

PREVENTING AND COUNTERING CORRUPTION IN VIET NAM BY ANTI-MONEY-LAUNDERING MEASURES

*Ms. HOANG Hai Yen**
Ms. LE Hong Phuong†

In recent years, the international economy has provided great opportunities for development in all aspects of Vietnamese society, but it has also raised the gravity of international money-laundering crimes. Money-laundering activities have only become clearly visible recently through the opening of bank accounts, securities trading, gambling, illegal transfer of foreign currencies out of the country, use of credit cards etc. According to reports of the State Bank of Viet Nam, the number of suspicious transactions has been increasing annually, which shows an alarming situation of money-laundering.

Currently, combating corruption and money-laundering has become one of the top concerns not only for the government but also the citizens in Viet Nam. The Vietnamese government has been expressing a strong determination to prevent and eliminate corruption and money-laundering through guidelines, policies and legislation. The Law on Anti-money Laundering took effect on 1 January 2013 and the New Anti-Corruption Law took effect on 1 July 2019. However, the situation of preventing corruption and money-laundering in Viet Nam has faced numerous difficulties, for instance, the insufficient legal framework of anti-money-laundering efforts; debatable guidelines for implementation of the law; limited capacity of authorities in detecting and dealing with the offence, as well as finite scientific and technological capacity. This means that the Vietnamese government must constantly make efforts to combat this type of crime.

I. VIET NAM'S LEGAL FRAMEWORK ON ANTI-CORRUPTION AND MONEY-LAUNDERING

The amended 2015 Penal Code has some major policies for corruption crimes, as follows: i) Expanding the concept of corruption crime in the private sector, like property embezzlement, taking bribes etc.; (ii) Expanding the content of “bribery” to include “non-material benefits”; (iii) Modifying and supplementing some criminal elements; (iv) Specifying details of offences and determining penalty frameworks. The Anti-Corruption Law in 2018 mainly focuses on the public sector and partly extends to non-State enterprises. Such entities are now required to establish and implement specific anti-corruption policies and are subject to investigation by government inspectorates to ensure compliance. In addition, the law provides details on the circumstances in which former public officials can join non-State enterprises following their resignation or retirement from public office. Every year, Vietnamese officials have to declare assets and income truthfully and take responsibility for such declaration.

* Head of Criminal Law Division of the Criminal Law and Criminal Supervision Faculty of Hanoi Procuratorate University, SPP.

† Legal Officer of the Department of International Cooperation and Mutual Legal Assistance in Criminal Matters, SPP.

In addition, the Anti-money-laundering Law of 2012 stipulates the measures to prevent, detect, stop and handle the organizations and individuals who commit acts of money-laundering, the responsibilities of agencies, organizations and individuals in the prevention of money-laundering and international cooperation against money-laundering.

According to article 324 of the Penal Code 2015 (amended 2017), the following acts will be punished as money-laundering crimes:

- a) Directly or indirectly participating in financial transactions, banking transactions, or other transactions to conceal the illegal origin of the money or property obtained through [the offender's] commission of a crime, or obtained through another person's commission of a crime with [the offender's] knowledge;
- b) Using money or property obtained through [the offender's] commission of a crime or obtained through another person's commission of a crime with [the offender's] knowledge of doing business or other activities;
- c) Concealing information about the true origin, nature, location, movement, or ownership of money or property obtained through [the offender] or commission of a crime or obtained through another person's commission of a crime with [the offender's] knowledge, or obstructing the verification of such information;
- d) Committing any of the offences specified in points a through c of this clause while knowing that the money or property is obtained through transfer or conversion.

Also, Resolution No. 03/2019/NQ-HDTP dated May 24, 2019, of the Supreme People's Court (on providing guidelines for Article 324 of the Criminal Code on money-laundering) explains some terms, crime determination circumstances, penalty determination circumstances with regard to money-laundering crime. Accordingly, "money-laundering" subject to penalty under this clause consists of Viet Nam Dong, any foreign currency; cash or money in account. The term "*original crimes/ source crimes*" (the same meaning as the term "*predicate offence*" in UNCAC) are the crimes prescribed in the Criminal Code, and the property acquired from such crimes is subject to money-laundering charges (e.g. murder; intentionally inflicting injury or harm to the health of other persons; human trafficking, property, corruption etc.). Original crimes can be committed by Vietnamese citizens, Vietnamese commercial entities, stateless people who are permanently residing in Viet Nam within or outside the territory of the Socialist Republic of Viet Nam. The prosecution of criminal liability for money-laundering can be carried out simultaneously with the criminal prosecution of the original crimes.

It can be seen that Viet Nam's legal framework in general, and Viet Nam's Penal Code in particular, has implemented the UNCAC recommendations about anti-corruption and money-laundering. However, there are many loopholes that create difficulties for law enforcement in dealing with corruption and money-laundering cases.

Firstly, one of the difficulties in countering money-laundering is that the Vietnamese Penal Code does not establish illicit enrichment as a criminal offence. In order to identify, trace, freeze, seize, confiscate and repatriate the proceeds of corruption, the investigation and prosecution offices have to prosecute a corruption case and sentence the offenders. Recovering the proceeds of corruption has been considered as a measure that follows sentencing in

corruption cases. Although Vietnamese laws require officials to declare their assets and income, we do not have a strong mechanism to charge acts that lead to illicit enrichment.

Secondly, before convicting money-laundering crimes, Vietnamese law enforcement has to deal with “*source crimes/original crimes*” in advance, including corruption crimes. This means that, if law enforcement fails to prove the source crime/original crimes, they cannot obtain a conviction for money-laundering.

II. PREVALENT METHODOLOGIES OF CONCEALING THE PROCEEDS OF CORRUPTION IN VIET NAM

Nowadays, there are many methodologies of concealing the proceeds of corruption in Viet Nam such as:

- Use of structured transactions
- Use of non-bank financial services
- Trade-based money-laundering
- Use of gatekeepers (e.g. accountants, lawyers, notaries)
- Use of third parties
- Use of casinos

Among those methodologies, trade-based money-laundering and using third parties are the most popular ones in Viet Nam. In order to conceal and launder the money, offenders often invest corrupt proceeds into other enterprises or buy expensive properties that will be declared as belonging to the criminals’ family members.

However, there are no trends of new methodologies for concealing the proceeds of corruption in Viet Nam such as using of New Payment Products and Services (NPPS) or virtual currencies (virtual assets). The reasons are as follows:

Firstly, the cash payment habits of Vietnamese people. Although the government has been promoting the use of mobile and other convenient payment methods, such as QRpay, mobile wallets etc., many Vietnamese people do not want to use them. As a result, in some cases, law enforcement cannot trace corrupt transactions.

Secondly, the Vietnamese government does not accept virtual currencies or virtual assets as legal property or legal payment methods. Thus, corruption offenders also do not choose those assets to hide their dirty money.

Below is an actual corruption and money-laundering case in Viet Nam that faces those issues: According to the indictment, in 2014 and in early 2015, Phan N (Chairman of the VTC Online Company’s Board of Directors) met Nguyen D (Chairman of the Members Council of the High-tech Security Development and Investment Company (CNC)) to discuss the development of an online gambling system. After that, N and D decided to launch an online casino without the government’s permission. After that, they embezzled form VTC online Company and CNC capital by making false contracts and invoices. All of that money had been invested in an online casino called Rik on the portal Rikvip.com. The main server of Rik casino was located in Phutho province.

In order to cover their organized gambling crime, N and D also gave bribes to Phan V (Former General Director of the Ministry of Public Security) and Nguyen H (Former Director of the High-tech Crime Police Department). According to D's testimony, D gave V and H about 8 billion VND in cash and Rolex watches to help them shield the country-wide gambling ring from investigation.

With the illicit money from the online casino, Phan N transferred money to relatives and friends to deposit into bank accounts, invest in other companies and buy real estate. Over 236 billion VND was transferred to N's aunt who used the money to buy houses in District 7, Ho Chi Minh City. Phan N also sent money to a friend to store nearly 150 billion VND. Moreover, N invested 50 billion VND in Ha Long Green Bay Company, a Hanoi Fintech Company. In addition, N deposited 3.5 million USD at a bank and bought four apartments worth nearly 39 billion VND.

In July 2016, the Ministry of Public Security directed the investigation offices in Hanoi and Phutho to trace the large-scale gambling organizations in cyberspace including Rikvip. After collecting enough evidence, the Security Investigation Agency in Phutho province arrested Phan N, Nguyen D, Phan V and Nguyen H in March 2018. Those arrest warrants were approved by the procuracy office. Because this case was particularly serious and complicated, it was investigated by the Ministry of Public Security and the Supreme People's Procuracy of Viet Nam. Both Phan N and Nguyen D were convicted of "embezzlement", "organized gambling" and "money-laundering". In order to reduce the sentence, Phan N returned the embezzled and laundered property (over 90 percent) and closely cooperated with the authorities in the process of investigation, prosecution and jurisdiction.

Unfortunately, although the investigators gathered sufficient evidence to pin charges of taking bribes on Phan V and Nguyen H, we were not successful in proving their crimes. Nguyen D's testimony was not enough to prosecute them, so they were sentenced to 10 years' imprisonment for "abusing position and power while performing duties". We also could not recover the corrupt proceeds from Phan V and Nguyen D.

Thirdly, in recent years, the results of corrupt property recovery in Viet Nam are still limited due to the following difficulties: (1) offenders often do not declare assets, or they disperse or hide assets; (2) Corruption acts are often committed by many offenders so the investigation process often requires assessment to determine the damage consequences, but the assessment of economic losses, including the value of land, is quite complicated.

III. ANTI-MONEY-LAUNDERING MEASURES BY INTER-AGENCY COOPERATION

With regard to the emerging threats as mentioned above, Viet Nam also pays high attention to anti-money-laundering measures with new technologies implemented. Actually, Viet Nam is not a member of the FATF but a member of the Asia/Pacific Group on Money Laundering (APG). In 2007, the State Bank of Viet Nam established an FIU organization which is under the Banking Supervision Agency. The Vietnamese FIU has duties to receive, process and provide information on the prevention of money-laundering. In our opinion, the Vietnamese FIU organization is not an independent agency, which also makes it difficult to improve the effectiveness of cooperation among authorities to fight money-laundering.

It can be said that cooperation among domestic agencies is one of the most effective ways to collect and protect evidence in corruption and money-laundering cases. Offenders often use technology to conceal their crimes. After being detected, offenders hide, falsify or destroy documents, making it difficult to collect evidence. After charging suspects, prosecutors must continue to handle evidence in such a way that it is admissible and persuasive in court. Thus, if cooperation between investigators and prosecutors is insufficient, the case might fail.

IV. INTERNATIONAL COOPERATION IN ASSET RECOVERY

Viet Nam officially joined the United Nations Convention against Corruption (UNCAC) on 18 September 2009. This is the only global legally binding document providing comprehensive solutions to prevent corruption. The Vietnamese government has signed 22 bilateral treaties on mutual legal assistance in criminal matters, in which confiscation of proceeds of crimes is specified as the content of the MLA request. Currently, the Supreme People's Procuracy of Viet Nam is carrying out domestic procedures to propose to the government to join in the Asset Recovery Interagency Network – Asia Pacific (ARIN-AP).

In 2011, implementing the recommendations of the UNCAC Member States Conference, the Vietnamese government appointed the Ministry of Justice to be the focal point of Viet Nam for the recovery of corrupt assets within the framework of UNCAC. However, due to perceived difficulties of the MOJ in the process of practicing the functions of focal point, the Government of Viet Nam decided to transfer the role of the focal point to the Supreme People's Procuracy.

On 7 January 2019, the 2018 Anti-Corruption Law of Viet Nam came into effect. Article 91 of the Law stipulated that:

The Supreme People's Procuracy is the Central Authority of Viet Nam for international cooperation in corrupt property recovery in criminal procedure; responsible for receiving, executing foreign states' MLA requests related to corrupt property recovery and sending foreign states MLA requests of Viet Nam related to corrupt property recovery.

This provision is basically consistent with the role of the SPP as the Central Authority in mutual legal assistance in criminal matters, stipulated in the 2007 Law on mutual legal assistance, the 2015 Criminal Procedure Code and treaties that Viet Nam has concluded in the field of MLA.

The Vietnamese SPP has received, and has been executing, five incoming MLA requests related to asset recovery and four outgoing MLA requests related to the confiscation of proceeds of crimes. There are not any clear instructions about how to process the confiscation of proceeds of crimes in Viet Nam, so it is very challenging for us to deal with MLA requests relating to confiscation.

Finally, fighting against corruption is not a short-term and easy battle. It requires strategic measures including anti-money-laundering measures. It is hoped that these measures will reverse the latest trends of concealing the proceeds of corruption in Viet Nam in the near future.