

Bribery in business sector: Vietnam's regulation and current situation



Vu Van Hung¹, Nguyen Duy Dung^{2,*}

¹Faculty of Law, University of People's Security, Ho Chi Minh City, Vietnam

²Faculty of Law, Nguyen Tat Thanh University, Ho Chi Minh City, Vietnam

ARTICLE INFO

Article history:

Received 9 April 2022

Received in revised form

19 July 2022

Accepted 28 July 2022

Keywords:

Bribery

Business sector

Regulation

Current situation

Vietnam

ABSTRACT

Corruption is a negative phenomenon appearing in many subjects of society. In Vietnam's business sector, the most common form of corruption is bribery. Bribery to falsify business activities undermines development, and innovation reduces labor productivity and hinders the correct policies of the Government. In recent years, Vietnam's economy has been developing rapidly. However, besides the economic development, Vietnam is facing many problems in business, such as bribery, which is considered an "inevitable" issue when doing business in Vietnam. Previous studies have focused on bribery in Vietnam. However, most researchers are concerned with the consequences of bribery, the effects of bribery on socio-economic, and the Government anti-corruption policy. There is no in-depth research to analyze the legal framework and clarify the situation in a narrow field such as bribery in business in Vietnam. Our study will evaluate Vietnam's regulations on anti-bribery in business and analyze the current practice of this problem, which focuses on clarifying the situation of enterprises bribing officials and assesses the extent of the act of bribery, thereby providing a general overview of bribery in business in Vietnam.

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1. Introduction

Corruption is a problem in both developed and developing economies, affecting almost all parts of society (Rohwer, 2009). It is described as cancer, deeply ingrained in the social fabric, destroying the functioning of every organ in society (Amundsen, 1999). In Vietnam, Corruption is not a new problem, but it is always a hot topic of public interest, 43% of people said that corruption is a hot issue that must be solved behind poverty alleviation, food safety, security, and crime. In the business sector, bribery is seen as a big problem. Although Vietnam has made many efforts to combat corruption, bribery is still widespread (Van et al., 2018). According to The Vietnam Provincial Competitiveness Index (PCI) in 2020, which was implemented in 63 provinces and cities of Vietnam, nearly 45% of enterprises said that they have to pay informal fees, while 54% of enterprises said that the phenomenon of corruption still exists, 20% of enterprises rated state officials in

handling work as ineffective and unfriendly and also up to 3% of enterprises report that they are still audited and inspected more than five times per year. Notably, 40% of businesses agree with the statement that "commission payment is necessary to have a chance to win the bid."

About the causes of corruption (including bribery in business), The World Bank has identified causes of corruption as weak economic policy, underdeveloped civil society, low education level, and accountability of weak public authorities (La Porta et al., 1997). Besides, when researching China, a country that is quite similar to Vietnam, He (2000) pointed out six causes of corruption: The existence of a dual economy; salaries of public employees being low or lower than other groups in society; loopholes in the law; moral degeneracy; incomplete political reform and the weakness of anti-corruption agencies; the influence of cultural and international factors. In addition, some studies have shown that when a large corporation decides to enter a foreign market, this entails securing the documents and permits issued by the Government. Since the right to authorize a business belongs to politicians or local officials, it is not surprising that businesses use their financial resources to influence these people. The degree of influence can be promised by investments in local infrastructure or a direct payment to an official to influence their public decisions. It will be

* Corresponding Author.

Email Address: nddung@ntt.edu.vn (N. D. Dung)

<https://doi.org/10.21833/ijaas.2022.11.008>

Corresponding author's ORCID profile:

<https://orcid.org/0000-0001-8091-2103>

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considered bribery in business (Jimenez and Pulos, 2016). So, this is the common way for local businesses when starting a business. Of course, when approaching the Vietnamese market, domestic and foreign enterprises may also face the above problems. Another issue that needs to be mentioned when it comes to bribery in business is the gift culture of Asians in general and Vietnam in particular. In Asian cultures, gifts are viewed as an act of reciprocity to establish trust and build relationships, and this is one of the cultural communication features. Gifts are used to maintain and develop business relationships (D'Souza, 2003). Therefore, although bribery is considered illegal and immoral, there are still many acts that fall into the gray area, and it can be difficult to analyze a single global standard. The important question is, when does a gift become a bribe? In fact, many governments and regulators have tried to make a clear distinction between bribery and non-bribery behavior (Jimenez and Pulos, 2016), including Vietnam.

Bribery in business in Vietnam is a serious problem. Vietnam has issued many legal documents to adjust the bribery problem to improve the business environment. So this study was conducted to clarify two issues: Firstly, what are Vietnam's regulations on bribery in business? Secondly, what is the practicality of bribery in business in Vietnam? Significantly, the author focuses on analyzing various forms of bribery between business and government officials.

2. Methods and key findings

2.1. Methods

To clarify the research question, the author uses secondary data from the CPI from 2016 to 2020 implemented by the Vietnam Chamber of Commerce and Industry (VCCI) in collaboration with the United States Agency for Development (USAID). The CPI is designed to survey over 63 provinces and cities in Vietnam and thus collect representative samples of enterprises in the provinces. The survey asks respondents about interactions between businesses and officials by separating each province into different, in which officials can determine how much money must be taken from businesses. The reason why CPI specifically asks about agreements between businesses and officials at different levels officials is the fact that due to the decentralization of corruption and bureaucracy in Vietnam, in contrast to the central Government, provincial officials often use their power to take bribes from businesses (Meyer and Nguyen, 2005; Cung et al., 2004; Tran et al., 2009). This feature of the CPI provides information for a theoretical and practical framework related to bribery in business, where each province is considered a geographical unit related to bribery, and there is competition among provinces to minimize bribery to retain businesses. These results will be shown in Tables 1 and 2.

In addition, the study also uses qualitative methods, analyzing information from previous studies and public information sites to assess the practicality of bribery in business in Vietnam.

2.2. Key finding

Vietnam's legal framework on bribery is relatively complete with a rigorous attitude towards bribery, especially accepting bribes. Vietnam strives to reduce bribery and has achieved certain results, but bribery in business is still quite serious. Bribery in business in Vietnam appears at both "petty corruption" and "grand corruption" levels.

3. Discussion

Corruption is an area that has received the attention of many researchers. International studies have shown that corruption has positive and negative impacts on the business environment (e.g., Méon and Weill, 2010; Welter and Smallbone, 2014; Nguyen et al., 2016; Dang, 2016). According to a commonly held perspective around the world and in Vietnam, corruption will harm the business environment in the long run, lead to a loss of trust in society, and slow economic development (Tromme, 2016; Anh et al., 2016). At a general level, Olken and Pande (2012) studied the effects of corruption (with a focus on bribery) on developing countries, and they showed the negative effects of corruption on developing economies to varying degrees (Olken and Pande, 2012). In Vietnam, some studies with small and medium enterprises have shown that corruption in business (including bribery) is the problem that enterprises are most concerned about when doing business in Vietnam; public employees often take advantage of their position to accept bribes (Maruichi and Abe, 2019). Relating to bribery in business, studies by De Jong et al. (2012) and Nguyen (2020) showed that the evidence of the impact of bribery in business revolves around the "Sand of Wheel" theory; accordingly, bribery brings immediate benefits to businesses, but it hurts businesses and the business environment in the long run (De Jong et al., 2012; Nguyen, 2020). Regarding the person giving the bribe and the amount of the bribe, the study of Vu and Le (2016) conducted research with small and medium enterprises in many different business fields. The results show in different business fields, firms have varying degrees of bribery, the study also shows that bribery is an "inevitable" problem for small and medium enterprises when doing business in Vietnam (Vu and Le, 2016). Previous studies have approached bribery from many different angles. However, most of them assess the consequences and effects of bribery on the economy and study bribe-giver or bribery situations in different fields in Vietnam. These studies have not yet entered bribery from a legal perspective (many changes between 2015 and 2018), thereby assessing the influence of legal regulations on the reality of bribery in business in Vietnam

3.1. Vietnam's background

Vietnam is a country with a developing economy in Southeast Asia. According to Lewis (2006), Vietnam is described as a Confucian group-oriented country with an embrace of French nationality and a western-style of corporate management. He also suggested that the current strategy of the Vietnamese Government is to liberalize the economy with tight political control (Lewis, 2006). Stepping out of the war and economic crisis in the early 1990s, Vietnam's economy and society have undergone a transition period called "Doi Moi" (Renovation-known as Doi Moi). This change led to rapid economic development but also problems related to corruption. The period of liberalization after "Doi Moi" does not mean the withdrawal of the State; on the contrary, public employees take advantage of the complexity of administrative procedures to receive bribes, paving the way for the proliferation of "petty corruption." In addition, another product of the post "Doi Moi" is the rise of interest groups with close collusion between politicians and businessmen to profit (Tromme, 2016). This makes bribery between businesses and officials seem to be common in Vietnam, forcing businesses to grow their business dependent on relationships and gifts (sometimes bribes) to officials. There is a truth that corruption is a problem in both developed and developing countries, but corruption is especially serious in underdeveloped economies (Bai et al., 2013). Therefore, to develop the economy, Vietnam identifies anti-corruption as an important part of the national development strategy. In 2009, Vietnam's Government promulgated the national strategy to combat corruption by 2020, identifying this as an important mission, both urgent and long-term, throughout the process of socio-economic development and building a socialist rule of law state in the new period, is mission of both the political system and the whole society. In addition, Vietnam has also developed a relatively complete legal framework for anti-corruption activities, with the Anti-Corruption law 2005 (which was subsequently amended in 2007 and 2012). Recently, Vietnam continued to promulgate a new Anti-Corruption Law in 2018 with the expansion of anti-corruption regulations to the private sector; With the role of social leader in Vietnam, The Communist Party of Vietnam (CPV) identifies corruption as a "serious problem" that causes incalculable losses to society and the regime, eroding the masses' confidence in the leadership of CPV.

Along with efforts to perfect laws, mechanisms, and policies, Vietnam also takes strong action against corrupt officials; from 2018 to 2021, more than 87,000 Party members were disciplined. Especially, by the end of 2020, more than 11,700 economic crime cases have been investigated, prosecuted, and brought to Court for first-instance trial. This number includes 1900 corruption cases involving 1,400 suspects. More than 800 people, including one

incumbent Politburo member, seven former and current members of the Party Central Committee, four current ministers and ministers, and seven armies and police generals-implicated in nearly 90 cases of corruption and economic wrongdoing-have been convicted (Hoang et al., 2022). Vietnam's anti-corruption efforts have brought certain results, on the scale of Vietnam's Corruption Perception Index assessed by Transparency International from 2015 to 2021; Vietnam has increased its score from 31 to 39, ranking 87/180 globally. Another study in 2019 showed that 49% of Vietnamese people surveyed thought that the State's prevention measures were effective or very effective, an increase of more than half (21%) compared to 2017.

In recent years, with efforts to improve the business environment and prevent business corruption, CPV began to pay attention to the role of the private sector in anti-corruption. With the policy of "step by step expanding anti-corruption activities to the non-state sector," The National Assembly of Vietnam has legalized corrupt practices in the private sector, in which acts of embezzlement and bribery in the private sector can also be prosecuted for penal liability under the provisions of the Penal Code.

3.2. Overview of the legal framework for business bribery

Vietnam's current legal framework governing bribery in business is concentrated in the Anti-Corruption Law 2018 (Law no. 36/2018/QH14) and Criminal Law 2015-Amended and Supplemented 2017 (Law no. 100/2015/QH13).

3.2.1. Definition of bribery

The definition of *bribery* is diverse because there is no area where corruption manifests itself outwardly (Enste and Heldman, 2017). To explain bribery, Pacini et al. (2002) described bribery as "a business transaction, albeit an illegal or unethical one, that has the effect of corrupting economic or governance systems as it bestows an unfair advantage on those bestowing the bribe." The terms bribery and corruption are used synonymously. As Johnstone and Brown (2004) explained, "the criminalization of corrupt acts that incorporate bribery depends on the country of usage and customary and legal interpretation." In Vietnam, the 2018 Anti-Corruption Law defines "corruption" means an office holder's abuse of his/her official capacity for personal gain. This definition is quite similar to corruption in The United Nations Convention against Corruption (UNCAC), of which Vietnam is a member. However, Vietnam's Anti-Corruption Law does not define bribery but lists giving bribes, accepting bribes, and brokering bribes as prohibited acts. Although the Anti-Corruption Law does not mention the definition of bribery, in the provisions of Article 354, 364 of the Penal Code, it is mentioned that giving and accepting a bribe means

that a person, through an intermediary or directly, gives or will give, receive or will receive any benefit (including property, money, material benefits valued at VND 2 million equivalent to \$95 and material fee benefits) for himself or herself, for another person or entity, to do or not to do something for the benefit of or at the request of the person giving the bribe. For acts of giving, receiving, or brokering bribes, the Vietnam Criminal Law requires the recipient to be a person with a position of authority (regardless of whether it is the public or private sector). The above definition has shown the nature of bribery, which is a secret transaction between the giver and the receiver, understood as the offering, giving, soliciting, or receiving any item of value as a means of influencing the action of an individual holding a public or legal office.

3.2.2. The act of bribery under the provisions of the Vietnam current law

As we know, bribery is certainly a violation of ethics and law. When it comes to corruption in the private sector, bribery is the most common practice (Luo, 2005). Vietnam's current legal regulations prohibit all bribery-related acts, including accepting bribes, giving bribes, and brokering bribes. For the act of accepting bribes, the Penal Code of Vietnam has very strict penalties; the recipients of bribes can be imprisoned for up to 20 years, even life imprisonment or death sentence (Vietnam Criminal code, Clause 354). The determination of the

seriousness act of accepting a bribe is based primarily on the value of the person's property. For acts of giving bribes, the maximum penalty applied is 20 years in prison (Vietnam Criminal code, Clause 364).

Meanwhile, a bribe broker can receive a maximum penalty of 15 years in prison (Vietnam Criminal code, Clause 365). It should be noted that the subject of the act of giving or brokering a bribe is a natural person; commercial legal entities are not the subject of this crime, which is also an inadequacy of current Vietnam law. Vietnam's current legal framework is very strict against bribery, which shows Vietnam's strong hand in anti-corruption.

3.3. Practical bribery in business in Vietnam

In order to evaluate the effectiveness of Vietnam's legal regulations related to bribery, it is necessary to study and clarify the reality of this act in practice. Because of the nature of bribery, it is not possible to have a direct quantitative study of it. To assess the practicality of bribery in business, the author uses data from the CPI report, in which the authors filter out the criteria of the CPI that are directly related to bribery. The study sample is private enterprises and Foreign Direct Investment (FDI); the spatial limitation is at the provincial level. In this part, we present the reality of bribery in business through Table 1 for studying some criteria related to bribery of private enterprises and Table 2 for studying some criteria related to bribery of FDI.

Table 1: Some criteria related to bribery of private enterprises*

Year	Sample size	a	b	c	d	e	f
2016	10.037	66.04%	9.09%	58.54%	41%	-	-
2017	8.292	59.3%	9.8%	60.8%	31.6%	32%	54.9%
2018	8.681	54.8%	7.1%	58.2%	28.8%	30.8%	48.4%
2019	8.773	53.6%	7.5%	54.1%	21.6%	36%	41.2%
2020	8.633	44.9%	5.4%	54.1%	23%	32%	40.0%

* lists only some of the criteria directly related to bribery; a: Unofficial cost-paying businesses; b: Paying over 10% of revenue for informal expenses; c: The phenomenon of corruption of officials when handling administrative procedures; d: The situation of "corrupted" is common when bringing the case to the Court; e: Unofficial costs in carrying out land procedures; f: Unofficial costs in bidding

Table 2: Some criteria related to bribery of FDI enterprises**

Year	Sample size	a	b	c	d	e	f
2016	1.500	49.7%	45.8%	56.4%	18.7%	22.6%	45.3%
2017	1.500	44.6%	44.9%	53.0%	18.9%	17.5%	50.3%
2018	1.500	36.5%	39.9%	44.4%	14.3%	6.8%	49%
2019	1.500	33.7%	32.5%	42.5%	14.9%	10%	44.5%
2020	1.500	34.7%	25.4%	37.2%	17.2%	10.3%	39.1%

** lists only some of the criteria directly related to bribery. The data given is the median % of the data according to the calculation method of CPI; a: Regulations used to claim unofficial cost; b: Paying the unofficial cost for inspectors and inspectors; c: unofficial cost in carrying out import and export procedures; d: The situation of "corrupted" is common when bringing the case to the Court; e: Unofficial costs in carrying out land procedures; f: Work done after paying the unofficial cost

Tables 1 and 2 show that bribery tends to decrease year by year. For private enterprises, payment of unofficial costs decreased from 66.04% (2016) to 44.9% (2020); For FDI, the number of enterprises admitting to paying the unofficial cost for inspectors decreased from 45.8% (2016) to 25.4% (2020). In general, the indicators related to bribery have decreased over the years, which shows that the provincial authorities in Vietnam have made efforts to retain businesses by reducing bribery because it is a fact that businesses tend to move or

choose where to invest are localities where officials are less likely to accept bribes (Bai et al., 2013).

However, some criteria show contradictions between private enterprises and FDI, the unofficial cost criterion in land procedures (often associated with grand corruption). Meanwhile, the proportion of private enterprises paying informal fees in land procedures almost did not decrease from 2016 - to 2019 (32%); for FDI, this criterion is halved from 22.6% (2016) to 10.3% (2020). Two-component criteria i.e., the corruption of officials when handling

administrative procedures and Regulations used to claim unofficial costs tend to increase in the two years 2019-2020. This shows that state officials actively ask for "sweeteners" when carrying out administrative procedures. However, it should be noted that there is scientific evidence that foreign enterprises tend to actively give bribes to achieve business benefits (García, 2019); the explanation for this problem has shown that now businesses are no longer "victims" but have become "agent" to create bribes (Ufere et al., 2012). An alarming fact through the investigation results of VCCI is that businesses believe that giving bribes is an "unwritten rule" giving bribes is the "rule of the game" when doing business in Vietnam. CPI 2016 shows that 54.6% of FDI enterprises give bribes during inspections, in 59% believe it is a common practice, which pushes bribery to a new level of prevalence where the giver and receiver do not even need to agree to each other.

The survey results of CPI showed that bribery in Vietnam is not only related to "petty corruption" acts to speed up administrative procedures (day-by-day corruption), evade inspections, or "directly circumvent regulation" (Anechiarico and Jacobs, 1996) but also involved in grand corruption in the bidding. It seems that the culture of paying commissions in bidding is quite common in Vietnam when up to 40% of businesses agree that paying commissions is necessary to win bids.

Recently, there have been cases involving paying bribes to win bids that shocked Vietnamese society (Big scandal); this is Viet A case. In the Covid-19 pandemic, to win contracts to supply Covid-19 test products to provinces, Viet A has spent a huge amount of commissions, up to 35 million USD. This company then inflated the price of these biological products through bidding tricks with Ghosh contractors (companies founded by Viet A), profiting 175 million USD. The above typical case is not only related to the CDC of the provinces but is believed to be related to high-ranking officials of the Ministry of Health of Vietnam and the Military Medical Academy of the Ministry of National Defense. It can be seen that efforts to reduce bribery in the business of Vietnam have brought specific results. However, the reality of bribery is still very complex, including "petty corruption" and "grand corruption."

4. Conclusion

The study provided an overview of the regulation and reality of bribery in business in Vietnam. It can be recognized that bribery is a critical problem to be concern in Vietnam. It causes inequality in business and degrades the business environment. To face this challenge, Vietnam has many regulations on bribery and strong punishments for bribery. This has brought specific effects; bribery in business in Vietnam tends to decrease over the years. However, the reality shows that bribes with big money still happen. Therefore, continuing to improve legal regulations, mechanisms, and policies and punishing bribery is inevitable for Vietnam in the future.

Compliance with ethical standards

Conflict of interest

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

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