

CORRUPTION IN THE BANKING SECTOR: EXPERIENCES, CHALLENGES, TRENDS, SOLUTIONS AND RECOMMENDATIONS

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I. DEFINITION OF CORRUPTION AND CORRUPTION CRIMINALS ACCORDING TO THE CRIMINAL PROCEDURE CODE

Corruption is a behaviour harmful to society, taking place not only within the territory of a single country but also around the globe. The concept of “corruption” has been fundamentally agreed upon between Viet Nam and the international community. Black’s Law Dictionary defines corruption as “*Illegality; a vicious and fraudulent intention to evade the prohibitions of the law. The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others*”.

According to the international concept, the term "*corruption*" introduced by the World Bank in 1997 is understood as: “*the abuse of public office for private gain*”. According to the Vietnamese Encyclopedia, corruption is defined as: "*the act of an office-holder who abuses his/her position or power to harass, embezzle, take bribes or intentionally violate the policy for private gain, which causes damage to property of the State, community and individuals*”.

According to Article 1, Clause 1 of the Anti-Corruption Law 2005, corruption means “*acts committed by persons with positions and/or powers of abusing such positions and/or powers for private gain*”.

There is no definition of “corruption criminal” in the Penal Code 2015, amended in 2017. However, there are 7 articles about corruption criminals in Section 1, Chapter XXIII of this law (the names of these 7 articles are still the same as in Section A, Chapter XXI of the Penal Code 1999). They are: Article 353 (Embezzlement), Article 354 (Taking bribes), Article 355 (Abuse of power or position for appropriation of property), Article 356 (Abuse of power or position in performance of official duties), Article 357 (Acting beyond authority in performance of official duties), Article 358 (Abuse of power or position to influence another person for personal gain) and Article 359 (Commission of fraud in performance of duties). The Penal Code also defines “*abuse of power*” as “*acts of infringement upon rightful activities of an agency or organization committed by an office-holder in performance of his/her official duties*” and “*office-holder*” as “*person who is given certain duties and power through appointment, election, contract conclusion, or another method. An office-holder might or might not receive salaries.*”

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Some crimes regulated in the Penal Code are corruption crimes by nature because they contain two factors:

- Firstly, the crime is committed by an office-holder by abusing his/her position or power. (If the person taking action is not an office-holder, he/she cannot commit this type of crime).
- Secondly, the crime is committed for private gain.

Therefore, the acts which contain these two factors, such as: abusing power or position to illegally use property for private gain, failure to perform their duties for private gain..., meet the requirement for corruption according to the international concept and under the Anti-Corruption Law 2005. However, they are not included in Section A, Chapter XXI of the Penal Code 1999 or Section 1, Chapter XXIII of the Penal Code 2015, which results in an inconsistency between the Penal Code, the Anti-Corruption Law 2005 and the international concept. This is a shortcoming that needs to be addressed soon.

II. METHODS FOR COMMITTING CORRUPTION IN THE BANKING FIELD IN RECENT YEARS

In recent years, with an enormous effort in fighting corruption, Vietnamese law enforcement agencies have detected, instituted, investigated, prosecuted and adjudicated many large-scale and exceptionally serious corruption and economic cases. Methods of criminals are getting more and more sophisticated. The offenders are sometimes working in the banking sector. Some cases are transnational and use advanced technologies in committing offences.

A. Common Methods in Corruption Cases Committed in the Banking Sector

The offenders who are working in the banking sector might abuse their positions and powers to create false dossiers, papers, savings books and/or fake gold for mortgages and then appropriate assets. They also might forge signatures of customers for embezzlement or deposit the money into their personal accounts instead of customers' accounts and then transfer to another bank to withdraw. Other methods are: using false accounting entries, not depositing loans collected, making fake loans or increasing the amount of money in contracts to withdraw later; not assessing or intentionally assessing mortgaged property inaccurately to gain a part of the total loan amount; using people who are not working in the banking sector ("backyard") to carry out acts of corruption, declaring on the money deposited paper and depositing in savings books an amount of money different from the amount declared by the customer, and so on.

The offenders might abuse their bank's reputation to commit fraud through professional methods, such as: raising capital, changing, erasing and raising the value of money several times in the certificates of deposit of issuing banks, then mortgage them in the bank they are working; making payment vouchers, payment receipts, receipts, and then forging the signature of the account holder on checks and payment receipts to transfer through the deposit and loan accounts of customers to withdraw money.

The offenders might lack responsibility, appear credulous, bureaucratic or have weak capacity, which causes serious consequences. They might appropriate assets through the implementation of policies, financial and monetary regimes, and packages for stimulation, support and rescue of enterprises. Other methods are: abusing positions or powers to directly or through intermediaries influence others for personal gain; abusing position or power or acting beyond authority in performance of official duties to claim bribes; using the professional knowledge and skills for appropriation of assets; cooperating with customers to appropriate bank assets. These types of acts are sophisticated and difficult to detect.

Some remarkable corruption cases carried out by those working in the banking sector which have been investigated, prosecuted and adjudicated are:

1. Case 1

Pham Cong Danh together with 45 accomplices "intentionally violate[d] the State's regulations on economic management and cause[d] serious consequences" and "violat[ed] regulations on lending in operation of credit institutions", which occurred at Viet Nam Construction Joint Stock Bank (VNCB). In this case, Pham Cong Danh, who abused his position as chairman of the Board of Directors of Viet Nam Construction Joint Stock Bank (VNCB), and his accomplices lost more than 9,000 billion VND (409.000.000 USD) through the following acts:

- Danh instructed his subordinates to sign sham contracts with two companies to transfer more than 644 billion (equivalent to \$29,272,000) to individual accounts and then withdraw the money to pay off loans for 6 companies under Thien Thanh Group where Thanh served as the Chairman of the Board of Directors. The money claimed as a customer service fund was, in fact, transferred to Thanh.
- Danh instructed his subordinates to draw up false documents for the purchase of construction material and repayment plans for 12 corporate legal entities under Thien Thanh Group to take out loans from VNCB. Using a number of real estate properties in Ho Chi Minh City and Danang as collateral, raising their values to make loans worth 5 trillion VND (US \$227,000,000) from VNCB. These assets were also used to borrow money from BIDV, Sacombank and TPBank with the total amount of 2,095 billion VND (US \$95,227,000).
- Danh authorized three companies to purchase bonds worth of 903 billion VND (US \$41 million) from Thien Thanh Company headed by Danh himself through false documents of personal consumption, debt repayment and customer care. The fund was then transferred to Danh and now unrecoverable.
- Through loan contracts between Tran Ngoc Bich and VNCB, Danh withdrew 5.19 trillion VND (US\$235.9 million) from the bank without any document or signature of the account holder. This money was transferred to Danh's account, and then withdrawn by Danh to repay the debt to Bich's father.

- After misappropriating the money, Danh gave the money, about US\$948 billion (\$44,272,000), to Hua Thi Phan to buy back the shares of the Trustbank.
- Danh instructed the Board of Directors, the Board of Management of VNCB and his subordinates in Thien Thanh Group and VNCB to prepare the fraudulent loan applications and withdraw a large amount of money which then was deposited into 3 banks including Sacombank, TPBank, BIDV to pledge, guarantee and pay off loans made by Danh's companies.

2. Case 2

The second case involved Hua Thi Phan, the founder of TrustBank, and 27 other accomplices who were accused of "breaching regulations on loan provision in the operations of credit institutions", "abusing trust to appropriate property" and "deliberately acting against the State's regulations on economic management, causing serious consequences". They caused damages of more than 6,300 billion VND (US\$286,363,000) to TrustBank through various fraudulent schemes. For example, after buying a house at No. 5 Pham Ngoc Thach in Ho Chi Minh City, Phan instructed his subordinates to continue to resell and rebuy it (4 times) to raise its value eightfold, then demanded the Board of Directors of Trustbank to purchase the house at the price of 1.256 billion VND (US\$57 million) and forged documents to appropriate 1,105 billion VND (US\$50,200,000).

3. Case 3

Ha Van Tham, the former chairman of OceanBank, along with 46 associates, has been prosecuted for various crimes such as "embezzlement of property", "deliberately acting against the State's regulations on economic management, causing serious consequences". In particular, Ha Van Tham abused his position as Chairman of OceanBank Commercial Joint Stock Bank to commit the following acts. He falsified 45 contracts with 20 partners to appropriate money for personal use and caused a loss of 118 billion VND to OceanBank (US \$3.36 million). He also established BSC without any business activity to serve as a legal entity to sign service contracts with OceanBank customers and collect fees. Moreover, he signed a loan contract of 500 billion VND (US \$227 million) despite knowing the profiles of the customers are ineligible, resulting in a huge loss of capital and serious damage to OceanBank and its shareholders.

B. Corruption Offences Committed by Persons Outside the Banking Sector

- Performing fraudulent acts such as falsifying project dossiers, forging contracts, faking mortgage, shares, bonds, business plans or loan schemes.
- Inflating the value of the collateral or using properties without legal papers or under dispute as collateral; making bogus projects, forging certificates of land use rights or using certificates of land use rights, houses and valuable papers of other people as collateral to obtain loans and then appropriating the money; performing deceptive acts such as financial investments through the network, capital mobilization in the disguise of multi-level business or global financial investment groups. For example, a criminal disguised himself as a representative of an international financial institution, having large credit overseas looking for a partner with a low interest rate and long loan tenor, should

the victim go along with the plan, they would be required to sign a deposit of between 5% and 10% of the reciprocal capital, then use the fake signature of the escrow to withdraw the appropriated money.

- Forging documents and papers to appropriate the bank's assets; for instance, the offender signs forged contracts, legitimizes the financial investment for his organization by transferring money to an intermediary account under his name; Forging project documentation, contracts, certificates of land use rights or house ownership to use as collateral and appropriate money.
- Breaking into the banking network, stealing passwords, creating fake money transfer orders in order to appropriate assets; Offering bribes to persons holding high positions and great powers who facilitate the appropriation of property. Since the operation of the banking system is strictly regulated, especially when it comes to loans, it is difficult to misappropriate assets without the assistance of an accomplice working in the banking system.
- Laundering money via the banking system using money and property acquired through crime to purchase real estate properties or stocks; transforming "dirty money" into "clean money" by moving money to their accounts to participate in public transactions.
- Taking advantage of loopholes in managing foreign exchange business; Production, stockpiling, transportation and circulating counterfeit money, cheques and bonds; swindling through payment or exchange of travelers' cheques.¹⁰
- Among corruption cases committed by persons outside the banking sector but assisted by a bank employee which have been investigated, prosecuted and tried in the past years, the most prominent one is the case against Ninh Van Quynh (in the case of Ha Van Tham) who abused his position as a deposit agent of Petrovietnam (PVN) at the bank to receive 20 billion VND (US \$900,000 USD) as "customer care funds" from Oceanbank through Nguyen Xuan Son, former deputy director general of PVN.

C. Some Tricks Used by Corruption Offenders in the Field of Banking with High Tech Systems

- Robbery of ATM cards (card number), PIN numbers, personal profiles (full name, address, phone number, email) in order to withdraw cash without using the card.
- Establishment of ghost a company to rob a database; money will be transferred to another account instead of the company's account.

¹⁰ Nguyen Quang Hien, *Identification of crimes in the banking sector and recommendations for prevention*, Journal of Legislative Studies, 15/6/2015.

- Production and usage of fake AMT cards to withdraw cash; to buy goods, hotels and services. Using theft card to buy online products.
- To steal data of cardholders, correct information, falsify signatures to transfer money into virtual accounts (which are opened under counterfeit documents). After being transferred to such accounts, money will be withdrawn promptly, and those accounts will never be used again.
- To use the bank's Swift network to perform false transaction.
- Illegally access websites, using fake e-mail to obtain personal information, distribute spam, and create counterfeit websites.

III. SOME EXPERIENCES WHILE DEALING WITH CORRUPTION CASES IN THE FIELD OF BANKING

- Investigating agencies always emphasize the responsibility of individuals and groups being in charge of resolving cases; clearly assign tasks to right, capable and enthusiastic officials; intensify cooperation between the investigation agency and the People's procuracy and related judicial assistance agencies.
- Investigators, prosecutors, and judges in charge of corruption cases always take the initiative in grasping the nature of cases, the process of settlement in order to have hypotheses, orientations and to request scientific investigation, search breakthrough point.
- In the prosecution stage, besides detection of crimes, we should pay attention to list property and freeze accounts in order to recover assets. For example, in the case of Hua Thi Phan, 158 properties of the accused Phan and her accessories and 27 properties of related individuals are listed and 26 accounts and securities are blocked. The total value reaches over VND 10,000 billion, and VND 15,000 billion must be recovered.
- Regardless of the corruption case, criminals are high-positioned, powerful, knowledgeable persons with complex relations and they always hide their illegal activities. Investigating agencies and officers should handle such cases carefully and resolutely fight against such criminals and constantly pay attention to expand the case.

IV. SOME CHALLENGES FACED BY VIET NAM IN DEALING WITH CORRUPTION CASES IN THE BANKING SECTOR

- Corruption can occur in any sector, so this type of crime involves a variety of legal documents, such as documents on finance, banking, land, capital construction, budget, etc. Due to the insufficiency of intensive skill training for officials of investigating agencies, the collection, strengthening, preservation, evaluation and use of evidence encountered many difficulties. Sometimes there are contract opinions and views when taking these actions.

- Corruption cases often involve the assessment and valuation of assets and need support of competent state management agencies and specialized agencies. However, these activities have not yet been paid much attention by government agencies. This fact leads to the lack of a sufficient number of assessors with legal functions and a lack of qualifications of assessors, specialists and assessment facilities.

Legal documents such as the Law on Judicial Expertise, the Decree on Valuation of Assets in Criminal Procedure are still incomplete and inadequate. The cost of expertise is often high. The remuneration system for the assessors is not appropriate for the effort they spend to perform their duties.

-Corruption is often associated with money laundering and other transnational crimes, which requires mutual legal assistance and international cooperation in investigation. However, Viet Nam has only signed a limited number of bilateral agreements on mutual legal assistance with other countries. The process of getting results of mutual legal assistance is extended depending on the requested countries. Moreover, the Vietnamese and foreign investigation task forces have not coordinated closely and widely.

- The fact that proceeds of crime are often moved abroad or dispersed and hidden by corruption offenders causes difficulties in detection, seizing, freezing and recovering them.

V. NEW CORRUPTION TRENDS IN VIET NAM, RECOMMENDATIONS AND SOLUTIONS

A. Evaluation of the Trends of Corruption Crime in Viet Nam

- The concept and regulation of corruption acts in Viet Nam are not only focused on the public sector but also more broadly on the private sector in accordance with UNCAC. Reviewing the big corruption cases, we find that there has been the connection between the corruption in public sector and the corruption in private sector; therefore, it is predicted that in the coming time in the context of the development of a market economy and the attraction of foreign investment in Viet Nam, especially the policy of ensuring fairness between businesses run by different kinds of economic elements or different kinds of entrepreneurs, there will be a drastic increase in the number of corruption cases of a more serious degree and on a larger scale.

- Corruption in the fields of banking, land, construction projects, and economic development investment projects will arise from the development and improvement of infrastructure and expansion of cities.

- In the era of 4.0 technology revolutions, corruption offenders make full use of the accomplishments of modern science and technology to commit fraud, hiding criminal acts, dispersing proceeds of crime, colluding with foreign accomplices or going abroad to commit crime against domestic organizations and persons in order to avoid detection and arrest by functional agencies, to easily move proceeds of crime to foreign countries to hide their crimes and prevent the recovery of proceeds of crime.

B. Recommendations and Solutions

- Improving the effectiveness of operations to prevention and fight against corruption performed by the Central Steering Committee for Prevention and Fight against Corruption, Central Commission of Internal Affairs, Examination Committee at all levels, political institutions, the Viet Nam Fatherland Front and its member organizations. The prevention of, and fight against, corruption should be viewed as the task of the whole political system and the people.
- The Criminal Procedure Code 2015 of Viet Nam defines electronic data as a source of evidence; hence banks and criminal investigation agencies should make use of information technology and audio-video recording means to prove crimes.
- Continue improving legal regulations on the prevention of, and fight against, money laundering and regulations on credit organizations to hinder offenders' circumvention of the law by the exploitation of loopholes.
- In the coming time, judicial agencies should take tougher measures to fight against corruption both in the public sector and in the private sector. It should be noted that private sector may be either the offenders or both the victims and offenders at the same time.
- Perfecting the legal framework on the prevention of, and fight against, corruption including the regulations of the Law on Prevention and Fight against Corruption to make them suitable with regulations of Penal Code and other relevant international laws.
- Improving business environment to make it transparent and fair between different types of economic elements or different types of entrepreneurs within one economic element in order to prevent collusion, group benefit, and protectionism between management agencies and entrepreneurs.
- Promoting administrative reform, improving the effect of official missions to prevent and combat corruption. Gradually stopping the mechanism of "beg and give" in State management and administration implemented by state agencies, with the starting point as personnel.
- Bringing into play the roles of the private sector in the prevention and fight against corruption, strengthening the combination between prevention of, and fight against, corruption in public and private sectors. It is necessary to require that the declaration of assets be implemented by managers and officers in the public sector as well as those in the private sector.
- Building up cooperation among criminal investigation agencies and other relevant agencies, institutions managing information data relating to citizens aiming at promptly providing criminal investigation agencies with necessary information to investigate corruption cases.