

New regulation on gift taking and giving in Vietnam

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/QĐ-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./.