

Client Alert

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New Decree relating to the implementation of the new Law on Anti-Corruption

On 15 August 2019, Decree No. 59/2019/ND-CP dated 1 July 2019 ("**Decree No. 59**") providing specific guidance on a number of articles and measures for implementation of the New Anti-Corruption Law No. 36/2018/QH14 dated 20 November 2018 ("**Law on Anti-Corruption**") officially came into effect.

We set out below notable regulations of Decree No. 59 for your reference.

1. Regulations on Giving and Receiving Gifts

As a general principle under the Law on Anti-Corruption, and reinforced under Decree No. 59, agencies, organizations, units ("**State Organizations**") and individuals holding position and power ("**Public Officials**") are prohibited from, either directly or indirectly, receiving gifts in any form from individuals, agencies, organizations or units under their management in connection to their public duties.¹

More importantly, Decree No. 59 supersedes Decision No. 64/2007/QĐ-TTg dated 10 May 2007 guiding the giving and receiving of gifts to state officials and public servants ("**Decision No. 64**"). Resultantly, the exception allowing Public Officials to receive gifts with a value of less than VND 500,000 (for special occasions such as weddings, funerals, public holidays, etc.) without having to report such gifts is no longer valid. Therefore, Public Officials must now disclose all gifts received for an improper purpose, regardless of the value of the gift.

Similarly to Decision No. 64, Decree No. 59 requires that State Organizations and Public Officials refuse to accept any improper gifts. While Decree No. 59 does not define the term "improper gifts", in common practice, it is understood to be gifts used for the purposes of bribery and corruption. In cases where Public Officials are unable to reject such gifts, they are required to report the incident (regardless of the value of gifts) to a direct supervisor within five working days from the date of receiving the improper gifts, and dispose of such gifts in accordance with the Decree. Decree No. 59 also requires that Public Officials disclose their relationship with the giver of the gift.²

If a State Organization is unable to reject a gift, the gift must be handed over to the department of that State Organization which is responsible for handling gifts for its disposal in accordance with the Decree.³

2. Regulations on Conflicts of Interest

With the aim of further combating Government corruption, Decree No. 59 emphasises the control of actions constituting conflicts of interest by Public

¹ Article 22, Law on Anti-Corruption; Article 25, Decree No. 59.

² Article 26.2, Decree No. 59

³ Article 26.1, Decree No. 59





Officials. Decree No. 59 outlines situations where a Public Official's actions will be a conflict of interest. Such situations include, but are not limited to, providing consulting services to domestic or foreign enterprises, organizations or individuals in connection to state secrets, business secrets or work related to the Public Official's competence and authority.⁴ Consequently, if an enterprise wishes to invite Public Officials to engage in certain services, e.g., providing speeches or lectures which requires them to discuss issues relating to their public duties, these regulations should be taken into consideration.

Decree No. 59 further imposes obligations on certain enterprises (such as public companies and credit institutions) as well as certain non-state organizations to establish regimes for preventing and resolving conflict of interest issues occurring within their organization.⁵ Such measures may include providing training to employees as well as building a robust system for the reporting and handling of conflict of interest cases.

3. Regulations on Enterprises and Non-state Organizations

The Law on Anti-Corruption and Decree No. 59 also require that public companies, credit institutions, and certain non-state organizations, including fundraising charities, establish regulations on methods to ensure openness and transparency within their operations.⁶ Such organizations must also establish regulations specifying the responsibilities of heads and deputies in situations where corruption is detected as well as specific sanctions in cases where corruption has occurred.⁷

Furthermore, the authorities are now entitled to conduct inspections/investigations into public companies, credit institutions, and certain non-state organizations including fundraising charities, in order to examine and ensure compliance with the relevant regulations on transparency, conflicts of interest, and anti-corruption.⁸

4. Regulations on Sanctions against Head or Deputies of Non-state Enterprises

The Law on Anti-Corruption requires that heads or deputies of non-state enterprises be held liable for corruption activities committed by employees or units/departments under their management/supervision.⁹ Decree No. 59 gives each non-state enterprise the right to regulate appropriate sanctions and disciplinary measures against heads and deputies who allow corruption to occur within their enterprises.

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⁴ Article 29, Decree No. 59

⁵ Article 54, Decree No. 59

⁶ Article 53.1, Decree No. 59

⁷ Article 55, Decree No. 59

⁸ Articles 56 and 57, Decree No. 59

⁹ Article 72, Law on Anti-Corruption