offense is committed regardless of whether the bribe is received directly or via an intermediary.

A government official does not have to report a gift that is worth less than VND 500,000, provided the gift is offered on a particular occasion such as sickness, accidents, a family funeral, wedding, or Lunar New Year (Tet), and the gift does not otherwise constitute a bribe.

Who is subject to the legislation?

Government officials are subject to the legislation behind anti-bribery and corruption. Individuals working for corporations, charities, and other nongovernmental organizations can now be criminally liable for bribery offenses under *Article 352* of the *New Penal Code* even when they do not involve government officials under the law's recent changes.

An intermediary, or broker, between a bribe giver and bribe taker is criminally liable under the law, independent from the main transacting parties. *Article 365* of the *Penal Code* punishes people who "broker" bribery. The term "brokering" is not defined in the law, but the plain meaning interpretation is the person who arranges the bribe/transaction between the bribe-giver and officer holder.

Is there criminal liability for corporate entities who have either paid or accepted a bribe payment?

The *Penal Code* 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.

What is the penalty for individuals violating the law?

Penalties range from relatively low fines of VND 20 million and six months' imprisonment to 20 years' imprisonment for bribery. This includes domestic and foreign officials or individuals. There is no death penalty or life sentence for giving bribes. The severity of the punishment depends upon

the bribe amount offered and what consideration would have been exchanged for the bribe; in other words, the amount of money involved in the bribe dictates the severity of the punishment.

Assuming corporate entities are liable for violating the legislation, what is the penalty for corporate entities violating the law?

Corporate entities are not liable for corruption under the new laws. Individuals within companies, however, can be held liable for their corrupt conduct, which includes bribery.

The **Penal Code** sets out various punishments for companies convicted of other crimes, such as money laundering or embezzlement. For crimes other than corruption, the primary punishment consists of a fine, which starts at VND 50 million. The amount of the fine depends on the nature of the offense and a company's financial capacity.

Other punishments include suspension of operations for a limited time period and a permanent shutdown for more egregious offenses. The law also allows banning the company from engaging in particular fields, as well as a prohibition from raising capital. In addition, property gained from crimes can be confiscated, including illegal profits.

Assuming corporate entities are liable for violating the legislation, does having a compliance program designed to prevent bribery constitute a defense?

The **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. Thus, theoretically, the company's director or manager could raise the defense they did not order, assist, know of, or facilitate an employee's bribe to another. Regarding individuals as brokers for bribery, if the bribery broker voluntarily reports the bribe before the crime is discovered, the broker may be exempt from criminal responsibility.

The law, though, is ambiguous in regard to these types of defenses. Additionally, compliance programs for other aspects of business, such as taxes, are required by law.

Importantly, it is recommended for all foreign companies to maintain a strong compliance program designed to prevent bribery and corruption to meet legal requirements of other jurisdictions which may be applicable to a

company, such as the *Foreign Corrupt Practices Act* in the United States and the *U.K. Bribery Act*.

Assuming corporate entities are liable for violating the anticorruption law, is it possible for a corporate entity to reach a deferred prosecution agreement or leniency agreement with the enforcement authorities?

Leniency is applied to companies that voluntarily disclose their offenses to authorities, and cooperate during criminal proceedings. Leniency is also granted when a company voluntarily compensates for any inflicted damage or takes action to alleviate consequences of a crime.

Interestingly, the law also describes making considerable contributions to social policies as a mitigating factor. A company may be exempt from punishment altogether after it repairs whatever damages the conduct caused and paid compensation.

Please be advised that the information set forth above is intended only as a general overview of the law. This entry is not intended to constitute legal advice or a tax opinion, and no conclusions may be inferred from or are implied by the statements or discussions contained herein. Readers requiring legal advice should not rely on this entry as an alternative to the engagement of local counsel and should consult with the Lex Mundi member firm in the relevant jurisdiction. Please note that this entry refers to laws and regulations in force on the date of submission by the contributing Lex Mundi member firm and is subject to change by future legislation.