

LAWS AND REGULATIONS ON PREVENTING AND COMBATING CORRUPTION IN THE PRIVATE SECTOR IN VIETNAM

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ABSTRACT

In this article, the author will synthesize and analyze legal regulations on preventing and combating corruption in the private sector in Vietnam. In addition, the author also mentioned the current status of the implementation of these legal regulations. From there, the author provides assessments, comments and proposes solutions to further strengthen compliance with legal regulations on anti-corruption in the private sector in the coming time.

Keywords: Anti-Corruption, Private Sector, Legal Regulations, Enforcement, Solutions.

INTRODUCTION

Corruption not only takes place in the public sector, but also in the private sector including businesses and non-state socio-economic organizations. This behavior causes frustration in society because it has the potential to create injustice and inequality in businesses/organizations, affecting economic development in particular and the general development of the entire society. Therefore, the prevention and combat of corruption in the private sector is paid attention, managed and monitored by the state through the promulgation of regulatory laws and sanctions to ensure enforcement.

LITERATURE REVIEW

Manifestations of corruption in the private sector

According to the 2021 Provincial Competitiveness Index (PCI) Report of the Vietnam Confederation of Commerce and Industry (VCCI), the number of businesses having to pay unofficial fees in general is 41.4% (2020). was 44.9% and in 2006 it was 70%). In particular, the proportion of businesses paying unofficial fees is still high in construction inspection activities (67.22%) and granting conditional business licenses (61.36%).

Corruption in the private sector is manifested in many different forms, in which the subjects carrying out corrupt acts are individuals and/or businesses and organizations in the private sector, including: Firstly, corruption in corporate business activities such as: Bribery, accepting bribes, embezzlement, embezzlement of assets, insider trading, accounting fraud, tax evasion, money laundering, falsification of documents. In particular, crimes of property embezzlement and bribery of people with positions and powers in non-state enterprises and organizations will be handled according to the provisions of the Penal Code. Second, corrupt acts of businesses colluding with businesses to cause damage to third parties (can be the public or private sector), typically in bidding, auction, and price manipulation activities. securities, taking advantage of inside information or insider trading... to defraud investors. Especially recently, there has been a situation where foreign businesses hide in the shadow of Vietnamese businesses to create online lending applications, which scam people's money, causing bad consequences for society. Third, is corrupt behavior that causes damage to the business itself. This behavior is quite

common in the process of purchasing supplies and goods, renting and leasing facilities, recruiting and appointing personnel, and abusing subsidies; cooperation, capital contribution, loans to partners.

Corrupt practices in the private sector increase costs and significantly reduce business profits, creating an unhealthy and non-transparent business environment and distorting the nature of economic relationships.

Law and regulations on anti-corruption

Since 2009, Vietnam has ratified and become a member of the United Nations Convention against Corruption (UNCAC). In the provisions of UNCAC in Article 12 “*each State Party shall take measures to prevent corruption involving the private sector, strengthen accounting and auditing standards in the private sector and, where appropriate, appropriate, issue appropriate and dissuasive effective civil, administrative or criminal sanctions for non-compliance with these measures.*” Accordingly, Vietnam's anti-corruption law issued in 2018 has specific regulations on preventing corruption in businesses and non-state sector organizations. Among them, there are 10 laws regulating corruption prevention and combat in the non-state sector, including recommended regulations for all types of businesses and non-state organizations and regulations that carry Mandatory nature for some types of businesses.

The application of anti-corruption measures in enterprises and non-state sector organizations is specifically stipulated in Article 80 of the 2018 law on Anti-Corruption. Specifically, the following regulations apply to for public companies, credit institutions and for social organizations whose charters are decided by the Prime Minister, the Minister of Home Affairs or the Chairman of the Provincial People's Committee to establish or approve their charters. People's contributions to charitable activities: (i) Principles of publicity and transparency, content of publicity and transparency, form of publicity, responsibility for implementing publicity and transparency specified in Article 9, Points a, c and d, Clause 1, Article 10, Article 11 and Article 12 of this Law; (ii) Control conflicts of interest specified in Article 23 of this Law; (iii) Responsibilities and handling of responsibilities of the head and the head's deputies specified in Article 72, Points a, b and d, Clause 3, Article 73 of this Law. Article 81. Inspection of the implementation of laws on anti-corruption for enterprises and non-state sector organizations.

To enforce the anti-corruption movement, the law also stipulates the responsibilities of individuals and organizations for detecting corruption in enterprises and non-state sector organizations. Enterprises and organizations in the non-state sector are responsible for self-inspection to promptly detect, handle and propose to competent authorities to handle corrupt acts in their enterprises and organizations. When conducting inspection activities, if inspection agencies detect corrupt acts in enterprises or organizations in the non-state sector, they are responsible for handling them according to their authority or transferring them to competent agencies for handling in accordance with the provisions of the Law. law. Agencies, organizations, units and individuals when detecting acts of corruption in enterprises and non-state sector organizations are responsible for reporting, denouncing and reporting according to the provisions of Section 3 Chapter III of the Law. This.

On April 6, 2022, the Politburo of the Communist Party of Vietnam also issued Conclusion No. 12-KL/TW on continuing to strengthen the Party's leadership in preventing and combating corruption and negativity. In which, an important requirement is set out that is "Gradually expanding the scope of anti-corruption to the non-state sector". The Law on Prevention and Combat of Corruption and the Penal Code (amended and supplemented) have regulations on prevention and combat of corruption in non-state organizations and enterprises. However, the subjects in the private sector regulated by the Anti-Corruption Law are quite narrow, including public companies, credit institutions and some socio-political organizations.

To ensure enforcement of anti-corruption laws, sanctions for handling other acts of violating anti-corruption laws in enterprises and non-state sector organizations are also stipulated. Enterprises and non-state sector organizations are public companies, credit institutions and social organizations established by the Prime Minister, the Minister of Home Affairs or the Chairman of the Provincial People's Committee or Approving a charter that mobilizes people's contributions for charitable activities in violation of Article 80 of this Law will be handled as follows, depending on the nature and severity of the violation:

- i. *Enterprises and organizations are sanctioned for administrative violations according to the provisions of law;*
- ii. *People holding positions or management positions in an enterprise or organization will be handled according to the charter, rules and regulations of that enterprise or organization.*

- iii. *In case an enterprise or organization does not take handling measures against people holding positions or management positions, the name, address and violation will be publicly announced by the competent inspection agency according to the provisions of this Law. provisions of law.*

To concretize the Anti-Corruption Law, the Government issued Decree No. 59/2019/ND-CP dated July 1, 2019 detailing a number of articles and measures to implement the Anti-Corruption Law. In particular, there are regulations on inspection of the implementation of legal provisions on anti-corruption for businesses and non-state social organizations and regulations on responsibilities and handling of responsibilities of people. heads and deputy heads of heads when corruption occurs in enterprises or organizations under their management. The Penal Code (amended and supplemented) has expanded the concept of position-related crimes to include position-related crimes in the private sector in Article 352: "1. Position-related crimes are acts that violate the proper operations of agencies and organizations committed by position holders while performing official duties and tasks. 2. A position holder is a person appointed, elected, contracted or in another form, with or without salary, who is assigned to perform a certain task and has certain powers in the job. when performing public duties and tasks". Thus, according to the provisions of the Penal Code, corrupt acts in the private sector can be prosecuted for criminal liability.

Vietnam has also signed a number of important free trade agreements (FTAs), including the Vietnam - EU FTA (EVFTA), and the Comprehensive Progressive Agreement for Trans-Pacific Partnership (CPTPP). In the context of regional and world economic integration, Vietnam certainly cannot be left out of the above trend. Currently, Vietnamese law is gradually transforming and promises to approach international standards in the near future, especially the requirements for preventing and combating corruption in the private sector in general and the business sector. industry in particular. One of Vietnam's first steps to implement the above international commitment to prevent and combat corruption is the inclusion in the 2015 Penal Code (amended in 2017) of a number of corruption crimes. Corruption in the private sector, including property embezzlement, bribery, bribery, and bribery.

In addition, the Government's recent international commitments have brought some benefits Advances in anti-corruption laws as well as in the business and investment environment. For example, the promulgation of the new Enterprise Law and Investment Law, through the Law

on Access to Information. Or Decree 20/2017/ND-CP issued by the Government on February 24, 2017 on tax management for enterprises with associated transactions, has set out requirements for parent companies with revenue. Global consolidation in a fiscal year of VND 18 trillion or more must submit a cross-national profit report to the tax authority for annual review.

CURRENT STATUS OF CORRUPTION AND ANTI-CORRUPTION IN THE PRIVATE SECTOR IN VIETNAM

According to Transparency International (TI), in 2017, Vietnam ranked 107/180 globally on the corruption perception index (CPI), reaching 35 points on a scale of 0 to 100 (in which 0 is very corruption and 100 is very clean). Thus, the above results are quite similar to the recent assessment of the Party and State of Vietnam that corruption in Vietnam is still serious.

Corruption in the public sector often receives a lot of attention from society with issues related to land, education, health care and budget allocation and use. However, corruption in the private sector in Vietnam is also emerging as a major challenge, hindering this sector's important contributions to the economy.

Corruption in the private sector is a form of corruption in which the main subjects are individuals or businesses and organizations in the private sector. The most common type of corruption in the private sector is bribery in business and commercial activities.

When assessing the business environment in Vietnam, many international organizations believe that corruption is one of the biggest risks for businesses investing and doing business in Vietnam.

According to the 2017 Vietnam Business Environment Perception Report by AmCham Vietnam (American Chamber of Commerce in Vietnam), “instability caused by corruption continues to be the top challenge facing member businesses of AmCham must face it. In a similar report presented at the Vietnam Business Forum (VBF) in 2010, AmCham Vietnam said “the original intentions of some potential foreign investors could not be realized, because

of continue to deal with challenges of corruption, limited human resources, and unclear licensing processes and legal environments.”

Although there has not been any in-depth research on the negative effects of corruption on the business environment in Vietnam, it can be easily seen that corruption hinders fair competition, distorts the business environment and Restrict investment, especially foreign investment. Therefore, preventing and combating corruption in the private sector in Vietnam is really necessary.

Businesses are both agents of corruption and key factors in the fight against corruption in the private sector. According to survey results in Vietnam's Provincial Competitiveness Index (PCI) report in 2017 conducted by the Vietnam Chamber of Commerce and Industry (VCCI), the proportion of enterprises with foreign investment capital exceeded Receiving payment of unofficial costs related to inspection - examination, customs clearance of goods and land procedures are 45%, 53% and 17.5% respectively.

In an environment where corruption risks are high like in Vietnam, the view that bribery is an "unavoidable" part of business activities is quite popular, leading to businesses accepting to pay the costs. unofficial fees.

Thus, from being victims, businesses have become agents of corruption. On the other hand, in reality, many anti-corruption solutions also come from within the enterprise itself. Some recent studies by Towards Transparency (TT), TI's focal point in Vietnam, have shed further light on this issue. Report "Corruption risk analysis for investors in Vietnam" (2017) coordinated by the Center for Social Governance and Research (CENSOGOR - one of TI's two official partners in Vietnam) and VBF The implementation team surveyed 21 foreign invested enterprises in Vietnam. Survey results show that corruption risk is a significant obstacle in the business operations of these enterprises. In particular, the giving, giving and receiving of private gifts and/or other benefits between private individuals and between private individuals. The report "Assessment of information disclosure practices of enterprises" (TRAC Vietnam Report) was conducted by TT, the first time in 2017 for the 30 largest enterprises in Vietnam, and the second time in 2018 for 45 largest enterprises in Vietnam, to measure the level of information disclosure related to anti-corruption of Vietnamese enterprises compared to international good practices. Following TI's research methodology, the report evaluates businesses' information

disclosure practices on the following three aspects: First, disclosing information about anti-corruption programs, including 13 questions question, built on the document "Guidelines for Information Disclosure under Principle 10 on preventing and combating corruption" issued by the United Nations Global Compact v. and TI does it. Second, transparency in the structure of the enterprise's ownership ratio, including 8 questions related to disclosure of information about the enterprise's subsidiaries and affiliated companies. Third, basic financial information disclosure according to the national reporting mechanism, including 5 questions about financial information disclosure in each country where the business operates.

Because the report's evaluation criteria are built on high international information disclosure standards, the evaluation results of businesses are not high. However, the overall results of the 2018 TRAC Vietnam Report are generally significantly improved compared to the 2017 TRAC Vietnam Report. Some domestic enterprises have had good results in disclosing information about their programs. Prevent and combat corruption with principles relatively consistent with international standards. This is really a positive signal for the ability to legislate the development of anti-corruption policies and programs within enterprises in the coming time.

Around the world, many international conventions have been signed, as well as many countries have been developing legal regulations to regulate corruption in the private sector.

In addition, since the 2018 Anti-Corruption Law was introduced, the Government has increasingly recognized the important role of businesses in anti-corruption efforts as well as encouraged companies to apply control measures. internal control, coordination with the business community and State agencies to effectively promote anti-corruption measures.

Building anti-corruption thinking for businesses

Nowadays, doing business ethically and with integrity has become a globally recognized standard, aiming to build trust among investors, business partners and employees. Along with the demands of the times, reform and implementation of specific measures to make integrity a norm instead of an exception in business activities will gradually become an inevitable requirement for businesses. Government and business sector in Vietnam.

Therefore, from now on, businesses need to be clearly aware of business integrity issues as well as proactively develop, implement and monitor the implementation of an internal anti-

corruption program. your business. Complying with the law, even going ahead of current regulations by building an internal anti-corruption program will be an essential requirement for sustainable growth, especially for small businesses. Vietnamese businesses are in the process of developing and targeting regional and global markets.

PROPOSED SOLUTIONS

Therefore, thoroughly grasping the Politburo's direction, so that the prevention and combat of corruption and negativity in the private sector is truly strong, effective and widely spread, it is necessary to pay attention to the following issues:

Firstly, the prevention and combat of corruption and negativity in the public and private sectors must be carried out synchronously and in parallel with very high determination. Fighting corruption and negativity in the private sector needs to be synchronized with strengthening public sector institutions, as well as perfecting institutions and legal policies of both the public and private sectors, which requires Pay attention to the issue of expanding the subjects of the private sector and controlling the assets and income of the entire society. Expanding the scope of businesses regulated under the Anti-Corruption Law is necessary, because not only public companies and credit institutions are the groups that mobilize capital from shareholders or depositors. Currently, there are many businesses with very large scale of operations, mobilizing capital from individual corporate bond issuance of tens of thousands of billions of VND, but are not in the group of subjects subject to adjustment under the Law on Prevention and Combat of Corruption, leading to brings many potential risks to the inspection, supervision and management of these businesses.

Second, on the business side, it is necessary to build a business culture, a healthy, transparent, and corruption-free business culture; develop and promulgate rules of business ethics, professional ethics, and codes of conduct; Implement internal inspection and control mechanisms... Ensuring integrity and creating a healthy and fair business environment must become an inherent need of each business and organization to move towards development. sustainable development.

Third, promote the role and responsibility of business associations and industry associations in preventing and combating corruption. Implement measures to prevent and combat corruption and negativity; promptly detect, report and coordinate with competent state agencies to prevent and handle corruption occurring in member enterprises; Organize, motivate and encourage members to build a healthy, corruption-free business environment; Supervise compliance with anti-corruption laws by members and associates, and actively participate in perfecting legal policies.

In addition, it is necessary to build an external control mechanism or self-inspection mechanism of businesses and organizations to promptly detect, handle and recommend to competent authorities to handle corrupt acts. This requires that the enterprise's regulations and charter must have self-inspection and control measures to ensure that the provisions of the Anti-Corruption Law are properly complied with the common control mechanism through feedback and denunciation activities.

In addition, focus on building codes of conduct, professional ethics, business ethics and internal control mechanisms. This should be mandatory for public companies, credit institutions and social organizations.

Finally, there needs to be many supervisory parties such as shareholders, consumers, the press or independent organizations participating in the process of preventing corruption in the operations of businesses and regional organizations non-state sector.

On the State side, it is necessary to improve policies and procedures, not to let honest and transparent businesses suffer. The state needs to have ethical standards and send messages about business quality requirements. Anti-corruption is not only about amending laws but also about processes. Modifying administrative processes has a great impact on reducing corruption, such as the process of receiving and adjudicating economic cases.

As for the business community, it is necessary to actively participate in building and perfecting legal policies; especially related to anti-corruption activities. At the same time, we should join state agencies in monitoring and evaluating law enforcement and dialogue towards the goal of perfecting the law on anti-corruption.

CONCLUSION

From the above analysis, it can be seen that strengthening anti-corruption in the private sector plays an extremely important and urgent role today to create a healthy business environment and sustainable development. To do this requires the cooperation, cooperation and support of competent state agencies, associations and business leaders. Transparency in state and business policies and laws also plays an important part in this anti-corruption process.

REFERENCES

- [1] United Nations (2003), Convention against Corruption (UNCAC)
- [2] Vietnam Politburo, (2022). Conclusion No. 12-KL/TW on continuing to strengthen the Party's leadership in preventing and combating corruption and negativity.
- [3] National Assembly of Vietnam (2013). Constitution
- [4] National Assembly of Vietnam (2015). Criminal Code
- [5] Vietnam National Assembly (2012, 2020). Law on handling administrative violations
- [6] National Assembly of Vietnam (2018). Anti-Corruption Law
- [7] Vietnam National Assembly (2020). Enterprise Law
- [8] National Assembly of Vietnam (2015). Investment law
- [9] National Assembly of Vietnam (2016). Law on Access to Information.
- [10] Government of Vietnam (2019). Decree 59/2019/ND-CP details a number of articles of the Law on Anti-Corruption
- [11] Government of Vietnam (2021). Decree 134/2021/ND-CP amending Decree 59/2019/ND-CP guiding the Law on Prevention and Combat of Corruption
- [12] Prime Minister of Vietnam (2018), Report "Survey of business integrity in high-tech zones in Vietnam".

[13] Christian Levon, Preventing and combating corruption in the private sector in Vietnam: A business perspective

[14] Vietnam Chamber of Commerce and Industry (2017). Vietnam's Provincial Competitiveness Index (PCI) Report

[15] Towards Transparency, websites: <https://towardstransparency.org/> , access on 20th November 2023.

