

# Legal framework on anti-corruption responsibility of businesses in Vietnam

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Enterprises, business associations and professional associations play a very important role in anti-corruption work. These entities frequently use public services, and they may influence the “health” of the economy. Over the past few years, enterprises have not only been the “victims” of corruption, power abuse and harassment caused by persons with higher positions and/or power, but also the “cause” of corruption. Many enterprises seek to give bribes to public cadres and civil servants in order to obtain certain business or profit making advantages.

According to the Report on Provincial Competitiveness Index, the number of enterprises that paid unofficial charges increased over the years, from 50% in 2013 up to 64.5% in 2014 and 66% in 2015-2016. Enterprises themselves are also exposed to potential risks of their employees committing corrupt acts, abusing their positions and delegated powers to make personal gains or cause loss of enterprise’s assets.

In order to effectively tackle corruption, it is necessary to have active and proactive participation from all society actors, especially the business community.



## **Current legal framework on the anti-corruption responsibility of businesses**

In 2009, the Government issued a National Strategy on Anti-corruption till 2020. One of solutions which have been pointed out in this Strategy is: "Promoting the role of businesses and business associations in the fight against corruption through building and practicing a fair and non-corrupt business culture, and coordinating with competent state agencies to prevent and detect corrupt acts of officials."[2]

The role and responsibilities of businesses in anti-corruption work are specified in Article 87 of the Anti-Corruption Law (amended in 2007 and 2012) (AC Law) and Chapter IV of Decree 47/2007/ND-CP guiding a number of provisions of the AC Law on the role and responsibilities of businesses in anti-corruption work (Decree 47). Accordingly, enterprises, business associations and professional associations bear the following responsibilities:

Communicate and encourage enterprise managing staff and employees, members of business and professional associations to implement the AC Law. In addition, associations are responsible for motivating and encouraging their members to build a fair and non-corrupt business culture, to develop and implement a code of conduct to prevent corruption.

Take measures to prevent and detect corruption;

Encourage denunciation of corrupt acts, report to and coordinate with state authorities in the settlement of cases of potential corruption.

Make recommendations for improvement of the policies and laws against corruption.

Overall, the current regulations mainly focus on responsibilities of enterprises. There is a lack of policies and mechanisms to emphasize the important role of enterprises and encourage them to proactively join in anti-corruption work.

## ***Requirements for disclosure and transparency in operations of enterprises***

These requirements are understood in two aspects: *(i) enterprises are required to publicly disclose information to investors and those with need to know it; and (ii) enterprises are required to ensure disclosure and transparency of their organization and operation.* The 2014 Law on Enterprises (LOE) and relevant documents provide the responsibilities of enterprises including state-owned enterprises (SOEs) for disclosing information and ensuring transparency of their organization and operation.

*Disclosure of business registration information* is generally required for all enterprises, which must disclose such information in the form of announcement on the National Business Registration Portal.

**For non-state enterprises**, disclosure and transparency requirements are considered on three following aspects:

Disclosure of information about enterprises:

For joint-stock companies, LOE is deemed to have stricter requirements for disclosure of information by joint-stock companies on their websites (if any) under a particular article.

For public companies, the companies are required to disclose their audited annual financial statements and biannual financial statements reviewed by an independent audit firm or upon occurrence of events which have serious influence on benefit of investors, in accordance with Article 101 of the 2006 Law on Securities (amended in 2010) and Chapter II of Circular 155/2015/TT-BTC guiding in detail information disclosure on the securities market. Public companies are required to disclose information on their electronic web pages (website) and on the information disclosure system of the State Securities Commission.

Disclosure of related interests:

In respect of conflicts of interest, LOE requires the chairman of the Board of Members (members of the Board of Members or chairman of the company in case of a single-member limited liability company), members of the Board of Directors (BOD), director or general director, at-law representative, members of the Supervisory Board and other managers of the company to promptly, fully and accurately inform the company of the enterprises that they and their related persons own and/or hold a majority of shares/capital contribution.<sup>[3]</sup>

Particularly for joint-stock companies, LOE has more detailed provisions on the benefits to be disclosed, the procedures and time limits for declaration thereof. These regulations apply specifically to *(i) those having the obligation to declare*; and *(ii) related persons of those having the obligation to declare*.

Disclosure of managers' income:

According to Article 158.3 of LOE, remuneration of BOD members, director/general director and other managers may be found in the annual financial statements of the company as these amounts are charged to the business expenditure and is shown as a separate item in the financial statements. This information must be reported to the GMS at the annual meeting.

This disclosure is still limited to internal extent, except for joint-stock

companies which are required to disclose their financial statements on their electronic web pages, which is considered a higher extent of publicity and accessibility to more people.

**For SOEs**, disclosure and transparency requirement is also considered on three similar aspects. SOE means an enterprise of which the State holds 100% of the charter capital.[4] Since all the funds invested in SOEs are sourced from public funds and assets, SOEs must meet more rigorous requirements on disclosure and transparency of information as compared to non-state enterprises.

Disclosure of enterprise information:

LOE has a separate chapter to regulate SOEs, including provisions on their responsibilities for disclosing information. The Government issued Decree 81/2015/ND-CP on disclosure of information of SOEs (Decree 81). Article 18 of the AC Law also regulates the disclosure of information relating to management of SOEs.

Declaration of related interests:

LOE requires the chairmen and other members of the Boards of Members of SOEs to promptly, fully and accurately notify their companies of any enterprises in which they own interests, shares/capital contributions. This notice shall be posted at the headquarters and branches of the company.[5]

However, there is no provision on the process which needs to be gone through in cases where SOEs enter into contracts or transactions with enterprises in which the chairman, Board members and their related persons hold interests.

Declaration of managers' assets and income:

Controlling assets and income of persons holding managerial positions and/or powers is an important measure against corrupt acts, and declaration of their assets and income is a part of this process. Regulations on asset and income transparency are included in Decree No. 78/2013/ND-CP and Circular No. 08/2013/TT-TTTP.

If violating disclosure requirements, enterprises can be sanctioned as follows:

Any enterprise that fails to disclose or timely disclose information on business registration on the National Business Registration Portal will be fined between VND 1,000,000 and VND 2,000,000 and compelled to publicly disclose such information.[6]

Any public company that fails to make a complete, timely, punctual disclosure in required form(s) or truthful disclosure or fails to disclose in accordance with the law will be served a warning or imposed a monetary fine.[7]

SOEs violating provisions on disclosure of information under Decree 81 will be fined and compelled to disclose the required information.[8]

Managers of such SOEs are also liable for disclosure of violations of their enterprises.

### ***Development and implementation of internal control regulations***

One measure that any enterprise can take to effectively prevent and detect corrupt acts is to maintain its internal control system. However, the AC Law only “encourages enterprises to maintain an internal control system in order to prevent embezzlement and bribes giving,”[9] and the guiding provisions under Decree 47 do not really emphasize that establishing internal control is under enterprises’ responsibilities. That means the current laws only require enterprises to develop a mechanism to prevent certain types of corrupt act. Building mechanisms to prevent conflicts of interests and to prevent and deal with all types of corrupt act has not been defined as responsibility of enterprises under the law.

An enterprise may set up, in addition to its internal control system, an internal audit department. However, internal audit is not required by law to be set up in enterprises. The Government is currently drafting a decree providing for internal audit requirements. According to this draft, internal audit will be required for listed companies and certain types of enterprise.[10]



*PM Nguyen Xuan Phuc and delegates at the Conference themed “Siding with Businesses” \_\_Photo: Thong Nhat/VNA*

***Encouragement of denunciation and notification of corrupt acts; coordination with state authorities in the settlement of cases involving signs of corruption***

Reporting corrupt acts is governed in the 2011 Law on Denunciations and guiding documents. The scope of the Law on Denunciations is limited to denunciation against acts of violation committed by cadres, civil servants and officials in the performance of their tasks and duties and acts of violation committed by authorities, organizations and persons in the state management in various sectors.[11]

Although the Law on Denunciations has no specific provisions on the settlement of denunciations by SOEs, Article 17 of the Law on Denunciations provides for the competence to settle denunciations against violations committed by persons who are assigned to perform certain tasks and duties but are not cadres, civil servants, officials; and the subject entities defined under Circular No. 06/2013/TT-TTCP on process for handling denunciations include SOEs.[12] Therefore, denunciations and the settlement of denunciations in SOEs are subject to the Law on Denunciations.

Reporting corrupt acts or other misconducts committed by individuals in private enterprises has not been regulated in any legal documents. Whereas, under Decree 47, enterprises are responsible for encouraging detection and denunciation of corruption and under the 2015 Penal Code, four groups of corrupt acts in the private sector shall be charged with penal liability.

Enterprises and their associations are responsible, upon their awareness of any corrupt acts, for notifying competent authorities of such corrupt acts.[13] However, procedures and forms of notification, rights and obligations of enterprises in relation to such notification are not clearly stated under any law. The current Law on Denunciations only establishes the right of individuals to make denunciations.

**What to do to promote the role of businesses in fighting corruption?**

**For the Government:**

Affirming and promoting the role of enterprises in anti-corruption work

Fighting against corruption is not only a responsibility of enterprises, rather enterprises play a very important role in promoting an effective fight. Therefore, the AC Law should include provisions to highlight the important role of enterprises (as well as of other social actors) in this fight and, at the same time, adopt policies to create favorable conditions for businesses to promote their roles in practice. These provisions would contribute to the change of citizen's perception since a number of citizens

still think that combating corruption is a mission of state agencies.

***Supplementing the Law on Enterprises with provisions on how to handle contracts signed between SOEs and enterprises in which the chairman, members of the Boards of Members and related persons are owners/shareholders/capital contributors***

For joint-stock companies, such contracts must be approved by the GMS or BOD. SOEs are usually single-member limited liability companies. For example, if a company has only a chairman (with no Board of Members) and the company enters into a contract with another enterprise in which the chairman is the owner/shareholder/capital contributor, how should the procedure of approval be regulated in this case? This issue needs to be clarified and specified in LOE.

***Considering the extension of the scope of assets to be declared; diversifying methods to verify assets origin and forms of asset declaration disclosure***

To prevent persons with the declaration obligation from concealing and dispersing assets to their relatives, it is necessary to extend the scope of declared assets, including assets and income of parents and adult children of declaring persons.

A proposed option would be to declare only the assets which are originated from persons having declaration obligation (to cover circumstances where declaring persons transfers their assets to parents and adult children) or assets which are related to those with the declaration obligation (to cover circumstances where corruption-related assets are transferred to parents and adult children of persons with positions/powers). If so, a definition should be given to the concept of "assets originated from or related to persons with the declaration obligation". This will raise higher requirements for verification and justification of the assets origin. Therefore, it is needed to have a specialized professional department/agency to verify the declarations in SOEs.

According to current regulations, verification is only carried out in certain cases. The urgent need of the fight against corruption requires verification of asset declarations to be conducted on a regular basis and is a mandatory step, but it only needs to be done for certain leading positions due to the large amount of work and limited resources. Besides, random verification of other declarers should also be taken into account.

Public disclosure of asset declarations should be done in a more flexible way. Apart from being posted at the head offices of enterprises, asset declarations can also be posted at regular workplaces of declaring persons if they are different from the head offices.

### ***Requiring businesses to build an internal control mechanism***

The law should require the establishment of an internal control department in certain types of enterprises, or at least in SOEs. This demand has been included in the draft amended AC Law "Enterprises have responsibility to include in their charter or operation regulations provisions on internal control in order to prevent conflict of interest and handle embezzlement, bribery, abuse of position/power and other corrupt acts."[14]

Issuing clear regulations on enterprises' right to notify corrupt acts

As analyzed above, the current AC Law has recognized the right to "notify" of enterprises but no specific regulations for the implementation. Hence, it is necessary to supplement provisions on the mechanism and process to enable enterprises to proactively exercise their right to notify corrupt acts and specify the responsibilities of state agencies to receive and respond to such notices.

**For businesses:**

### ***Proactive disclosure and transparency in their operations***

Proactive disclosure and transparency by enterprises are very important, bringing about huge benefits to enterprises. Transparency will help increase productivity, gain partners' trust and strong commitment of employees, attract more partners and customers and contribute to sustainable development of companies.[15] According to a survey, 48% respondents are willing to pay more to buy goods from a company that is clean/corruption free.[16]

### ***Developing and publicizing anti-corruption programs***

Enterprises should realize the importance of anti-corruption programs and proactively develop their anti-corruption programs. In addition to internal control regulations and code of conduct, anti-corruption programs may include policies on gifts, hospitalities and prohibition of facilitation payments. By publicizing anti-corruption programs, companies express their commitments to fighting against corruption to state agencies and their partners.

Enterprises need to realize the importance and necessity of the internal control mechanism and establish regulations and procedures for internal control aiming at preventing and combating corrupt acts inside and outside enterprises. At the same time, enterprises should proactively improve the structure of the Supervisory Board and internal audit and enhance the capacity, expertise and independence of members of the Supervisory Board and internal audit.

## ***Conducting anti-corruption communication and training for employees***

In order for anti-corruption policies and regulations of the Government and of businesses to be applied and implemented effectively, companies need to organize communication programs and training for all staff levels including senior leaders, supervisory staff and employees in the organization to provide information and guidance for implementation of these policies and regulations.

## ***Actively participating in collective actions***

An enterprise can participate in the fight against corruption at three levels: *(i) within enterprises, (ii) in relationship with partners, and (iii) within business environment.*

Within enterprises, they can develop and apply anti-corruption programs as one of the most effective measures to protect companies from corruption risks, reduce unofficial charges or legal consequence as well as reputation risk caused by corruption. For example, having policies on prohibiting facilitation fees, conflict of interest, gifts; carry out annual assessment on corruption risk.

Companies should disseminate anti-corruption policies to their partners and other stakeholders, such as clients and intermediaries.

Within the business environment, enterprises should actively join collective action to promote business integrity and create a healthy business environment. Members joining such initiatives will learn from each other, share experience and spread knowledge of business integrity, start action and inspire other companies to apply international standards.-

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[1] Law and Advocacy Team, Toward Transparency (TT), Nation Contact of Transparency International (TI) in Vietnam.

[2] Government Resolution 21/NQ-CP dated May 12, 2009, on the National Strategy on Anti-corruption until 2020.

[3] Articles 71.1(c), 83.4, 160.1(d), 2014 LOE.

[4] Article 4.8, LOE.

[5] Article 96.4, LOE.

[6] Article 26, Government Decree No. 50/2016/ND-CP dated June 1, 2016, providing for sanctioning of administrative violations in planning and investment.

[7] Article 33, Decree No. 108/2013/ND-CP providing for sanctioning of administrative violations in securities and securities markets (as amended in

Decree No. 145/2016/ND-CP).

[8] Article 27, Decree 50.

[9] Article 87.4, AC Law.

[10] Thoi bao ngan hang, Listed companies must establish internal audit, 13/12/2016,

(<http://thoibaonganhang.vn/cong-ty-niem-yet-bat-buoc-phai-co-kiem-toan-noi-bo-57254.html>) [accessed on January 12, 2017].

[11] Article 1, Law No. 03/2011/QH13 on Denunciations.

[12] Article 2.1, Circular No. 06/2013/TT-TTCP of the Government Inspectorate dated September 30, 2013.

[13] Article 17, Decree 47.

[14] Article 108.2, draft amended AC Law dated August 24, 2016.

[15] Thoi bao doanh nhan, 'Why do transparent businesses gain more success?', 2/6/2015,

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[16] Towards Transparency, 2013 Global Corruption Barometer Views and experiences of Vietnamese citizens, 2013, p.19.