



Law on Anti-corruption 2018 and Decree No. 59/2019/ND-CP

Highlights on new regulations applicable to private sector

The National Assembly of Vietnam has promulgated Law No. 36/2018/QH14 dated 20 November 2018, effecting from 01 July 2019 on Anti-corruption (the **AC Law 2018**) to supersede Law No. 55/2005/QH11 dated 29 November 2005 (which was then amended by Law No. 01/2007/QH11 dated 04 August 2007 and Law No. 27/2012/QH13 dated 23 November 2012) (the **AC Law 2005**). Following the AC Law 2018, the Government has recently issued the guiding Decree No. 59/2019/ND-CP dated 01 July 2019, effecting from 15 August 2019, with guideline for the implementation of the AC Law 2018 (**Decree 59**).

With these new regulations, the new law on anti-corruption has now been widened its scope of application – it no longer only applies to govern behaviours of the public sector – but will also apply its supervisory upon behaviours of private entities. In this update, we note a number of remarkable changes required by the new regulations for private sector’s attention.

1. New definition of “corruption” and “person with title/power”

Under the AC Law 2018, the definition of “*corruption*” and “*person with title/power*” have been substantially amended to widen the scope of application of this law covering the private sector.

In particular, the AC Law 2018 now clearly separates the actions to be considered as “*corruption*” in public and private sectors. While the ambit of “*corruption*” remains as same for state entities as those under the AC Law 2005, the definition of “*corruption*” applicable to private sector is limited in three actions, as below:

To be considered as *corruption* conducted by the public sector

1. **embezzling property;**
2. **taking a bribe;**
3. **offering or brokering bribe for the entities or local business for personal interest;**
4. abusing power to misappropriate the property;
5. taking advantage of power while performing tasks or official duties for personal interest;
6. abusing power while performing tasks or official duties for personal interest;
7. taking advantage of power or position to affect other persons for personal interest;
8. committing forgeries in work for personal interest;
9. taking advantage of power to illegally use the state properties for personal interest;
- 10 harassment for personal interest;
- 11 not performing, performing inappropriately or inadequately the official duties for personal interest; and
- 12 taking advantage of power to cover up law violators for self-interest; illegally hindering, intervening in the examinations, inspections, auditing, investigation, prosecution, adjudication or judgment execution for personal interest.

To be considered as *corruption* conducted by the private sector

1. **embezzling property;**
2. **taking a bribe;**
3. **offering or brokering bribe for the entities or local business for personal interest;**

Regarding the term “*person with title/power*,” the AC Law 2018 now provides a broader description – *i.e.* it refers to person who is appointed, elected, hired, either on contractual or other bases, either with or without salary, to perform specific tasks and duties and has specific powers in performing such tasks and duties. Under this broader definition, the term “*person with title/power*” now covers a person who holds a management position in private enterprises or organizations.

2. New responsibilities and obligations applicable to private sector

2.1. General responsibilities

The AC Law 2018 and Decree 59 sets out new general obligations and requirements for private sector in preventing and fighting against corruption. In particular, entities in private sector are now required to:

- (1) issue and implement anti-corruption measures/policies, such as the ethics code, code of conduct and internal control mechanism;
- (2) report to and cooperate with competent authorities in handling corrupt acts in the company/organization; and

- (3) promptly notify to and provide information on the corrupt acts of the management positions in the enterprises/organizations with the competent authorities.

In addition, private enterprises being public companies or credit institutions are also required to establish policies on transparency and conflict of interest for enforcement throughout the operation of such enterprises.

2.2. Ethics code, code of conduct and internal control mechanism

One of the remarkable regulations is that the AC Law 2018 urges entities in private sector to establish business ethics code for their employees and/or members in order to create a non-corrupt working environment.

In addition to the ethics code, enterprises in private sector have to formulate a code of conduct and internal control mechanism (collectively, the **Internal Code**) to prevent and fight corruption as well as the conflict of interests. It is advisable for enterprises in private sector to prepare the Internal Code with the following specifications on:

- (1) clear definition of “*corrupt acts*,” “*persons with title/value*,” “*gift/valuable*” or equivalent terms;
- (2) the prohibited actions (*i.e.*, actions which would constitute the “*corrupt acts*”);
- (3) suspected violations reporting mechanism;
- (4) relevant disciplinary measures etc., (NB: such disciplinary measures must also be clearly specified in the internal labour rule of such enterprises for registration with labour authorities).

2.3. Specific regulations applied to public companies and credit institutions

Along with the above regulations, private entities being public companies and credit institutions¹ must also comply with the following obligations:

- (1) To publicly disclose information of public companies/credit institutions relating to the employees’ benefits policies, companies’ or institutions’ asset usage, or the organizational structure; and
- (2) To take measures to strengthen the control of conflict of interests within its organization (*i.e.*, imposing a reporting or control mechanism of transaction with related party of person holding a management position, etc.)

In addition, if there is any corrupt act occurring within the business, managers of the company (such as the General Director, CEO, CFO etc.,) may also be held responsible.

Furthermore, the AC Law 2018 and Decree 59 now provide specific the measures to handle the violations in these entities. If any corrupt act occurs within the business:

- (1) the public company/credit institution shall be imposed an administrative fine (by competent authorities); and
- (2) the managers of such company/institution need to be disciplined or imposed penalties by the company/institution in accordance with the charter of such company/institution (NB: there must be clear regulation to discipline or penalize the company/institution’s manager in this regards for strict compliance with this requirement under AC Law 2018 and Decree 59).

¹ Under the AC Law 2018, along with the public companies and credit institutions, social organizations whose operation requires approval of the Prime Minister, Minister of Home Affairs or Chairperson of the provincial People’s Committee are also subject to these obligations.

In case such public company/credit institution does not impose any measure to handle the violation of its managers, competent authorities have discretionary power to publicly disclose the name, address and (description of) the violation of such person.

Decree 59 also sets out inspection mechanism for competent authorities to conduct inspection on the implementation of AC Law's requirements applicable to private enterprises. Specially, public companies and credit institutions shall be inspected on the compliance with transparency and conflict of interest regulations under the AC Law 2018. However, the inspection shall not be conducted on regular basis, as competent authorities must rely on clear basis to support an inspection decision:

- (1) if there is clear sign of failure to comply with regulations and law on corruption precautions;
- (2) if there is report or claim on violations of the enterprises.

3. Remarks

With the adoption of the AC Law 2018 and the Decree No. 59/2019/ND-CP, this is the first time that private sector has become the subject to be governed by Vietnam's anti-corruption legislations. A number of specified regulations on the implementation of preventing and fighting against corruption in the private sector have been promulgated. While waiting for further guiding documents (Circulars) to be implemented, it is advisable for private enterprises to take a careful review of their internal policies on anti-corruption and bribery to make sure that such policies well comply with the new regulations of the AC Law 2018 (of if such policies are no available yet, private enterprises must prepare and issue such policies for strict compliance with the new laws).

Key contacts

If you have any questions or would like to know how this might affect your business, please contact these key contacts.



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