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Convention against Corruption**

Executive summary

Note by the Secretariat

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II. Executive summary

Viet Nam

1. Introduction: overview of the legal and institutional framework of Viet Nam in the context of implementation of the United Nations Convention against Corruption

Viet Nam ratified the Convention by Decision No. 950/2009 on 30 June 2009 and deposited its instrument of ratification with the Secretary-General of the United Nations on 19 August 2009.

The country's implementation of chapters III and IV of the Convention was reviewed in the second year of the first review cycle, and the executive summary of that review was published on 21 August 2012 (CAC/COSP/IRG/I/2/1/Add.4).

The provisions of the Convention are not self-executing in Viet Nam. The Convention is implemented in accordance with the Constitutional principles and substantive law of Viet Nam, on the basis of bilateral or multilateral agreements and on the principle of reciprocity. In case of any conflict with domestic law, the provisions of the Convention prevail (art. 6 of the Law on Treaties).

The implementing legislation includes, principally, the Anti-Corruption Law (Law 36/2018/QH14), the Law on the Prevention of Money-Laundering, the Criminal Code, the Criminal Procedure Code and the Mutual Legal Assistance Law.

The competent authorities with mandates relevant to preventing and countering corruption include, primarily, the Central Steering Committee on Anti-Corruption, the Government Inspectorate, the Ministry of Public Security, the Supreme People's Procuracy, ministerial and provincial inspectorates, the State Audit Office, and the Anti-Money Laundering Department of the Banking Supervision Agency of the State Bank of Viet Nam.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

The country's anti-corruption policies are contained mainly in the Anti-Corruption Law, the National Strategy on Anti-Corruption Towards 2020 (Resolution 21/2009/NQ-CP), the Government's action plan to overcome weaknesses and prevent and curtail corruption to enhance the efficiency of management and the use of national resources (Resolution 82/NQ-CP) and other directives and resolutions issued by the Communist Party of Viet Nam on the fight against corruption.

The National Strategy, which was developed through broad consultations with a range of public and private stakeholders, establishes long-term and short-term objectives in the fight against corruption and sets out an implementation plan, including the responsibilities of different ministries and State entities. The Anti-Corruption Bureau of the Government Inspectorate is primarily tasked with monitoring and assessing the implementation. A working group to review the National Strategy, chaired by the Anti-Corruption Bureau, guides ministries and local authorities in implementing the Strategy.¹

According to the authorities, the country's legal framework against corruption is evaluated periodically. Those evaluations, led by the Ministry of Justice and the Government Inspectorate, resulted in the enactment of the Anti-Corruption Law, which replaced previous laws against corruption. In addition, the Government

¹ Following the country visit, Vietnamese authorities indicated that Viet Nam was taking stock of the implementation of the existing Strategy and considering the adoption of the new one for the next period.

requires relevant agencies to conduct social surveys and studies on corruption-related matters, which have led to legislative revisions.

The Central Steering Committee on Anti-Corruption was established pursuant to Decision No. 162-QD/TW issued by the Party Politburo of Viet Nam. The Committee is responsible for directing, coordinating and inspecting anti-corruption activities. It is headed by the Party Secretary General, and its membership includes the Inspector General, the Minister of Public Security, the Minister of Justice, the Prosecutor General of the Supreme People's Procuracy and the Chief Justice of the Supreme People's Court (Politburo Regulation No. 163-QD/TW). The Government Inspectorate, as the focal agency assisting the Government in preventing and combating corruption (art. 84 of the Anti-Corruption Law), supervises the implementation of various preventive measures. As a ministerial agency, the Government Inspectorate is accountable to the Government (art. 14 of Law on Inspection 56/2010/QH12), and its Inspector General is a cabinet member appointed and removed by the State President after having been approved by the National Assembly at the proposal of the Prime Minister. The Government Inspectorate appears to have adequate human and financial resources to exercise its mandate. In addition, other state inspectorates at all levels and sectors exercise responsibilities against corruption within their specific scope of mandates and are accountable to the State management agencies at the same level or sector.

The Vietnamese authorities cooperate regionally and internationally in corruption prevention initiatives and activities, including through the Anti-Corruption Initiative for Asia-Pacific, ASEAN Parties Against Corruption (ASEAN-PAC), the Asia-Pacific Economic Cooperation initiative and collaboration with the World Bank.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The recruitment, retention, promotion and retirement of public officials are regulated mainly in the Law on Cadres and Civil Servants of 2008 and its 2019 Amendment, Government Decree 24/2010/ND-CP (Decree 24/2010/ND-CP).² Principles for recruitment and promotion include publicity, transparency, objectivity and legality (arts. 38 and 44 (3) of the Law). The recruitment of public officials is decentralized (art. 39 of the Law) and is conducted through competitive examinations (art. 37 of the Law; art. 8 of Decree 24/2010/ND-CP). Posts are to be advertised in the mass media and on the hiring agency's website (art. 15 of Decree 24/2010/ND-CP). Persons found guilty of a crime or serving a criminal sentence are ineligible (art. 36 (2) of the Law). Personnel inspectorates are responsible for inspecting the recruitment, appointment, training, retention, transfer, rotation, retirement, promotion and disciplining of public officials (arts. 74 and 75 of the Law).

Integrity is one of the values required of public officials (art. 15 of the Law on Cadres and Civil Servants). Article 79 of the Law lists the different forms of sanctions for those who violate it or any other relevant laws. There are no special provisions regarding the identification, selection and training of public officials in positions especially vulnerable to corruption, although it was explained that certain sensitive positions, such as those in the inspectorate system, are subject to additional criteria pertaining to integrity and political loyalty. Article 25 of the Anti-Corruption Law provides for the rotation of certain categories of public officials. The State is required to implement policies to discover, attract and maintain talented persons for public service (art. 6 of the Law on Cadres and Civil Servants). Public officials have the right to receive salaries matching their duties and responsibilities (art. 12 of the Law) and are guaranteed the right to receive training (art. 14 of the Law). Each agency is

² Following the country visit, Vietnamese authorities indicated that Decree 24/2010/ND-CP had been replaced by Decree 138/2020/NĐ-CP dated 27 November 2020. In addition, Decree 115/2020/NĐ-CP dated 25 September 2020 regulating the recruitment, employment and management of public employees had been enacted.

responsible for training its staff (art. 48 of the Law). Training must cover anti-corruption issues (Directive No. 10/CT-TTg).

Article 37 of Law 85/2015/QH13 on the election of deputies to the National Assembly and the People's Council (the Electoral Law) sets out disqualification criteria for candidates for the position of deputy of the National Assembly. Candidates must submit income and asset declarations (art. 35 of the Electoral Law). For other elected positions, certain provisions of the Law on Cadres and Civil Servants apply (art. 4), but no disqualification criteria are specified.

Electoral expenses are publicly funded, audited and disclosed as part of the expenses of public agencies. Other specific provisions further regulate this matter (e.g., Circular No. 06/2016/TT-BTC dated 14 January 2016 of the Ministry of Finance). Fundraising activities are prohibited (art. 68 of the Electoral Law).

Article 3 of the Anti-Corruption Law defines "conflict of interest". Public officials are required to report any situation giving rise to a conflict of interest to the head of the corresponding entity (art. 23 of the Law). In addition, certain public officials are prohibited from (i) establishing or participating in the management of private companies or advising them in matters related to their field of work (art. 20 of the Law); and (ii) receiving any gifts (art. 22 (2) of the Law). Decree 59/2019/ND-CP requires public officials to report gifts of any value and their relationship with the giver, and to refuse to accept "improper gifts". The identification, management and resolution of conflicts of interest are provided for under chapter IV, section 3, of Decree No. 59/2019/ND-CP.

The Ministry of Home Affairs enacted a code of conduct for all public officials (Code No. 03/2007/QĐ-BNV). In addition, ministries and heads of agencies are authorized to enact rules of conduct for public officials entrusted with prominent functions (art. 21 of the Anti-Corruption Law). To date, some sectoral codes have been enacted that include additional ethical requirements for specific government authorities, such as the Government Inspectorate and the police. Decree 34/2011/ND-CP³ establishes disciplinary measures for public officials who violate anti-corruption laws, including violations of existing codes of ethics.

Public officials must report illegal acts (art. 9 of the Law on Cadres and Civil Servants). Article 10 of the same Law stipulates that cadres and civil servants that are heads of agencies/units must settle complaints and denunciations of individuals or organizations in a timely and lawful manner according to their competence or propose competent agencies to do so. Law 25/2018/QH14 (the Law on Denunciations), Decree 75/2012/ND-CP⁴ and Circular 07/2013/TT-TTCT establish the procedures for reporting and addressing illegal acts committed by public officials. The Law on Denunciations also establishes measures aimed at protecting reporting persons (chapter V). Reporting persons are required to provide their full name and address. If it is not possible to verify their identity, the report may provide leads for further investigation (art. 23 and 25 of the Law on Denunciations).⁵

All public officials must declare their assets and income, as described under article 52, paragraph 5, of the Convention.

Judicial independence is established according to the Constitution (art. 103). The organization of the judiciary is governed by the Constitution and Law 62/2014/QH13

³ Following the country visit, Vietnamese authorities indicated that Decree 34/2011 had been replaced by Government Decree No. 112/2020/ND-CP dated 18 September 2020 on disciplinary measures for cadres, civil servants and public employees.

⁴ Following the country visit, Vietnamese authorities indicated that Decree 75/2012/ND-CP had been replaced by Decree 31/2019/ND-CP, which details some articles and measures to implement Law on Denunciations.

⁵ Following the country visit, Vietnamese authorities indicated that the Ministry of Home Affairs of Viet Nam had issued Circular No. 03/2020/TT-BNV dated 21 July 2020, which detailed the authority, order, procedures and measures to protect the job of whistle-blowers who are cadres, civil servants or public employees.

on the Organization of People's Courts. Judges are selected through an examination process organized by the National Council for Judge Selection and Supervision, which is composed of members of competent agencies, including the Government. On the basis of the selection results, judges are appointed and reappointed by the President upon a proposal of the Council (arts. 65 and 68 to 71 of Law 62/2014/QH13). The Supreme People's Court has enacted Decision 1253/2008/QD-TANDTC on the Code of Conduct for Officials and Employees of the People's Court.⁶ Judges must respect the code of conduct and professional ethics for judges, and violations constitute grounds for dismissal (arts. 76 and 82 of Law 62/2014/QH13).

The organization of the Prosecution Service is governed by the Constitution and Law 63/2014/QH13 on the Organization of People's Procuracies. Prosecutors are selected through an examination process organized by the Council for the Selection of Prosecutors of the Supreme People's Procuracy (art. 86 of the Law), and they are appointed and reappointed by the Prosecutor General of the Supreme People's Procuracy (arts. 63, 77 and 82 of the Law). Prosecutors may be dismissed if they lack ethical qualities or commit any illegal act (art. 89 of the Law). The Prosecutor General of the Supreme People's Procuracy enacted Decision 46/QD-VKSTC on the promulgation of the code of conduct for prosecutors.

Public procurement and management of public finances (art. 9)

Public procurement is regulated mainly by Law 4/2013/QH13 (the Procurement Law), Decree 63/2014/ND-CP (the Tender Decree) and Decision 08/2018/QD-TTg. Procurement modalities include open bidding, limited bidding, direct appointment, competitive quotation and self-implementation. While open bidding is the preferred method, direct contracting is to be used for procurements of a value not exceeding 100,000,000 dong (approx. US\$ 4,300) (art. 15 of Circular 58/2016/TT-BTC). Procurement operations may be either centralized or decentralized (arts. 44 and 46 of the Procurement Law) and the State Audit Office may audit compliance with procurement procedures in both cases.

All relevant information on the procurement process, including procurement plans, invitations to bid, calls for proposals, shortlists, award results, relevant legislation and a list of prohibited firms, must be published in a procurement newspaper and on the national online bidding network (art. 8 of the Procurement Law; art. 7 of the Tender Decree). Chapter 4 of the Procurement Law establishes the bid evaluation method. Evaluation criteria must further be specified in the bidding documents (art. 7 of the Procurement Law; art. 15 of the Tender Decree).

There is a separate procedure, specified in article 26 of the Procurement Law, for procurements conducted under special circumstances by the Prime Minister. Decision No. 17/2019/QD-TTg dated 8 April 2019⁷ lists the bidding packages and procurement contents which are subject to article 26 of the Procurement Law.

Contractors and investors participating in the procurement process may file an objection when their legitimate rights and interests are violated in connection with the contractor selection process and its result (arts. 91 and 92 of the Procurement Law). Complaints are to be resolved by the procuring entity or, if the issue is not resolved, the authorized person, i.e. a minister or chair of a people's committee. Complaints regarding bid results are resolved by a consulting council established by

⁶ Following the country visit, Vietnamese authorities indicated that the National Council for Judge Selection and Supervision had issued Decision No. 87/QD-HDTC dated 14 July 2018 on the Code of Ethics and Conduct of Judges.

⁷ Decision No. 17/2019/QD-TTg dated 8 April 2019 of the Prime Minister on a number of bidding packages and procurement contents to maintain routine operations, which are subject to contractor selection in special cases specified in Article 26 of the Procurement Law. In addition, following the country visit, Vietnamese authorities indicated that chapter V of Decree 25/2020/ND-CP dated 28 February 2020 detailing a number of articles of the Procurement Law also details the implementation of article 26 of the Procurement Law.

the Minister of Planning and Investment or by other authorities (art. 92). If a court procedure is instituted, the administrative complaint procedure is terminated.

According to article 16 of the Procurement Law, individuals involved in procurement activities must possess a training certificate, which may be issued by an entity that complies with the requirements established under article 19 of such Law. Article 89 of the Procurement Law lists certain prohibited acts, which include certain situations of conflict of interests.

The national budget is prepared by the Government and the Minister of Finance in accordance with Law 83/2015/QH13 and is adopted by the National Assembly (arts. 19, 25 and 26). The Government reports on revenue and expenditure to the National Assembly, whose deliberations are public, on an annual basis (art. 60). Except as provided in article 51, off-budget expenditure is not permitted (art. 18). Applicable controls issued by the State Treasury regulate expenditure and internal risk management in public bodies. The State Audit Office is responsible for auditing central and provincial government budgets (art. 71).

The acts of forging, falsifying, damaging or destroying public or private accounting documents are criminalized (art. 221 of the Criminal Code) and are listed as prohibited acts in article 13 of Law 88/2015/QH13 (the Law on Accounting).

Public reporting; participation of society (arts. 10 and 13)

Access to information is regulated by Law 104/2016/QH13 (the Law on Access to Information) and by Law 80/2015/QH13 (the Law on the Promulgation of Legal Documents).

As provided under article 5 of the Law on Access to Information, except for the information listed in articles 6 and 7, which includes information classified as State secrets, all the information of State agencies is accessible to the public. Articles 6 and 8 of the Law on Access to Information provide for the classification of restricted information. Regulations on State secrets are further stipulated in articles 5 to 7 of the Ordinance on the Protection of State Secrets. The authorities explained that consideration was being given to the future publication of information on the number of requests made, information provided and requests denied. If access to information is denied, the matter may be appealed in court (art. 14 of the Law on Access to Information).

Government Resolution 30c/NQ-CP promulgated the master plan on state administrative reform for the period 2011–2020. In addition, Prime Minister's Directive No. 07/CT-TTg aims at accelerating the implementation of the master plan on state administrative reform for the period 2011–2020.

The Government Inspectorate is required to prepare annual reports on corruption (art. 84 of the Anti-Corruption Law), which are reported to the National Assembly in live television broadcasts and are available on the website of the National Assembly. The law establishes the minimum information that each agency must publish (arts. 17 and 19 of the Law on Access to Information; art. 10 of the Anti-Corruption Law).

The participation of society in public decision-making processes is provided through elections for the National Assembly and referendums (arts. 7 and 29 of the Constitution). In addition, citizens are entitled to provide opinions and comments on draft legislative documents. These opinions and comments must be considered and justification must be provided if they are not implemented (arts. 5 and 6 of the Law on the Promulgation of Legal Documents). However, the active involvement of individuals and groups outside the public sector in anti-corruption efforts needs to be enhanced.

Everyone has the right to report acts of corruption (art. 30 of the Constitution and arts. 5 and 65 of the Anti-Corruption Law). Each agency must establish a procedure for handling reports (chapter III, section 3, of the Law on Denunciations). Reports can be made to a variety of public bodies, such as the Government Inspectorate,

ministerial and provincial inspectorates and the police, which are generally known to the public. Pursuant to article 2 (c) of Prime Minister's Directive No.10/CT-TTg, administrative agencies must also establish systems to receive reports through telephone hotlines or by email.

Private sector (art. 12)

Viet Nam has implemented some measures to prevent corruption in the private sector. However, to date, anti-corruption measures are directed mainly at the public sector. The country's enterprises, businesses and associations are required to implement measures to identify and prevent corruption in their activities (art. 76 of the Anti-Corruption Law). In addition, enterprises and other economic organizations must implement rules of conduct, internal control mechanisms, and other anti-corruption measures (arts. 78 and 79 of the Anti-Corruption Law and chapter VII, section I, of Decree 59/2019/ND-CP). However, according to the governmental authorities, further specific guidance on the implementation of those measures or their enforcement is expected to be issued. While cooperation with the private sector in the fight against corruption is reported to be a government priority, specific measures to achieve this objective are not fully implemented.

Apart from a model of business integrity developed by Viet Nam Chamber of Commerce and Industry, no business integrity principles or corporate governance codes have been established.

Public officials are prohibited from establishing or holding managerial or executive positions in private companies after resignation for the period defined under article 23 of Decree 59/2019/ND-CP.

The Law on Accounting requires all private entities to prepare financial statements in accordance with Vietnamese accounting standards. Joint stock companies and other private sector entities are subject to independent audit (art. 37 of the Law on Independent Audit). Article 13 of the Law on Accounting and article 221 of the Criminal Code, among others, prohibit the acts of falsifying, damaging or destroying public or private accounting records. They also prohibit the types of accounting practices set out in article 12, paragraph 3, of the Convention.

There are no specific legislative provisions prohibiting the tax deductibility of expenses that constitute bribes.

Measures to prevent money-laundering (art. 14)

The prevention of money-laundering is regulated primarily in the Law on the Prevention of Money-Laundering, Government Decree 116/2013 and related State Bank of Viet Nam circulars. The measures apply to banks, non-bank financial institutions and designated non-financial businesses and professions, including money or value transfer service providers. The regulatory regime encompasses requirements concerning, inter alia, customer and beneficial owner identification and verification, record-keeping and the reporting of suspicious transactions, as described in the discussion of article 52 below.

The national risk assessment 2012–2017 was completed in April 2019 and Viet Nam has also adopted a national anti-money-laundering policy.

The provisions on international cooperation (chapter IV of the Law on the Prevention of Money-Laundering; chapter V of Government Decree 116) establish general principles for cooperation on anti-money-laundering and do not specify the investigative measures that may be taken in response to requests for information and cooperation from foreign authorities. These specific activities are regulated through formal mutual legal assistance channels or informal channels based on the Law on Mutual Legal Assistance and other relevant legal documents.

Viet Nam has adopted measures to detect and monitor the movement of cash and appropriate negotiable instruments across its borders, including related reporting

requirements, through provisions in the Law on the Prevention of Money-Laundering (art. 24), Government Decree 116 (art. 15), the Customs Law (art. 55) and State Bank of Viet Nam circulars 15/2011, 11/2014 and 11/2016. State Bank Circular 35/2013 amended in 2019 (Circular 20/2019/TT-NHNN) specifies that foreign and domestic currency in cash, precious metals, stones and appropriate negotiable instruments the value of which exceeds 300 million dong (approx. US\$ 12,900) must be declared at customs (art. 9).

All clients opening accounts or establishing transactions with financial institutions, including the execution of money orders, shall be identified (arts. 8 and 9 of the Law on the Prevention of Money Laundering, art. 3 of Decree 116). However, Viet Nam has not adopted specific regulations on customer identification for electronic funds transfers.

In addition to signing memorandums of understanding with foreign financial intelligence units, the Anti-Money-Laundering Department, which is the Vietnamese financial intelligence unit, exchanges intelligence with foreign financial intelligence units, primarily among States members of the Asia/Pacific Group on Money Laundering. Viet Nam is evaluating requirements and conditions for membership of the Egmont Group of Financial Intelligence Units.

Preparations for the country's third mutual evaluation by the Asia/Pacific Group on Money Laundering began in April 2019.

2.2. Successes and good practices

- The obligation to consider citizens' comments regarding draft laws and to provide justification when such comments are not addressed (art. 13).

2.3. Challenges in implementation

It is recommended that Viet Nam:

- Provide the preventive anti-corruption bodies with the necessary independence to enable them to carry out their functions effectively and free from any undue influence and strengthen coordination in the exercise of their functions (art. 6, paras. 1 and 2).
- Endeavour to adopt adequate procedures for the selection and training of individuals for public positions vulnerable to corruption (art. 7, para. 1).
- Ensure that criteria relating to candidature for public office are established for all elected positions (art. 7, para. 2).
- Consider expanding the definition of conflicts of interest in the Anti-Corruption Law in line with international good practices (art. 7, para. 4, and art. 8, para. 5).
- Establish an effective system of review and appeal of public procurement matters by independent bodies; ensure the consistent application of open bidding as the norm for public procurement; and consider adopting integrity measures for procurement personnel (art. 9, para. 1).
- Continue to implement the framework for access to information to ensure that State agencies adopt clear procedures on access to information, train government employees in handling requests and raise public awareness. Continue efforts to enhance the transparency of decisions and procedures on access to information (art. 10 (a)).
- Enhance the objectivity of the selection and reappointment of judges (art. 11, para. 1).
- Take measures to strengthen the prevention of corruption involving the private sector, including by providing appropriate guidance on compliance procedures to private sector entities, enhancing anti-corruption cooperation with private

entities and promoting the development of business integrity principles or corporate governance codes (art. 12, paras. 1 and 2).

- Adopt an explicit provision disallowing the tax deductibility of expenses that constitute bribes (art. 12, para. 4).
- Strengthen the active participation of individuals and groups outside the public sector in efforts to prevent and combat corruption and continue to promote the reporting of corruption (art. 13, paras. 1 and 2).
- Review and consider revising its legislation to specify the types of investigative measures that may be taken to respond to requests for information and international cooperation involving money-laundering and corruption offences; and continue evaluating requirements and conditions for membership of the Egmont Group (art. 14, para. 1).
- Adopt detailed identification requirements for electronic funds transfers in line with article 14, paragraph 3.
- Continue to develop relationships with foreign jurisdictions for the purpose of enhancing cooperation in order to combat money-laundering (art. 14, para. 5).

2.4. Technical assistance needs identified to improve implementation of the Convention

- Technical assistance needs in relation to arts. 5, 6, 8, 13 and 14.

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

Viet Nam cooperates in matters related to asset recovery primarily pursuant to provisions in the Anti-Corruption Law (arts. 91 and 93), the Criminal Procedure Code and the Mutual Legal Assistance Law, as well as bilateral treaties.

Dual criminality is a requirement in respect of all types of mutual legal assistance, including non-coercive measures.

To date, Viet Nam has never refused a request for mutual legal assistance. The country has not received any requests for asset recovery in connection with corruption cases and there have been no completed cases of asset return.

Apart from provisions in relation to money-laundering offences as defined in the Law on the Prevention of Money-Laundering (art. 37 (6) and (7)), the spontaneous sharing of information in relation to offences established in accordance with the Convention is not specifically provided for in Vietnamese legislation.

Some bilateral mutual legal assistance treaties contain provisions relevant to asset tracing, seizure and confiscation.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

Pursuant to the Law on the Prevention of Money-Laundering and its implementing legal documents, notably, the aforementioned Prime Minister's decisions, government decrees and State Bank of Viet Nam circulars, Viet Nam has established requirements for financial institutions to verify the identity of customers and beneficial owners (art. 9 (2) of the Law on the Prevention of Money-Laundering; arts. 3–5, of Government Decree 116), and to conduct enhanced due diligence of accounts of foreign politically exposed persons and their family members, but not their close associates (art. 13 of the Law on the Prevention of Money-Laundering; art. 4 of State Bank of Viet Nam Circular 35). There are no requirements on enhanced due diligence for domestic politically exposed persons, their family members or close associates.

For designated non-financial businesses and professions, customer identification is required for high-value transactions (art. 8 (2) (a) of the Law on the Prevention of Money-Laundering, as specified in art. 3 of Government Decree 116), including real estate transactions in cash of a value of more than 300 million dong (approx. US\$ 12,935) (art. 3 (4) of Government Decree 116). Some challenges were reported in implementing the requirements on beneficial owner identification.

Higher-risk clients and transactions include transactions of an unusually large or complex value, transactions involving jurisdictions on the Financial Action Task Force list, foreign politically exposed persons, correspondent banking and new technologies, as defined in the Law on the Prevention of Money-Laundering, Government Decree 116 and State Bank of Viet Nam circulars. The State Bank has issued advisories and alerts to the financial sector regarding specific persons or accounts for which enhanced due diligence is required.

Article 27 of the Law on the Prevention of Money-Laundering provides a time limit for keeping records of transactions, customer and beneficial owner identities, accounting documents and reports of at least five years from the closing date of the transaction, the date of closure of the account or the reporting date.

In Viet Nam, banking operations must be licensed by the State Bank of Viet Nam if the conditions under article 20 of the Law on Credit Institutions are met (art. 8 of the Law on Credit Institutions). However, there is no regulation explicitly prohibiting the establishment of “shell banks” in Viet Nam. While the law prohibits business relations (including correspondent banking relationships) with “shell banks” (as defined in arts. 7 (3) and 14 of the Law on the Prevention of Money-Laundering), there is no requirement for financial institutions to guard against establishing relations with foreign financial institutions that permit their accounts to be used by “shell banks”.

The country has established a reporting obligation concerning assets and income for public officials and civil servants, as well as certain enumerated persons (art. 34 of the Anti-Corruption Law). These rules apply to all public officials in Viet Nam, including candidates for the position of deputy of the National Assembly and the People’s Council. Public officials must declare their assets and income when appointed to public office and when their income rises above a specified threshold (approx. US\$ 12,700) (arts. 34 and 35 of the Anti-Corruption Law). Furthermore, the persons listed in article 35 (3) of the Law must submit declarations on an annual basis. While each agency is responsible for managing and reviewing declarations (art. 38 of the Law), declarations are only verified in specific situations (arts. 41–51 of the Law). To date, few entities have established the necessary institutional arrangements and verification procedures, although the introduction of an electronic filing system for making and reviewing declarations is under consideration. The failure to submit declarations and the submission of false declarations are subject to disciplinary sanctions (art. 51 of the Law). Relevant information could be shared with foreign States in appropriate cases (art. 91 of the Law).

Under article 35, paragraph 3, of the Anti-Corruption Law, reporting persons are required to declare their accounts and assets, including bank accounts held or controlled abroad.

The country’s financial intelligence unit, the Anti-Money-Laundering Department, is an administrative-type unit that is part of the State Bank of Viet Nam tasked with receiving, analysing and transmitting information on money-laundering to the competent authorities. However, there are no legal provisions ensuring its independence.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

Article 465 of the Civil Procedure Code provides that foreign persons and organizations may bring civil action in the Vietnamese courts in cases that fall under

the jurisdiction of those courts, and that Viet Nam may apply the principle of reciprocity to restrict the civil procedural rights of such foreign entities in appropriate cases. Cases involving foreign elements must be rejected and proceedings terminated under certain circumstances (art. 472 of the Civil Procedure Code).

There is no mechanism or procedure for injured parties to claim compensation or establish ownership of property in criminal proceedings, other than through mutual legal assistance. The resolution of civil matters, including compensation and reimbursement for damages, where those issues do not affect the settlement of the criminal case, is settled in separate civil proceedings (art. 30 of the Civil Code) conducted in accordance with section I of chapter VI of the Civil Procedure Code.

The law does not provide for the recognition of foreign States as legitimate owners in confiscation proceedings. Victims and lawful owners of property are entitled to the return of property only in cases where it is not confiscated (arts. 47 and 48 of the Criminal Code). Relevant amendments were under consideration.

There is no mechanism for the recognition and enforcement of foreign confiscation orders. Related provisions in the Civil Code are not applicable to the enforcement of confiscation orders in criminal cases. Amendments to the legislation on mutual legal assistance in criminal and civil matters are under development in this regard pursuant to Prime Minister's Document No. 1083/VPCP-PL.

Article 46 of the Criminal Code provides for the confiscation of criminal proceeds as a judicial measure, which includes proceeds of offences committed both in Viet Nam and abroad. While confiscation is generally conviction-based, in the event of the death of the offender, equipment and instruments of the crime may be confiscated in accordance with article 106 of the Criminal Procedure Code; however, this does not cover all proceeds of crime. Authorities reported that the Supreme People's Court was developing a draft resolution on the recognition and enforcement of foreign court judgments and decisions involving non-conviction-based forfeiture.

Article 507 of the Criminal Procedure Code stipulates that the competent Vietnamese authorities must cooperate with the competent foreign authorities to search, seize, restrain, freeze, confiscate and dispose of criminal assets for the activities of investigation, prosecution and adjudication and the enforcement of criminal sentences. Further provisions on the freezing and seizure of property are contained in articles 128, 129, 437 and 438 of the Criminal Procedure Code.

A request for asset recovery (identification, search, seizure and confiscation) may be required to be accompanied by a foreign court judgment or ruling on the mandate to conduct the requested action (art. 19 (2) (d) of the Mutual Legal Assistance Law). Accordingly, the Vietnamese authorities may require a foreign court order to conduct search and seizure activities, depending on the circumstances of the case.

Basic measures are in place to preserve exhibits and restrained property for confiscation in order to provide mutual legal assistance.

The procedure to obtain an order of confiscation or to enforce a foreign confiscation order on the basis of a foreign request is not explicitly set out in the legislation.

Article 19 (2) of the Mutual Legal Assistance Law provides that a request for mutual legal assistance may include information that may lead to the detection or recovery of assets, depending on the specific case and at the request of competent authorities. No additional content requirements or further guidance specific to asset recovery requests have been developed.

The country does not recognize the Convention as a basis for mutual legal assistance, but would provide assistance in the absence of a treaty on the condition of reciprocity.

Viet Nam would not refuse assistance on the grounds that the property was considered to be of a de minimis value and would consult with requesting States as a matter of practice in cases of insufficient evidence (art. 19 (3) of the Mutual Legal Assistance Law).

There are no specific legal protections for bona fide third parties in confiscation proceedings. However, in parallel civil proceedings, the rights of lawful owners and holders of property to reclaim assets are established (art. 166 of the Civil Code), and the court must include interested third parties in the civil case where their interests are related to the resolution of the lawsuit (art. 68 (4) of the Civil Procedure Code).

Return and disposal of assets (art. 57)

Article 47 (1) of the Criminal Code provides that confiscated assets that are directly related to a crime will be transferred to the State or destroyed. Article 93 of the Anti-Corruption Law and article 47 (2) of the Criminal Code provide for the return of property to legitimate owners only in cases where such property is not confiscated.

The country's legislation does not provide for the return of confiscated property to a requesting State in the circumstances specified in paragraph 3 of article 57 of the Convention. Under article 507 (3) of the Criminal Procedure Code, decisions on asset return are to be handled according to international agreements or on a case-by-case basis between the relevant competent authorities. Viet Nam has not entered into any agreements or arrangements on the disposal of confiscated property or the return of assets.

The costs of mutual legal assistance are borne by the requesting State unless otherwise agreed (art. 31 of the Mutual Legal Assistance Law). The matter of costs presents reported challenges in practice.

3.2. Challenges in implementation

It is recommended that Viet Nam:

- Eliminate the threshold for customer identification involving real estate transactions; continue to strengthen measures for beneficial ownership identification and verification by financial institutions and designated non-financial businesses and professions; amend its legislation to establish requirements for enhanced scrutiny of accounts sought or maintained by domestic politically exposed persons, their family members and close associates; and amend the definition of foreign politically exposed persons to also cover close associates of such persons, including legal persons (art. 52, para. 1).
- Adopt measures to explicitly prohibit the establishment of "shell banks" in Viet Nam and to require financial institutions to guard against establishing relations with foreign financial institutions that permit their accounts to be used by "shell banks" (art. 52, para. 4).
- Endeavour to improve the operation of the asset declaration system by adopting the necessary institutional arrangements and verification procedures, and continue efforts to establish electronic filing and verification systems (art. 52, para. 5).
- Amend its legislation and adopt measures in line with article 53 (a) to (c).
- Adopt legislation to recognize and enforce confiscation orders issued by foreign courts (art. 54, para. 1 (a)).
- Consider adopting measures to allow for the confiscation of any property acquired through or involved in the commission of an offence without a criminal conviction, in cases where the offender cannot be prosecuted by reason of death, flight or absence, or in other appropriate cases (art. 54, para. 1 (c)).
- Amend its legislation to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for such action, in the absence of a freezing or seizure order issued by a foreign court (art. 54, para. 2 (b)).

- Strengthen measures to preserve property for confiscation through international cooperation, such as on the basis of a foreign arrest or criminal charge (art. 54, para. 2 (c)).
- Amend its legislation to allow its competent authorities to: (i) obtain an order of confiscation or enforce a foreign confiscation order on the basis of a foreign request (art. 55, para. 1); and (ii) identify, trace and freeze or seize property for the purposes of confiscation on the basis of a foreign request in the absence of a relevant foreign court order (art. 55, para. 2).
- Specify the required content of asset recovery requests and consider producing further guidance in the form of a handbook or guideline for requesting States (art. 55, para. 3).
- Amend its legislation to adopt measures protecting the rights of bona fide third parties (art. 55, para. 9).
- Endeavour to adopt measures on spontaneous cooperation and information-sharing with regard to offences established in accordance with the Convention (art. 56).
- Adopt measures providing for the disposal of confiscated property (including by return to its prior legitimate owner) and for the return of confiscated property, when acting on the request of another State (art. 57, paras. 1 and 2).
- Amend its legislation to provide for the return of confiscated property to a requesting State in the circumstances specified in paragraph 3 of article 57, by incorporating the requirements of this article into domestic law or procedure (art. 57, para. 3).
- Adopt a legal provision on the expenses of asset recovery pursuant to article 57, paragraph 4, taking into consideration article 46, paragraph 28, of the Convention.
- Take specific measures to strengthen the necessary independence and improve the operational effectiveness of the Anti-Money-Laundering Department (art. 58).

3.3. Technical assistance needs identified to improve implementation of the Convention

- Technical assistance needs in relation to articles 52, 54, 56 and 58.
