



## KEY ISSUES

*Business Integrity  
Transparency  
EVFTA & FDI*

## HIGHLIGHTS:

- *Corruption remains a serious cause for concern*
- *It takes two to tango!*
- *Corruption global penalties paid in connection with international bribery and corruption schemes are likely to continue to increase*
- *FTAs bring new business opportunities and carry new transparency requirements*
- *The tone at the top and action across the company!*
- *Time to change business mindset*

## WHY BUSINESS INTEGRITY MATTERS MORE THAN EVER

*Vietnam is integrating into the global and regional economy: it is a fact! Several free trade agreements have been agreed and are now being implemented, notably the Europe-Vietnam Free Trade Agreement (EVFTA). The continuous and growing influx of foreign direct investment (FDI) in Vietnam attest to this positive trend. However, despite recent improvements in the legislation, corruption remains a serious risk for companies and investors. FDI companies are increasingly subject to stringent foreign bribery legislation and must follow headquarters' strict anti-corruption programs.*

*In Europe in particular, pressure on global businesses is mounting to take legal responsibility for adherence to international standards, including anti-corruption by their supply chain partners. For local enterprises, especially small and medium (SME), sustainable growth depends on their ability to demonstrate integrity, transparency and accountability in their operations. Building robust business integrity will underpin the trust of global business partners, and long-term success of Vietnamese companies in overseas markets.*

### CORRUPTION REMAINS A SERIOUS CAUSE FOR CONCERN

Over the past two decades, Vietnam has undeniably seen important socio-economic transformations, leading to significant gains in terms of poverty reduction and human development. Economic growth in Vietnam has been tremendous, fueled by ever increasing FDI. However, pervasive corruption has been a serious challenge threatening to undermine these gains. Bribery is experienced at the grand corruption level as well as at the everyday petty corruption level where poor people suffer the most from reduced services. Vietnam has ranked consistently towards the bottom of Transparency International's Corruption Perception Index for several years.

## IT TAKES TWO TO TANGO!

The private sector is no longer an innocent bystander in the country's anti-corruption landscape. Indeed, corruption does not only affect the public sector but is also widespread in the private sector, with a specific characteristic: businesses are victims as well as perpetrators of corruption acts.

On one hand, corruption remains a serious risk for companies and investors, in particular with regard to customs procedures, government procurement and administrative inspection. According to VCCI's 2019 Provincial Competitiveness Index, 48 percent of foreign direct investment enterprises that applied for construction permits in the past year paid bribes to acquire them at an additional average cost of USD1,000 per permit, while 43 percent had to pay a bribe during customs procedures and 33 percent paid a bribe during an administrative inspection.

On the other hand, businesses carry a growing negative image. Towards Transparency's 2019 Vietnam Corruption Barometer report points out that 62 percent of citizens believe that corruption in the private sector is "a problem" or "a serious problem". Interestingly, 76 percent of respondents said that they are willing to pay either "much more" or "more" for products and services from companies with a "clean" reputation.

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## CORRUPTION GLOBAL PENALTIES PAID IN CONNECTION WITH INTERNATIONAL BRIBERY AND CORRUPTION SCHEMES ARE LIKELY TO CONTINUE TO INCREASE

For companies, the costs of engaging in corrupt activities increasingly outweigh the benefits. Indeed, in addition to the multilateral and international legal frameworks, such as the United Nations Convention against Corruption –UNCAC, the only legally binding universal anti-corruption instrument to which Vietnam is a party since 2009, or the 1999 OECD Anti-Bribery Convention, three national anti-corruption laws have profoundly impacted companies' business culture: the American 1977 Foreign Corrupt Practices Act (FCPA), the 2010 UK Bribery Act and the 2017 French Sapin II Law.



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*Reaching a resolution with the US authorities allows us to close this legacy chapter. We can now move forward and build a stronger company,” said Börje Ekholm (pictured), president and CEO, Ericsson.*

These laws are mutually reinforcing and have in common an extraterritoriality principle, namely the possibility for American, British or French anti-corruption institutions to prosecute companies and individuals for offences committed overseas.

Three recent cases, involving Vietnam, show how these strengthened legislations can affect companies' reputation and lead to massive penalties to resolve charges involving global bribery and corruption schemes.

In December 2019, Swedish Telecom giant Ericsson settled with the US Justice Department and Securities and Exchange Commission (SEC) for just under \$1.1 billion over charges of extensive corruption in several countries, including China, Saudi Arabia and Vietnam. The company had been accused of violating the Foreign Corrupt Practices Act between 2000 and 2016 by bribing officials, falsifying its records and failing to use "reasonable" accounting controls.

In late June of this year, the U.S. Department of Justice and the Securities and Exchange Commission announced that pharmaceutical giant Novartis AG and Alcon Pte Ltd, a former subsidiary of the Swiss drug maker, agreed to pay a combined \$347 million to resolve allegations that the companies engaged in corrupt conspiracies to bribe public hospitals and clinics in Greece, Vietnam, and South Korea. The Alcon unit was accused of having used a third-party distributor to funnel payments to employees of state-owned hospitals and clinics in Vietnam between 2011 and 2014, to boost sales of intraocular lenses which are used to treat cataracts.

Last but not least, on January 31, 2020, the European aerospace manufacturer Airbus agreed to pay nearly 3.7 billion euros in fines to settle bribery charges stemming from a four-year investigation by French, British, and US authorities. The investigations found that for more than a decade, the firm bribed officials in 16 countries, including Vietnam. According to documents from the US Department of Justice, from 2008 to 2015 Airbus used its Strategy and Marketing Organization (SMO) branch to funnel millions of bribes to decision-makers and influencers to obtain business deals.

## FTAS BRING NEW BUSINESS OPPORTUNITIES AND CARRY NEW TRANSPARENCY REQUIREMENTS

Free Trade Agreements (FTAs) contribute to a fairer business environment and are in line with an ever stricter legal framework against international corruption. Based on principles of non-discrimination and transparency, they aim at promoting a level playing field between local and foreign companies. The most recent generation of FTAs increasingly encourage trading partners to go beyond traditional trade matters and address issues such as labor conditions, environment and corruption. While offering significant economic opportunities, FTAs such as the Europe-Vietnam Free Trade Agreement (EVFTA) and the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) include strong sustainable development measures.





The EVFTA's transparency provisions cover extensively the agreement. In particular, two chapters where companies are often subject to corruption will hugely benefit from transparency provisions, namely government procurement as well as customs and trade facilitation. For its part, the CPTPP requires its parties to adopt or maintain domestic provisions which criminalize (and appropriately sanction) corrupt behavior in matters that affect international trade or investment. Such behavior includes promising, offering or giving a bribe to a public official, as well as soliciting or accepting a bribe by a public official when committed intentionally.

## THE TONE AT THE TOP AND ACTION ACROSS THE COMPANY!

Stronger anti-corruption regulations do not only affect FDI companies operating in Vietnam. Far from it. While recognizing that corruption is a long term fight, the Party and State have stepped up their commitment and efforts to fight corruption. The 2018 revision of the Anti-Corruption Law, in effect since July 2019, introduces a number of important changes that expand its governing scope. For the first time, it addresses corruption in the private sector, bringing the Law in line with Vietnam's Penal code and reflecting Vietnam's commitments under the United Nations Convention on Anti-corruption (UNCAC). In a nutshell, Article 79 of the anti-corruption Law encourages companies and economic organizations to issue and carry out their code of conduct and internal control mechanisms in order to prevent conflicts of interests and corruption. Furthermore, two specific types of companies, namely publicly-listed and credit institutions, must apply provisions on *transparency and publicity in their organization and operation*.

## TIME TO CHANGE BUSINESS MINDSET

The signs are clear! Internationally and nationally laws and policies set clear expectations for corporate anti-corruption, and penalties for non-compliance. Expectations for responsible behavior by businesses are ever increasing, as demonstrated by growing political pressure on companies to ensure adherence to global standards in their supply chains. At the same time, new trade agreements bring significant opportunity for business and increase momentum for public reforms that increase transparency and reduce business risk. For Vietnamese companies, this means increased pressure to demonstrate high standards and an opportunity to build trust with global business partners and customers. To thrive, or maybe just to survive, Vietnamese companies, from the largest conglomerates to the smallest exporting firms will have no other choice but to realize that integrity must be an integral part of their business culture. It will take time for sure. But with the help from government agencies such as the Vietnam Chamber of Commerce and Industry (VCCI) and business associations, it looks like creating a sustainable business integrity culture in Vietnam is not only desired but inevitable.

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