

**13th Annual Anti-Corruption Dialogue
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*Present by
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Your Excellency Deputy Prime Minister Nguyen Xuan Phuc, Ministers, Director General, Ambassador, ladies and gentlemen, the Vietnam Business Forum very much welcomes the opportunity to participate today at this important 13th Anti-Corruption Dialogue with donors and Government officials. You will recall that the business community first joined the Dialogue at the 12th Anti-Corruption meeting last year and pledged to work with Government to tackle the very difficult and growing issue of corruption. It was at that meeting that Dr. Loc from VCCI coined the term Project 12.

As the Anti-Corruption Dialogue moves to a new stage, the business community is increasingly concerned about the level and pervasiveness of corruption and the need for us all to face it head on. Since last year, under the banner of Project 12 and elsewhere, many new initiatives have been implemented. Corruption affects us all - foreign and domestic businesses alike - and working with the Government to find solutions is our joint effort. We are working to find methods of prevention as well as enforcement.

You will hear today from the Vietnam Integrity Alliance - an effort by foreign companies operating in Vietnam to unite around a common pledge for integrity.

You will hear from VCCI where a Project 12 initiative is designed and has received approval to work with the domestic business community and Government to established standards, better corporate governance criteria, and a business integrity pledge.

At VBF we established a Working Group on Transparency and Governance in particular but many of the sector Working Groups have also incorporated attention to where corruption affects doing business.

Many of our member Chambers have asked their membership for information on how and where they are confronted with corruption and for ideas learned from global best practises on how to tackle the problems. Corruption and administrative hurdles are often cited as their main barriers - they often are one and the same - "informal" payments being expected as solution to administrative road blocks.

As we all hope, Vietnam will soon be part of an even wider network of trade agreements such as TPP, the EU FTA, and full implementation of the ASEAN Community. This can lead to great benefits for Vietnam with greater integration into global supply chains, the growth of supporting industries and of the economy as a whole. Corruption is global, rarely is there anything unique, but corruption and administrative reform has become one of the biggest bottle neck for Vietnam being prepared to take advantage of these global opportunities. The trade agreements do not solve these problems.

On Transparency International's ranking Vietnam is 116 out of 175 on the level of corruption index. In the recent "Ease of Doing Business" report by the World Bank, Vietnam is ranked 78th out of 189 economies, by contrast Malaysia is 18, Thailand is 26. All TPP member countries, except Vietnam and Brunei, are in the report's top 40 performers, leaving a large gap and many countries performing better than Vietnam. Among important indicators, the index measures

ease of starting a business, getting construction permits and electricity, registering property, paying taxes, and cross border trading - all areas where Vietnam ranked very low and where the systems are susceptible to delay and corruption.

VBF has a lengthy report and specific recommendations, but I would like to outline some overall recommendations and goals here today. We would like to see business, Governments and donors work together to:

- Encourage global best practises on moving toward non-cash transactions systems to reduce corruption and encourage efficiencies,
- Encourage global best practises for fair assessment and collection system for taxes, fees and fines that reduce the face-to-face opportunity for informal/illegal fees while increasing collection of revenues owed,
- Encourage global best practises for procedures regarding watch-dog reporting and whistle-blowing protections,
- Encourage global best practises for the increased implementation of paper-free and cash free transactions among businesses and between business and Government.

1. TAX ASSESMENT AND COLLECTION SYSTEMS

One rather shocking statistic from the World Bank report's *Doing Business 2015* was on systems for paying taxes - Vietnam ranked 173 out of 189 - 16th from the bottom. But thanks to Government's tremendous efforts recently, the new regulations expect to significantly reduced the average of 873 hours needed to pay taxes here, to 247 hours per year from 2015. And when the new amended Law supplementing a number of articles to solve difficulties for production and business takes effect from January 1, 2015, the total amount of tax procedures is expected to be decreased to 171 hours, which is equal to the average of ASEAN-6 group countries. We appreciate Government tremendous efforts in this regard and we look forward to assessing the success of this new system with you.

As the World Bank report notes, establishing effective information, communication and payment technologies for filing and paying all taxes and then educating taxpayers and tax officials in their use are essential to limiting corruption and increasing efficiencies. Effective electronic tax systems greatly benefit both the tax authorities and tax payers. And very importantly, it reduces face-to-face interaction which globally has been seen to provide the opportunity for either side to cheat, bribe or distort returns.

Therefore, we are very grateful to see Government's actions in reducing tax payer time and implementing e-tax systems. The full implementation of these programs will be key to their success.

2. A SHIFT TOWARD CASHLESS ECONOMY

The overuse of cash is dangerous. Countries in the top 10 of non-cash consumption rates see over 80% of their transaction in non-cash forms. For Vietnam, the number is only 3%. Yet global research indicates that in cash-based economies, problems ranging from petty corruption to large scale money laundering are more prevalent and harder to tackle. Money laundering can flourish when large value transactions such as land, property, vehicles and other high value goods are paid in cash. We applaud recent efforts that have lead to Vietnam to no longer subject to Financial Action Task Force (FTAF) on-going global AML/CFT (Anti-Money Laundering/Combating the Financing of Terrorism) compliance process. We urge that Vietnam will work with APG as it continues to address the full range of AML/CFT issues identified in their report.

But in general, the use of cash between consumers, businesses and the Government can breed an environment for "informal fees", bribes, a lack of efficiency, and suspicious accounting and auditing trails that will not meet global standards. Alternatively, in jurisdictions where cash

transactions are limited, corruption and money laundering is easier to identify, to prosecute and to prevent. Corruption and money laundering are global, and work to limit it must be an ongoing.

Many developing countries like Vietnam are encouraging the move to non-cash financial arrangements to conduct business - including electronic methods such as e-payments, debit and credit cards, cash cards, checks, bank to bank transfers and the many other non-cash systems available today. Other major advantage to this is that tax authorities are more able to accurately assess tax obligations of businesses and businesses have better records for accounting and auditing purposes. It is often tax revenue and not money laundering that is behind a jurisdiction's drive to reduce their cash based systems - but the results are the same and both important goals achieved.

For example in the Philippines, they have recently implemented a Government financial transactions pilot program with the goal of Government agencies being 80 percent cashless before the end of this year. With the first phase of their Cashless Purchase Card, accounting for transactions is automatically done and suspicious use of the card can be tracked easily. This system is also designed to allow them to capture and collate the correct data which the Government can use in future decision making. It is one of many models to examine.

We would like to continue to work with the Government on implementing global best practises for moving forward towards reducing the use of cash in transactions in Vietnam. Vietnam ranks very high in the use of smart phones and internet connectivity, we need to see these as tools for efficient commerce as well. For domestic and foreign companies operating in Vietnam, to be ready to take advantage of the opportunities provided by the new trade agreement the use of non-cash payments for services, fees, taxes, utilities, major purchases and the like is essential to reduce the cost of doing business and the vulnerability we face for corruption.

3. A SYSTEM FOR FEES AND FINE COLLECTION TO REDUCE "INFORMAL FACILITATION FEES"

We note the Governments increased efforts and attention toward the elimination of bribes and corruption in particular areas such as customs clearance, permits and applications, and regulatory penalties. However, our members remain very concerned about either direct pressure or pressure for their intermediaries to pay systematic and sometimes "standard facilitation fees" to clear shipments, obtain documents, and register paperwork - all without transparent posting or receipts provided. Some offices appear dependent on pooled "informal" payments and a closed system of bribe collection and distribution. But if the fee is "informal" it is illegal, and both sides are performing a criminal act that can destroy future business opportunities.

Global best practises increasingly allow the charging of small fees - posted and payable on line - for providing documents or other services. Government offices can charge additional fees for expediting services incurring cost to the specific office. But they must be published, payable in non-cash formats, and come with a receipt. For fines due, such as a regulatory violation or a traffic ticket, payments again should be non-cash, and a receipt provided.

We look to work with the Government to establish an appropriate plan designed and implemented to ensure all fees and fines to the Government be clear and transparent, and receipts provided. And that the Government move towards a system where fees and fines are payable in non-cash formats.

4. IMPROVEMENTS SUGGESTED FOR REPORTING AND WHISTLE-BLOWING PROTECTION

Whistle-blowing and reporting are also essential aspect of encouraging transparency and combating corruption. Without protection from retaliation, complaints will not be forthcoming

nor can complaints be used to assist the Government in closing loopholes that make systems vulnerable to abuse and the individuals who allow it.

For example, in handling complaints with Customs, one mechanism used in other countries is to create an online capability on the Customs website to allow for both responsive communications about such matters with Customs authorities and to allow anonymous reports of illegal activity. Through such on-line mechanisms the reporting of loopholes can help systems to be improved and corruption decreased.

Also, the current legislation in Vietnam provides too little protection to whistle-blowers reporting corruption. Under corruption legislation and the Labor Code, employees have few means to address retaliation undertaken against them in response to their reports on corruption. Job protection is extremely limited, and only applies where an employee has made a general report about misconduct, rather than corruption, and even in this case, the authorities may only directly intervene in respect of a public sector employee.

VBF has put together an extensive analysis of the needs for improving the whistle blower legislation that we will include in the VBF report next week. (Below, Appendix 1)

In closing, may I emphasize that to benefit from the tremendous opportunities the upcoming trade agreements provide and to grow and strengthen the Vietnamese economy, building systems that close the doors of corruption are as important as building the systems that open the doors of global trade.

APPENDIX I: IMPROVEMENTS SUGGESTED FOR LEGISLATION REGARDING WHISTLE-BLOWING

Objective

This paper seeks to outline suggestions for improving corporate policy or procedures to protect whistle-blowers from employment termination and other forms of retaliation, and government policies to encourage whistle blowing within government agencies.

In doing so, we take into account the actual domestic situation as well as the international best practices with the aim of encouraging and protecting employees who report crimes of corruption and bribery.

1. Job protection to whistle-blowers

Issue: The law presently provides only limited job protection to whistle-blowers. An official complaint to the authorities is necessary to engage these provisions, and under the present wording of the law it is unclear whether such protection would apply to a report on corruption or only to a report about other forms of misconduct. This is because job protection for whistle-blowers is addressed in regulations implementing the Law on Denunciations,¹ and while the Anti-Corruption Law² specifies that the Law on Denunciations applies, it is unclear which provisions apply.

Decree No. 76³ implements the Law on Denunciations and provides some job protection to whistle-blowers. In the case of a public employee, the authority to whom the complaint is made may directly intervene to transfer the complainant to another agency, organization or unit in order to protect him or her from discrimination.⁴ The official may also implement measures to discipline the individual who retaliates against the whistle-blower, or request another authorized party to do so.⁵

Employees in the private sector, on the other hand, have far less sufficient protection. The authority handling the complaint cannot directly intervene in their case. Instead, private-sector employees must rely upon their corporate trade union, the labor management agency or "another competent agency" to take protective measures.⁶ There is no definition provided for "another competent agency", so the identity of this party is unclear. While the law provides that those who intervene on behalf of the employee may request the employer to cease retaliatory acts and request a competent person to handle those responsible for the retaliation,⁷ the union would have no authority to make decisions or orders, so the efficacy of this provision is questionable.

Proposal for Corporate Policies: The Labor Code⁸ does not provide any specific protection for whistle-blowers, but there are legally binding measures employers could take to provide protection to whistle-blowing employees. An employers' Internal Labor Regulations, the labor rules of an organization which are registered and approved by the labor authority (the "ILRs"), could include provisions stating that the employer will not undertake any disciplinary action in relation to a good faith report on suspected misconduct. The ILRs could also include provisions

¹Law No. 03/2011/QH13, dated 11 November 2011, of the National Assembly, on Denunciations ("Law on Denunciations").

²Law No. 55/2005/QH11 on Anti-corruption which is amended in the Law No. 01/2007/QH12 and the Law No. 27/2012/QH13 ("Anti-corruption Law").

³Decree No. 76/2012/ND-CP of October 3, 2012 of the Government, detailing the implementation of a number of articles on the Law on Denunciations ("Decree No. 76").

⁴*Ibid.*, at Article 17.

⁵*Ibid.*

⁶Decree No. 76, at Article 18.

⁷*Ibid.*

⁸Labor Code No. 10/2012/QH13 adopted by the National Assembly dated 18 June 2012 ("Labor Code").

specifically addressing disciplinary action to be taken where another employee has retaliated against a whistle-blower.

The employees' labor contracts could also provide them with legally binding protection. Contracts could include provisions stating that the employer is not entitled to take any disciplinary action against the employee for good faith reports, and is obligated to protect the employee from retaliation.

Proposal for Legislative Reform: In respect of legislative reform to provide better job protection, the Labor Code could be amended to extend protection from unilateral termination by the employer to whistle-blowers who make reports in good faith. Decree No. 76 could also be amended to grant the power to authorities receiving complaints to directly intervene in employment in the private sector, similar to their rights in respect of public sector employees.

2. Specific defects in government policies to encourage whistle-blowing within government agencies

Under the current legislation, the following issues discourage whistle-blowing within government agencies: the lack of anonymity provided to whistle-blowers, the potential conflict of interest of those to whom reports are made, the assumption that incorrect accusations are deliberately untruthful and the minimal monetary rewards. The means by which defamation is addressed under the law provides additional disincentive to report, as defamation is a criminal offence and there are no categorical defences to a civil claim for defamation.

A. Lack of Anonymity

Issue: The Law on Anti-Corruption provides that citizens must provide their full names and addresses when reporting.⁹ In respect of anonymous reports, the law provides that they shall only be investigated if there is clear evidence.¹⁰ In contrast, denunciations in respect of misconduct which does not involve corruption may be made anonymously. Decree No. 76 provides that if necessary, the full names and identifying information of reporters may be omitted from evidence in order to keep their identities confidential.¹¹

Proposal for Legislative Reform: Reporting on corruption would clearly be encouraged by extending the application of the confidentiality provisions as stated in Decree No. 76 to reports on corruption. The rationale behind disallowing anonymity for reports on corruption while permitting it for reports on general misconduct is presently unclear. Thus, we recommend amending the Law on Anti-Corruption to provide that the full names and identities of whistle-blowers may be omitted from reports if confidentiality is deemed necessary.

B. Potential Conflict of Interest of Those Receiving Reports

Issue: The current wording of the law creates a potential conflict of interest, as it requires civil servants to report acts of corruption to the heads of their agencies,¹² while heads of agencies themselves face liability for any corrupt act occurring within the agency under their authority.¹³ Heads of agencies are prima facie liable for the corruption, but may disprove their culpability by demonstrating that they took necessary measures to prevent or remedy the consequence of a corrupt act or that they dealt with it strictly and reported it in a timely manner.¹⁴ The degree of the head of the agency's liability depends upon his or her management capability, exercise of responsibility in carrying out his or her management duties and whether

⁹Anti-Corruption Law, at Article 54.

¹⁰*Ibid.*, at Article 55(4).

¹¹Decree No. 76, at Article 12.

¹²Anti-Corruption Law, at Article 38.

¹³*Ibid.*, at Article 5(2).

¹⁴*Ibid.*, at Article 55(3).

or not he or she has attempted to conceal the corrupt act.¹⁵ Thus, civil servants are required to report corruption to the very individuals who may face criminal and disciplinary action due to the occurrence of the act within itself.

Heads of agencies are also in charge of investigations. The law provides that upon receipt of an accusation, the head of an agency must consider and deal with the complaint as well as protect the safety and confidentiality of the whistle-blower.¹⁶ It appears that this provision would apply to reports of corruption from the general public, as well as to those from civil servants. Where the reported act of corruption has met the threshold for criminal liability (for example, a bribe of over VND2,000,000), it would be transferred to the police, however, it appears that investigations in respect of those below this threshold would remain in the hands of the head of the implicated agency.¹⁷

This approach of placing the safety and confidentiality of the whistle-blower under the responsibility of the head of the agency while he or she conversely faces criminal liability or disciplinary action upon the occurrence of a corrupt act, clearly creates a strong conflict of interest. Because the head of the agency would have a great deal to lose if the accusation were true, he or she would have a strong incentive to find the accusation groundless or hamper the investigation.

Proposal: We recommend revising the legislation so that an independent body deals with investigations into corruption. It would be ideal if an independent branch of government received and investigated corruption complaints rather than the agencies in which they occur.

C. The Assumption that Incorrect Accusations are Deliberately Untruthful

Issue: The current wording of both the Anti-Corruption Law and the Law on Denunciations fail to contemplate the situation where an individual has reported an instance of corruption in good faith, which turns out to be incorrect. Both acts provide that upon concluding that the report of corruption is incorrect, those who make "false denunciations" or "who deliberately make untruthful accusations" will be dealt with immediately.¹⁸ The legislation does not make any mention of a good faith, but incorrect report.

Proposal:

We recommend amending the law so that provisions are included to address this situation, and to ensure that those who made a bona fide report are offered protection even if the report cannot be proven.

D. Minimal Monetary Rewards

Issue: The Law on Anti-Corruption provides that whistle-blowers can receive cash rewards for putting forward their reports.¹⁹ However, these rewards are very low and are only around VND300,000.

Proposal: Considering the high risk nature of reporting corruption, and the extreme stress whistle-blowers experience, we recommend raising the amount of the award so that it is equivalent to at least one month's salary under the regional minimum wage.

¹⁵ *ibid.*, at Article 55(4).

¹⁶ *ibid.*, at Article 65(2).

¹⁷ Decree No. 59/2013/ND-CP of 17 June 2013 of the Government detailing some articles of the Anti-Corruption Law ("Decree No. 59") at Article 53 states that the provisions of the Law on Denunciation apply, so it appears that Article 12 of the Law on Denunciation would direct the complaint to be dealt with by the head of the agency unless it were criminal.

¹⁸ Decree No. 59, at Article 56; Law on Denunciation, at Article 25(1).

¹⁹ Anti-Corruption Law, at Article 67; Decree No. 59, at Article 59.

E. Defamation

Issue: Defamation is criminalized under the Penal Code, and those who are convicted may face sentences ranging from a warning to two years in prison under normal circumstances, or between one and seven years where they have defamed an individual in the course of performing official duties.²⁰ The Penal Code provides that the statement must be fabricated or deliberately untruthful to attract criminal liability, suggesting that a good faith but incorrect report of corruption would not be subject to criminal sanctions. Nonetheless, because defamation is a criminal offence, whistle-blowers face considerable risk in coming forward.

In addition to the risk of facing criminal liability, whistle-blowers also face the risk of facing a civil suit for defamation. The Civil Code provides that an individual who causes spiritual damage to another by damaging his or her reputation must make restitution.²¹ While defamation is a basis for civil liability in many common law jurisdictions, these legal systems also have categorical defences to defamation, such as qualified privilege. The defence of qualified privilege provides that if a statement is made in the course of one's duty, and is received by another individual also in the course of his or her duty, the individual making the statement would not face liability. Thus, an individual reporting corruption to the authorities or to his or her manager would have a clear defence to defamation. In Vietnam, on the other hand, there are no categorical defences to defamation but instead each defence is subject to the judge's discretion. This introduces far more uncertainty and risk into reporting on corruption.

Proposal: We recommend to decriminalize defamation, as the extreme sanctions a whistle-blower may face has a chilling effect on reporting. We also recommend to amend the Civil Code to recognize a defence similar to qualified privilege in order to protect those making good faith reports.

²⁰The Penal Code No. 15/1999/QH10 adopted by the National Assembly dated 21 December 1999, and amended in 2009 ("Penal Code"), at Article 122.

²¹Civil Code No. 33/2005/QH11 of the National Assembly dated 14 June 2005 ("Civil Code"), at Article 307 (3).