Vietnam issues new regulations implementing its Anti-Corruption Law, effective 15 August 2019

New requirements imposed on public companies and credit institutions - Gift Regulations replaced

8 August 2019

On 1 July 2019 the Vietnamese government issued new regulations pursuant to Decree No. 59/2019/ND-CP (the New Regulations), which will take effect on 15 August 2019. The New Regulations (1) provide implementation details for Vietnam's new Anti-Corruption Law (Law No. 36/2018/QH14), which took effect on the same day (the Anti-Corruption Law); and (2) replaced the regulations on receiving and giving of gifts that apply to certain government and state-owned or funded entities and individuals (the Gift Regulations) that have been in place since 2007 (Decision No. 64/2007/QD-TTg).

The New Regulations, although somewhat dialled back from prior drafts, are in line with the Vietnamese government's pronouncements to "clean up" corruption. Our analysis of the key provisions that impact the private sector is set out below. Although the Anti-Corruption Law's main focus continues to be on the public sector, its reach has extended to nonstate enterprises that rely on public capital on a large scale - namely, publicly held companies and credit institutions.[1] Such entities are now required to establish and implement specific anti-corruption policies and are subject to investigation by government inspectorates to ensure compliance. In addition, the New Regulations provide details on the circumstances in which former public officials can join nonstate enterprises following their resignation or retirement from public office.

Although specific fines and penalties against individuals were contemplated in prior drafts, the New Regulations leave it to the company's discretion to determine appropriate discipline and sanctions for heads and deputies who allow corruption to occur within their organizations. Covered entities that fail to implement appropriate policies are subject to administrative penalties under the New Regulations. Criminal liability for bribery and corruption, however, is still limited to individuals. There is still no corporate liability under Vietnamese law, even though this has been a topic of discussion amongst lawmakers and might change in the future.

[1] Social charity organizations established by a competent state authority are also within the law's expanded reach to nonstate enterprises.

The New Regulations governing the giving and receiving of gifts, although not imposing affirmative obligations on companies in the private sector, are still important for corporates to keep in view, as the New Regulations impose requirements on public officials to disclose improper gifts received.

Vietnamese lawmakers are expected to continue to issue guidance on implementing the Anti-Corruption Law and we will continue to provide updates on important changes that affect the private sector.

New Anti-Corruption Law guidance

With respect to publicly traded companies and credit institutions, the New Regulations set out two main categories of requirements:

1. Such companies are required to establish specific policies designed to guard against corruption, including policies to ensure openness and transparency in their operations (such as those requiring disclosure of employees' legal rights, salaries and benefits, and the company's internal organizational structure), policies governing conflicts of interest, and policies that require heads of organizations and their deputies to detect and prevent corruption.

2. Such companies are now subject to investigation by government inspectorates from time to time to ensure compliance with the Anti-Corruption Law. If shortcomings are discovered, the company will be required to take remedial action. If violations of law are discovered, such violations are to be reported to the appropriate government ministries and agencies. Violations that may be criminal in nature are to be transferred to the appropriate investigative agencies to handle, with written notification to the Supreme People's Procuracy of Vietnam which has prosecution authority.

Separately, the New Regulations also set out specific restrictions on former government officials joining certain nonstate enterprises after they resign or retire from office. The Anti-Corruption Law provides that office holders in state organizations are prohibited from holding managerial or executive positions in a certain nonstate enterprises operating in the field that was under his or her management. The New Regulations set out specific parameters to implement this restriction, including the time limits that apply to persons in specific fields. For example, a former officer from the Ministry of Industry and Trade would be prohibited from holding an executive position in a private trading company from 12 to 24 months after his or her retirement or resignation from the government position. This restriction is presumably meant to help prevent the practice of former government officials setting up businesses to obtain favorable contracts or projects from their government contacts through corrupt means. These businesses are dubbed "doanh nghiệp sân sau," literally translated to "backyard businesses". Corporates will need to be more vigilant when hiring former government officials into their organizations.

Gift Regulations replaced

Although the provisions in the New Regulations pertaining to gifts do not impose affirmative obligations on gift givers in the private sector, such regulations are important to keep in view because a gift given to a public official will have to be disclosed by the official if it was given for an unlawful purpose.

The existing Gift Regulations set out the parameters for the giving and receiving of gifts by state officials, public servants, state officials holding managerial positions and representing state ownership in state-owned enterprises, and persons holding managerial positions in other government funded or owned enterprises (collectively, Public Officials). The New Regulations continue to apply to the foregoing categories of persons and entities and do not extend coverage to non-managerial employees, either in the public or private sector.

Under the New Regulations, Public Officials continue to be prohibited from receiving gifts that are given to them in connection with their public duties or for an unclear or corrupt purpose. The New Regulations, however, specify that such gifts must not be received either directly or indirectly from entities or individuals that relate to the recipient's work or matters under the recipient's management.

Like the existing Gift Regulations, the New Regulations also set out procedures for Public Officials to report and return inappropriate gifts received but with slight modifications, such as a requirement that such a report now disclose the receiver's relationship with the gift giver. This requirement replaces the requirement that the purpose of the gift, if known, be disclosed. The report must be made to the government official's direct manager within prescribed time periods.

Finally, the exception to the reporting requirement (which applies to gifts with a value of less than VNđ500,000 that are given on certain special occasions such as weddings and holidays, such as Tết) is no longer available. As a result, Public Officials must always disclose gifts received regardless of the value of the gift if it was given for an unlawful purpose.

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