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LAW ON ANTI-CORRUPTION

New regulation on gift taking and giving in Vietnam

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In practice, an act of giving gifts to others and taking gifts from others, on the basis of friendly, family, relative relations, is a normal practical conduct in Vietnam, particularly on such traditional, cultural or special occasions as Lunar New Year festival, wedding, funeral, when a person is ill or suffering from accidents, etc. *Similarly*, an act of inviting others to have lunches or other financial benefits (such as travelling, study, healthcare treatment or the like) is also a normal practice conduct in Vietnam, if it is merely made on the basis of friendly, family, relative relations. Other than those, an act of giving gifts to others or taking gifts from others will be strictly regulated and in most circumstances prohibited by Vietnamese laws.

After several amendments of the Law on Anti-corruption 2005 in 2007 and 2012, the Law on Anti-corruption 2018 was adopted by the National Assemble of the Social Republic of Vietnam, on 20 November 2018, which took its full effect on 1 July 2019. To guide the implementation of the Law, Decree No.59/2019/ND-CP was issued by the Government of the Social Republic of Vietnam on 1 July 2019. Decree 59 will take its full effect on 15 August 2019 and will then replace 9 relevant Government decrees and Prime Minister decision, including the widely-known Decision No.64/2007/QD-TTg of the Prime Minister of the Social Republic of Vietnam, dated 10 May 2007, promulgating the regulations on giving, receiving and handing-over of gifts by State budget-funded agencies, organizations and units and cadres, public officials and servants. Compared with the former law and its guiding decrees and decision, it is seen that the Law and Decree 59 do *not only* provide stricter regulations on receiving gifts by State funded agencies, organizations (including companies) and units and cadres, public officials and servants, *but also* include non-State funded (or private) companies and their management persons in their wider scope of application. *This paper focuses only on this point of which private companies (including foreign invested companies) incorporated and existing in Vietnam and their management persons (including expatriates) living and working in Vietnam should be aware.*

Gift taking prohibition

Article 22 of the Law provides that *in all circumstances*, agencies, organizations, units and competent persons are not permitted to receive, directly or indirectly, gifts in any form, from agencies, organizations, units and individuals involved in affairs which the recipients are responsible for settlement or fall under the recipients' respective management. Article 25 of Decree 59 confirms the same prohibition. It is seen that there is no exception provided by the Law and Decree 59 because receiving gifts

valued less than VND500,000 permissible under Decision 64 in the past (i.e. before 1 July 2019), without report obligation, has been no longer applicable under the Law and Decree 59.

Gift taking report

Articles 25 and 26 of Decree 59 adds that in the circumstance where gift taking cannot be denied, agencies, organizations or units will be obliged to manage and handle the gifts so received over to persons who are authorised by those agencies, organizations or units to handle the gifts. If the gift recipients are competent persons, they will be obliged to comply with stricter requirements, by first making reports and then handling the gifts so received over to the heads of their agencies, organizations or units or to the heads of their higher-level agencies, organizations or units, within 5 business days from their receipts. A report must contain all such *mandatory information* as (i) full name and title of the gift giver, (ii) name and address of agency, organization or unit where the gift giver is working, (iii) type and value of the gifts so received, (iv) time, place and circumstance where the gifts are given and received, and (v) relation between the gift giver and recipient.

Gift handling

Subject to the nature of the gifts so received, their handle by agencies, organizations, units or competent persons will be subject to different procedures. *In brief*, Article 27 of Decree 59 provides that:

1. If the gifts so received are in cash (e.g. paper notes, valuable papers), they will be contributed directly to the State budget, in accordance with relevant laws.
2. If the gifts so received are in kind, they will be handled by the following steps:
 - (a) They must be first valued on the basis of available market price. If they cannot be valued in such a manner, their valuation will then be determined by a competent valuation agency.
 - (b) They will then be sold out, via public auction, in accordance with relevant laws.
 - (c) Their net proceedings will then be contributed to the State budget, within 30 days from the completion of the public auction.
3. If the gifts so received are financial benefits (such as travelling, study, healthcare treatment or the like), the heads of the agencies, organizations, units or competent persons who received the gifts, will be obliged to notify the relevant agencies, organizations or units which offer the said financial benefits that the gifts so received are not utilised by the relevant recipients. The notification should be made in writing.

4. If the gifts so received are plants, animals, fresh foods or the like, the preservation of which is difficult, the heads of the agencies, organizations or units will make their own decision or make a report to higher-level agencies, organizations, units or competent persons for making final decisions on the handle of the gifts so received.

In all circumstances, within 5 business days from the date of handling the gifts so received, the agencies, organizations or units did handle the gifts, will be obliged to notify the agencies, organizations or units where the gift givers are working, for their consideration and settlement of the act of gift giving, in accordance with their own competence. The notification must be made in writing.

Penalties applicable to an act of gift giving or receiving

Article 28 of Decree 59 just provides that the heads of agencies, organizations or units, and the competent persons who violate the Law and Decree 59 in relation to receiving, handling, reporting and settlement of the gifts so received, will be subject to (i) relevant disciplines provided by the laws on cadres, public officials and servants, as well as (ii) relevant penalties provided by the laws on management and utilization of State assets.

The Law and Decree 59 do not refer to any relevant crimes provided by the Penal Code 2015 (as amended in 2017). However, in our view, an act of giving or receiving gifts may constitute an act of giving or receiving bribes provided by the Penal Code 2015. On that basis, in addition to the disciplines and administrative penalties provided by the Law and Decree 59, gift givers or recipients, depending on the seriousness of their acts, may also be subject to relevant criminal liabilities provided by the Penal Code 2015. *As examples*, Article 354 of the Penal Code 2015 provides that any person who abuses his power to directly or through an intermediary, receive bribes, for himself or for another person/ organization, as a condition to act or not to act certain tasks in the interests of or at the request of the bribe giver, will be sentenced to imprisonment for a period:

1. From 2 years to 7 years, if the bribes so received value from VND2,000,000 to less than VND100,000,000.
2. From 7 years to 15 years, if the bribes so received value from VND100,000,000 to less than VND500,000,000.
3. From 15 years to 20 years, if the bribes so received value from VND500,000,000 to less than VND1,000,000,000.
4. Of 20 years, imprisoned for the whole life or sentenced to death, if the bribes so received value from VND1,000,000,000.

Similarly, Article 364 of the Penal Code 2015 provides that any person who directly or through an intermediary gives bribes to competent person in order to influence him to act or not act certain tasks in the interests of or at the request of the bribe giver, will be sentenced to imprisonment for a period:

1. From 6 months to 3 years, if the bribes so given value from VND2,000,000 to less than VND100,000,000.
2. From 2 years to 7 years, if the bribes so given value from VND100,000,000 to less than VND500,000,000.
3. From 7 years to 12 years, if the bribes so given value from VND500,000,000 to less than VND1,000,000,000.
4. From 12 years to 20 years, if the bribes so given value from VND1,000,000,000.

Other sectors:

Finance - Banking

- Decree No. 63/2019/ND-CP dated 11 July 2019, on administrative penalties for violations in the field of public property management and use; practice of thrift and frugality; national reserves; the State Treasury.
- Consolidated Document No. 17/VBHN-NHNN dated 12 July 2019 of the Governor of the State Bank of Vietnam, combining Circulars providing guidelines for Decree No. 26/2014/ND-CP, on organization and operations of Banking Inspectorate and Supervision.
- Circular No. 08/2019/TT-NHNN dated 4 July 2019 of the Governor of the State Bank of Vietnam, on amendments to Circular No. 03/2015/TT-NHNN, providing guidelines for implementation of Decree No. 26/2014/ND-CP, on organization and operations of Banking Inspectorate and Supervision.

Accounting

- Decision No. 1299/QĐ-BTC dated 31 July 2019 of the Minister of Finance, approving the Scheme for a system of Vietnam's public accounting standards.
- Circular No. 44/2019/TT-BTC dated 19 July 2019 of the Minister of Finance, on amendments to Circular No. 292/2016/TT-BTC, providing guidelines for annual updates of knowledge for practicing accountants and registered accounting services providers and Circular No. 296/2016/TT-BTC on grant, revocation and management of certificates of registration for providing accounting services, issued by the Minister of Finance.

Securities

- Consolidated Document No. 37/VBHN-BTC dated 5 July 2019 of the Ministry of Finance, combining Decrees on conditions for investment and trading in securities.
- Consolidated Document No. 36/VBHN-BTC dated 5 July 2019 of the Ministry of Finance, combining Decrees providing guidelines for Law on Securities and Law amending a number of articles of Law on Securities.

Taxation

- Circular No. 43/2019/TT-BTC dated 12 July 2019 of the Minister of Finance, providing guidelines for implementation of Clause 4, Article 24 of Decree No.82/2018/ND-CP, on the management of industrial parks and economic zones.
- Circular No. 42/2019/TT-BTC dated 12 July 2019 of the Minister of Finance, cancelling Circular No. 128/2014/TT-BTC, providing guidelines for reduction of Personal Income Tax applicable to individuals working in the economic zones.

Trade

- Decision No. 2144/QD-BCT dated 19 July 2019 of the Minister of Industry and Trade, supplementing the lists of domestically manufacturable machinery, equipment, supplies, raw materials.
- Circular No. 10/2019/TT-BCT dated 22 July 2019 of the Ministry of Industry and Trade, amending Circular No. 22/2016/TT-BCT, on implementation of Rules of origins under the ASEAN Trade In Goods Agreement issued by the Minister of Industry and Trade.
- Consolidated Document No. 35/VBHN-BTC dated 1 July 2019 of the Minister of Finance, combining Circulars providing guidelines for procedures for issuance of Certificate of customs declaration; issuance and revocation of customs broker number; procedures for recognition and operation of customs brokers.

Health

- Decision No. 3310/QD-BYT dated 29 July 2019 of the Minister of Health, providing guidelines for diagnosis and treatment of hepatitis B.
- Decision No. 14/2019/QD-UBND dated 5 July 2019 of the People's Committee of Hanoi, on the assignment and decentralization of food safety management in the area of Hanoi.
- Circular No. 18/2019/TT-BYT dated 17 July 2019 of the Minister of Health, providing guidelines for Good Manufacturing Practices (GMP) in manufacture and trade of health supplements.
- Circular No. 17/2019/TT-BYT dated 17 July 2019 of the Minister of Health, providing guidelines for control and response to infectious diseases and epidemics
- Circular No. 16/2019/TT-BYT dated 12 July 2019 of the Minister of Health, promulgating the National technical regulations on vitamin A to supplement

vegetable oil.

- Circular No. 15/2019/TT-BYT dated 11 July 2019 of the Minister of Health, providing for drug tendering at public health facilities.

Culture, Sports and Tourism

- Circular No. 04/2019/TT-BVHTTDL dated 17 July 2019 of the Minister of Culture, Sports and Tourism, on the List of sports activities required to have training instructors, and List of extreme sports.
- Circular No. 03/2019/TT-BVHTTDL dated 5 July 2019 of the Minister of Culture, Sports and Tourism, providing for the process of judicial expertise for relics and antiques.
- Circular No. 02/2019/TT-BVHTTDL dated 5 July 2019 of the Minister of Culture, Sports and Tourism, providing for the process of judicial expertise on copyright and related rights.

Transport

- Decision No. 1291/QD-BGTVT dated 10 July 2019 of the Ministry of Transport, publishing amended administrative procedures in the road sector within the scope of management function of the Ministry of Transport.
- Circular No. 25/2019/TT-BGTVT dated 5 July 2019 of the Minister of Transport, on inspections of the quality of technical safety and environmental protection in automobile production and assembly.
- Circular No. 24/2019/TT-BGTVT dated 5 July 2019 of the Minister of Transport, publishing the National technical regulation on protection equipment system of automatic warning level crossing - QCVN 104:2019/BGTVT.

Construction

- Decision No. 655/QD-BXD dated 25 July 2019 of Ministry of Construction, cancelling the planning for investment in the development of specific goods, services and products, establishing the volumes and quantities of goods, services and products to be produced and consumed under the authority of the Minister of Construction.
- Decision No. 626/QD-BXD dated 10 July 2019 of the Ministry of Construction, on Code of Internal Procedures for handling administrative procedures under the

jurisdiction of the Ministry of Construction.

- Circular No. 02/2019/TT-BXD dated 1 July 2019 of the Ministry of Construction, providing detailed guidelines for the periodic reporting regime; amending or replacing some articles of Circulars on periodic reporting regime under the State management of the Ministry of Construction.

Natural Resources - Environment

- Decree No. 67/2019/ND-CP dated 31 July 2019, providing for methods of calculation and collection rates of fees for grant of mineral mining rights.
- Decree No. 66/2019/ND-CP dated 29 July 2019, on conservation and sustainable use of wetlands.
- Decree No. 65/2019/ND-CP dated 18 July 2019, on amendments to Decree No.104/2017/ND-CP, on administrative sanctions for violations in the field of prevention of and fighting against natural disasters; use and protection of irrigation works and dikes;
- Decree No. 64/2019/ND-CP dated 16 July 2019, on amendments to Article 7 of Decree No. 160/2013/ND-CP, on criteria for determining species under the system of species management within the list of endangered, precious and rare species with priority protection.
- Decision No. 1979/QD-BTNMT dated 31 July 2019 of the Ministry of Natural Resources and Environment, on the set of unit prices for public non-business professional products and services in the field of land, which are ordered, assigned with the plan to use the State budget in 2019 (according to the base salary of VND 1,490,000 per month) by the Ministry of Natural Resources and Environment.
- Circular No. 09/2019/TT-BTNMT dated 5 July 2019 of the Minister of Natural Resources and Environment, on Economic–technical norms for publication of national remote sensing metadata.
- Circular No. 08/2019/TT-BTNMT dated 5 July 2019 of the Minister of Natural Resources and Environment, on Economic–technical norms for thematic mapping with remote sensing images on scales of 1:5.000, 1:10.000, 1:500.000 and 1:1.000.000.
- Circular No. 07/2019/TT-BTNMT dated 5 July 2019 of the Minister of Natural Resources and Environment, on Economic–technical norms for measurement of remote sensing images.

Information - Communications

- Decision No. 1074/QD-BTTTT dated 15 July 2019 of the Minister of Information and Communications, on cancellation of and amendment to National postal codes.
- Decision No. 1190/QD-BTC dated 15 July 2019 of the Minister of Finance, promulgating the Regulation on management, operation and exploitation of software for Management of and reporting on investments in information technology.
- Circular No. 06/2019/TT-BTTTT dated 19 July 2019 of the Minister of Information and Communications, on amendments to Circular No.24/2015/TT-BTTTT, providing for the management and use of Internet resources.
- Circular No. 04/2019/TT-BTTTT dated 5 July 2019 of the Minister of Information and Communications, providing for the interconnection between the Vietnam National Root CA Authority and Specialized Root CA Authority of the Government.

Energy

- Decision No. 2023/QD-BCT dated 5 July 2019 of the Minister of Industry and Trade, on approval of the Program on Promoting development of rooftop solar power in Vietnam in the period of 2019-2025.
- Circular No. 09/2019/TT-BCT dated 8 July 2019 of the Minister of Industry and Trade, providing for safety management of hydroelectric dams and reservoirs.

Administration - Judiciary

- Decree No. 61/2019/ND-CP dated 10 July 2019, providing for guidelines for Law on Vietnam coast guard.
- Decree No. 59/2019/ND-CP dated 1 July 2019, providing for guidelines for Law on Anti-Corruption.
- Decision No. 1696/QD-BTP dated 25 July 2019 of the Ministry of Justice, publishing administrative procedures in the field of legal support to small and medium-sized enterprises within the scope of management function of the Ministry of Justice.

Agriculture

- Decree No. 62/2019/ND-CP dated 11 July 2019, amending Decree No.35/2015/ND-CP, on management and use of rice land.
- Resolution No. 53/NQ-CP dated 17 July 2019 of the Government, on solutions to encourage and promote enterprises to efficiently, safely and sustainably invest in agriculture.

Miscellaneous

- Decision No. 981/QD-LDTBXH dated 10 July 2019 of the Ministry of Labour, War Invalids and Social Affairs, publishing new or amended administrative procedures in the field of vocational education within the scope of management function of the Ministry of Labour, War Invalids and Social Affairs.
- Decision No. 1904/QD-BGDDT dated 4 July 2019 of the Minister of Education and Training, on technical regulations for data of the database of preschool and general education.

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