



TOWARDS TRANSPARENCY'S COMMENTS AND RECOMMENDATIONS ON THE DRAFT DECREE ON MONITORING ASSETS, INCOME OF OFFICE HOLDERS OF AGENCIES, ORGANIZATIONS, UNITS

GENERAL COMMENTS

Monitoring assets, income of public officials and civil servants has been applicable in many countries around the world as one of the necessary measures to increase transparency and control corruption. This is also one of the important issues of Vietnam's Anti-Corruption (AC) Law which was passed by the National Assembly in November 2018 and took effect as from July 1st, 2019. That the Government of Vietnam is developing and issuing specific regulations on monitoring assets, income of office holders of agencies, organizations and units is not only in line with international trend and practice but also essential for enforcement of the AC Law as well as implementation of Vietnam's policies and commitments on anti-corruption.

The draft Decree on monitoring assets, income of office holders of agencies, organizations, units (hereafter referred to as the Draft, prepared by the Government Inspectorate and recently released for public comments) has a number of new provisions compared to the previous regulations on transparency of assets and income, such as: expanding the scope of subjects of assets, income declaration; increasing tasks and powers of assets, income monitoring authorities; renovating assets, income monitoring by developing a national database and applying information technology. The Draft reflects the Government's willingness and determination to increase efficiency of assets, income monitoring and prevention of corruption.

In addition to the new and progressive provisions in the Draft, Towards Transparency (TT) realizes that there remain a number of ambiguous provisions and loopholes which may impact the effectiveness of assets, income monitoring work, especially with regard to three following issues: (1) Assets, income monitoring authorities; (2) Persons obliged to declare their assets, income; things to declare and how to declare; and (3) Transparency and accessibility of asset, income declarations.

Here below TT is presenting more specific comments and recommendations on the aforementioned issues.

COMMENTS ON A NUMBER OF SPECIFIC PROVISIONS OF THE DRAFT

On assets, income monitoring authorities

The scope and requirements of assets, income monitoring work will create big challenges for capacity and resources of assets, income monitoring authorities on one hand, and for the control of powers, ensuring of integrity and accountability of officers in charge of assets, income monitoring on the other hand.

According to the Draft (Articles 11, 12), the scope and number of declarants will be very large, which will require assets, income monitoring authorities to have adequate capacity and resources for effective management and monitoring. International experiences show that the effectiveness of an assets, income monitoring system will decrease where there's a big number of declarants while the system has no adequate human resources or technical/material conditions to receive, process and verify information. Hence, an assessment of capacity of assets, income monitoring authorities and their workload when the decree will be enforced is essential in order to ensure its feasibility. In the context of limited capacity and resources of authorities, developing an assets, income monitoring system to target positions which are most prone to corruption may be appropriate. In this regard, Articles 17 and 18 of the Draft provide that the verification of assets, income shall be conducted according to yearly plans and on a random selection basis. This "random selection" provision is a new and progressive one which would help strengthen the monitoring of assets, income and prevention of corruption. According to international experiences, the quantity of declarations subject to assets, income verification needs not to be high but needs to cover the top-level leadership in the state apparatus. This approach helps target the most powerful positions which are most prone to corruption on one hand and ensure that leaders will lead by example on the other hand.

The Draft gives quite many duties and powers to assets, income monitoring authorities, including receiving declarations (Article 13); requesting agencies, organizations and individuals to provide information (Articles 5, 6); verifying assets, income (Articles 17- 21); and exploiting the national database on monitoring of assets, income (Article 25). Empowering assets, income monitoring authorities is necessary for these bodies to be able to fulfil their assigned duties and to meet the requirements of assets, income monitoring. However, besides Chapter VII with general provisions on the handling of violations, the Draft lacks specific regulations to control the exercise of power and ensure integrity, accountability of officers in charge of assets, income monitoring. In reality, information and data on assets, income might be used by officers managing them for improper purposes or as a tool to harass or threaten "political opponents".

On persons obliged to declare their assets, income; things to declare and how to declare

The Draft (Articles 11, 12) provides a detailed long list of official levels, positions and jobs subject to annual declaration of assets, income. From the aspect of law-making techniques, this listing might help prevent omission of subjects that need to be governed but it lacks flexibility

which may leave the provisions behind the development of reality and outdated in case of changes in various relevant legal documents. If the Draft adopted a more inclusive approach, it could help increase the stability of the future Decree.

A number of the Draft's provisions on assets, income subject to declaration remain unclear and may create loopholes.

The Draft (Article 9) and Declaration Form in its Appendix provide in details types of asset, income to be declared. However, the Draft does not specify whether the declarant must provide information on assets, income of other members in his/her family and, if yes, how detailed such information should be. Article 9.2.b of the Draft requires the declarant to declare residential houses and constructions works that he/she owns "in practice" even though such houses/construction works have not been issued with a Certificate of Ownership or the Certificate of Ownership is under the name of another person. But this approach does not apply to other types of asset (e.g. cars, bank accounts, equipment, factories or other assets not for residential purpose) despite the fact that the Certificates of Ownership over such assets can also be under the names of relatives (wife, children or parents) of the declarant. The Draft requires public officials/civil servants to declare shares, capital contributions that they are holding but not those that they have held. Also, the Draft does not require them to declare their trusted/authorized investments. These might become legal loopholes for the hiding of true beneficial ownership of assets and concealment of the declarants' business relationships.

The Draft has new and progressive provisions on development of a national database on monitoring of assets, income (Chapter VI). However, the provisions on receipt and posting of declarations (Articles 13, 14, 15) as well as the Declaration Form (Appendix) fail to specify whether the declaration will be made on paper, on personal computer (in Word file) or online. The paper-based declaration may temporarily be suitable to the current technical conditions of a number of agencies, organizations, units but is not in line with the IT development and application trend in the digital times as well as the general spirit of the Draft. The process of converting information from paper-based declarations into electronic versions may also incur mistakes. The declaration on personal computers will require techniques to integrate and transfer data from individual databases of agencies, organizations, units to the national database. Meanwhile, online declaration (as already applicable to the delivery of a number of public services in Vietnam) may, at the beginning, face some technical difficulties but in the long run will be more convenient for declarants, cost-effective and easier for the state agencies to consolidate, analyze, archive and share data as well as to connect with and manage information of the national database.

Regarding the development of a national database on monitoring of assets, income, an important condition for effective operation of such database is the connectivity with other databases (e.g. of land, property and business registration). This requires not only solutions to certain technical

problems but also strong political will and an effective mechanism for coordination and sharing of information among the concerned state agencies.

On transparency and accessibility of declarations

There's a view that publication of assets, income declarations is a violation of privacy and may facilitate the exploitation and abuse of such information for private gains. However, international practice shows that ensuring transparency and accessibility of declarations is important and necessary for assets, income monitoring to work as an effective tool for the prevention and fight of corruption. According to the World Bank, around 80 countries worldwide have publicized assets, income declarations of public officials and civil servants.

The Draft reflects an unclear and inconsistent approach on transparency and the accessibility of information: While Article 14 of the Draft provides that information (on assets, income) will only be posted at offices of agencies, organizations, units, Article 29 allows the publication (of disciplinary decisions against officials violating regulations on assets, income monitoring) at general meetings of public officials/civil servants or on e-portals of agencies, organizations, units. Similarly, while Article 14 allows declarations to be made public, Article 25.2 stipulates that only a number of agencies, organizations, individuals may access information on declarations and such access "must comply with the provisions of law on the protection of state secrets".

Another thing to note, the Draft sets a time limit of 30 days for posting assets, income declarations but does not specify whether such declarations can be copied and/or a request for their copies is allowed within this 30-day time limit.

RECOMMENDATIONS

Studying the Draft in the context of Vietnam and in light of international experiences, TT would like to present to the Government Inspectorate and the Government of Vietnam the following recommendations:

1. Provide criteria for selection of assets, income declarations for yearly verification along the direction that top-level positions in the state apparatus (e.g. from the vice-minister level upward) will automatically be included in the list subject to verification.
2. Provide that the declaration form will also cover information on assets, income of members of family of the declarant (wife, husband, his/her biological children or biological children of his/her spouse); information on shares, capital contributions that the declarant is holding and has held (e.g. for the past 5 or 10 years) prior to the time of declaration; information on his/her trusted/authorized investments.

3. Provide clearly that the declarant is obliged to justify the legitimate origin of his/her assets, income when subject to inspection.
4. Design the declaration form for online declaration.
5. Broaden the scope of subjects entitled to access information on assets, income declarations and request the verification of assets, income, such as by establishing a council/committee whose members will be representatives of both state and non-state actors, e.g. elected bodies, assets and income monitoring authorities, fatherland front and academia. Such a council/committee will have the power to (1) request the provision and exploitation of information on assets, income of people randomly selected for yearly verification; (2) request verification of a number of declarations besides the list of randomly selected ones (provided that this number will not exceed a certain percentage of the total number of declarations, e.g. 5%, and that the request is well grounded).
6. Provide a mechanism to strengthen the control of power and accountability of assets, income monitoring authorities, such as through procedures for lodging and handling complaints against decisions of these authorities; adopt and promulgate a code of conduct for officers in charge of assets, income monitoring.
7. Develop and promulgate a Regulation on connection and information sharing among the national database on assets, income monitoring and electronic databases of relevant agencies, which clearly defines tasks and powers of each involved agency and officer in charge as well as forms of sanction for violations./.