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# LEGAL UPDATE

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## THE NEW POINTS OF THE PROVISIONS ON BRIBERY UNDER CURRENT PENAL CODE

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10 April 2020

### SUMMARY OF HISTORICAL BACKGROUND

After 15 years of existing and developing, the Penal Code 1999, amended in 2009 (Law No. 15/1999/QH10, as amended by Law No. 37/2009/QH12, hereinafter “**Old Penal Code**”) has changed which is suitable for the economic and social situation in Vietnam. From 01<sup>st</sup> July 2016, the Current Penal Code (Law No. 100/2015/QH13, hereinafter “**Current Penal Code**”) was effected and replaced the Old Penal Code. It is expected that the Current Penal Code will bring a significant change to the bribery rule in Vietnam. This article addresses some issues regarding bribery offence under the Current Penal Code which should be paid attention to by foreign-invested companies doing business in Vietnam.



## **BRIBERY REGULATIONS REACH FOREIGN PUBLIC OFFICIALS, PUBLIC INTERNATIONAL ORGANIZATION OFFICIALS, AND EMPLOYEES OF PRIVATE SECTORS**

Bribery offence under the Old Penal Code is stipulated as a crime relating to a “person with the position” for doing “public duties” (Article 277 of the Old Penal Code), and the receivers of the bribe are interpreted as persons who have certain powers in performing official duties in Vietnam (Articles 279 and 289 of the Old Penal Code). Under the Current Penal Code, it is clearly stipulated that a foreign official, an official of a public international organization, and an office holder in an enterprise or organization other than state organizations can also be a receiver of the bribe (Article 364.6 of the Current Penal Code). Although we should observe the actual enforcement by the competent authority in order to determine the concrete scope of the application of this provision, it should be noted that the scope of the bribe receiver will be expanded under the Current Penal Code.

## **CAN AN ENTERPRISE BE SUBJECT TO PUNISHMENT BY GIVING BRIBE UNDER THE CURRENT PENAL CODE?**

One of the important changes under the Current Penal Code is to add corporate legal entities as offenders of certain crimes (for example, Smuggling - Article 188 of the Current Penal Code, Tax Evasion - Article 200 of the Current Penal Code, etc.). Meanwhile, the Old Penal Code regulates the crime within the limit of natural persons only (Article 2 of the Old Penal Code). However, most of these crimes under which offenders can be corporate legal entities are crimes only related to economic management or the environment. The offence of giving bribe under Article 364 of the Current Penal Code and other bribery-related crimes are not applied to the corporate legal entities including foreign-invested enterprises under the relevant provisions of the Current Penal Code.

## **AMOUNT OF BRIBE AND THE PENALTIES**

Basically, the offence of giving bribe will be punished depends on the amount of the value of bribe and the manner of bribery. Below is the comparison of some major changes regarding the amount of bribe and the applicable penalties between the two Codes.



| Old Penal Code<br>(Art.289, as amended in 2009)                                                                                                                                                                                                                                                     |                                                | Current Penal Code<br>(Art.364)                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| Constitution of the crime                                                                                                                                                                                                                                                                           | Penalty                                        | Constitution of the crime                                                                                                                                                                                                                                                                                                                                                          | Penalty                                                                                                                                            |
| Offer bribe (i) which has a value of between VND 2,000,000 and under VND 10,000,000, or (ii) under VND 2,000,000 but cause serious consequences or commit it more than once.                                                                                                                        | Between 01 and 06 years of imprisonment.       | Offer (i) money, property or other material benefits valued at from VND 2,000,000 to under VND 100,000,000 or (ii) non-material benefits.                                                                                                                                                                                                                                          | A monetary fine of from VND 20,000,000 to VND 200,000,000; non-custodial reform up to 03 years; or between 06 months and 03 years of imprisonment. |
| Offer bribe in one of the following cases: in an organized manner; employing treacherous tricks; using State property to offer bribes; committing the offence more than once; with the bribe has a value of between VND 10,000,000 and under VND 50,000,000; or causing other serious consequences. | Between 06 years and 13 years of imprisonment. | Offer bribe in one of the following cases: in an organized manner; employing treacherous tricks; using the State property to offer bribes; the offender abuses his/her position or power to commit the offence; the offence has been committed at least twice; or the bribe is money, property or other material benefits valued at from VND 100,000,000 to under VND 500,000,000. | Between 02 and 07 years of imprisonment.                                                                                                           |
| Offer bribe which has a value of between VND 50,000,000 and under VND 300,000,000 or causing other very serious consequences.                                                                                                                                                                       | Between 13 years and 20 years of imprisonment. | If the bribe is money, property or other material benefits valued at from VND 500,000,000 to under VND 1,000,000,000.                                                                                                                                                                                                                                                              | Between 07 and 12 years of imprisonment.                                                                                                           |



|                                                                                                              |                                                |                                                                                                 |                                                       |
|--------------------------------------------------------------------------------------------------------------|------------------------------------------------|-------------------------------------------------------------------------------------------------|-------------------------------------------------------|
| Offer bribe which has a value of VND 300,000,000 or more or causing other particularly serious consequences. | 20 years of imprisonment or life imprisonment. | If the bribe is money, property or other material benefits valued at VND 1,000,000,000 or more. | A penalty of between 12 and 20 years of imprisonment. |
|--------------------------------------------------------------------------------------------------------------|------------------------------------------------|-------------------------------------------------------------------------------------------------|-------------------------------------------------------|

Notably, while the offender might be subject to life imprisonment under the Old Penal Code (Article 289.4) as the most severe penalty, the Current Penal Code has abolished such penalty. Instead, the most severe sentence applied to this crime under the Current Penal Code is 20 years of imprisonment only. Also, under the Current Penal Code, the case of the bribe with the value under VND 2,000,000 has been abolished while the act of giving a bribe of “non-material benefits” has been newly added to be subject to bribery crime (Article 364.1.b). Given that no further guidelines as to the non-material benefits have been so far provided for, there is a concern that this would be a risk for such less-valued bribery property of less than VND 2,000,000 might be considered as “non-material benefits” which is still subject to the bribery crime under the Current Penal Code. For this issue, there is the thought that non-material benefits can be implied as “the benefits are not tangible and exchanged into money but providing the satisfaction to the receiver”. Meanwhile, the bribe with the value under VND 2,000,000 is not constituted as the giving bribes crime because the Current Penal Code regulates for the bribe with the value from VND 2,000,000 as the bribery crime. As a result, the bribe with the value under VND 2,000,000 is considered as neither the giving bribes crime nor non-material benefits. The above analysis is a reference for non-material benefits, which is not official guidance for this issue. Therefore, careful consideration should be made until official guidance in this regard is promulgated.

The fight against bribery is one of the most important issues for the Vietnamese government, and it is expected that the enforcement of anti-bribery legislation would be stricter going forward. Since the Current Penal Code was effected in 2016, the practical enforcement of the competent authority is more prudently observed but there are still inadequacies as mentioned above.

**BP Attorneys**

<sup>1</sup> The new points of provisions on position crimes in Penal Code 2015, People’s Court Magazine, <https://tapchitoaan.vn/bai-viet/phap-luat/nhung-diem-moi-quy-dinh-ve-cac-toi-pham-ve-chuc-vu-trong-blhs-2015>;



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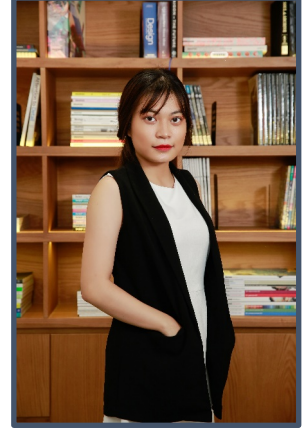


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