



# VIETNAM ANTI - CORRUPTION LAWS AND CASE HIGHLIGHTS

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# 1. Introduction

## Corruption Perceptions Index (CPI) in 2009

Country rank	Country	CPI Score Range
3	Singapore	> 9
17	Japan	8 - 9
19	United States	7 - 8
39	South Korea	6 - 7
79	China	5 - 6
84	Thailand	4 - 5
111	Indonesia	3 - 4
<b>120</b>	<b>Vietnam</b>	2 - 3
139	Philippines	< 2
178	Myanmar	< 2
180	Somalia	No data

# 1. Introduction (cont'd)

## Corruption Perceptions Index (CPI) in 2010

Country rank	Country	CPI Score Range
1	Singapore	> 9
17	Japan	8 - 9
22	United States	7 - 8
39	South Korea	6 - 7
78	China	5 - 6
78	Thailand	4 - 5
110	Indonesia	3 - 4
<b>116</b>	<b>Vietnam</b>	2 - 3
134	Philippines	< 2
176	Myanmar	No data
178	Somalia	No data

## 2. Areas of higher risks

- Bidding to select contractors for provision of consultancy services, for procurement of goods, and for construction and installation for tender packages belonging to projects funded/ managed by state agencies.
- Doing business with State owned enterprises (“**SOEs**”), especially SOEs in monopoly sectors.
- Dealing with government officials in administrative procedures, such as applying for investment license, real estate projects, construction projects, pharmaceutical sector, etc.
- Areas need special conditions/ approvals of the Government, such as: import/export, customs, etc.

### 3. Key Anti-Bribery Provisions

- Not covering giving and receiving bribes in private sector yet.
- **Bribe receivers:** any persons who have state powers, such as state officers, employees under state payrolls, entities carrying out state duties or representing state shares.
- **Act of giving money, property or material interest** to recipients or intermediaries.
- **Corrupt purpose:** the giving of the material interest must be for the bribe receiver *to do or not to do certain jobs* for the benefits or at the request of the bribe giver.
- **The threshold for criminal liability:** a bribe of VND2 million, equivalent to ~US\$100 (at exchange rate of USD1=VND20,000).

## **3.1. Act of Giving a Bribe**

- It is a crime to give a bribe either voluntarily or under a request of a bribe receiver**
- No clear description on act of giving a bribe under the Penal Code**
- In reality, it likely depends on provisions on receiving bribe in the Penal Code, i.e. bribe receiver being person holding a responsible position; bribe giver requesting or enjoying benefits from specific acts of bribe receiver.**

## 3.2. Is Giving Bribe Outside of Vietnam a Violation of Vietnam Law?

- **Vietnamese citizens** who bribe Vietnamese government officials outside the territory of Vietnam may constitute a crime of bribery under Vietnamese law (*Art. 6.1, Penal Code*)
- **Foreigners** who bribe Vietnamese government officials outside the territory of Vietnam might be criminally liable according to Vietnamese law (*Art. 6.2, Penal Code*)

### 3.3. What Makes a Bribe?

- Bribe is in the form of money, property, or other material interests in any form.
- Gifts such as money, property, property rights, material benefits, benefits in kind or any other material consideration of more than VND2,000,000 (about US\$100) may be considered as bribes.
- If causing “serious consequences” OR committing the offence more than once, giving gifts of less than US\$100 can still constitute a crime of bribery
  - No definition of “serious consequences” – can be subject to broad interpretation



### 3.4. What Is a “Gift”?

- Vietnamese currency, foreign currencies, savings certificates, stocks, bonds, checks and valuable papers;
- Materials items, goods and assets;
- Services of domestic or overseas sightseeing tours, travel, healthcare, education-training, internship and refresher training and other kinds of services;
- Rights to buy assets, houses, land use rights and equipment use rights; non state-prescribed privileges; use of assets, houses, land and equipment of other persons which is free of charge or undercharged.

*(Decision No. 64/2007/QĐ-TTg of the Prime Minister issuing the Policy on Giving and Receiving Gifts)*

### 3.5. Are All Gifts Considered to be Bribes?

- Not all gifts are considered bribes.
- People having public responsible positions can receive gifts in certain circumstances provided by law:
  - From relatives having **no benefits relevant** to the public duties of the gift recipients: No specific limit on the value of the gift;
  - From entities **irrelevant** to the public duties/activities of the public officials: No specific limit on the value of the gift; and
  - In cases of public officials falling sick, suffering from accidents or in mourning or wedding events, on traditional festivals or lunar new year occasions: Gifts of value **<VND500,000** (~USD25) and not relating to any benefits or purposes or acts of corruption prohibited under the Law on Anti-Corruption and the Penal Code.

*(Decision No. 64/2007/QĐ-TTg of the Prime Minister issuing the Policy on Giving and Receiving Gifts)*

## 4. Criminal Liabilities

- The Penal Code only addresses individual liabilities  
→ No corporate liability
- Specific individuals must bear responsibility for the crime.
- Senior management can be responsible for mismanagement or negligence, even if they do not themselves commit a prohibited act.

## 4.1. Specific Penalties

Bribe amount \ Identity	Receiver	Giver	Intermediary
VND2,000,000 to <10,000,000	2 to 7 years imprisonment	1 to 6 years imprisonment	6 months to 5 years imprisonment
VND10,000,000 to <50,000,000	7 to 15 years imprisonment	6 to 13 years imprisonment	3 to 10 years imprisonment
VND50,000,000 to <300,000,000	15 to 20 years imprisonment	13 to 20 years imprisonment	8 to 15 years imprisonment
>= VND300,000,000	20 years to life imprisonment, <b>capital punishment</b>	20 years to life imprisonment	12 to 20 years imprisonment
<b>Additional penalties</b>	Banned from holding certain posts, fine or confiscation of property	Fined of between one and five times the value of the bribe	Fined of between one and five times of the value of the bribe

## 4.2. Exemption of Criminal Liabilities

- Persons who are coerced to **give bribes** but take initiative in reporting them before being detected are exempt from criminal liability and have part of or the entire property given as bribes returned.
- Persons who are NOT coerced to **give bribes** but take initiative in reporting them before being detected MAY be exempt from criminal liability and have part of or the entire property given as bribes returned.

*(Article 289.6 of the Penal Code)*

- The **bribery intermediaries** who take initiative in reporting such crime before being detected MAY be exempt from criminal liability.

*(Article 290.6 of the Penal Code)*

## 5. Legal Trends in Vietnam

**In compliance with UNCAC, the Prime Minister issued the Decision No. 445/QD-TTg dated 7 April 2010 setting out a detailed plan to implement the Convention in which the followings are worth noting:**

- Considerations of criminalizing the act of giving bribes to foreign officers, employees of international organizations.
- Considerations of covering giving and receiving bribes in private sector in anti-corruption laws.
- Consideration of corporate criminal liabilities for violation of anti-corruption laws.

## 6. Prosecution Highlights

### Corruption related to the ODA – funded HCM City East-West Avenue and Water Environment Project Management Board

- The total investment capital in this Project is recorded nearly VND9,864 billion (around US\$616.5 million), including VND6,394 billion of ODA capital from the Japan Bank for International Cooperation (“**JBIC**”) and the remaining from HCM City’s budget.
- In 2008, Japan-based Pacific Consultants International (“**PCI**”) officials were found guilty in Japan and some were punished for bribing Huynh Ngoc Sy, the former director of the managing board of the Project in Ho Chi Minh City, and breaking healthy-competition laws of Japan.
- The Japanese Government sent 3,000-page-case-report to the Vietnam Supreme People’s Procuracy in 2009 requesting Vietnam to further investigate the case.
- Japan delayed new ODA loans to Vietnam after details of the scandal emerged, and only resumed the lending in March 2009 after seeing the Vietnamese Government's taking action on the case.

## 6. Prosecution Highlights

### Corruption related to the ODA – funded HCM City East-West Avenue and Water Environment Project Management Board (cont.)

- According to the Supreme People’s Procuracy, PCI officials agreed to bribe Huynh Ngoc Sy 10% of the contractual value of the “design consultancy contract” (equivalent to US\$900,000) and 11% of the contractual value of the “supervision contract” (equivalent to US\$1.7 million) of the Project in order to win bids. However, due to the lack of evidence, Sy is prosecuted for having taken bribes of a lesser amount of US\$262,000 and may face death penalty.
- The Vietnamese investigative body will continue to investigate on the remaining bribery amount and would prosecute Sy in a separate case if sufficient.
- The case will be heard on 28-30 Sep 2010 by the Criminal Court of the HCMC People’s Court.

*(Source: <http://www.vnexpress.net/GL/Phap-luat/2010/09/3BA205AD/>)*



## Take away points

- Vietnamese Government is under pressure to combat against corruption more aggressively as requested by the international community.
- Evidence provided by foreign governments might be considered in Vietnam
- International cooperation in combating corruption.

## 6. Prosecution Highlights

### Bribe of \$71,000 at Department of Planning and Investment (DPI) of Khanh Hoa

- In 2008, an official of DPI Khanh Hoa, who was assigned to process the application for a resort investment project in Khanh Hoa of the Korea-based company Sky Resort Ltd., requested “under-table money” from the Korean investor through the latter’s interpreter.
- The total amount of “under-table money” is about US\$71,000.
- The Korean investor, after giving money to the interpreter, voluntarily denounced the case to the police.
- The official received a 20 year imprisonment sentence for receiving bribe and the interpreter Sky Resort Co. Ltd. was sentenced 12 years of imprisonment for acting as an intermediary.
- The investor was exempted from criminal liability of “giving bribe” thanks to his voluntarily reporting prior to being detected.

*(Source: <http://www.cand.com.vn/vi-VN/phapluat/2008/1/83628.cand>)*

## Take away points

- When dealing with corruption, the main idea of the Vietnamese legal system is to encourage individuals, entities and organizations to discover crimes and report them to the State authorities.
- Bribe givers and bribery intermediaries should take initiative to report corruption to the State authorities before being detected to enjoy criminal liability exemption.

## 6. Prosecution Highlights

### Nexus Technologies Inc. and Three Employees Pleaded Guilty to Giving Bribes to Vietnamese Officials

Nexus Technologies Inc. (“**Nexus**”), three former employees and a partner of the company pleaded guilty for their roles in a conspiracy to bribe officials of the Vietnamese government in exchange for lucrative contracts to supply equipment and technology to Vietnamese government agencies, in violation of the Foreign Corrupt Practices Act (“**FCPA**”).

Nexus identified U.S. vendors for contracts opened for bid by the Vietnamese government and other companies operating in Vietnam. From 1999 to 2008, Nexus agreed to pay, and knowingly paid, bribes in excess of \$250,000 to Vietnamese government officials in exchange for contracts with the agencies and companies for which the bribe recipients worked.

The defendants admitted that the bribes were falsely described as “**commissions**” in the company’s records.

Nexus was ordered to turn over assets to court, cease all operations. The president cum owner of the company was sentenced to 16 months in prison and ordered to serve 2 years of supervised release following the prison term.

(Source: <http://www.justice.gov/opa/pr/2010/September/10-crm-1032.html> )

## 6. Prosecution Highlights

### Securrency Pty Ltd – Paying unreasonably huge commissions for translation work

- Melbourne-based Securrency Pty Ltd (“**Securrency**”), a subsidiary of the Reserve Bank of Australia, is reportedly under investigation by the Australian Federal Police over commissions paid to agents to help win contracts from foreign governments.
- Securrency won a major contract in 2002 to supply polymer banknotes to Vietnam after hiring a company, namely Company for Technology and Development (“**CFTD**”), that employed the son of the governor of the State Bank of Vietnam as its local agent. Securrency allegedly paid large commissions, including some to a Swiss bank account, to CFTD.
- The Vietnamese agent was reportedly paid at least US\$10 million in commissions primarily for translation work and agency work such as organizing meetings and picking up people from the airport.
- Securrency refused that they had dealings with the governor's son and was familiar with the CFTD subsidiary, Banktech, which the son directed. However, Banktech documents show Securrency as one of its "overseas partners" and indicate Banktech was the "exclusive supplier" for Vietnam's polymer banknote project.

*(Source: <http://www.theage.com.au/national/rba-offshoots-10m-for-translation-service-20090525-bkt7.html>)*

## Take away points

- Companies pay unreasonable amounts for agents' work are at higher risk of non-compliance.
- It should be cautious when engaging agents in Vietnam to deal with the State authorities and agencies.
- Prior to engaging an agent, a company should run a thorough FCPA and compliance due diligence to have a full profile of the agent, its employees and owners.

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**THANK YOU!**