

TOWARDS TRANSPARENCY NEWS

TRANSPARENCY AND INTEGRITY NEWSLETTER

WHY COMBATING BUSINESS-RELATED CORRUPTION MATTERS!

As Vietnam is fast integrating into the global and regional economy, in particular through new free trade agreements such as with the EU, addressing the risks of businesses becoming victims or perpetrators of corruption is of urgent relevance. Despite improvements in some areas, corruption remains a serious risk for companies and investors, in particular with regard to customs procedures, government procurement and administrative procedures; it destroys entrepreneurship, inhibits fair competition and undermines the stability vital to successful and inclusive economies. Businesses have a key role to play in supporting positive change towards greater integrity, transparency and accountability in all spheres of life. Companies are also under an increasing pressure to meet tightened international standards, particularly on transparency and accountability.

Corruption does not only affect the public sector...

Corruption in Vietnam is widely agreed amongst the Communist Party of Vietnam, the Government, international organizations and businesses, to be a serious problem. It is considered systemic and a threat to national development and socio-political stability. Corruption Perceptions Index (CPI) 2016 indeed illustrates that Vietnam (ranking 113/176 in the global index, with a score of 33/100) stays in the group of countries where corruption is considered serious.

But, even though studies indicate that corruption is perceived to be particularly widespread in land management, health services and in the diversion of state funds, corruption does not only affect the public sector. Indeed, corruption is also widespread in the private sector, with a specific characteristic: businesses are victims as well as perpetrators of corruption.

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 2016 Provincial Competitiveness Index, among interviewed foreign direct investment enterprises, 50% admitted having paid unofficial charges in customs procedures and 45% paid a bribe during an administrative inspection.



(Nguyen Thi Kieu Vien, TT's Executive Director interviewed by VTV in April 2017 about the importance of doing business with integrity)

On the other hand, businesses carry a growing negative image. The Global Corruption Barometer¹ (GCB) 2017 analysis prepared by Towards Transparency points out that 38% of the surveyed Vietnamese citizens believed business executives are one amongst three groups that are highly corrupt (the other two being tax officials and police).

...Businesses benefit from an improved legal framework

Considerable efforts have been made for the last 10 years at the policy and legal levels to deal with the problem, starting with the first 2005 Anti-corruption

¹ The Global Corruption Barometer (GCB), conducted by Transparency International (TI) since 2013 in over 153 countries worldwide, collects data on citizens' perceptions and experiences of corruption, their views on the government's anti-corruption efforts, as well as the

Law, followed by the 2009 "National Strategy on Anti-corruption towards 2020". Vietnam has also entered into several significant free trade agreements (FTAs), including the EU-Vietnam FTA. It is also implementing regional commitments towards an ASEAN Economic Community (AEC) which contain important provisions to strengthen the regulatory environment.

Recent undertakings from the government brought some improvement in the anti-corruption legislation as well as in the business and investment environment: the adoption of the new Enterprise Law and Investment Law; the revision of the Penal Code governing corruption in the private sector² and the approval of a Law on Access to Information.

The country has also reviewed the **10-year implementation of the Anti-Corruption Law** in preparation for its comprehensive amendment, which will extend its governing scope from government-business interactions to business relationships. The **revised Anti-Corruption Law** is expected to be passed by May/June 2018.

Increasingly, the government has recognized the important role of enterprises in anti-corruption and encouraged them to apply internal control measures as well as to work with business community and state agencies to promote the effectiveness of anti-corruption measures. In particular, Article 87 of the Law on Anti-corruption and Chapter IV of the Decree 47/2007/ND-CP provide for a certain amount of responsibilities of enterprises, business and professional associations, in the form of encouragements and recommendations to build a fair, non-corrupt business culture.

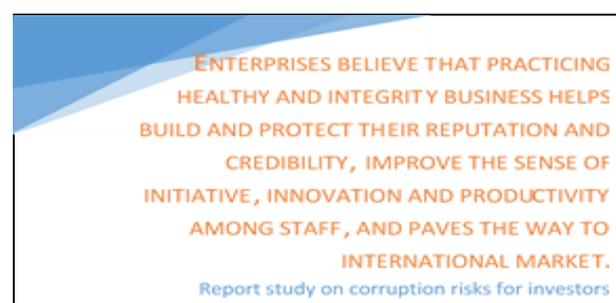
The February 2017 Resolution 19 (No. 19-2017/NQ-CP) provides an action plan for creating a business enabling environment. SOEs are now legally required to disclose their corporate structure, governance and financial reports. In addition, **the February 2017 Transfer Pricing Decree 20** (ND-CP) requires parent companies with worldwide consolidated revenue in a fiscal year exceeding VND 18,000 billion to submit Country-by-country Reporting to tax authorities.

Despite being improved from legal viewpoint, the concrete results at the implementation level have not yet proven effective enough. Indeed, evaluations by international organizations (World Bank), as well as by

the CPV and the State (11th Party National Congress) show that Vietnam still face a huge implementation gap in relation to its anti-corruption framework.

There is a negative impact of corruption on business growth ...

Even though corruption may provide short-term benefits for some individual enterprises, in the long run, evidence shows that it will damage the inner capacity of an enterprise and make it unable to obtain a competitive advantage and develop sustainably. According to the Report on the costs of corruption in Vietnam from a macroeconomic, local and microeconomic perspectives in 2014 by the Vietnam Chamber of Commerce and Industry (VCCI) and DEPOCEN³, corruption is shown to have negative impacts on economic growth.



There is indeed a connection between information disclosure, transparency and reduction of corruption, which results in such businesses' benefits including: lower transaction costs, smarter and more targeted investments, reduced legal and reputational risks, transparent and predictable administrative procedures and fair competition.

Recent studies conducted by Towards Transparency and others shed some light on the corruption and anti-corruption practices in the Vietnamese business sector.

A new study on corruption risks for investors⁴ was presented in February 2017, which measured the practical benefits that proactive anticorruption measures can bring to 35 enterprises in Vietnam. Results showed that:

- 24 out of 35 enterprises have policies against facilitation payment;

environment in Vietnam", conducted by the Centre for Social Governance Research (CENSOGOR) in collaboration with Vietnam Institute for Economic and Policy Research (VEPR), with the support of the Prosperity Fund of the United Kingdom managed by the British Embassy in Hanoi.

² The 2015 Penal Code extends sanctions for bribery related crimes to the private sector.

³ VCCI, Depocen, T&C Consulting, "The costs of corruption in Vietnam from a macro, provincial and firm perspective", Edited Report (2014).

⁴ This report is part of the project entitled "Promoting the application of international standards on business integrity to enhance international integration and improve business

- 22 enterprises conduct annual corruption risk assessments;
- 22 enterprises have policies on prevention of conflict of interest;
- 19 enterprises have policies on gifts, hospitality and entertainment.
- 27 enterprises have organized trainings on application of anti-corruption measures for their leaders, managers and staff.
- 31 enterprises conduct periodic internal reviews and 22 enterprises conduct regular reviews on anti-corruption policy.

However, the interview results also show that while being capable of obtaining licenses and performing customs clearance on their own, many enterprises still used services offered by a third intermediary party to mitigate regulatory risks related to facilitation payment.

A 2016 study of 21 foreign invested companies' experiences of inappropriate business practices in Vietnam⁵ assessed anonymously the experiences and mitigation strategies of foreign invested companies in Vietnam in relation to high risk business activities (private procurement, routine government authorizations and gifts and entertainment regarding government officials). The results highlight various challenges for foreign invested companies in the country which arise from high-risk business practices. In particular, the giving and receiving of personal gifts and/or other advantages in both private to private and private to public business contexts was seen as a fact of business life and a common view was that nothing could be done about it. Expectations from government officials for gifts or cash were also reported as widespread.

- 24% of participating companies reported that their management and/or procurement staff had relatives who held the position of director or shareholder in a service provider.
- 62% reported requests facilitation payments by government officials in order to carry out routine government services in the last 12 months; 48% also reported being asked informally to use a third party non-government intermediary when paying for a government service (most companies commented that a failure to make payments would lead to delays rather than a refusal to provide the service).
- 62% stated that requests for gifts and/or entertainment were an area of concern while

10% stated that they had been refused a government service because they had not met an expectation for gifts and/or entertainment by a government official; 52% said that they experienced an expectation at least once per quarter.



(Panel discussion about challenges faced by Vietnamese companies to practice business integrity)

The Transparency in Corporate Reporting (TRAC) 2016 report of Towards Transparency assessed the disclosure practices of the 30 largest companies registered in Vietnam (10 publicly-listed companies, 10 foreign direct investment companies and 10 state-owned companies). Adapting Transparency International's methodology for evaluation of corporate reporting practices to the Vietnamese context, the report assesses companies' disclosure practices, with the aim to promote best practice in line with international standards, and to support companies to better communicate their commitment to anti-corruption and transparency to their stakeholders. Highlights of the report show that:

- The majority of companies assessed in the report do not yet demonstrate leadership-level commitment to anti-corruption, and do not disclose how they monitor anti-corruption
- However, 4 companies already demonstrate clear leadership in this area
- Vinamilk and FPT score 100% in disclosing the full list of ownership, countries of registration and operations of their subsidiaries and joint ventures.

While this shows significant work lying ahead, it also demonstrates that a number of companies are actively pursuing international standards of practice.

⁵ This study was completed by the Vietnamese Business Forum's Governance & Integrity Working Group ("GIWG"), with the assistance of Duane Morris & Selvam LLP ("DMS")

together with the Centre for Social Research Development ("CENSOGOR").

But things are changing...

The government and the Vietnamese business community are facing not only the need for reforms to meet the requirements of regional and global economic integration, but also the need to demonstrate compliance with international anti-corruption commitments and anti-bribery laws, including the United Nations Convention Against Corruption (UNCAC), the UK Bribery Act and the US Foreign Corrupt Practices Act (FCPA). The government of Vietnam has also officially issued Decree No. 20/2017/ND-CP dated 24 February 2017 ("Decree 20") guiding tax compliance for enterprises having related party transactions.



(Collective efforts in promoting business integrity, Hanoi April 2017)

Collective action approaches - critical to overcoming shared challenges - are taking place, and contribute to improving the overall business environment. This includes VCCI's project 12, the Vietnam Business Forum's Governance and Integrity working group and Saigon High Tech Park's promotion of integrity standards among business parks. VBF-GIWG aims to bring international governance and transparency best practices to Vietnam for improvement of businesses' confidence in Vietnam's long-term sustainable development by developing position papers and recommendations on the most pressing corruption/bribery issues faced by businesses in Vietnam. VCCI's Project 12 involves relevant authorities such as the Government Inspectorate and the CPV's Central Committee of Internal Affairs. During 2015-2019, Project 12 aims to assist domestic and foreign companies operating in Vietnam to collaborate towards a sound and transparent

business environment. As for Saigon Hi Tech Park (SHTP), its management board, with support from CENSOGOR/Towards Transparency worked throughout 2014-2016 on a Collective Action Project to "help companies in SHTP work collectively to proactively manage risks to promote integrity and safeguard their businesses.

Moreover, international frameworks for corporate responsibility increasingly encourage businesses to apply transparency standards, whether at G-20, OECD or EU level, leading companies to strengthen their internal regulations and corporate governance systems to cope with the requirements of anti-foreign bribery laws as well as international business principles and standards.

While these global frameworks tend to initially touch multinational companies, their successful implementation will require increasing efforts among their Vietnamese supply chain partners and customers. In turn, these have much to gain from establishing standards for transparency and integrity.

Towards international integration

In order to realize the benefits of economic integration and for companies to better manage integrity risk, new actions, programs, and projects need to be designed and implemented in the months and years to come. These need to focus on increasing awareness and understanding among Vietnamese businesses of the benefits and necessary components of anti-corruption and transparency standards and to improve the standard of level of anti-corruption reporting and transparency practices of businesses.

To that end, tools exist that can be tailored to the Vietnamese context, helping companies to set up and implement anti-corruption strategies; including Transparency International's (TI) Business Principles for Countering Bribery, the United Nation Global Compact (UNGC) Reporting Guidance on the 10th Principle against corruption⁶, TI's UNGC # 10 Reporting Guidelines.

TI welcomes discussions and partnerships with companies and other interested stakeholders on practical actions to promote integrity and transparency in the business sector.

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⁶ 10th Principle of UNGC: "Businesses should fight against any forms of corruption, including extortion and bribery".