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**Challenges and Best Practices to Improve the  
Effectiveness of Detecting, Investigating and  
Prosecuting Bribery in Viet Nam - Paper**

Submitted by: Viet Nam



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Effectively Using Corporate Compliance Programs  
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### **“Challenges and best practices to improve the effectiveness of detecting, investigating and prosecuting bribery in Vietnam”**

Since its foundation, the Government of Vietnam has always upheld, implemented and enforced consistently policies reducing bureaucratic corruption of government officials, particularly determining briberies (including giving, taking and brokering bribes) are behaviors that must be handled very strictly.

According to Vietnamese laws, crimes of bribery include three independent but intimately related offenses: the offense of taking bribes; the offense of giving bribes; and the offense of broking bribes. All of them belong to the group of position offenses that infringe on the correctness in the operation of agencies and organizations.

In these three offenses, the offense of taking bribes belongs to the group of corruption offenses in which the subject of crime (perpetrator) is people with positions of authority, the two remaining offenses belong to group of position offenses in which the subject is anyone with criminal responsibility.

#### **1. Challenges of bribery crimes**

Under the survey to identify the Provincial Competitiveness Index (PCI) implemented by Vietnam Chamber of Commerce and Industry in 2018, in spite of recognizing the positive feeling of the private business community on the anti-corruption efforts, unofficial cost reduction and the phenomenon of petty corruption which has decreased but there is still 60% of surveyed businesses said there was a phenomenon of harassment by local officials when solving procedures; 30% of them said that they had to pay unofficial expenses to speed up land procedures; 40% of them said that they paid unofficial expenses for inspectors; 50% of them agreed with the statement that "Payment of commissions is necessary to have a chance to win a bid".

Through cases of bribery crimes as well as the evaluation results of specialized agencies, it can be seen that the status of taking, giving, and brokering bribes has a very high concealment and arise in following main areas and stages:

- In the field of land management, there are phenomena in construction, investment when businesses using houses, land, money and assets to

"lubricate" some authorized officials to apply for a license or project land grant.

- In the field of construction management and investment: It is popular that the investors take bribes by contractors, then appoints contractors without complying with regulations, arranging in the bidding organization.

- In the field of state financial management: There are phenomena of "bribing" the authorized officials to be assigned with revenue estimate which is lower than the actual capacity.

- In the field of banking: taking advantage of positions and powers to cause difficulties, harassment, claiming bribes in the expenditure approval and funding.

- In the field of justice, inspection, examinations: intimidating, taking bribes to ignore violations, covering and deliberately making false conclusions, reducing the level of wrongdoing.

## **2. The results of fighting against bribery crimes**

With the leadership of the Government, the participation of all people, the efforts of law enforcement agencies, the anti-corruption work have obtained "initial positive results", many serious corruption cases, including bribery crimes have been detected, investigated and settled, showing the higher and higher levels of the determination.

According to statistics, in the period of 2016 to 2018, there were 63 cases of bribery crimes with 102 detected offenders. In particular, the crimes of taking bribes counted in 51 cases (accounting for 80.95%), 73 offenders (accounting for 71.57%). The total number of cases of giving bribes crimes was 11 (accounting for 17.46%) with 28 offenders (accounting for 27.45%). In this period, the statistics only recorded 01 case (accounting for 1.59%) and 01 offender (accounting for 0.01%) of brokering bribes crime.

In addition, in the first 6 months of 2019, 10 cases were detected with 9 offenders of bribery crimes, of which: 9 cases (accounting for 90.00%), 8 offenders (accounting for 88, 89%) on charges of taking bribes; 01 case, 01 offender of giving bribes.

The above statistics show that among three bribery offenses, taking bribes is the main offense.

### **3. Some practices in preventing bribery crimes of Vietnam in recent years**

**3.1.** Revising some law provisions in accordance with the practice of preventing bribery crimes as well as to ensure that it complies with the United Nations Convention on Anti-Corruption such as amending and supplementing some provisions on corruption crimes in the Penal Code 2015 (amended and supplemented in 2017), typically:

- Expanding the scope of the offender of corruption crimes to non-state sector, non-state enterprises and institutions .

- The profound meaning of the concept of "bribery" is extended, not only cover money, property, and other material benefits but also include non-material interests (such as: sex, position or job...)

- The scope of person and organizations enjoying illegitimate benefits from receiving and giving bribes is also defined more broadly, not only the person receiving the bribe himself but also other related people and organizations that gain indirect benefits from bribery.

- Implementing some new policies related to the handling of corruption crimes. Specifically, as stipulated in Article No. 40 of the 2015 Penal Code: "The person was sentenced to death for receiving bribes, but after being sentenced, he actively returns at least three-quarters of the embezzled property, received bribes and actively cooperate with the authorities in the process of investigation, detection and handling crimes or establishing great merits" will not be enforced with the death sentence and be transferred from the death penalty to life imprisonment.

Thus, considering the criminal law aspect, the regulations relating to bribery crimes have been constantly improved to meet the requirements of practice as well as compatible with international and special laws especially the UN Convention against Corruption which Vietnam has participated in.

**3.2.** Promoting administrative procedure reform, thoroughly eliminate the application-granting mechanism and thoroughly implement the hierarchy and decentralization in the administration; promoting socialization of public services to reduce the supply-demand gap that is main cause of taking and giving bribes.

**3.3.** Enhancing the awareness, promoting the role of society in criticizing and fight against bribery.

**3.4.** Innovating the activities of investigating agencies in investigating corruption cases, especially crimes of bribery. Investigators have a relatively independent right, can actively fight against crimes of corruption, to avoid intervention to prolong the amount of time to investigate or interfere with the investigation. Regularly guide and inspect to promptly remove difficulties and obstacles in detecting, investigating and handling cases and cases related to corruption in localities.

**3.5.** In the process of detecting, investigating and handling bribery . Detecting and arresting bribery trespassers is usually done in the following ways:

- Catching red-handed: Due to the collection of material evidence to prove the content of the agreement and the giving - receiving of bribes in cases of bribery crimes are very difficult. For sure evidence, most need the cooperation of one of the participants, on the basis that the Investigation Agency builds a plan and organises when a bribe is received or taken. Taking photos or recording the phone calls between the parties concerned. In fact, most of the bribery cases are resolved by catching red-handed.

- Though the process of investigation and taking testimony : Based on the collected documents, the Investigation Agency conducts an inquiry into bribery, but this effect is not high. Therefore, the process of detecting, investigating and prosecuting crimes of bribery needs to be carefully analyzed fully considered the evidence, facts and the relationship between them, thereby giving the accurate conclusion and true with nature of the case.

- Recovering bribery : The investigation and clarification of "bribery" are very important in the process of determining the nature of the case and serving as a basis for the application of remedies in accordance with the law, thus requiring the Investigation agencies must apply measures to improve the effectiveness of this activity.

**3.6.** International cooperation in fighting and handling corruption cases, especially foreign-related embezzlement and bribery:

- The process of investigating, prosecuting and adjudicating foreign-related bribery cases, Vietnamese legal authorities have based on the provisions of the law of each country, based on the provisions of the law on international relations in investigation and mutual legal assistance on criminal matters, on the basis of the principle of mutual assistance in

investigating cooperation to carry out investigation cooperation as well as performing support requirements in each country's criminal justice.

- Based on the cooperation and diplomatic relations between the two countries, the legal agencies of the two countries have cooperated and helped each other to resolve well problems related to jurisdiction and procedures in the proceedings that have arisen in the process of cooperation and investigation. On the basis of the results of cooperation investigation between countries, which performed prosecution and adjudication of cases according to the laws of each country, contributing to the effective fight against crimes in each country.