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**LEGAL  
GAP ANALYSIS  
OF  
ANTI-TRAFFICKING  
LEGISLATION  
IN**

# Vietnam

**LIBERTY ASIA**  
TO PREVENT  
HUMAN TRAFFICKING



2018

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#### Disclaimer

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## FOREWORD

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Since 2011 the Vietnamese government has made significant changes to the anti-trafficking legal framework by introducing a specific law on human trafficking, issuing various decrees and circulars to interpret and expand its victim protection and support measures and crafting a more precise trafficking offence that reflects the international standard.

The amendments related to human trafficking, money laundering and corruption under the new Penal Code demonstrate Vietnam's commitment to take a more holistic approach to combating human trafficking at a time where corporations are increasingly held accountable for forced labour and human trafficking in several jurisdictions. Corporate liability for money laundering is now punishable under the new Penal Code and the draft Law on Anti-Corruption which extends to the private sector, if approved, will add to the legal tools available to fight the crime of human trafficking.

Implementation and enforcement of these new laws and policies presents a challenge particularly given the porous borders where it is difficult for the authorities to extensively exercise control and effectively implement the law. The villages along the Vietnamese-Chinese border are a hunting ground for human traffickers. With China expecting to have 30 to 40 million more men than women at a marriageable age by 2020, the repercussions of China's absent female population will persist if the implementation and enforcement of the laws are not in full force.

Not only must domestic cooperation and cross-agency coordination be improved but there is also a significant role for international cooperation to tackle the cross-border trafficking given that Vietnam is primarily a source country for women and children trafficked as brides to China and for forced labour in construction, fishing, agriculture, mining, logging, and manufacturing, primarily in Taiwan, Malaysia, Republic of Korea, Laos, Japan, Europe and the Middle East.<sup>1</sup> The business of transnational organised crime in Vietnam continues to increase in scale and complexity and the law has already reflected this modus operandi by providing for a more severe penalty for crimes committed in an organised manner, hence this must be met by improved cooperation in case investigations, collection of evidence, the capture and repatriation of suspects, and victim rescue, rehabilitation and repatriation.

Thank you to Hogan Lovells and Blue Dragon Children's Foundation for their collaboration in producing this Legal Gap Analysis.

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<sup>1</sup> US Department of State, Trafficking in Persons Report 2017.

## EXECUTIVE SUMMARY

- Vietnamese men, women and children are trafficked for sexual exploitation and forced labour to countries such as China, Cambodia, Thailand, Hong Kong, Macau, Malaysia, Taiwan, South Korea, the United Kingdom and the Czech Republic with 60% of victims estimated to be trafficked to China (mostly from the central and northern provinces of Vietnam). The victims often end up in forced labour in factories, mining sites, constructions sites, brothels or as domestic servants or, in Europe, cannabis farms, related parts of illegal drug operations or nail bars. Human trafficking in Vietnam frequently occurs through means such as fraudulent marriage or false promises of employment. In cases where victims migrate willingly, the vulnerabilities of victims due to reasons such as poverty, gender, lack of education, and ethnicity are usually being exploited. Fraudulent marriage, false promises of employment and licensed and unlicensed migrant labour recruiting agencies are conduits for human trafficking in Vietnam. Trafficking within Vietnam also remains an issue with victims trafficked from rural to urban areas for sexual exploitation and forced labour and rural to rural areas for agriculture and mining, fishing, etc. Children are subjected to forced street hawking and begging in major urban centres of Vietnam.
- To deal with the issue of human trafficking, the Vietnamese anti-trafficking legislation has evolved and advanced to the point that it is now a comprehensive anti-human trafficking legal framework, substantially compliant with Vietnam's international obligations, particularly under the Palermo Protocol. This has not always been the case but has resulted in particular from the introduction of a specific law on human trafficking in 2011, the issuance of various decrees and circulars since 2011 interpreting and expanding the law on human trafficking (particularly its victim protection and support measures) and the new Penal Code with revised trafficking offences. As a consequence, the Vietnamese anti-trafficking legislation has a broad definition of "human-trafficking" which covers the various forms of human trafficking and criminalises all forms of trafficking. Penalties for trafficking have been increased and are now commensurate with the gravity of the crime. Very serious crimes carry a minimum of 5 years imprisonment. The financial penalty has also been increased to VND 500,000 million, illustrating a serious political will of the Vietnamese government to tackle this crime. In accordance with international standards, the Vietnamese anti-trafficking legislation also places a strong emphasis on the protection and rehabilitation of the victims of trafficking.
- However, despite the much improved and comprehensive anti-human trafficking legislation, issues remain particularly in relation to enforcement. Because the trafficking of women and children across Vietnam's border for sexual exploitation purposes is well documented and pervasive, the Vietnamese authorities have tended to focus on this form of trafficking (both internal and cross-border). As a consequence, there have been gaps in the prosecution and conviction of labour traffickers (with most traffickers convicted in cases involving sexual exploitation rather than labour trafficking as the Old Penal Code did not criminalise forced labour) and gaps in the identification of forced labour victims and the protection offered to male victims. Given the lack of regulations in the Old Penal Code, the prosecution and conviction of labour traffickers was handled as different crimes e.g. illegal detention, employing child employees. Trafficked victims may also face concerns about being prosecuted for crimes committed as a direct result of their trafficking as the law does not explicitly grant victims immunity. The Vietnamese government, however, appears to be listening to the international community and the development and incremental improvements in its anti-human trafficking legislation can be seen as a gradual response to the various concerns of the international community. Most recently, in relation to forced labour trafficking, the amended Penal Code expressly criminalises forced labour trafficking and treats it in the same way as trafficking for sexual exploitation.<sup>2</sup> There is therefore room for optimism that the government's efforts to prosecute and convict forced labour traffickers will improve.

<sup>2</sup> Article 297 of the Penal Code.

- In Vietnam the offence of money laundering is broadly defined. Although Vietnam does not have any specific legislation to address money laundering which arises as a result of human trafficking, the broad definition of money laundering means there are a wide range of predicate offences, including human trafficking offences.
- Vietnam has established an anti-corruption legal framework that can be considered “strong” and which broadly complies with Vietnam’s international obligations. The anti-corruption regime, however, currently only applies to the public sector and not the private sector. It remains to be seen whether the National Assembly would vote in favour of the draft anti-corruption law to hold those in the private sector accountable for corrupted practices.
- While Vietnam has a robust legal framework in terms of preventing and combatting money laundering and corruption, the vagueness of some of the laws (including implementing guidelines) can, in practice, lead to gaps in the practical application of anti-money laundering and anti-corruption legal frameworks. The government’s efforts to enforce the law are also impeded by issues such as ineffective and time-consuming bureaucracy, lack of cross-agency coordination. Statistics on money laundering and corruption are not always available to the international community and this lack of reporting can stymie progress to eliminate or prevent these offences.
- With the intensified focus on environmental and social reporting worldwide since the United Nation’s unanimous endorsement in 2011 of a framework for business and human rights that emphasises the responsibility of companies to ensure that their activities do not negatively impact human rights, public firms and companies listed on the Stock Exchange are legally required to disclose on sustainable development.<sup>3</sup> Moreover, the listing rules of the Hochiminh Stock Exchange also require environmental, social and governance reporting by Vietnamese companies. These developments have demonstrated Vietnam’s willingness to join the global initiative on market transparency. Such reporting is, however, more visible among multi-nationals doing business in Vietnam motivated by, among other things, the desire to position themselves favourably with the authorities, media and other interested parties (both in and outside Vietnam) and the level of information disclosure remains relatively low.<sup>4</sup>

<sup>3</sup> Circular No. 155/TT-BTC issued 6 October 2015 on “Guidance on information disclosure on the securities market”.

<sup>4</sup> La Soa Nguyen, Manh Dung Tran, Thi Xuan Hong Nguyen & Quoc Hoi Le (2017). Factors Affecting Disclosure Levels of Environmental Accounting Information: The Case of Vietnam, *Accounting and Finance Research*, Vol. 6, No. 4; 2017.



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# Section A

# Human Trafficking





## Question 1. What (if any) is Vietnam’s specific anti-trafficking legislation?

### Vietnam’s specific anti-trafficking legislation

1. Vietnam’s specific anti-trafficking legislation includes:
  - (a) Law on Prevention and Combatting of Human Trafficking No. 66/2011/QH12 dated 29 March 2011 (the “**Law on Human Trafficking**”);
  - (b) a number of regulations issued to provide implementing guidelines on the Law on Human Trafficking, including:
    - (i) Joint Circular No. 01/2013/TTLT-TANDTC-VKSNDTC-BCA-BQP-BTP dated 23 July 2013 of the Supreme People’s Court, the Supreme People’s Procuracy, the Ministry of Public Security, the Ministry of National Defense, and the Ministry of Justice (the “**Joint Circular on Trafficking Criminalisation**”);<sup>5</sup>
    - (ii) Decree No. 62/2012/ND-CP dated 13 August 2012 (“**Decree 62**”);
    - (iii) Decree No. 09/2013/ND-CP dated 11 January 2013 (“**Decree 09**”);
    - (iv) Joint Circular No. 01/2014/TTLT-BCA-BQP-BLDTBXH-BNG dated 10 February 2014 (the “**Joint Circular on Victim Protection**”); and
  - (c) Penal Code No. 100/2015/QH13 dated 27 November 2015, as amended and supplemented by Law No. 12/2017/QH14 (the “**Penal Code**”) which superseded the Penal Code No.37/2009/QH12 dated 19 June 2009 (the “**Old Penal Code**”),<sup>6</sup> collectively, the “**Vietnamese Anti-Trafficking Laws**”.
2. The full list of Vietnam’s key anti-trafficking legislation is set out in Schedule 1.

### Overview of the Vietnamese Anti-Trafficking Laws

3. In 2011 the Vietnam National Assembly approved the Law on Human Trafficking which came into effect in January 2012 and introduced a comprehensive anti-trafficking framework containing provisions encompassing prevention, prosecution, protection and partnership measures.
4. The Law on Human Trafficking expands the trafficking offences set out in Articles 119 and 120 of the Old Penal Code and specifically defines and prohibits trafficking for sexual exploitation and forced labour. In the Law on Human Trafficking, human trafficking is defined as including the following acts:
  - (a) the offences set out in Articles 119 and 120 of the Old Penal Code;
  - (b) transferring or receiving persons for sexual exploitation, forced labour, removal of human organs or other inhumane purposes;
  - (c) recruiting, transporting or harbouring persons in order to use them for sexual exploitation, forced labour, removal of human organs or other inhumane purposes or for conducting any acts mentioned in paragraphs (a) and (b) above;
  - (d) forcing people to commit any acts mentioned in paragraphs (a), (b) and (c) above; and
  - (e) acting as a broker on behalf of other people to commit any acts mentioned in paragraphs (a), (b) and (c) above.

<sup>5</sup> The validity of the Joint Circular on Trafficking Criminalisation Circular is not certain under the new law.

<sup>6</sup> Implementation remained pending until 20 June 2017 when the National Assembly adopted Resolution No. 41/2017/QH14 on the implementation of the Penal Code. The Penal Code finally took effect on 1 January 2018.

5. To further prevent and combat human trafficking, the Law on Human Trafficking also prohibits the following acts:
  - (a) taking revenge or threatening to take revenge on victims, witnesses, informers, denounciators or their relatives or on persons trying to prevent any of the prohibited acts mentioned in paragraph 6 above or in this paragraph 7 or any other acts that are prohibited to prevent human trafficking;
  - (b) taking advantage of activities that seek to prevent and combat human trafficking for self-seeking purposes or for committing illegal acts;
  - (c) obstructing the reporting, denunciation and handling of any of the prohibited acts mentioned in paragraph 6 above, or in this paragraph 7, or any other acts that are prohibited to prevent human trafficking;
  - (d) stigmatising or discriminating against victims of human trafficking;
  - (e) disclosing information on victims without their consent; and
  - (f) impersonating victims.
  
6. The Law on Human Trafficking does not itself contain a clear definition of trafficking consistent with the model definition of trafficking in the Palermo Protocol and is only somewhat aligned with that definition. The understanding of the offence in the Law on Human Trafficking has to be derived from different sections of the law (namely the “Definition of Terms” and “Prohibited Acts” sections of the Law on Human Trafficking). Furthermore, although the trafficking offence in the Law on Human Trafficking is more closely aligned with the model definition in the Palermo Protocol, only if an offence falls within the ambit of Articles 119 and 120 of the Old Penal Code (or within the ambit of any other provision of the Old Penal Code) is it a criminal offence (meaning, for example, that while trafficking for forced labour purposes is specified as a trafficking offence under the Law on Human Trafficking, it is not definitely a criminal offence because it is not clearly covered in the Old Penal Code). Given that the Penal Code is now in force as of 1 January 2018, it is unclear whether the references to the Old Penal Code under the Law on Human Trafficking are superseded by the new provisions on human trafficking in the Penal Code.
  
7. Human trafficking is now criminalised under Article 150 (trafficking in persons) and Article 151 (trafficking in person under 16 years of age) of the Penal Code.<sup>7</sup> The Penal Code significantly improves the Vietnamese Anti-Trafficking Laws by creating clearer, more precise trafficking offences (in addition to maintaining the slavery type offences under the Old Penal Code). The Penal Code now contains the following offences:
  - (a) Article 150 Human trafficking: the offence involves using violence, threats of violence, deception (or similar) for the purpose of (i) transferring or receiving persons for delivery, for receiving money, assets or other material benefits, for sexual exploitation, forced labour, body organs or for other inhumane purposes or (ii) recruiting, transporting, harbouring other persons to conduct such acts.
  - (b) Article 151 Human trafficking of minors: the offence is (i) transferring, or receiving persons below 16 years of age for delivery, for receiving money, assets or other material benefits (except if for humanitarian reasons), for sexual exploitation, forced labour, body organs or for other inhumane purposes or (ii) recruiting, transporting or harbouring persons below 16 years of age to conduct such acts. The Penal Code now separates trafficking in person under 16 years of age as an independent article whereas it was combined under 120 of the Old

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<sup>7</sup> In the Old Penal Code, trafficking in persons was criminalised under articles 119 and 120.

Penal Code: trading in, fraudulently exchanging or appropriating children.

- (c) Article 152 Swapping a person under 1 year of age: the offence is fraudulently exchanging or swapping a person below one year of age with another.
  - (d) Article 153 Abduction of a person under 16: the offence is using violence, threatens to use violence, deceives, or employs other tricks to abduct persons under 16 years of age.
  - (e) Article 154 Trading, appropriation of human tissues or body parts: the offence is dealing in or appropriating human tissues or other body parts.
  - (f) Article 297 Forced Labour: the offence is using violence, threatens to use violence or uses other similar methods to force someone to work and that work causes bodily harm.
  - (g) Article 348 Brokering illegal entry, exit, or stay in Vietnam: the offence is for self-seeking purposes, brokering the illegal entry, exit, or stay in Vietnam of another person.
8. The human trafficking offences set out in Articles 150 and 151 of the Penal Code brings more precision to trafficking offences than the Old Penal Code hence bringing it in line with the model trafficking definition introduced by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Woman and Children (the “**Palermo Protocol**”). Although the trafficking offences in the Penal Code now acknowledge the three elements (act, means and exploitation) that collectively define human trafficking in the Palermo Protocol<sup>8</sup>, the means element includes only “violence, threatens to use violence, deceives, or employs *other tricks*”. The abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent could be deemed “other tricks” used to commit the acts under Article 150, but such interpretation is up to the courts.

### **Protection of victims**

9. Legislation relating to matters concerning the protection of victims (which is discussed further in the response to Question Four) includes:
- (a) Decree 62 which addresses the issue of victim identification and sets out the broad based test to be used to identify victims and the specific grounds for the identification of victims;
  - (b) Decree 09 (together with its implementing Circular No. 35/2013/TT-BLDTBXH dated 30 December 2013) which provide guidelines and further detail for the implementation of the provisions on the Law on Human Trafficking relating to the establishment and operation of victim support establishments and other procedures and rules for providing support to victims of human trafficking; and
  - (c) the Joint Circular on Victim Protection which deals with the procedures and required cooperation between the various government and regulatory bodies in the identification, receipt and repatriation of victims of human trafficking.
10. However, the legislation does not specifically provide for the non-criminalisation of victims for crimes committed as a direct result of their trafficking (see the response to Question Six).

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<sup>8</sup> The three elements are “act” (e.g. recruitment, transport, harbouring), “means” (e.g. threat or use of force, coercion, abduction) and “purpose” (e.g. sexual exploitation, forced labour, removal of organs).

## National action plans

11. The government also issues national action plans setting out anti-trafficking initiatives and priorities in order to implement the responsibilities set out in the Law on Human Trafficking and to promote cooperation between the various government bodies who have anti-trafficking responsibilities. Funds are allocated from the central budget to finance the action plan. The current national action plan for the period from 2016 to 2020 was approved by the Prime Minister under Decision No. 2546/QD-TTg dated 31 December 2015.
12. The general objective of the current national action plan is to reduce human trafficking and improve the effectiveness of measures concerning the reception and protection of victims and the provision of aid to victims. This general objective is coupled with five specific objectives:
  - (a) to improve awareness about trafficking and strengthen the powers of those responsible for preventing and combatting human trafficking;
  - (b) to improve the identification, reception, support and protection of trafficking victims;
  - (c) to improve the efficiency of investigating and prosecuting human trafficking cases;
  - (d) to improve the anti-trafficking legal framework and enhance the enforcement of the law; and
  - (e) to enhance international cooperation in combatting human trafficking.
13. The national action plan calls for an intensification of the involvement of national and local government bodies in the prevention and combatting of human trafficking and for anti-trafficking measures to form an integral part of general social development programmes as well as the formulation of interjurisdictional cooperation mechanisms for effective enforcement of the anti-trafficking laws. The national action plan was launched nationwide with a particular focus on provinces bordering Cambodia, Laos and China.
14. The national action plan central “Steering Committee” is responsible for managing the overall implementation of the national action plan, with local steering committees implementing the action plan at the regional level. The central Steering Committee includes officials from relevant ministries and meets on a quarterly basis to discuss the progress of implementation of the national action plan’s initiatives and to share best practice. Tasks laid out in the action plan are assigned to various ministries and other government bodies with targets and performance indicators identified in order to measure the progress of the implementation of an initiative. Regular review meetings between the various ministries and other relevant government bodies are also prescribed in order to improve inter-ministerial cooperation and assess the status of the implementation. This Steering Committee will soon be disbanded and the aforementioned tasks will fall under another department of the Ministry of Public Security.

## Responsible government bodies

15. The Vietnamese Anti-Trafficking Laws engage and task a number of government bodies in the fight against human trafficking including the responsible bodies for putting the national action plan into practice. These include:
- (a) the Ministry of Public Security, which has a range of responsibilities associated with the management of all government related human trafficking efforts and is the central body with responsibility for a number of key anti-trafficking measures, including investigation, prosecution, reception and identification of victims and improving international cooperation and also manages the Immigration Department of Vietnam;
  - (b) the Ministry of National Defence, which is responsible for the border guard force which is tasked with combatting trafficking on the borders of Vietnam and has responsibilities relating to the protection of victims trafficked across the borders;
  - (c) the Ministry of Labour, Invalids and Social Affairs (“**MOLISA**”), which is a body primarily charged with employment related matters but which also has a range of responsibilities relating to the protection of trafficking victims;
  - (d) the Ministry of Justice, which is responsible for drafting and updating legislation in relation to human trafficking (including decrees and circulars which guide and supplement the law); and
  - (e) the Ministry of Foreign Affairs which, in addition to representing Vietnam at international conventions on human trafficking, is responsible for activities relating to the protection of Vietnamese victims trafficked abroad.

Further details about the role of these government bodies are included in the discussion on the protection of victims set out in the response to Question Four.

16. Local authorities, particularly those in border-provinces or other provinces deemed “high risk”, are also heavily involved in preventing and combatting human trafficking with an ever-increasing number of local officials in those areas receiving anti-trafficking training and being engaged in combatting human trafficking.

**Question 2. Where Vietnam has ratified regional or international anti-trafficking conventions (including the Palermo Protocol) does its legislation comply with those that would be needed in order to ensure that it can, in theory, meet its obligation?**

17. As part of its efforts to prevent human trafficking, Vietnam has ratified a number of international conventions of the United Nations (“UN”) and its agencies and entered into a number of multi-lateral and bilateral cooperation agreements.

**International conventions**

18. Vietnam has ratified the following international conventions relating to human trafficking:
- (a) the Convention against Transnational Organised Crime (2000) and its supplementing protocol, the Palermo Protocol (i.e. the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Woman and Children (2000));
  - (b) the Convention on the Rights of the Child (1989), including (i) the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000) and (ii) the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000) (the “**Convention on the Rights of the Child**”);
  - (c) the Convention on the Elimination of All Forms of Discrimination Against Women (1979);
  - (d) the International Covenant on Civil and Political Rights (1966); and
  - (e) the following conventions of the International Labour Organization:
    - (i) the Forced Labour Convention (1930);
    - (ii) the Minimum Age Convention (1973); and
    - (iii) the Worst Forms of Child Labour Convention (1999).

**Regional and bilateral agreements**

19. Multi-lateral agreements involving Vietnam include those emanating from the regional inter-governmental body ASEAN (i.e. the Association of Southeast Asian Nations) which consists of Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam. These include:
- (a) the ASEAN Declaration against Trafficking in Persons, Particularly Women and Children (2004);
  - (b) the ASEAN Treaty on Mutual Legal Assistance on Criminal Matters (2004); and
  - (c) the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007).
20. The ASEAN declarations referred to in paragraph 19 are generally not binding on the signatories, but are instead the expression of political views or efforts of the ASEAN member States. Of greater significance is the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (“**ACTIP**”) which was signed by the leaders of the ten members states of ASEAN (including Vietnam) at the 27th ASEAN Summit in November 2015 and, having been ratified by six member States (including Vietnam), is a legally binding instrument. ACTIP seeks to effectively prevent and combat trafficking in persons, especially women and children, protect and assist human trafficking victims with full respect for their human rights and promote cooperation among ASEAN member States in preventing and combatting human trafficking.

21. Vietnam, together with Cambodia, China, Lao PDR, Myanmar and Thailand is a part of the Coordinated Mekong Ministerial Initiative against Trafficking (referred to as **COMMIT**). The COMMIT members entered into a Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-region in 2004 which highlighted the need for multi-lateral and bilateral agreements and government-NGO cooperation to fight human trafficking. Vietnam has entered into bilateral agreements with all COMMIT governments (except Myanmar) which establish the scope of cooperation, including logistics on repatriation, support services, and social inclusion. Vietnam has also entered into agreements with the police forces of other countries. Such agreements include:
- (a) an agreement with Cambodia on Cooperation to Eliminate Trafficking in Women and Children and Assisting Victims of Trafficking (2005) (as amended in 2012);
  - (b) a cooperation agreement between the Cambodian and Vietnamese police forces stipulating joint practices for combatting human trafficking, especially women and children across the Vietnam-Cambodia border (2007); an agreement with Cambodia on Standard Operating Procedures for the Identification and Repatriation of Trafficked Victims (2009);
  - (c) an agreement with China on Strengthening Cooperation on Preventing and Combating Human Trafficking (2010);
  - (d) an agreement with the Lao PDR on Cooperation in Preventing and Combating Trafficking in Persons and Protection of Victims of Trafficking (2010);
  - (e) an agreement with Thailand on Eliminating Trafficking in Persons, Especially Women and Children and Assisting Victims of Trafficking (2008);
  - (f) an agreement with Thailand on Standard Operating Procedures for the Identification and Return of Victims of Human Trafficking (2013); and
  - (g) a memorandum of understanding with Thailand on Labour Cooperation (2015).
22. Vietnam has also entered into an agreement with Australia on the implementation of ASEAN and Australia Asia Program to combat trafficking in persons (2015).
23. Vietnam has also entered into a number of bilateral agreements with China, both at central government level and neighbouring provinces level.

### **Compliance with International and Regional Agreements**

24. Full details about Vietnam's commitments under the conventions and agreements, and Vietnam's compliance with such commitments, is set out in Schedule 2. Additional comments about Vietnam's compliance with its commitments under the Palermo Protocol are set out below.

#### **The Palermo Protocol**

25. The Palermo Protocol contains the internationally agreed definition of human trafficking and sets the standard for national legislation to follow. The Palermo Protocol represents the international community's recognition of all forms of human trafficking, not only the sexual slavery of women and children.
26. Under the Palermo Protocol, Vietnam is required to adopt such legislative and other measures as may be necessary to establish human trafficking activities as criminal offences. As discussed in the response to Question One, Vietnam's human trafficking offences under the Law on Human Trafficking were not consistent with the model definition in the Palermo Protocol. However,



the offences created in the Penal Code mean that Vietnam could be said to have adopted such legislative and other measures as may be necessary to establish human trafficking activities as criminal offences.

27. The Palermo Protocol indicates that a child shall mean any person less than 18 years of age. In Vietnam, however, the legislation legally defines a child as any person under 16 years of age which is inconsistent with the Palermo Protocol.
28. The Palermo Protocol provides that member States should (or should consider) adopting victim protection measures such as those necessary to:
  - (a) protect the privacy and identity of victims of trafficking; and
  - (b) provide for the physical, psychological and social recovery of victims of trafficking in persons, including (i) appropriate housing, (ii) counselling and information (in particular as regards their legal rights), in a language that the victims can understand, (iii) medical, psychological and material assistance and (iv) employment, educational and training opportunities.
29. The actual victim protection measures provided for in the Vietnamese Anti-Trafficking Laws are discussed in the response to Question Four. In terms of the effectiveness, in practice, of Vietnam's victim protection efforts, the 2017 Trafficking in Persons Report of the U.S. Department of State (Office to Monitor and Combat Trafficking in Persons), country narrative for Vietnam<sup>9</sup> (the "**2017 Trafficking Report**") comments that the Vietnamese government maintained "mixed efforts" to protect victims.
30. The 2017 Trafficking Report further elaborated that the government adopted common victim identification criteria as part of the Coordinated Mekong Ministerial Initiative against Human Trafficking (COMMIT) and maintained its own formal procedure for victim identification, but did not proactively or widely employ either mechanism among vulnerable groups such as women arrested for prostitution, migrant workers returning from abroad, and child labourers. It also did not systematically refer victims to protective services due to inadequacies in its formal referral process, including some border guards' unfamiliarity with trafficking crimes, a lack of interjurisdictional cooperation and incomplete data collection processes. In addition, authorities deported a large number of victims without referring them to services, including as many as 218 Cambodian victims—152 of whom were children. Some officials continue to conflate trafficking with smuggling, which ultimately precludes the identification of victims who voluntarily migrated abroad.<sup>10</sup>
31. In 2016, MOLISA provided protection and reintegration support to 600 trafficking victims (compared with 650 victims in 2015).<sup>11</sup> Protection services varied by location but victims could request initial psychological counselling, healthcare consultations, and legal and financial assistance. The government reported providing many victims with vocational training, employment opportunities, and lines of credit at a reduced interest rate.<sup>12</sup> MOLISA operated 400 social protection centres through local authorities, which provided services to a wide range of vulnerable groups, including trafficking victims but are unevenly staffed and lack appropriately trained personnel to assist victims.<sup>13</sup> Shelters or service specifically for assisting male or child victims are inadequate.

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9 U.S. Department of State, Trafficking in Persons Report 2017.

10 *Id.*

11 *Id.*

12 *Id.*

13 *Id.*

32. In terms of Vietnamese nationals trafficked abroad, the 2017 Trafficking Report commented that the government maintained labour representatives at diplomatic missions in countries with large numbers of documented Vietnamese migrant workers, but reduced the number of such missions from nine to six during the reporting period. These missions could provide basic provisions, transportation, and healthcare to Vietnamese citizens subjected to trafficking abroad. However, some diplomatic personnel reportedly lacked sufficient training to adequately assist victims, and NGOs reported some overseas missions were unresponsive to foreign countries' attempts to connect them with Vietnamese victims.<sup>14</sup> The government reportedly encouraged trafficking victims to assist in judicial proceedings against traffickers and offered some protection and compensation to victims.<sup>15</sup> Vietnam lacked diplomatic representation or bilateral agreements with some countries where Vietnamese citizens were subjected to trafficking, inhibiting victims' access to government assistance and impeding the government's protection efforts.<sup>16</sup>

## Conclusion

33. Vietnam maintains its second tier ranking in the 2017 Trafficking Report (which is a country whose government does not fully comply with the U.S. Trafficking Victims Protection Act's minimum standards but which is making significant efforts to bring itself into compliance with those standards). Notwithstanding the second tier ranking under the 2017 Trafficking Report (which is based on compliance with U.S. standards rather than international standards) the structural reforms that were enacted by the Vietnamese authorities (particularly the adoption of the Law on Human Trafficking and its broad definition of trafficking) together with the amended Penal Code and its revised human trafficking offences means that, in theory at least, the Vietnamese Anti-Trafficking Laws are broadly compliant with Vietnam's international obligations, particularly those under the Palermo Protocol.

## Question 3. What legislation exists to cover labour laws (i.e. protection of workers' rights, domestic workers)? Are migrant workers – both legal and illegal – covered by such legislation?

### Sources of labour law

34. The keys sources of labour law are:
- (a) the current Vietnam Labour Code No. 10/2012/QH13 dated 18 June 2012, as amended by Civil Procedure Code No. 92/2015/QH13 dated 25 December 2015 (the "**Labour Code**");
  - (b) Law on Vietnamese Guest Workers No. 72/2006/QH11 dated 29 November 2006 (the "**Law on Guest Workers**");
  - (c) Law on Employment No. 38/2013/QH13 dated 16 November 2013 (the "**Law on Employment**");
  - (d) a wide range of implementing regulations which supplement these laws, such as decrees issued by the government and official letters, decisions and circulars issued by MOLISA as well as other ministries. The following decrees have been passed in relation to the implementation of the Labour Code:
    - (i) Decree No. 45/2013/ND-CP dated 10 May 2013 stipulating in detail a number of articles of the Labour Code in relation to working time, rest time, occupational safety and occupational hygiene;

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> U.S. Department of State. Trafficking in Persons Report 2015.

- (ii) Decree No. 102/2013/ND-CP dated 5 September 2013 stipulating in detail a number of articles of the Labour Code in relation to foreign workers in Vietnam;
  - (iii) Decree No. 27/2014/ND-CP dated 7 April 2014 stipulating in detail a number of articles of the Labour Code in relation to domestic workers (and Circular No. 19/2014/TT-BLDTBXH dated 15 August 2014 guiding the implementation of number of articles of this decree);
  - (iv) Decree No. 05/2015/ND-CP dated 12 January 2015 stipulating in detail and guiding the implementation of a number of articles of the Labour Code (and its guiding Circular No. 23/2015/TT-BLDTBXH);
  - (v) Decree No. 85/2015/ND-CP dated 1 October 2015 stipulating in detail a number of articles of the Labour Code in relation to policies for female employees;
  - (vi) Amendments to the government's Decree no. 95/2013/ND-CP dated 22 August 2013 on penalties for administrative violations against regulations on employment, social insurance, social insurance, and Vietnamese guest workers;
  - (vii) Decree no. 119/2014/ND-CP stipulating in detail a number of articles of labour code, law on vocational training and law on Vietnamese employee working abroad under contract about the complaint and denunciation; and
- (e) the Penal Code.

## The Labour Code

35. The Labour Code plays a key role in the Vietnamese labour legislation and provides the framework for the protection of employee rights and contains detailed provisions on a wide range of issues relating to the relationship between the employer and employee. In general, Vietnamese labour law is seen as 'employee-friendly' and highly regulated in order to protect the interests of employees by way of including provisions such as maximum working hours, minimum salary levels, minimum holiday or rest periods, prescribed formalities for entering into employment contracts and requirements for the contents of such contracts, a requirement for an employer employing more than ten employees to establish internal labour rules, restrictions on an employer's right to unilaterally terminate an employment contract and an acknowledgement of the role of collective bargaining. The Labour Code also stipulates the rights of labour inspectors, who are state officials in the labour sector, to raid and investigate employers whenever they suspect any violations. While employers are able to offer employees more favourable employment terms than that set out in the Labour Code, the converse is not true and employers cannot contract out of the Labour Code.
36. The Labour Code includes a number of provisions that are of relevance in the trafficking context. The Labour Code outlaws discrimination, maltreatment, sexual harassment, labour coercion (which is defined as an employer using, or threatening to use, force or other underhand tactics aimed at coercing an employee contrary to the employee's will) and "seducing, making false promises or conducting false advertising in order to deceive employees, or taking advantage of employment services or labour export to foreign countries pursuant to contracts in order to conduct an illegal act". The Labour Code also seeks to protect minors by restricting the employment of employees under the age of 18 to jobs suitable to their health "so as to ensure their physical, spiritual and personal development" with the employer having a greater duty of care towards such employees and with stricter conditions being imposed on maximum working hours. The employment of children below the age of 15 is prohibited, except for those over the age of 13 who are employed in "light work" in accordance with a list of approved jobs<sup>17</sup> issued by MOLISA. This means there is no protection for children being exploited in jobs outside of

<sup>17</sup> The list of approved jobs includes actor (including dancer and singer), athlete (if gifted), traditional jobs (such as ceramics, sewing clam shells and lacquer painting) arts and crafts jobs (such as embroidery and weaving), fine art craft from natural materials such as rattan, bamboo, coconut and banana, rearing silkworms and packing coconut candy.

this list of approved jobs. If the employee is from 15 years to 18 years of age, the employee's legal representative (being a parent or other person appointed by the court) must consent to the entry into the employment contract. If the employee is from 13 years to 15 years of age, the employment contract must be signed by the employee's legal representative with the consent of the employee. Generally speaking, debt bondage and extortionate lending are illegal under Vietnamese law.

37. The Labour Code, recognising the different nature of the employment relationship and the vulnerability to exploitation, includes a section on domestic workers and Decree No. 27/2014/ND-CP dated 7 April 2014 provides guidance on the implementation of a number of articles in this section of the Labour Code. In particular, those who employ domestic workers must enter into an employment contract with those domestic workers and pay a salary not less than the applicable minimum wage. The decree also stipulates the rights, obligations and responsibilities of employers and their domestic workers, as well as regulating other issues between them based on the Labour Code, such as working hours and overtime payments. Along with a salary, employers are required to give their domestic workers money so that the latter can cover social insurance and health insurance premiums and must give domestic workers at least 12 days paid holiday each year.

### The Penal Code

38. The Penal Code includes several labour related offences imposing criminal liability, in addition to any civil liability that might be imposed under the Labour Code. Of relevance in the human trafficking context, the Penal Code includes the following offences:
- (a) Article 162 Unlawful dismissal: any person who, for self-seeking purposes or other personal motives, unlawfully dismisses an employee or uses force or threats to cause an employee to resign and this act causes extreme hardship to the family of that employee or a labour force strike shall be liable to a fine of between VND10 million and VND100 million (approximately US\$439<sup>18</sup> and US\$4,390) or face a penalty of up to one year non-custodial probation or three to 12 months imprisonment. In addition, the offender may be banned from holding certain positions for a period of between one and five years. If aggravating factors are present, the sentence is increased to up to three years imprisonment. Aggravating factors include the number of victims and the status of the victims (e.g. if the victim is a female raising a child under 12 years of age or is pregnant or if the offence results in the victim committing suicide).
  - (b) Article 216 Evasion of mandatory employee contributions: any person who is responsible for paying social, health or unemployment insurance for his employees but fails to do so for ten or more employees for a period of six months or more and such evasion involves an amount of at least VND50 million (approximately US\$2,195) then such person may be liable for a fine of between VND50 million and VND200 million (US\$2,195 and US\$8,780), one year non-custodial probation and from three to 12 months imprisonment. In addition, the offender may be banned from doing certain jobs or holding certain positions for a period of between one and five years. If aggravating factors are present the fine may be increased up to VND1 billion (approximately US\$43,900) and the prison term increased to up to seven years. Aggravating factors include the amount of the insurance contributions not paid, the number of employees involved and if the offender claimed the contributions from employees but failed to then pay to the relevant authorities.
  - (c) Article 296 Unlawful employment of minors: any person who employs someone under the age of 16 to carry out hard or dangerous work or work involving contact with prohibited harmful substances which causes bodily harm to that person shall be liable to a fine of between VND30 million and VND200 million (approximately US\$1,317 and US\$8,780) or

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18 For the purpose of this Report, the exchange rate for US\$ to VND is US\$1:VND22,800.

face a penalty of up to three years non-custodial probation or imprisonment of between six months and 36 months. An offence will only be committed if the child suffers bodily harm or death and the severity of the penalty imposed will depend on the extent of that harm. If aggravating factors are present, the sentence is increased to between three and 10 years imprisonment. Aggravating factors include the severity of the injuries caused and whether the offender is a repeat offender. The Penal code, however, does not regulate excessive working hours for children who do work in hazardous environments e.g. children working in the garment factory for 15 hours/day.

- (d) Article 297 Forced labour: any person that uses violence, threatens to use violence or uses other similar methods to force someone to work and that work causes bodily harm shall be subject to a fine of between VND50 million and VND200 million (approximately US\$2,195 and US\$8,780), non-custodial probation of up to three years or six months to three years imprisonment. If aggravating factors are present, the sentence is increased to between three and 12 years imprisonment. Aggravating factors include the severity of the injuries caused, the number of victims, the age and status of the victims (e.g. pregnant, elderly or disabled or if the offender previously incurred a civil penalty or has a previous conviction for the same offence which has not been expunged). The lack of guidelines explaining forced labour and trafficking for labour exploitation results in low understanding and prosecution of such crime.

### **Labour recruitment agencies**

- 39. In furtherance of the protection of Vietnamese and other legal migrant workers, the Labour Code regulates and restricts what are termed “employment services agencies” and “labour outsourcing services”.
- 40. Employment services agencies are defined in Vietnamese labour legislation as agencies having the function of providing consultancy services, introducing jobs and providing vocational training to employees, supplying and recruiting labour at the request of employers and collecting and providing information on the labour market. They are required to obtain a licence for the provision of employment services from the relevant government body (which is the local provincial People’s Committee or local department of MOLISA) and place a deposit with the authorities (currently approximately US\$15,000) which is used to settle risks and compensation claims that might arise during the organisation’s course of operation. Reports about the employment services provided must be submitted to the authorities on a bi-annual and annual basis or when otherwise requested by the authorities.
- 41. Labour outsourcing is defined in the Labour Code as a practice involving an employee who is recruited by an organisation licensed to conduct labour outsourcing to work for a third party employer but who maintains the employment relationship with the labour outsourcing organisation. To be eligible to conduct labour outsourcing, an organisation must be licensed by MOLISA and report its labour outsourcing activities to MOLISA and the relevant provincial People’s Committee (where the organisation is headquartered) on a bi-annual and annual basis or when otherwise requested by the government authorities. Labour outsourcing is permitted for a limited number of jobs only (notably it is not permitted for domestic workers) and the entity utilising the outsourced employee must pay salary at least equal to the salary it pays to its own employees who have the same professional qualifications and are doing the same job, or a job of the same value. The duration of the labour outsourcing must not exceed 12 months and may not be extended. This limitation on duration is placed upon the outsourced employee and not the outsourcing organisation meaning that it would not be possible to switch organisations to circumvent the 12 month limitation.

## Other labour laws

42. The other key laws dealing with labour are the Law on Employment and the Law on Guest Workers.
43. The Law on Employment regulates job creation policies, labour market information, assessment and grant of national certificates of vocational skills, unemployment insurance and State administration of employment.
44. The Law on Guest Workers regulates the sending of Vietnamese workers abroad and protects those workers and specifically prohibits anybody from taking advantage of Vietnamese workers abroad or sending workers abroad by using deception. The Law on Guest Workers stipulates the rights and obligations of both Vietnamese guest workers and the organisations sending them abroad under various types of contracts, including labour supply contracts, guest worker contracts, individual contracts and labour contracts. This law also sets out State policies in relation to Vietnamese guest workers which revolve promoting off-shore working where it leads to workers learning skills abroad, encouraging workers with professional and technical skills to go abroad and sending Vietnamese workers to high-income markets. It is prohibited to send Vietnamese workers abroad to engage in certain jobs including dancers, singers and masseurs in restaurants, hotels or entertainment centres.

## Application of labour laws to migrants

45. Vietnamese labour laws (other than the Law on Guest Workers) apply to both Vietnamese and foreign citizens working in Vietnam (unless the foreign citizen is hired by the parent offshore company and seconded to work in its subsidiary in Vietnam under an offshore employment contract). Generally speaking, foreign employees require a work permit and may be deported if they are not in possession of one. Although there are some differences, for example, the requirements on work permit for foreign workers, legal migrant workers are, to all intents and purposes, fully covered by the labour legislation of Vietnam and are entitled to all of the key benefits and protections that Vietnamese workers are entitled to. An illegal migrant worker, however, has no standing under the labour legislation of Vietnam and, technically speaking, has no entitlement to any of the employee benefits and protections and is subject to arrest, detention and deportation. In practice, this lack of legal protection means that illegal migrant workers are vulnerable to exploitation by employers and human rights violations.

**Question 4. What legislation exists to protect women and girls from gender-based exploitation (i.e. forced prostitution, domestic violence, child marriage, and temporary marriage) and are migrants – both legal and illegal – covered by this legislation?**

## Overview of Vietnamese law on gender equality

46. Vietnam's Constitution dated 28 November 2013 recognises gender equality which broadly underpins most laws in Vietnam with men and women treated equally.
47. In November 2006, Vietnam passed the country's first Law on Gender Equality (No. 73/2006/QH11), which not only established gender equality as a fundamental principle in all aspects of society, but also clarified the role and responsibilities of organisations, families and individuals in ensuring that gender equality takes place. Under this law, men and women have an equal position and role in society and shall be entitled to equal conditions and opportunities "to develop their

capacities for the development of the community and family without gender discrimination and equally enjoy the achievement of that development”. The State Management Agency on Gender Equality was established to advocate and oversee the implementation of gender equality legislation within government bodies which represented, for the first time, the government’s effort to effectively promote gender equality at the executive level.

48. A wide range of legal documents has been issued specifically to protect and support the development of women and girls as well as to implement the UN Convention on the Elimination of All Forms of Discrimination Against Women. These include decisions and directives of the Prime Minister which provide for the protection, support and rehabilitation of female victims of human-trafficking.
49. In practice, however, as a result of the deeply rooted patriarchal Confucian values in Vietnamese culture and traditions, gender equality legislation, domestic violence laws against women and other laws prohibiting gender exploitation may not always be vigorously enforced and it is possible that some cases of underage marriage and forced marriage may take place in rural parts of the country. In an attempt to bridge the gap, several government bodies at the national and local level have been established such as the State Management Agency on Gender Equality to support the enforcement of gender equality legislation.

### **Forced prostitution and sexual exploitation**

50. Vietnam is seen as a country of origin for the trafficking of minors especially to Thailand, Cambodia and China, all significant destinations for child sex tourism which is considered a form of prostitution but not defined under Vietnamese law, although the Penal Code now criminalises the acts of recruiting, transporting, or harbouring a person under 16 for sexual exploitation. While child sex tourism is commonly reported in large cities, there is evidence that it is emerging in remote and mountainous areas. Foreign child sex offenders in Vietnam include those operating in organised networks and those who engage in sex with children on an opportunistic basis. Both male and female children have been victims of domestic and international child sex offenders. There are several factors contributing to the child sex tourism in Vietnam. Firstly, due to the pressure from law enforcement agencies in Thailand and Cambodia, perpetrators have been pushed across borders into neighbouring countries (such as Vietnam, Laos and Myanmar). Secondly, tourism continues developing in Vietnam which has been brought not only huge economic benefits but also challenges like child sex tourism. Thirdly, the advent of the Internet has provided more opportunities for tourists looking for underage sex partner (e.g. the growth in online bookings and private rental accommodation has made it easier for perpetrators to remain anonymous). Fourthly, the lack of awareness of child sex tourism especially in many local communities of Vietnam exacerbates the problem for those most at risk, including children already involved in prostitution, poor children and street children.
51. In relation to prostitution and sexual exploitation related offences, Vietnam has what may be considered a somewhat progressive legal framework.
52. The Ordinance on the Prevention and Suppression of Prostitution No. 10/2003/PL-UBTVQH11 dated 17 March 2003 (the “**Ordinance on Preventing Prostitution**”) entered into force on 1 July 2003 and was the first specific document on the prevention and suppression of prostitution. Prohibited acts include forced prostitution as well as harboring prostitutes and organizing prostitution activities. Prostitutes are generally considered victims and, depending on the nature and seriousness of the offence, a Vietnamese prostitute may be fined, compelled to attend a re-education programme or receive medical treatment, while a foreign prostitute may be warned, fined or deported. However, any person including prostitute who intentionally infects others with HIV is liable to a criminal prosecution and faces a prison sentence of up to seven years.

53. The Penal Code contains the following offences in connection with forced prostitution and sexual exploitation:
- (a) in relation to rape, Article 141 of the Penal Code stipulates that those who use violence, threaten to use violence or take advantage of the victim's inability for self-defence or resort to other "tricks" in order to have sexual intercourse with the victim against the latter's will shall be sentenced to between 2 and 7 years imprisonment (with the sentence increasing to between seven and 15 years imprisonment if there are aggravating factors such as the offence occurring in an organised manner). Article 142 of the Penal Code creates a separate offence of rape of a person under the age of 16, with the penalty ranging from seven years imprisonment to life and capital punishment, with the actual sentence depending on the age of the victim and the presence of aggravating factors such as the offence being committed in an organised manner;
  - (b) in relation to forced sexual intercourse, Article 143 of the Penal Code provides that persons who employ "trickery" to induce persons dependent on them, or persons in dire straits, to have sexual intercourse<sup>19</sup> with them against their will shall be sentenced to between one and five years imprisonment (with the sentence increasing to between three and 18 years imprisonment if there are any of the specified aggravating factors present, such as if committed against more than one person or the severity of the consequences suffered by the victim);
  - (c) Article 144 of the Penal Code introduces a separate offence of forced sexual intercourse in relation to a person between the ages of 13 and 16 with the penalty ranging from seven years imprisonment to life punishment, with the actual sentence depending on the presence of aggravating factors such as the severity of the consequences suffered by the victim;
  - (d) in relation to trafficking, Articles 150 and 151 of the Penal Code (which set out the new human trafficking crimes) specifically state that it is an offence if the act of trafficking is done for the purposes of sexual exploitation;
  - (e) under Article 327 of the Penal Code, persons who harbour prostitutes will attract a penalty of one to five years imprisonment (with the sentence increasing to up to 15 years if there are any of the aggravating factors specified in Article 327 present which include if it involves forced prostitution, is committed in an organised, professional manner or if committed against children); and
  - (f) under Article 328 of the Penal Code, persons who encourage or assist the prostitution of others shall be sentenced to between six months to 36 months imprisonment, increasing to up to 15 years if any of the aggravating factors set out in Article 328 are present (which include if committed in an organised, professional manner or if committed against children).

### Domestic violence

54. Law on the Prevention and Control of Domestic Violence No. 02/2007/QH12 dated 21 November 2007 (the "**Law on Domestic Violence**") provides protection measures for both men and women who are victims of domestic violence, for example, setting out support services (emergency aid to victims, medical care, legal advice and other counselling), forbidding any person who conducts an act of domestic violence to contact the victim (victims can apply to the Chairperson of the relevant commune People's Committee (which is the People's Committee at the third level administrative sub-division) or the courts for this order).

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<sup>19</sup> The Penal Code now includes a broader group of criminal behaviours including sexual intercourse and other sexual behaviours, not only sexual intercourse between female and male but also male and male.



55. The Law on Domestic Violence defines domestic violence as including the following acts:
- (a) beating, ill-treatment, persecution or other acts causing injury to a family member's health or life;
  - (b) insulting acts or other acts intended to offend;
  - (c) isolating, shunning or imposing psychological pressure on other family members, that causes serious consequences;
  - (d) obstructing the exercise of rights and obligations in the relationship between grandparents and grandchildren, between parents and children, between husbands and wives and between siblings;
  - (e) forced sex;
  - (f) forced child marriage; forced marriage or divorce and obstruction to voluntary and progressive marriage;
  - (g) appropriating, demolishing, destroying or other intentional acts that damage the private property of other family members or the common property of family members;
  - (h) forcing other family members to overwork or make financial contributions beyond their capacity or controlling other family members' incomes in order to make them financially dependent; and
  - (i) committing illegal acts to force other family members out of the family home.
56. Article 185 of the Penal Code provides for the offence of ill-treating family members and moves away from using ambiguous terms such as "serious consequences". The penalties are also increased where the offence provides that those who ill-treat or commit violence against their grand-parents, parents, spouse, children, grand-children or fosterers in one of the following circumstances shall be subject to warning penalty, non-custodial probation for up to three years or between six months and three years imprisonment:
- (a) regularly causing mental, physical pain to the victims; and
  - (b) having previously been administrative sanctioned for ill-treating family members but repeating the offence.

The punishment ranges between two and five years imprisonment if aggravating factors are present including if the offence is committed against persons under 16 years, pregnant women or old weak or disabled persons.

### **Child marriage**

57. Law on Marriage and Family No. 52/2014/QH13 dated 19 June 2014 stipulates different minimum marriage ages for men and women. Men must be at least 20 and women must be at least 18. Both sexes are required to give consent.
58. Article 183 of the Penal Code provides that a person who organises an underage marriage shall, if previously sanctioned for the same offence, be liable to a fine of between VND10 million and VND30 million (approximately US\$439 and US\$1,317) or face a penalty of up to two years non-custodial probation.
59. On a related note, Article 181 of the Penal Code criminalises forced marriage and provides that a person who forces others into marriage against their will or prevents others from entering into marriage or maintaining a voluntary and progressive marriage through persecution, ill-treatment, mental intimidation, by means of a property claim or other similar means, and who has previously

been administratively sanctioned for such acts but repeats the offences, shall be subject to a warning, non-custodial probation for up to three years or a prison term of between three months and 36 months.

### **Temporary marriage**

60. Vietnamese law does not permit or provide for temporary marriage.

### **Application of laws to migrants**

61. The laws referred to above do not make any distinction in their application to legal and illegal migrants and protect legal and illegal migrants. In practice, however, an illegal migrant is subject to deportation and so remains open to gender based exploitation given there may not be a desire to report certain crimes to the authorities.

## **Question 5. Do victims of trafficking have protected status under the law?**

### **Overview**

62. The Law on Human Trafficking contains protection mechanisms for human trafficking victims. These include measures relating to rescue and protection, victim identification, receipt and repatriation, victim support, protection of privacy and identity, compensation and legal assistance.

### **Rescue and protection**

63. The Law on Human Trafficking requires the relevant agency (e.g. the police) to take the necessary measures to rescue an individual when there are grounds to believe that an individual has been trafficked.

### **Identification, receipt and repatriation**

64. The Law on Human Trafficking sets out the grounds for identifying victims and the required documents and evidence necessary to allow an individual to receive victim status. The grounds for identifying victims are expanded upon in Decree 62 which also sets out a more broadly drawn list of documents and evidence for victim identification method. This list moves away from the requirement to provide documents relating to the investigation or prosecution of the trafficker and instead includes documents from a variety of sources, such as information and documents provided by the victims, by relevant government bodies (such as the rescuing authorities or consular agencies abroad) and testimony provided by victims and witnesses. Decree 62 is, however, seen as too narrow because it does not include a list of indicators or determinants that victims can display. As the Penal Code took effect on 1 January 2018, the validity of Decree 62 is unclear.

65. There are different mechanisms for the identification and receipt of victims in the Law on Human Trafficking depending on whether the individual is a victim of domestic trafficking or cross-border trafficking and whether the victim comes into contact with the authorities through self-identification or is rescued by the authorities. The Joint Circular on Victim Protection sets out detailed procedures for these mechanisms, including procedures for the identification, receipt and repatriation of trafficked foreign citizens in Vietnam as described in paragraphs 66 to 70. Funding is from the State budget.

66. Internally trafficked victims who identify themselves to the authorities are initially referred to the commune-level People's Committee which is responsible for reporting the victim to the local district office of MOLISA ("DOLISA") and providing support to meet the essential needs of the victim. Within three days of being notified about the victim, DOLISA is required to receive and assist the victim and send the victim to a social welfare establishment or a victim support institution (provided that the victim's I.D. documents are available) and request the police to carry out the victim verification process. The victim verification process must be carried out by the police within 20 days (or up to 60 days if the case is complicated) and if the person is deemed a victim, he or she shall be given a "certificate of victim status" which shall enable the victim to receive the protection and support offered to victims (see paragraph 71). While the "certificate of victim" status is pending, the authorities shall meet the essential needs of the victim. DOLISA may pay travel expenses for the victim to return home and, if the victim is a child, must take the necessary steps to return the victim to his or her residence such as by notifying a relative to receive the victim or referring the victim to appropriate care services. For a victim who needs medical or psychological care and requires support, DOLISA shall carry out procedures to transfer the victim to appropriate care services.
67. If the victim is rescued by the authorities, in place of the commune-level People's Committee, the rescuing body (e.g. the police, border guard or coast guard) is responsible for notifying DOLISA and for meeting the immediate essential needs of the victim. The rescue agency is also required to immediately issue the victim with a "certificate of victim status" unless there are insufficient grounds to issue the certificate in which case the rescuing body is required to request that DOLISA refers the victim to a social welfare establishment or a victim support institution. DOLISA is required to fulfil the victim's essential needs and ensure the matter is referred to the police to carry out the victim verification process (which must be completed within 20 days or not more than 60 days if the case is complicated).
68. For a foreign citizen trafficked in Vietnam, the police department (where the foreign citizen self-identified to the authorities) or the rescuing body (if the victim was rescued) are required to fulfil the victim's essential needs and send the victim to DOLISA. The subsequent procedures (such as those relating to the victim being sent to a social welfare establishment or a victim support institution, the completion of the victim verification process and issuance of a "certificate of victim status") are similar to those that apply to a Vietnamese citizen trafficked in Vietnam, but involve additional government bodies such as MOLISA, the Ministry of Foreign Affairs and the immigration authorities. When the victim is identified and the "certificate of victim status" established, Vietnamese consular authorities are required to liaise with their foreign counterparts requesting that foreign country protects, identifies and receives the victims. If the foreign counterpart cooperates and issues the victim with travel documents the relevant Vietnamese authorities shall liaise and cooperate with each other to facilitate the victim's repatriation from Vietnam, either at a border checkpoint or an international airport.
69. The referral and verification of a victim returning from abroad is subject to a different process. An "overseas Vietnamese representative agency" (e.g. a diplomatic mission, consular agency or other similar agency) is required to follow-up any information it receives about trafficked Vietnamese individuals and notify the relevant authorities in that foreign country so that those authorities verify the identity and status of the victim and, if necessary, organise a rescue. If the evidence that an individual is Vietnamese and has been trafficked is substantial (or, if not substantial, once the information has been verified by the Ministry of Public Security in Vietnam), the overseas Vietnamese representative agency must provide protection to the victim, cooperate with the relevant authorities in the foreign country to ensure the victim's essential needs are met and issue any necessary temporary travel documents to allow the victim to return home. In order to facilitate the victim's journey to Vietnam and reception by the authorities in Vietnam, the overseas

Vietnamese representative agency is required to liaise with the relevant authorities in the foreign country and Vietnam. A hotline is also available to protect Vietnamese citizens abroad.

70. The Vietnamese Anti-Trafficking Laws stipulate procedures for the reception of victims returning from abroad. Victims are to be met on arrival (with DOLISA taking prime responsibility), helped with completing all procedures and issued with a “certificate of repatriation”. The cost of travel to the victim’s home are to be met (if the victim wishes to return home) and the victim’s family notified if the victim is a minor or otherwise unable to make his or her own way home. Alternatively, DOLISA will arrange for victims to be sent to social welfare institutions or victim support establishments.

### **Victim support**

71. There are a number of provisions for victim support in the Vietnamese Anti-Trafficking Laws; however, such support is only available to victims who are officially identified. There are many situations where victims of trafficking do not receive support because they either return by themselves (i.e. with no police involvement and formal identification) or do not wish to be officially recognised as victims of sex trafficking. Types of support include:
- (a) support to meet essential needs and travel expenses (e.g. meal and clothing allowances);
  - (b) medical support (this is essentially for a limited period as it is provided while the victim is staying in care such as in a victim support establishment);
  - (c) psychological support (this is essentially for a limited period while the victim is in care such as in a victim support establishment);
  - (d) legal assistance (victims of human trafficking are eligible for legal aid);
  - (e) basic education or vocational support (such as exemption from school fees for victims from poor households or a one-off grant to attend a vocational course); and
  - (f) loan support (available to a victim wishing to borrow funds to set up a business).
72. Depending on the type of support, victim support is available for victims who are Vietnamese citizens, stateless persons residing in Vietnam, foreign citizens and accompanying minors. For example, foreign citizens trafficked into Vietnam are only entitled to support for essential needs and travel, medical support, psychological support and legal assistance.
73. Sources of funds for the victim support regime including from the State budget are insufficient. Publicly run social welfare institutions shall support victims by receiving them and providing them with shelter as well as providing victims with the support set out in paragraph 72 according to their sex and age, according to their will, and on the basis of the institutions’ resources and ability; providing education on living skills and vocational guidance to victims; evaluating victims’ possibility of integration into communities and providing information on supportive policies, measures and services for victims in communities; providing necessary information to functional agencies for the prevention and suppression of all acts of human trafficking; cooperating with relevant agencies to take victims to their places of residence.
74. The Law on Human Trafficking also provides that victim support institutions, which are established by Vietnamese individuals or organisations in conformity with their establishment permits, may take part in the performance of the above-mentioned duties to support victims. Such organisations are to be founded and organised on a self-financing and not for profit basis. Public funds are to be made available to assist the victim support establishments to meet the cost of providing for the essential needs of victims, travel costs and the provision of medical and psychological assistance.

75. The Vietnam Women's Union is responsible for providing support to victims through shelters and care services and is heavily involved in assisting victims at the local level.

### **Protection of privacy and identity**

76. The Law on Human Trafficking makes several references to the protection of the privacy and identity of victims (and their relatives) in order to protect the victims. Information about victims may not be disclosed without their consent with a general prohibition on stigmatizing or discriminating against victims. Relevant government bodies, organisations and individuals are required to keep information relating to a victim confidential and courts can hold closed hearings at the request of the victim. Under the New Criminal Procedure Code<sup>20</sup>, trafficked victims and their relatives are also entitled to receive protection for their lives, health, honour, dignity and assets.
77. Victims of human trafficking are entitled to refuse to cooperate or provide statements to the police or the prosecutor. They will not be prosecuted for refusal to give testimony or refusal to provide documents punishable under Article 383 of the Penal Code.

### **Compensation**

78. The Law on Human Trafficking provides that victims have the right to claim compensation for damages suffered by the trafficking. The right to compensation for non-contractual damages is provided under Articles 584 - 599 of the Civil Code, Article 30 of the Criminal Procedure Code and Resolution No. 03/2006/NQ-HDTP dated 8 July 2006 of the Judges' Council of the Supreme People's Court guiding the application of a number of provisions of the 2005 Civil Code on extra-contractual damage compensation.

### **Legal assistance**

79. Victims of trafficking receive free legal aid in relation to court proceedings relating to their trafficking and also in relation to proceedings concerning matters such as receiving compensation and access to victim support measures.
80. The Vietnamese Anti-Trafficking Laws do not provide for any fast-tracked court procedures for trafficking cases and victims' access to justice is the same for any victim of crime meaning there is the potential for any legal proceedings to be drawn-out and time consuming. Given that human trafficking is considered a serious crime in Vietnam, fast-track court procedures are not available. In certain cases, especially for crimes committed in rural areas, circuit courts will be used but generally they are not considered to be as effective and fair as they were intended to be.

### **Issues**

81. Despite the strength of the victim protection measures in the Vietnamese Anti-Trafficking Laws and the fact that those measures apply to all women, children and men, Vietnam has prioritised the protection of women and children victims rather than male victims, particularly because the predominance of trafficking for sexual exploitation has made trafficking more pervasive, hence there is a tendency for organisations that provide assistance to women and children victims to receive state funding to build shelters for women and for other counter-trafficking activities. This results in a lack of shelters and support for men.

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<sup>20</sup> The New Criminal Procedure Code was approved and passed as law by the National Assembly of Vietnam on 27 November 2015 and originally intended to come into effect on 1 July 2016. Resemble to the Penal Code, this date has been postponed to an, as yet, undetermined date whilst the National Assembly of Vietnam re-considers certain provisions.

82. Similarly the tendency of the Vietnamese authorities to focus on trafficking for sexual exploitation (and the volume of trafficking for this reason) means that there is an insufficient focus on trafficking for forced labour and so a deficiency in the protection and assistance provided to victims of forced labour trafficking.

**Question 6. Can victims of trafficking be criminalised for crimes committed as a direct result of their trafficking (e.g. is a victim of forced prostitution able to be tried and found guilty under laws against prostitution)?**

83. The Law on Human Trafficking is silent on the issue of whether victims of trafficking can be criminalised for crimes committed as a direct result of their trafficking with the law containing no specific provision about victims of trafficking being protected from prosecution. Technically, therefore, a victim of trafficking can be criminalised if a crime is committed, notwithstanding that it is committed as a direct result of their trafficking. In practice, however, it is reported that once a person is identified as victim of the crime, he/she will not be criminalised for crimes committed as a direct result of his/her trafficking.
84. However, the Vietnamese Anti-Trafficking Laws place an emphasis on the protection of victims and providing victims with support and the means to rehabilitate themselves and it is considered that, in practice, if a victim of trafficking is dealt with by law enforcement officers well trained in matters of human trafficking and the victim opens up to the enforcement officers about the circumstances of the trafficking that the victim would not be criminalised (particularly if the victim's cooperation is required in any prosecution of a trafficker).
85. In relation to prostitution, it is worthy of note that, as discussed in paragraph 52, the Penal Code only criminalises acts such as harbouring and procuring prostitutes and so a victim of trafficking will not be criminalised for prostitution. However, any person including prostitute who intentionally infects others with HIV can be prosecuted for criminal liability and faces a prison sentence of up to seven years.

## Question 7. Are the penalties / punishments of those found guilty of trafficking sufficiently stringent?

86. The Vietnamese Anti-Trafficking Laws provide a range of punishments which are sufficiently stringent and commensurate with the penalties for other serious offences. The punishment varies depending on matters such as whether the victim is an adult or a child, the purpose of the trafficking and whether the trafficking is carried out by an organised criminal undertaking.

### Vietnamese Anti-Trafficking Laws

87. The basic offence of trafficking in humans under Article 150 of the Penal Code incurs a sentence of between five and ten years imprisonment with offenders also facing a fine of VND 20 million to VND100 million as well as mandatory supervision, prohibition from residence for one to five years, or have all or part of his/her property confiscated. If such aggravating factors are present, traffickers face a sentence of between 8 and 15 years imprisonment. Aggravating factors include:
- (a) if the offence is committed by an organized group;
  - (b) if the offence is committed by despicable motives;
  - (c) if the victim suffers from 11% - 45% mental and behavioural disability because of the offence;
  - (d) if the offence results in 31% physical disability or more of the victim;
  - (e) if the victim is taken across the border out of Vietnam;
  - (f) if the offence is committed against two to five people; or
  - (g) if the offence has been committed more than once.

If the below aggravating factors are present, traffickers face a sentence of between 12 and 20 years imprisonment. Aggravating factors include:

- (a) if the offence is committed in a professional manner or involves dangerous recidivism;
  - (b) if the victim's body part has been taken;
  - (c) if the victim suffers from 46% mental and behavioural disability or above because of the offence;
  - (d) if the offence results in the death or suicide of the victim; and
  - (e) if the offence is committed against 6 or more people.
88. The offence under Article 151 of the Penal Code incurs a penalty of between seven to twelve years imprisonment with offenders also facing a fine of up to VND200 million, prohibition from holding certain positions or doing certain works and a mandatory supervision for one to five years, or property confiscation. If aggravating factors are present, traffickers face an increased sentence between twelve to 20 years imprisonment or life imprisonment. Aggravating factors include:
- (a) if the perpetrator abused his or her position or the offence was against someone he or she was responsible to take care of or if the offence involved abusing child adoption activities;
  - (b) if the offence is carried out in an organised manner, or a professional manner, or for a despicable motive, or to harvest human organs, or involves multiple victims or dangerous recidivism;
  - (c) if the offence causes mental and behavioural disorders for the victim, damage to the victim's health or results in the victim's death or suicide;
  - (d) if the trafficking was cross-border;

- (e) if the offence is carried out against more than one person; and
  - (f) if the perpetrator is a repeat offender;
89. The offence of fraudulently exchanging or swapping babies (below one year of age) with another baby under Article 152 of the Penal Code incurs a penalty of two to five years imprisonment with offenders also facing a fine of between VND10 million to VND50 million (approximately US\$439 to US\$2,195) and a ban from performing certain jobs of between one and five years. If aggravating factors are present, the penalty increases to between three and seven years imprisonment. Aggravating factors include:
- (a) if the offence is committed in an organised manner, a professional manner or involves dangerous recidivism; and
  - (b) if the perpetrator has abused his position to commit the offence or the victim is someone the perpetrator is responsible to take care of or the perpetrator is a repeat offender.
90. The offence of abduction a person under 16 years of age under Article 154 of the Penal Code incurs a penalty of between five and ten years imprisonment with offenders also facing a fine of between VND10 million to VND50 million (approximately US\$439 to US\$2,195) and a ban from performing certain jobs of between one and five years. If aggravating factors are present the penalty increases to between five and ten years imprisonment (and ten and 15 years for the more serious aggravating factors). Aggravating factors include:
- (a) if the perpetrator abused his or her position or the offence was against someone he or she was responsible to take care of or the perpetrator is a repeat offender;
  - (b) if the offence is carried out in an organised manner, or a professional manner, or involves multiple victims or dangerous recidivism; and
  - (c) if the offence causes mental and behavioural disorders for the victim, damage to the victim's health or results in the victim's death or suicide.

### **Sentences imposed**

91. In terms of the sentences actually given to traffickers over the last three years, the law enforcement statistics provided by the Vietnamese government<sup>21</sup> show that:
- (a) in 2016 the government prosecuted 355 suspected traffickers under the Old Penal Code and convicted 275, with sentences ranging from two to 20 years imprisonment;
  - (b) in 2015 the government prosecuted 442 suspected traffickers under the Old Penal Code and convicted 217, with sentences ranging from non-custodial probation to life imprisonment;
  - (c) in 2014 the government prosecuted 472 suspected traffickers (346 under Article 119 of the Old Penal Code and 126 under Article 120 of the Old Penal Code) and convicted 413, with sentences mostly ranging from three to 15 years imprisonment;
  - (d) in 2013 the government prosecuted 512 suspected traffickers under the Old Penal Code and convicted 420 offenders with all convicted offenders receiving at least three years imprisonment; and

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<sup>21</sup> Statistics in this paragraph are taken from the 2017 Trafficking Report and the U.S. Department of State Trafficking in Persons Report for Vietnam 2016, 2015, 2014 and 2013. The reports comment that Vietnam's central data collection systems are inadequate with discrepancies between prosecution figures reported by the government and the courts.



- (e) in 2012 490 offenders were brought to trial, convicted and sentenced (319 tried under Article 119 of the Old Penal Code and 85 under Article 120 of the Old Penal Code) of which seven defendants received jail sentences of between 20 and 30 years, 38 defendants of between 15 and 20 years, 137 defendants of between seven and 15 years, 265 defendants of less than seven years with 48 defendants put on non-custodial probation and one fined.
92. The statistics did not include any commentary on the extent to which assets were confiscated from offenders. As a general comment, a common issue facing the authorities in Vietnam when seeking to confiscate an offender's assets is a lack of resources to effectively investigate and find assets (particularly hidden assets) which reduce the effectiveness of confiscation orders.
93. The statistics referred to in paragraph 91 did not include a breakdown of how many cases involved sexual exploitation or labour trafficking. In practice, the government has tended to pursue labour trafficking cases as administrative violations under Vietnam's labour laws which currently do not provide for criminal penalties. Local NGOs report that offenders usually receive administrative fines first and may then face criminal charges for a repeat violation. Depending on the particular offence, under the Labour Code an employer can face administrative penalties in the form of fines of up to VND400 million (approximately US\$17,560) and/or the suspension or revocation of licences or certificates which are legally required for it to carry out its business operations. A Vietnamese employer can be subject to these penalties for breaches which relate to employees in Vietnam (Vietnamese or foreign) and Vietnamese citizens employed abroad.
94. According to media reports, a number of recruitment agencies have had their licence giving them the right to send Vietnamese employees overseas revoked with a greater number fined for labour law violations relating to sending Vietnamese employees overseas. More specifically, in November 2015 MOLISA announced that two recruitment agencies had been fined VND200 million (approximately US\$8,780) for labour law violations in relation to sending Vietnamese employees overseas, with the licence of a further three recruitment agencies suspended.
95. Under Article 297 of the Penal Code, a new criminal offence has been created relating to forced labour which, it is hoped, will mean that even if trafficking offences are not used to prosecute perpetrators of forced labour trafficking that the perpetrator will nevertheless face more stringent punishment than may now be the case. The offence provides that those who use violence, threaten to use violence or apply other expedients to force others to work in one of the following circumstances shall be subject to a fine from VND50 million to VND200 million (approximately US\$2,195 to US\$8,780), non-custodial probation of up to three years or six months to three years imprisonment:
- (a) if the perpetrator has previously been fined or penalised for the same forced labour activity;  
or
  - (b) if the work causes injuries or damage to the health of one or more persons.

If aggravating factors are present, the sentence is increased to between three and 12 years imprisonment. Aggravating factors include the severity of the injuries caused, the number of victims, the age and status of the victims (e.g. pregnant, elderly or disabled).

**Question 8. Are the penalties / punishments of those found guilty of violence against women (i.e. domestic violence, violence against employees such as domestic workers) sufficiently stringent?**

**Domestic violence**

96. The principles underpinning the Law on Domestic Violence include the “taking of combined and integrated measures to prevent and fight domestic violence with preventive measures as key and with special attention paid to communication and education on family values, counselling and reconciliation in line with the fine traditional and cultural practices of Vietnam”. This means that in order to prevent and control domestic violence, the Law on Domestic Violence, in the first instance, emphasises procedures such as reconciliation of disputes by the family, clan or by grassroots organisations in conjunction with the commune level People’s Committee, together with community warnings and criticisms levelled at the perpetrator. The imposition of such measures, without any further sanction, may be seen as not being a sufficiently stringent punishment for the perpetrator. In addition, the Law on Domestic Violence imposes an administrative fine of up to VND10 million (approximately US\$439) which, again, may not be seen as a sufficiently stringent punishment. However, the Penal Code offers more severe punishments.
97. Under the Penal Code the requirement for “serious consequences” is removed with the penalty of a warning, non-custodial probation for up to three years or between six months and three years imprisonment applying for ill-treatment or violence that regularly causes mental or physical pain which, although still somewhat open-ended (i.e. what constitutes ‘regular’), is a more definite concept than “serious consequences”. The punishment increases to up to five years imprisonment if the victim is elderly, infirm, pregnant or disabled.
98. To ensure perpetrators face some sort of sanction, a number of rapid response teams, made up of police officers, volunteers and charity workers were established in early 2015 in certain provinces in Vietnam to provide immediate support and options to the victims of domestic violence and to encourage the prosecution of the perpetrator.
99. In conclusion, sufficiently stringent punishments are available for domestic violence under Vietnamese law but the sliding scale of punishments, and the seeming greater scale of violence required for the most severe punishments to be imposed means question marks remain about whether sufficiently stringent penalties are applied.

**Domestic worker violence**

100. Violence against domestic workers was covered by the Old Penal Code with the penalty dependent on the severity of the offence committed. Under the Penal Code, there are no specific offences that relate to violence against domestic workers and the general offences relating to violence against a person will apply.
101. Article 297 of the Penal Code criminalises any person that uses violence or threat of violence or other methods to force a person to work against his/her will. Offenders can be liable to a fine of from VND 50,000,000 to VND 200,000,000 or face a penalty of up to 3 years’ community sentence or 6 - 36 months’ imprisonment.

**Question 9. What are the numbers / ratio of investigations, prosecutions and convictions of traffickers (is there a difference in the likelihood of investigation, prosecution or conviction between cases in which an individual has trafficked another for the purposes of forced labour, and those who have trafficked another for the purposes of sexual exploitation)?**

102. According to the 2017 Trafficking Report, in 2016 the Vietnamese government prosecuted 295 suspected traffickers leading to 275 convictions (under Articles 119 and 120 of the Old Penal Code) with sentences ranging from two to 20 years imprisonment. By reference to the statistics for previous years, in 2015 Vietnam sustained its law enforcements efforts, albeit with a small increase in the number of convictions. This compared with 442 prosecutions and 217 convictions in 2015 and 413 convictions in 2014. The relevant statistics reported by the government for 2013 were that 697 suspected traffickers were arrested, 512 defendants prosecuted under the Old Penal Code and 420 offenders convicted and sentenced. The figures for 2012 did not provide a breakdown to illustrate the ratio between investigations, prosecutions and convictions.
103. The statistics for 2016 in the 2017 Trafficking Report did not include a breakdown of how many cases involved trafficking for sexual exploitation purposes and trafficking for forced labour purposes or which involved internal or external trafficking. In Vietnam, anti-trafficking efforts have often focused on sexual exploitation trafficking with a concentration on providing protection and assistance for trafficked women and children which can often mean male victims of labour trafficking are inadequately served and recruitment agencies not properly controlled.
104. There are few statistics that detail the full extent of trafficking for sex and marriage. According to Vietnamese law enforcement, nearly 4,500 Vietnamese women fell prey to traffickers between 2011 to 2015 – 70 percent of them bound for China.<sup>22</sup> There are however no official numbers regarding the number of girls reported missing, nor how many were rescued.
105. Labour exploitation of children trafficked from Vietnam to the UK to work on cannabis farms is an increasingly common form of modern day slavery, yet there were only 227 Vietnamese children identified as potential victims of modern slavery in the UK in 2016. Between 2000 and 2014, the number of cannabis farms detected by the police in the UK increased by more than 150 per cent. Of all the potential trafficking victims who were forced into cannabis cultivation, 96 per cent were from Vietnam, and 81 per cent of these were children.<sup>23</sup>
106. As discussed in paragraph 93, before the implementation of the Penal Code, labour trafficking was not specifically criminalised in the Old Penal Code, thus the Vietnamese government has, in practice, tended to pursue labour trafficking cases as administrative violations under Vietnam’s labour laws which do not provide criminal penalties.
107. However, pressure from the international community on Vietnam to prosecute trafficking for forced labour purposes under criminal legislation and the provisions of the Penal Code which clearly provide for the criminalisation of both forced labour trafficking and other forced labour type violations would suggest that there are grounds to believe that the number of investigations and prosecutions under criminal legislation for forced labour trafficking will increase.

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22 Bloomberg, “The Real Source of China’s Trafficking Problem”, <https://www.bloomberg.com/view/articles/2017-06-28/the-real-source-of-china-s-human-trafficking-problem>.

23 The Independent, “Dark truth behind UK cannabis cultivation revealed as short film exposes exploitation of Vietnamese minors”, <http://www.independent.co.uk/news/uk/home-news/uk-cannabis-cultivation-marijuana-farm-vietnamese-minors-children-short-film-a7999426.html>.

**Question 10. If a person is found to have been trafficked into Vietnam, and is without legal status, is that person likely to be imprisoned and/or repatriated?**

108. Under Article 32 of the Law on Human Trafficking the government is required to provide support to foreign victims of human trafficking, including financial, medical and psychological support. As discussed in paragraph 83, there is no express provision in the Law on Human Trafficking stating that victims will not be criminalised or imprisoned but it is considered that the requirements in the Law on Human Trafficking that victims are protected means that foreign victims are unlikely to be imprisoned.
109. Article 55 of the Law on Human Trafficking provides that the Vietnamese government shall take the necessary measures to facilitate the repatriation of foreign victims. A number of the bilateral agreements referred to in paragraph 24 include repatriation provisions. Therefore, foreign victims are likely to face forced repatriation, particularly as there is no focus in the Vietnamese Anti-Trafficking Laws on granting visas, temporary residence, asylum or work permits to foreign victims. Generally, after identifying the information of the foreign victims, Vietnamese authorities will contact the relevant authorities of the country of which the victims have citizenship in order to repatriate the victims.

**Question 11. If a person is repatriated to Vietnam, having been found to have been trafficked to a third country, is that person liable to be imprisoned for acts considered as criminal (i.e. prostitution, travel without documents) but which were a direct result of her having been trafficked?**

110. According to the 2017 Trafficking Report, while men, women, and children are subjected to sex trafficking and forced labour within Vietnam (particularly from rural to urban areas), trafficking of Vietnamese persons across Vietnam's borders remains a significant issue. Vietnamese men and women migrate abroad for work independently or through state-owned, private, or joint-stock labour recruitment companies. Some are subsequently subjected to forced labour in the construction, fishing, agricultural, mining, logging, and manufacturing sectors, primarily in Taiwan, Malaysia, Republic of Korea, Laos, Angola, United Arab Emirates, and Japan; there are increasing reports of Vietnamese labour trafficking victims in the United Kingdom, continental Europe, and the Middle East. Vietnamese women and children are subjected to sex trafficking abroad with many initially misled by fraudulent labour opportunities. Key destination countries for this include China, Cambodia, Laos and elsewhere in Asia, including Thailand, Malaysia, Republic of Korea, Taiwan, and Singapore. Some Vietnamese women who travel abroad for internationally brokered marriages or jobs in restaurants, massage parlours, and karaoke bars—mostly to China, Malaysia, and Singapore—are subjected to domestic servitude or forced prostitution. An increasingly reported tactic is men using the internet to lure young women and girls into online dating relationships and persuading them to move abroad where they are subjected to forced labour or sex trafficking. Vietnamese organised crime networks recruit and transport Vietnamese nationals, especially children, to Europe (particularly the United Kingdom) and subject them to forced labour on cannabis farms.
111. Given the prevalence of trafficking across Vietnam's borders, the issue of how repatriated victims are treated in Vietnam is of significance. The principle underpinning the Vietnamese Anti-Trafficking Laws is to prevent and combat human trafficking and to protect victims including the rehabilitate and repatriation of Vietnamese victims trafficked abroad. A person found to be a victim of trafficking who is repatriated to Vietnam is, in practice, highly unlikely to be charged for any offence committed in Vietnam as a consequence of that trafficking. Common offences that a victim trafficked overseas may, in theory, be guilty of relate to immigration offences and failing to leave Vietnam by way of immigration check points or official border crossing points. However, again, it is unlikely that victims will be prosecuted for such offences particularly in view of the repatriation provisions discussed in the response to Question Five and the obligation on the various Vietnamese authorities to facilitate a victim's repatriation including by providing travel documents and to receive victims when they do arrive back in Vietnam with the focus on rehabilitation rather than prosecution for offences committed as a result of the trafficking.
112. Where the situation becomes less clear is when a victim returns to Vietnam in circumstances where the country repatriating the victim has not clearly found the person to be a victim of trafficking, meaning the victim may not be seen by the Vietnamese authorities as a victim of trafficking and so may be prosecuted for a criminal offence committed outside the territory pursuant to Article 6 of the Penal Code, particularly if the victim appeared to voluntarily migrate abroad. In practice, Vietnamese government does not prosecute a victim when he/she returns to Vietnam. However, in this case, the issue becomes one of ensuring the victim identification processes referred to in our responses to Question Five are operating effectively to ensure that self-identifying victims are duly identified and treated as victims and so not prosecuted for any offence.



# Section B

# Money Laundering



## Question 1. What (if any) is Vietnam's specific anti-money laundering legislation?

### Vietnam's specific anti-money laundering ("AML") legislation

113. Vietnam's specific AML legislation includes the following:
- (a) Law on the Prevention of Money Laundering No. 07/2012/QH13 dated 18 June 2012 (the "**Law on AML**");
  - (b) a wide range of decrees, circulars and regulations issued to provide implementing guidelines on the Law on AML, most notably:
    - (i) Decree No. 116/2013/ND-CP dated 4 October 2013;
    - (ii) Circular No. 148/2010/TT-BTC dated 24 September 2010;
    - (iii) Circular No. 12/2011/TT-BXD dated 1 September 2011; and
    - (iv) Circular No. 35/2013/TT-NHNN dated 31 December 2013 (as amended by Circular No. 31/2014/TT-NHNN dated 11 November 2014); and
  - (c) the Penal Code,  
collectively the "**Vietnamese AML Laws**".
114. The Penal Code which replaces the Old Penal Code also form a key part of the Vietnamese AML Laws.
115. The full list of Vietnam's key AML legislation is set out in Schedule 3.

### Overview of the Vietnamese AML Laws

116. The Old Penal Code sets out the criminal offence of money laundering, while the Law on AML stipulates the measures to prevent, detect, stop and handle acts of money laundering and the responsibilities of agencies, organizations and individuals in the prevention of money laundering and international cooperation on AML.
117. Until the Old Penal Code was amended in 2009, the money laundering offence under the Old Penal Code was essentially the "legalising" of money/property which was obtained through the commission of crime. No further detail was provided about what acts might fall within the scope of "legalising", leading to concerns that activities which should properly be caught by AML offences were not clearly penalised under the Old Penal Code.
118. The Old Penal Code was amended in 2009 and now defines money laundering as an act of an individual or an organisation which has the aim of legitimising the origin of assets directly or indirectly obtained through the commission of a crime ("**Criminal Assets**") and includes the following acts:
- (a) directly or indirectly engaging in financial or banking operations or other transactions to conceal the illegal origin of Criminal Assets;
  - (b) using what are known to be Criminal Assets to conduct economic activities; and
  - (c) concealing information about the origin, ownership etc of what are known to be Criminal Assets or otherwise obstructing the verification of such information about Criminal Assets.
119. Following the amendment to the Old Penal Code in 2009, there was much debate over the scope of the offence and whether or not offenders included those who committed the predicate offence that provided the funds for the subsequent money laundering act. Some clarity was subsequently provided by the Ho Chi Minh City Department of Justice which commented that the language



of Article 251 reflected the legislators' intention that the offence should cover only those who committed the act of money laundering (and not the predicate offence).

120. The money laundering offence in the Law on AML replicates the offence in the Old Penal Code and also includes:
  - (a) assisting an individual or organisation involved in crime to avoid liability by legitimising the origin of Criminal Assets; or
  - (b) being in possession of Criminal Assets with a view to legitimising the origin of those Criminal Assets if, at the time of receipt of the assets, the recipient was aware that such assets were Criminal Assets.
121. In response to the evolving complexity and increasing scale of money laundering and the greater threat it poses to a country's security and financial stability the criminal offence of money laundering was re-written in the Penal Code.
122. Whilst making no changes to the activities encompassed by the existing offence, the Penal Code reshapes the law in two material ways. Article 324 now lists two distinct situations in which the accused can be made liable:
  - (a) if the accused himself deals with Criminal Assets; or
  - (b) if the accused knows or should reasonably know, that the relevant assets are Criminal Assets arising from another person's commission of a crime.
123. The changes made in the Penal Code mean that an offender who commits the predicate offence can also be charged under Article 324 for any subsequent money laundering. A key reason for this change was that it would permit the prosecution of offenders who committed money laundering offences in Vietnam where the predicate crime was committed in another jurisdiction.
124. Additionally, the Penal Code also lowers the bar for commission of the offence, changing the required state of mind from "clearly knew" the assets were Criminal Assets to "should reasonably have known". This reduces the burden of proof on the part of the prosecution and extends the reach of the law to catch more offenders and reflects the acknowledgment in Vietnam that money laundering is no longer a crime to be taken lightly, particularly in view of the increasingly important role it plays in facilitating trans-national criminal networks.
125. Under the Penal Code, commercial legal entities with the primary purpose of seeking profit can be held criminally liable for 32 offenses including money laundering under Article 324. Penalties can include monetary fines, forcible termination or suspension of business operations and bans from conducting certain business activities and/or raising capital, for one (1) to three (3) years.
126. The Vietnamese AML Laws also require organisations operating in certain sectors, such as banking, securities, insurance, real estate and gambling, to comply with various obligations to prevent money laundering, such as verifying the identity of customers and putting in place internal checks and procedures to identify and report suspicious transactions. In relation to suspicious transactions, Decision No. 20/2013/QĐ-TTg dated 18 April 2013 provides that any transaction with a value of VND300 million (approximately US\$13,170) or more must be reported to the State Bank of Vietnam ("SBV"). The SBV instituted standardised STR forms; however, the system is not yet online, and as a result, local banks must file hard copies of STRs.<sup>24</sup> Banks are also required to report domestic electronic transactions to the SBV which have a value of VND500 million or more (approximately US\$22,700) and cross-border electronic transactions with a value of US\$1,000 or more, but debit card, credit card and interbank transactions are exempt from this reporting requirement.

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24 US Department of State, International Narcotics Control Strategy Report, Volume II, Money Laundering (March 2018).

127. The government has also issued a national action plan for the prevention of money laundering. Decision No. 2112/QD-TTg dated 25 November 2014 issued by the Prime Minister lays down a national action plan covering the period from 2015 to 2020 which sets out initiatives and priorities for the prevention of money laundering and the financing of terrorism.
128. Other than the Law on AML, Circular No. 155/TT-BTC, issued on 6 October 2015,<sup>25</sup> requires disclosure on sustainable development of listed companies on stock exchanges in Vietnam. Companies are required to disclose information relating to their sustainable development policies (environmental and social disclosure) such as management of raw materials, compliance with the law, policies related to employees, report on responsibility for local community which aim to strengthen corporate responsibility for environment and social standards in addition to conventional disclosures in the Annual Reports. The Environmental and Social (E&S) Disclosure Guide<sup>26</sup> was commissioned by the International Finance Corporation (IFC) and the State Securities Commission of Vietnam (SSC) to encourage public listed companies to adopt and better implement the disclosure of E&S information as stipulated by Circular No. 155/TT-BTC. In circumstances where information relating to the sustainable development policies are not provided, the omissions along with an explanation must be stated in the report.
129. Vietnam has taken its sustainability reporting to the next level by adopting the sustainability reporting using the global reporting initiative (GRI) standard. The Ho Chi Minh Stock Exchange recently introduced the GRI Sustainability Reporting Standards and encouraged companies to use this reporting framework to strengthen their credibility. The Vietnamese version of the GRI Sustainability Reporting Standards<sup>27</sup> aims to address the fact that Vietnamese businesses are still producing sustainability reports in an inconsistent manner.

#### **Enforcement agencies**

130. To enhance the enforcement of the Vietnamese AML Laws, the Prime Minister passed Decision No. 470/QD-TTg dated 13 April 2009 which established a Central AML Steering Committee to support the Prime Minister's administration and coordination of ministries and other government bodies regarding AML measures.
131. Under the Law on AML, the SBV has a primary role in coordinating the enforcement of the Vietnamese AML Laws whilst specific ministries implement the laws at industry level. For example, the Ministry of Finance is responsible for the insurance, securities and gaming sectors and the Ministry of Construction is responsible for the real estate sector. In view of the high risk nature of the banking sector, the SBV has established a specialist department within the SBV for the banking sector.
132. The People's Committees, the executive branch of provincial government, at all levels have responsibility to co-ordinate with other government bodies to implement policies, strategies and plans to prevent and combat money laundering.

<sup>25</sup> Circular 155-2015-TT-BTC on disclosure of information on the securities market, [http://ssc.gov.vn/ssc/contentattachfile/idcplg?dID=103390&dDocName=APPSSCGOVVN162103170&Rendition=No.155-2015-TT-BTC&filename=C155mf6Oct-15DisclosureInformationSecurities%20\(ban%20day%20du\).pdf](http://ssc.gov.vn/ssc/contentattachfile/idcplg?dID=103390&dDocName=APPSSCGOVVN162103170&Rendition=No.155-2015-TT-BTC&filename=C155mf6Oct-15DisclosureInformationSecurities%20(ban%20day%20du).pdf).

<sup>26</sup> State Securities Commission of Vietnam and International Finance Corporation, "E&S Disclosure Guide", [http://www.sseinitiative.org/wp-content/uploads/2014/08/20161212\\_ES-Disclosure-Guideline-ENGLISH.pdf](http://www.sseinitiative.org/wp-content/uploads/2014/08/20161212_ES-Disclosure-Guideline-ENGLISH.pdf).

<sup>27</sup> GRI, "GRI Sustainability Reporting Standards", <https://www.globalreporting.org/standards/gri-standards-translations/gri-standards-vietnamese-translations-download-center/consolidated-set-of-gri-standards-vietnamese-translation/>.

**Question 2. Where Vietnam has ratified regional or international anti-money laundering conventions does its legislation comply with those that would be needed in order to ensure that it can, in theory, meet its obligation?**

133. Vietnam has ratified several UN conventions relating to AML including:
- (a) the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the “**Vienna Convention**”);
  - (b) the UN Convention against Transnational Organised Crime (the “**Palermo Convention**”); and
  - (c) the UN Convention against Corruption (discussed further in Section C (*Anti-Corruption Legislation*)).
134. Under the Vienna Convention, the signatories agreed to combat the laundering of the proceeds of drug trafficking, including by criminalising money laundering.
135. To determine the extent to which the Vietnamese AML Laws comply with Vietnam’s obligations under the UN conventions, a useful benchmark is the extent of the Vietnamese AML Laws’ compliance with the standards set out in recommendations issued by the Financial Action Task Force (“**FATF**”). FATF is an inter-governmental body initially established to monitor the implementation of the Vienna Convention and which, amongst other functions, sets international standards and promotes the effective implementation of legal, regulatory and operational measures for combating money laundering.
136. FATF developed Forty Recommendations on AML and Nine Special Recommendations on Terrorism Financing which were revised and consolidated in 2012 into a set of Forty AML and Terrorism Financing Recommendations (the “**FATF 40 Recommendations**”)<sup>28</sup>. The FATF 40 Recommendations are recognised as the international standard for combating money laundering and the financing of terrorism and cover all aspects of national AML efforts, from the criminalisation of money laundering to international cooperation in combatting money laundering. They include recommendations relating to the ratification and implementation of UN instruments, including recommendations that money laundering is criminalised in a manner in accordance with the Vienna Convention and the Palermo Convention.
137. FATF conducts periodic “mutual evaluations” and updates of its member states to determine the level of their compliance with the FATF 40 Recommendations (which includes compliance with the recommendations relating to the implementation of UN instruments). While Vietnam is not a direct member of FATF, it has been a member of the Asia-Pacific Group on Money Laundering (“**APG**”) since May 2007. The purpose of APG is to ensure the adoption, implementation and enforcement of internationally accepted AML and counter-terrorist financing standards as set out in the FATF 40 Recommendations and is supported by, and is an associate member of, FATF. Accordingly, in order to comply with the terms of its membership of APG, Vietnam was required to integrate the FATF 40 Recommendations into its domestic legislation and is also subject to the mutual evaluations and updates conducted by FATF.
138. Vietnam’s last comprehensive mutual evaluation was held in 2009 which identified a number of deficiencies in its AML legal framework as well as noting that there were significant gaps

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<sup>28</sup> The FATF’s Recommendations have been issued from time to time to provide international standards on combatting money laundering and the financing of terrorism & proliferation which cover certain relevant/necessary actions, including Policies & Coordination; Money Laundering and Confiscation, Preventive Measures, Transparency, International Cooperation, etc. The current version was published in 2012, <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/fatf-recommendations.html>.

between Vietnam's legal framework and its international AML obligations. Things did not improve immediately and in 2012 FATF placed Vietnam into its *International Cooperation Review Group* mechanism (often referred to as FATF's "blacklist") due to FATF's determination that Vietnam was not making sufficient progress in addressing the deficiencies in its AML legal framework.

139. This pressure from FATF worked and in response Vietnam passed the Law on AML in June 2012. The FATF reported in February 2014 that Vietnam had made significant progress in improving its AML regime by establishing the requisite legal and regulatory framework. As a result, Vietnam is no longer on the list of countries that are identified by FATF as having strategic AML deficiencies and is no longer subject to FATF's monitoring. Vietnam will, however, continue to work with the APG to address the full range of AML issues identified in the 2009 mutual evaluation report.
140. Although Vietnam now has laws on money laundering, terrorist financing, anti-corruption and asset recovery, its main difficulties concern effective application of its AML/CFT regime. Government figures suggest that in 2014, specialized units investigated 415 cases of embezzlement worth approximately US\$316 million, of which only about 22.3% was recovered.<sup>29</sup> Up to now, Vietnam has had only one successful money laundering conviction despite there being many cases where prosecutions could have been made.<sup>30</sup>
141. Although Vietnam is in good standing under FATF and in compliant with the FATF 40 Recommendations (which include implementing UN instruments), there is still more to be done ahead of the upcoming evaluation under the FATF framework scheduled to take place in 2019.
142. Vietnam is not a member of the Egmont Group of Financial Intelligence Units, an informal network of FIUs which meet regularly to find ways to promote the development of FIUs and to cooperate in the fight against money laundering and the financing terrorism, especially in the areas of information exchange, training and the sharing of expertise.<sup>31</sup> It is reported that Vietnam has applied for membership and is currently working with sponsors.<sup>32</sup>
143. While Vietnam is technically compliant with current international standards, especially in terms of its legal framework, banking supervision for AML still needs improvement, and Client Due Diligence and Know Your Client policies within domestic banks need to be enhanced and fully implemented. Regulations on updating information of customers whose transactions originate in other countries are minimal and are weakly enforced.<sup>33</sup> In addition, cross-border controls remain weak. The lack of rigorous and impartial financial oversight of key state-owned enterprises (e.g. in the oil and gas sector), and the resulting opportunities for embezzlement, represent an additional AML vulnerability.

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29 The Global Anticorruption Blog, "Guest Post: Money Laundering and Asset Recovery in Vietnam" -<https://globalanticorruptionblog.com/2015/02/19/guest-post-money-laundering-and-asset-recovery-in-vietnam/>.

30 UNODC, "Using AML and special investigation techniques to improve the prosecution process of wildlife crime in Viet Nam" - <https://www.unodc.org/southeastasiaandpacific/en/vietnam/2017/09/wildlife-crime-money-laundering/story.html>.

31 See more information on the Egmont Group at <http://www.egmontgroup.org>.

32 US Department of State, International Narcotics Control Strategy Report, Volume II, Money Laundering (March 2018).

33 *Id.*

### **Question 3. What legislation exists to address money laundering arising as a result of human trafficking?**

144. The Law on Human Trafficking deals with the prevention of human trafficking, but there is no specific money laundering offence as a result of human trafficking. Under the Vietnamese AML Laws, money laundering is broadly defined and involves legitimising the origin of assets obtained as a result of a “crime”. Crime is defined as including acts stipulated in the Penal Code.
145. This means that the human trafficking activity outlawed under the Penal Code will also, potentially, trigger a money laundering offence under the Vietnamese AML Laws. Under the Vietnamese legal system, each offence is dealt with in accordance with the laws applicable to that offence. For example, if there is money laundering activity as a result of human trafficking activity, those offences will be dealt with under both the Vietnamese Anti-Trafficking Laws and the Vietnamese AML Laws. The penalty that can be imposed is the total of the penalties imposed for each offence committed.
146. The broad definition of money laundering in the Vietnamese AML Laws means that the crime of money laundering applies to all serious offences (i.e. including all offences under the Penal Code) and so includes a wide range of predicate offences. Vietnam’s approach in relation to predicate offences is to describe them generally by reference to “all acts stipulated in the Penal Code”, rather than by listing all predicate offences.
147. However, Vietnam’s approach to predicate offences does mean that some serious offences, and other offences that the FATF 40 Recommendations require to be classified as predicate offences, are not predicate offences under Vietnamese law. In relation to human trafficking, the Penal Code criminalises human trafficking for sexual exploitation, forced labour, body organs or for other inhumane purposes.

#### **Question 4. Are the penalties/punishments of those found guilty of money laundering sufficiently stringent?**

148. Under Article 324 of the Penal Code, the basic offence of money laundering incurs a penalty of one to five years imprisonment. The offender may also be liable to a fine of VND 20,000,000 to VND 100,000,000, or a ban on holding certain posts, practicing certain occupations or performing certain jobs for one to five years, or have part or all of his/her property confiscated. If aggravating factors are present, the penalty may be increased to five to ten years imprisonment. Aggravating factors include:
- (a) if the offence is committed by an organised or in a professional manner or involves dangerous recidivism;
  - (b) if the offender commits the offence by abusing his position and/or power;
  - (c) if the offence has been committed more than once;
  - (d) if the offence involves deceitful methods;
  - (e) if the illegal money or property is assessed at from VND 200,000,000 to under VND 500,000,000 (approximately US\$8,780 and US\$21,950); or
  - (f) if the illegal profit earned is from VND 50,000,000 to under VND 100,000,000 (approximately US\$2,195 and US\$4,390).
149. The penalty increases to between 10 and 15 years imprisonment if:
- (a) the Criminal Assets have a value of more than VND500 million (US\$21,950);
  - (b) the illegal profit earned by the offender is at least VND100 million (US\$4,390); or
  - (c) the offence has a negative impact on the country's currency or financial system.
150. A person who collaborates or carries out preparatory work to facilitate the act of money laundering faces a penalty of one to five years imprisonment.
151. Despite the enactment of the Law on AML in 2012 which was prompted by the increased determination of the government to clamp down on money laundering, enforcement of the law remains relatively ineffective and, to date, Vietnam prosecuted its first money laundering case with the sentencing of Giang Van Hien, who was convicted of laundering funds embezzled by his son from a state-owned enterprise in 2017.<sup>34</sup>
152. In view of the above, the Vietnamese AML Laws can be seen as providing penalties and punishments which allows sufficiently stringent penalties to be imposed. However, questions remain in relation to the enforcement of the Vietnamese AML Laws, particularly as statistics on prosecutions and convictions for money laundering may not always be available (this is also discussed in paragraph 153 below.)

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<sup>34</sup> *Id.*

**Question 5. What are the numbers / ratio of investigations, prosecutions and convictions of traffickers for money laundering offences?**

153. There is no public data available on the investigation, prosecution and conviction of traffickers for money laundering offences. For this reason, the extent of the Vietnamese government's enforcement of the AML legislation and its effectiveness as a means to identify and restrict human trafficking activity remain unclear.
154. It is rare to have a parallel financial investigation along with a criminal investigation of predicate crimes conducted by police due to lack of resources and difficulty in coordinating the efforts of stakeholders. Domestic cooperation among agencies such as the Anti-Money Laundering Department of the SBV, Vietnam's FIU; Customs; Ministry of Public Security; and the General Department of Taxation is rare and cross-agency coordination occurs with signed MOUs.<sup>35</sup>

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35 *Id.*







**Section C**

**Corruption**

## Question 1. What (if any) is Vietnam's specific anti-corruption legislation?

### Vietnam's specific anti-corruption legislation

155. Vietnam's specific anti-corruption legislation includes:
- (a) Law on Anti-Corruption No. 55/2005/QH11 dated 29 November 2005, as amended by Law No. 01/2007/QH12 dated 4 August 2007 and Law No. 27/2012/QH13 dated 23 November 2012 (the "**Law on Anti-Corruption**");
  - (b) a wide range of decrees, circulars and regulations providing implementing guidelines on the Law on Anti-Corruption, notably:
    - (i) Decree No. 59/2013/ND-CP dated 17 June 2013 and Decree No. 47/2007/ND-CP dated 27 March 2007;
    - (ii) Decree No. 107/2006/ND-CP dated 22 June 2006 (as amended by Decree No. 34/2011/ND-CP dated 17 May 2011, Decree No. 27/2012/ND-CP dated 6 April 2012 and Decree No. 211/2013/ND-CP dated 19 December 2013); and
    - (iii) Decree No. 19/2008/ND-CP dated 14 February 2008;
  - (c) Decision No. 64/2007/QĐ-TTĐ of the Prime Minister dated 10 May 2007 on the Promulgation of the Regulations on Giving, Receiving Gifts and Returning Gifts in relation to the public sector;
  - (d) other relevant legal documents relating to anti-corruption in the form of instructions, guidelines, internal recommendations issued by industrial management bodies, government bodies and other competent authorities at the national and local level; and
  - (e) the Penal Code,
- collectively, the "**Vietnamese Anti-Corruption Laws**".
156. A detailed list of Vietnam's key anti-corruption legislation is set out in Schedule 5.
157. The Draft Law on Prevention and Combat of Corruption (the "**Draft Law**") is under discussion by the National Assembly on various issues including whether it should also cover individuals in the non-State sector, such as those in public companies, credit institutions, investment funds, social organisations. This is an expansion from the current Law on Anti-Corruption which only regulates public servants. The Draft Law is scheduled to be discussed at the 23<sup>rd</sup> session.<sup>36</sup>

### Overview of the Vietnamese Anti-Corruption Laws

158. The Penal Code defines the various offences and the applicable punishments for offenders while the Law on Anti-Corruption regulates the prevention and detection of corrupt acts and the responsibilities of organisations and individuals to prevent corruption.
159. The Vietnamese Anti-Corruption Laws govern the conduct of public officials, civil servants and, in some cases, government bodies. Generally, a public official or civil servant is prohibited from accepting an "inappropriate gift" (or, if he cannot refuse the gift, he must report and submit the gift to his supervisor) and is prohibited from conducting acts defined as "corrupt acts", including:

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<sup>36</sup> VietnamPlus, "NA Standing Committee convenes 23rd session in Hanoi", <https://en.vietnamplus.vn/na-standing-committee-convenes-23rd-session-in-hanoi/129327.vnp>.

- (a) embezzling property;
- (b) taking a bribe or offering a bribe or acting as a broker for the payment of a bribe;
- (c) abusing a position or powers to appropriate property;
- (d) taking advantage of a position or powers or abusing powers during the performance of a task or official duties for self-seeking purposes;
- (e) taking advantage of a position or powers to influence another person for self-seeking purposes;
- (f) committing forgeries or falsifications in work (e.g. amending or falsifying the contents of documents) for self-seeking purposes;
- (g) taking advantage of a position or powers to illegally use State owned property for self-seeking purposes;
- (h) failing to perform tasks or official duties (and such failure is for self-seeking purposes); and
- (i) taking advantage of a position or powers to cover up a breach of law for self-seeking purposes or hindering the investigation or prosecution of a breach of law for self-seeking purposes.

### **Enforcement agencies**

160. Vietnam has established several specialised bodies at the national and local levels for investigating and combatting corruption including:
- (a) the State Audit of Vietnam which audits agencies using public funds to prevent and detect corruption;
  - (b) the government Inspectorate which organises and guides the observance of the Vietnamese Anti-Corruption Laws and requests action to be taken where corruption is detected; and
  - (c) the Central Steering Committee for the Prevention of Corruption which is currently headed by the General Secretary of the Communist Party and has national responsibility for implementing measures to prevent corruption.
161. Vietnam has also established a mechanism for high-ranking persons in the public sector to declare his or her assets. However, this information is classified as “confidential information” and so is not made available to the public which limits its value in combatting corruption.
162. The Prime Minister also issues action plans to provincial People’s Committees and other local bodies for facilitating the adoption of all aspects of the Vietnamese Anti-Corruption Laws.
163. In 2009, the Government issued a National Strategy on Anti-corruption until 2020. One of the solutions proposed in this Strategy is to promote the role of businesses and business associations in the fight against corruption through building and practicing a fair and non-corrupt business culture, and coordinating with competent state agencies to prevent and detect corrupt acts of officials.<sup>37</sup> The role and responsibilities of businesses in anti-corruption work are also specified in Article 87 of the Law on Anti-Corruption and Chapter IV of Decree 47/2007/ND-CP guiding a number of provisions of the Law on Anti-Corruption on the role and responsibilities of businesses in anti-corruption work.

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<sup>37</sup> Government Resolution 21/NQ-CP dated 12 May 2009 on the National Strategy on Anti-corruption until 2020.

## **The Penal Code**

164. The Penal Code restates the bribery offences and criminalises private sector bribery. The key offences are as follows:
- (a) receiving or giving bribes;
  - (b) brokering bribes; or
  - (c) taking advantage of a position or powers to influence another person for personal gain, or taking advantage of one's influence over a person with a position or powers to seek personal gain.
165. A "bribe" encompasses the following:
- (a) money, property or other tangible interests with a value of VND2 million (approximately US\$88) (although benefits with a value of less than VND2 million may constitute a bribe if the recipient (or offeror) has already been disciplined for receiving a bribe or has been convicted of a corruption offence but the conviction is not deemed a spent conviction (i.e. the conviction has not been expunged from the records)); and
  - (b) intangible interests.

### **Offences of taking bribes under the Penal Code**

166. Article 354 extends the application of corruption-related offences to those working in the private sector, making it an offence for any person to abuse his or her position and/or powers to directly (or through an intermediary) take or promise to take a bribe for himself or herself or for another person or organisation in order to perform, or not perform, certain functions for the benefit of, or at the request of, the bribe giver. The general threshold for the amount constituting a bribe remains VND2 million (approx. US\$95).
167. Article 358 makes it an offence for a public official to take advantage of his or her position and/or powers to directly (or through an intermediary) request, take or promise to take a bribe in order to influence another public official to perform or not perform certain functions or otherwise to commit a prohibited act.
168. Article 366 makes it an offence for a person who directly (or through an intermediary) receives a bribe in order to influence a public official to perform or not to perform certain functions or to commit prohibited acts.

### **Offence of giving bribes under the Penal Code**

169. Article 364 makes it an offence for a person who directly (or through an intermediary) gives or promises to give a bribe to a public official or an office holder in the private sector in order to influence that person to perform or not to perform certain functions for the benefit of, or at the request of, that person. In addition, under Article 364(6), any person who gives or promises to give a bribe to a foreign public official will be subject to criminal penalties set out in the Penal Code.
170. Commercial legal entities are not subject to criminal liability for corruption-related crimes, such as commercial bribery. Only individuals (natural persons) who are found to be responsible may be held culpable for corruption-related crimes committed by an entity.

**Question 2. Where Vietnam has ratified regional or international anti-corruption conventions does its legislation comply with those that would be needed in order to ensure that it can, in theory, meet its obligation?**

171. The UN Convention against Corruption (“UNCAC”) was adopted by the UN on 31 October 2003 and was the first global legally binding international anti-corruption instrument. Vietnam signed UNCAC on 10 December 2003, ratified it on 30 June 2009 and became an official party on 19 August 2009. UNCAC requires its signatory countries to strengthen their legal and regulatory framework by introducing a number of measures aimed at more effectively preventing and combatting corruption. These measures include the use of preventive measures and the criminalisation of the most prevalent forms of corruption in both the public and private sectors. UNCAC also introduced a framework for stronger cooperation between countries to prevent and detect corruption.
172. At the time of ratifying UNCAC, the anti-corruption legal framework in Vietnam needed a number of amendments and improvements to enable Vietnam to meet its commitments under UNCAC. These changes were primarily delivered in the Law on Anti-Corruption which was first passed in November 2005 and subsequently amended in 2007 and 2012 and earned Vietnam praise in the Global Integrity Report (2009) which considered the Vietnamese Anti-Corruption Laws provided a “strong” anti-corruption framework. The improvements in Vietnamese Anti-Corruption Laws were also highlighted by the U.S. Department of State’s Investment Climate Statement in 2011.
173. The introduction of the Law on Anti-Corruption (particularly its final revision in 2012) means that the Vietnamese Anti-Corruption Laws can be seen as broadly complying with Vietnam’s obligations under UNCAC. However, while the Vietnamese Anti-Corruption Laws broadly comply with Vietnam’s obligations under UNCAC there are a number of deficiencies in the legal framework and several points to note.
174. On ratifying UNCAC, Vietnam announced reservations in relation to Articles 20 and Article 26 of UNCAC and the requirements of these Articles have not been incorporated into domestic law. Article 20 deals with illicit enrichment whereby a significant, unexplainable increase in the assets of a public official would constitute a criminal offence while Article 26 concerns the creation of corporate liability for corruption offences. Vietnam also announced that it will not abide by provisions in Article 66 of UNCAC which stipulate that signatory countries have the right to bring disputes concerning the interpretation or application of UNCAC to international arbitration courts.
175. Vietnam has also chosen not to adhere to some of UNCAC’s optional measures, such as those regarding special investigative techniques and, of particular note, private sector corruption.
176. A number of deficiencies in the Vietnamese Anti-Corruption Laws were highlighted in Transparency International’s Survey Report in Support of the Government’s Self-Assessment of the Implementation of UNCAC in 2011 (the “**Survey Report**”). This report proposed a number of recommendations for Vietnam, including:
  - (a) withdrawing its reservation of not abiding by certain Articles of UNCAC (Article 20 on illicit enrichment and Article 26 on liability of legal persons) and incorporating these provisions into domestic law;

- (b) further increasing publicity and transparency by stepping up its administrative and judicial reforms;
  - (c) expanding its international cooperation in the fields of preventing and combatting corruption; and
  - (d) revising the Vietnam Anti-Corruption Laws to (i) be more compatible with UNCAC, such as Articles 15, 16 and 17 of UNCAC (which concern the bribery of national and foreign public officials and embezzlement by public officials) and (ii) implement certain Articles of UNCAC (such as Articles 11 and 36 regarding the judicial and law enforcement apparatus and ensuring its independence).
177. As a positive development, it is expected that Law on Accession to Information No. 104/2016/QH13 dated 6 April 2016 (to be effective from 1 July 2018) which will enhance transparency in the public sector by allowing the general public access to data held by government bodies (as required by UNCAC) and the Penal Code will go a long way to address the remaining inconsistencies between Vietnam's national law and its obligations under UNCAC.

### **Question 3. What legislation exists to address corruption arising as a result of human trafficking?**

178. Generally speaking, there is no specific anti-corruption offence relating to human trafficking.
179. Under the Vietnamese legal system, each specific crime will be punished in accordance with the provisions of the relevant law. If corruption occurs as a consequence of human trafficking activity then the Vietnamese Anti-Corruption Laws are available to deal with that offence, regardless of whether it relates to human trafficking or some other crime. The human trafficking offence would be dealt with under the Vietnamese Anti-Trafficking Laws. If human trafficking and corruption offences are committed, the penalty that can be imposed will be the total of the penalties imposed for each offence committed by that person.
180. Court decisions are not publicly available in Vietnam and so there is no information readily available on the number of prosecutions brought for corruption that were in some way connected to human trafficking activities. Given the scope of the Vietnamese Anti-Corruption Laws there should, in principle, be effective means of pursuing corrupt activities carried out in connection with, or to facilitate, human trafficking activities but in the absence of further statistical information it is difficult to determine how effective the Vietnamese Anti-Corruption Laws have been in addressing corruption relating to human trafficking.

### **Question 4. Are the penalties/punishments of those found guilty of corruption sufficiently stringent?**

181. Penalties and punishments under the Vietnamese Anti-Corruption Laws are sufficiently stringent.
182. Public officials who commit acts of corruption shall, depending on the nature and seriousness of their offences, be disciplined internally by the public organisation they work for and/or face criminal and other civil penalties.
183. Under the Penal Code, corporate entities can be held criminally liable for certain offences, but not corruption related offences.

184. Punishments for giving and taking a bribe under the Penal Code are as follows:
- (a) A bribe taker may be subject to:
    - (i) imprisonment from two to 20 years, life imprisonment or capital punishment;
    - (ii) a fine of between VND30 million and VND100 million (approximately US\$1,317 and US\$4,390);
    - (iii) confiscation of some or all of the property; and/or
    - (iv) a ban of one to five years on holding certain positions or doing certain jobs.
  - (b) A bribe giver may be subject to:
    - (i) imprisonment from one to 20 years, life imprisonment or capital punishment; and
    - (ii) a fine between VND10 million and VND50 million (approximately US\$439 and US\$2,195).
185. The Penal Code defines the specific amounts of proprietary damages as aggravating factors, which include:
- (a) VND1 billion (approximately US\$43,900) to less than VND3 billion (approximately US\$131,700) for a penalty of between seven years and 15 years imprisonment;
  - (b) VND3 billion (approximately US\$131,700) to less than VND5 billion (approximately US\$219,500) for a penalty of between 15 and 20 years imprisonment; and
  - (c) VND5 billion (approximately US\$219,500) or more for a penalty of 20 years imprisonment, life imprisonment or capital punishment.
186. The Penal Code further stipulates that not only public officials but also non-public officials holding positions and certain powers in enterprises and organisations other than the State can become offenders of a number of corruption related offences, such as embezzlement (Article 353) and taking bribes (Article 354). Any person acting as bribe broker in enterprises and organisations other than the State can also be found guilty of bribe broker (Article 365).

**Question 5. What are the numbers of investigations, prosecutions and convictions of government officials, police officers and immigration officials for corruption?**

187. According to a report presented at the 10th Anti-Corruption Dialogue in November 2011, in the period between 2007 and 2011 an average of 280 corruption cases, involving more than 600 people, were prosecuted each year. This number rose in the first nine months of 2014 with investigative agencies nationwide handling 415 corruption cases, in which the courts nationwide commenced proceedings in 287 corruption cases and convicted 637 defendants.<sup>38</sup>
188. However, the number of investigations, prosecutions, and convictions for corruption remains uncertain because data on the subject is not routinely disclosed to the public, shared with the international community or reported by the media.
189. On occasion the media will report high-profile corruption cases which can provide some insight into corruption investigations and prosecutions against public officials. For instance, in 2006 it was reported that a Ministry of Public Security investigation revealed corrupt activities involving a public body connected with the Ministry of Transport and totalling approximately US\$2 billion, and a number of officials were tried and convicted. In 2010 two senior Vietnamese officials working for an overseas development aid (“ODA”) that funded infrastructure project were charged with illegally leasing public owned property to a Japanese company. The investigation was conducted in cooperation with the Japanese authorities after employees of the Japanese company

<sup>38</sup> Tuoi Tre news, “Vietnam loses \$316 million to corruption in nine months, only 22% recovered”, <http://tuoitrenews.vn/society/24312/vietnam-loses-312-mn-to-corruption-in-nine-months-only-22-recovered>.

were charged in Japan with paying bribes to Vietnamese officials of more than US\$820,000 in order to secure consulting contracts. One of the Vietnamese officials involved was sentenced to life imprisonment by the Vietnamese courts.

190. In May 2014 the Ministry of Public Security initiated criminal proceedings against six Vietnamese officials in connection with bribes received from a Japanese company seeking to win contracts on an ODA-funded railway project in Vietnam. Six Vietnamese officials were sentenced to a total of 52 years in prison with the longest individual sentence being 12 years.
191. An extensive anti-corruption campaign in 2017 led to trials of more than 50 former bank and energy company officials. More recently, the trial of 22 former top officials, including former lawmaker and Communist Party official Dinh La Thang, began in early January. The former ruling party official would be the highest-ranking state official to face criminal charges in decades. The charges of economic mismanagement could bring the former official up to 20 years in jail.<sup>39</sup>
192. In the absence of reliable official statistics on investigations, prosecutions and convictions, another way to consider the effectiveness of Vietnam's anti-corruption efforts is by looking at its ranking on Transparency International's Corruption Perceptions Index (the "CPI") which is based on the perceptions of business people and country experts of corruption in the public sector in various countries.<sup>40</sup>
193. On the CPI for 2017, Vietnam scored 35/100, ranked 107 globally,<sup>41</sup> an improvement from the previous year where Vietnam ranked 113 globally. Although Vietnam's score in 2017 is higher than previous years (2012-2016), the low ranking demonstrates that corruption in the public sector remains an issue in the country.
194. On a positive note, it is hoped that the Penal Code will strengthen public trust and support for anti-corruption measures and focus government efforts on building and strengthening policies to ensure transparency and accountability in both the public sector and the private sector which will result in concrete achievements in fighting corruption.

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39 Financial Times, "Vietnam seeks to purge 'corrupt' Communist leaders", <https://www.ft.com/content/0a9d49ae-f37e-11e7-8715-e94187b3017e>.

40 See Transparency International at <http://www.transparency.org/country/VNM>.

41 *Id.*



## SCHEDULE 1: KEY VIETNAMESE ANTI-HUMAN TRAFFICKING LEGISLATION

1. Penal Code No. 100/2015/QH13 dated 27 November 2015;
2. Law No. 12/2017/QH14 dated 20 June 2017 amending and supplementing some articles of the 2015 Penal Code;
3. Law on Vietnamese Guest Workers No. 72/2006/QH11 dated 29 November 2006;
4. Law on Protection, Care and Education of Children No. 25/2004/QH11 dated 15 June 2004;
5. Law on Donation and Transplantation of Human Tissues and Organs, Donation of Corpse/Body No. 75/2006/QH11 dated 29 November 2006;
6. Law on the Prevention and Combatting of Human Trafficking No. 66/2011/QH12 dated 29 March 2011;
7. Law on Marriage and Family No. 52/2014/QH13 dated 19 June 2014;
8. Ordinance on the Prevention and Suppression of Prostitution No. 10/2003/PL-UBTVQH11 dated 17 March 2003;
9. Decree No. 71/2011/ND-CP dated 22 August 2011 stipulating in detail and guiding the implementation of a number of articles of the Law on Protection, Care and Education of Children;
10. Decree No. 62/2012/ND-CP dated 13 August 2012 prescribing grounds for identification of victims of human trafficking and safety protection for victims of human trafficking and their relatives;
11. Decree No. 09/2013/ND-CP dated 11 January 2013 stipulating in detail a number of articles of the Law on the Prevention and Combatting of Human Trafficking;
12. Circular No. 35/2013/TT-BLDTBXH dated 30 December 2013 guiding the implementation of a number of articles of Decree No. 09/2013/ND-CP dated 11 January 2013;
13. Circular No. 78/2013/TT-BQP dated 25 June 2013 stipulating measures of border guards and marine police in the combat of human trafficking;
14. Circular No. 11/2014/TT-BTP dated 17 April 2014 providing on gender equality in legal aid;
15. Joint Circular No. 01/2013/TTLT-TANDTC-VKSNDTC-BCA-BQP-BTP dated 23 July 2013 guiding the penal liability examination against persons who commit human trafficking acts, trade in, fraudulently exchange or appropriate children;
16. Joint Circular No. 134/2013/TTLT-BTC-BLDTBXH dated 25 September 2013 guiding contents and level of expenditure on the support of victims stipulated under Decree No. 09/2013/ND-CP dated 11 January 2013;
17. Joint Circular No. 01/2014/TTLT-BCA-BQP-BLDTBXH-BNG dated 10 February 2014 guiding procedures for and coordination in the verification, identification, receipt and return of victims of human trafficking;
18. Decision No. 17/2007/QD-TTg dated 29 January 2007 providing regulations on the reception of, and rehabilitation support for, women and children trafficked overseas; and
19. Decision No. 2546/QD-TTg dated 31 December 2015 approving the plan for the combat of human trafficking for the period from 2016 to 2020.

## SCHEDULE 2: COMPLIANCE WITH INTERNATIONAL AND REGIONAL AGREEMENTS IN RELATION TO ANTI-HUMAN TRAFFICKING

### 1 International Agreements

| Title  | Obligations  | Extent of compliance with obligations   |
|--|--|---|
| <p>1. Convention against Transnational Organised Crime (2000), and its supplementing protocol, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000) (the “<b>Palermo Protocol</b>”)</p> <p>The Convention against Transnational Organised Crime was signed by Vietnam on 13 December 2000.</p> <p>The Palermo Protocol became effective for Vietnam on 8 June 2012.</p> <p>Vietnam has made some reservations and declarations under the Palermo Protocol.</p> <p>(Vietnam is not yet a party to (i) the Protocol against the Smuggling of Migrants by Land, Sea and Air, and (ii) the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.)</p> | <p>The Palermo Protocol defines the child as “any person under 18 years of age”.</p> <p>The provisions of the Palermo Protocol in relation to human trafficking require each State Party to:</p> <ul style="list-style-type: none"> <li>• adopt legislative and other measures as may be necessary to establish as criminal offences the trafficking in persons when committed intentionally (Article 5.1);</li> <li>• adopt legislative and other measures as may be necessary to establish as criminal offences for those who attempt to commit a human trafficking offence, participate as an accomplice in a human trafficking offence, and organise or direct other persons to commit a human trafficking offence (Article 5.2);</li> <li>• protect the privacy and identity of victims of human trafficking, including, inter alia, by making legal proceedings relating to such trafficking confidential (Article 6.1);</li> <li>• consider implementing measures to provide for the physical, psychological and social recovery of victims of human trafficking, and in particular, the provision of appropriate housing; counseling and information; medical, psychological and material assistance; and employment, educational and training opportunities (Article 6.3);</li> <li>• ensure that its domestic legal system contains measures that offer victims of human trafficking the possibility of obtaining compensation for damage suffered (Article 6.6); and</li> </ul> | <p><b>Compliant</b></p> <p>The Penal Code and the Joint Circular on Trafficking Criminalisation criminalise human trafficking activities and impose criminal penalties for those found guilty of human trafficking offences. The criminal penalties in such legislation apply not only to those engaged in the human trafficking activities, but also those involved in organising, abetting or aiding such activities. The life imprisonment (for the most severe human trafficking offences) may be imposed by the Vietnamese courts if the trafficking in children (persons under the age of 16 years) was carried out in an organised or professional manner or involves from two victims or more or dangerous recidivism, for taking human organs or resulted in the death or suicide of the victims.</p> <p>The Law on Human Trafficking, Decree 62 and Decree 09 stipulate various support and protection measures for victims of human trafficking, such as safety protection to the victims and their relatives, identity protection, medical support, legal aid and etc., which reflect Vietnam’s commitments under the Palermo Protocol.</p> |

| Title | Obligations   | Extent of compliance with obligations   |
|-------|---|---|
|       | <ul style="list-style-type: none"> <li>consider adopting legislative or other appropriate measures that permit victims of human trafficking to remain in its territory, temporarily or permanently, in appropriate cases, and with humanitarian and compassionate factors (Article 7).</li> </ul> | <p>The Law on Protection, Care and Education of Children defines a child as any person under 16 years. However, this is not necessarily non-compliant with Vietnam’s international commitments, given that pursuant to Law on International Treaties No. 108/2016/QH13 dated 9 April 2016 and Law on Promulgation of Legislative Documents No. 80/2015/QH13 dated 22 June 2015:</p> <ul style="list-style-type: none"> <li>in case of any different provisions on the same matter between a treaty to which Vietnam is a member and a domestic legislation of Vietnam, the provisions of the treaty shall prevail; and</li> <li>the promulgation of domestic legislation of Vietnam must ensure that they will not prevent the implementation of treaties to which Vietnam is a member.</li> </ul> <p>The Penal Code as amended in 2015 stipulates more details on human trafficking offences, for example:</p> <ul style="list-style-type: none"> <li>aggravating factors are set out clearly to determine the prison term applied to those engaged in human trafficking offences. For example, in replacement of “seriously damage the victim’s health”, the Penal Code sets out specific percentages of damage that victims suffer both mentally (from 11%) and physically (from 31%) because of the offence;</li> <li>the minimum prison term for the basic offence is increased from two years to five years and for trafficking children, from three years to seven years;</li> <li>finances are increased to between VND20 million and VND100 million (approximately US\$878 and US\$4,390) and for trafficking children, between VND50 million and VND200 million (approximately US\$2,195 and US\$8,780); and</li> <li>assets of traffickers may be confiscated</li> </ul> |

| Title   | Obligations   | Extent of compliance with obligations   |
|---|---|---|
| <p>2. Convention on the Rights of the Child (1989), including (i) the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000), (ii) the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000) and (iii) the Optional Protocol to the Convention of the Rights of the Child on a communication procedure (2011) (the “<b>Convention on the Rights of the Child</b>”)</p> <p>The Convention on the Rights of the Child was signed by Vietnam on 26 January 1990 and became effective for Vietnam on 28 February 1990.</p> <p>The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography were signed by Vietnam on 8 September 2000 and became effective for Vietnam on 20 December 2001.</p> <p>Vietnam has made some declarations under the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.</p> <p>(Vietnam is not yet a party to the Optional Protocol to the Convention of the Rights of the Child on a communication procedure (2011).)</p> | <p>The Convention on the Rights of the Child defines the child as “any human being below the age of 18 years unless the law applicable to the child, majority is attained earlier”.</p> <p>The provisions of the Convention on the Rights of the Child in relation to child trafficking require each State Party to:</p> <ul style="list-style-type: none"> <li>• take measures to combat the illicit transfer and non-return of children abroad (Article 11.1);</li> <li>• promote the conclusion of bilateral or multilateral agreements or accession to existing agreements (Article 11.2);</li> <li>• protect the child from all forms of sexual exploitation and sexual abuse. In particular, State Parties shall take all appropriate national and bilateral and multilateral measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity, the exploitative use of children in prostitution or other unlawful sexual practices, and the exploitative use of children in pornographic performance and materials (Article 34);</li> <li>• take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form (Article 35); and</li> <li>• protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare (Article 36).</li> </ul> | <p><b>Compliant</b></p> <p>The Penal Code, the Law on Human Trafficking, and the Law on Protection, Care and Education of Children prohibit the child trafficking for any illegal purposes, including the illicit transfer and non-return of children abroad, sexual exploitation, sexual abuse and other forms of exploitation prejudicial to any aspects of the children’s welfare.</p> <p>Under the Penal Code, the minimum prison term applied to those engaged in the trafficking in persons under 16 years have increased from three years to five years, and assets of traffickers may be confiscated accordingly. These stricter criminal penalties reflect Vietnam’s efforts to protect children from being trafficked.</p> <p>Vietnam has entered into several bilateral and multi-lateral cooperation agreements with countries like Thailand, the Lao PDR, Cambodia, China and Australia to support the prevention and combat of the trafficking in persons, especially children and women. The cooperation agreements with the Lao PDR, Cambodia and Thailand have specifically articulated the policies and programs in respect of children under 18 years.</p> |

| Title  | Obligations   | Extent of compliance with obligations  |
|--|---|--|
| <p>3. Convention of the Elimination of All Forms of Discrimination Against Women (1979) (the “CEDAW”)</p> <p>The CEDAW was signed by Vietnam on 29 July 1980 and became effective for Vietnam on 17 February 1982.</p> <p>Vietnam is not bound by Article 29.1 of the CEDAW.</p> | <p>The provisions of the CEDAW in relation to women trafficking requires each State Party to embody the principle of gender equality in its domestic legislation and take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women (Articles 2(a) and 6).</p>   | <p><b>Compliant</b></p> <p>The Constitution recognises gender equality which broadly underpins most laws in Vietnam with men and women treated equally. The Law on Gender Equality not only establishes gender equality as a fundamental principle in all aspects of society, but also clarifies the roles and responsibilities of organisations, families and individuals in ensuring that gender equality takes place.</p> <p>The Law on Human Trafficking and its implementing guidelines directly address human trafficking, including women trafficking. While the Ordinance on Preventing Prostitution and its implementing guidelines address the exploitation of prostitution. Those laws of Vietnam do not discriminate against female victims.</p> |
| <p>4. International Covenant on Civil and Political Rights (1966) (the “ICCPR”)</p> <p>Vietnam accessed the ICCPR on 24 September 1982.</p>  | <p>The key rights of persons in each State Party under the ICCPR in relation to human trafficking are:</p> <ul style="list-style-type: none"> <li>• freedom from torture, cruel, inhuman or degrading treatment or punishment (Article 7);</li> <li>• freedom from slavery and slave-trade in all their forms (Article 8.1);</li> <li>• freedom from servitude (Article 8.2);</li> <li>• freedom from forced or compulsory labour (Article 8.3(a));</li> <li>• liberty and security of person and freedom from arbitrary arrest or detention, except on such grounds and in accordance with such procedures as are established by law (Article 9.1);</li> <li>• request for compensation as a result of victims of unlawful arrest or detention (Article 9.5);</li> <li>• liberty of movement and freedom to choose their residence (Article 12.1); and</li> <li>• protection against arbitrary or unlawful interference with their privacy, families, homes or correspondence, and unlawful attacks on their honor and reputation (Article 17).</li> </ul> | <p><b>Compliant</b></p> <p>Vietnamese law (including, inter alia, the Penal Code, the Labour Code, the Law on Human Trafficking, the Law on Marriage and Family, and their implementing guidelines) generally gives effect to the key rights of persons under the ICCPR in relation to human trafficking.</p> <p>The Penal Code now criminalises forced labour activities and imposes criminal penalties for those found guilty of forced labour offences.</p>   |

| Title  | Obligations   | Extent of compliance with obligations   |
|--|---|---|
| <p>5. Forced Labour Convention (1930)</p> <p>The Forced Labour Convention became effective for Vietnam on 5 March 2007.</p> <p>(Vietnam is not yet a party to the Protocol of 2014 to the Forced Labour Convention.)</p> | <p>The Forced Labour Convention requires each State Party to suppress the use of forced or compulsory labour in all its forms within the shortest possible period (Article 1.1) and to criminalise the illegal exaction of forced or compulsory labour with really adequate and strictly enforced penalties (Article 25).</p> | <p><b>Compliant</b></p> <p>The Penal Code now criminalises forced labour. In particular, for the basic offence, an offender may receive a fine of between VND50 million and VND200 million (approximately from US\$2,195 to US\$8,780), non-custodial probation for up to three years or from six months to three years imprisonment.</p> |

| Title   | Obligations  | Extent of compliance with obligations   |
|---|--|---|
| <p>6. Minimum Age Convention (1973)</p> <p>The Minimum Age Convention became effective for Vietnam on 24 June 2003.</p> | <p>The Minimum Age Convention require each State Party to pursue a national policy designed to ensure the effective abolition of child labour and raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons (Article 1).</p> <p>The minimum age for admission to employment or work and on means of transport registered within the territory of a State Party shall not be under 15 years (Articles 2.1 and 2.3).</p> <p>The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young people shall not be under 18 years (Article 3.1).</p> <p>However, national laws of a State Party may permit the employment or work of persons from 13 to 15 years (or from 12 to 14 years) on light work which is (i) not likely to be harmful to their health or development, and (ii) not to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received (Articles 7.1 and 7.4).</p> | <p><b>Compliant</b></p> <p>The Constitution prohibits the employment of workers less than the minimum age permissible by law.</p> <p>The Labour Code provides the list of jobs and workplaces prohibited to employ workers under 18 years and the principles of minimum age for admission to employment or work, for examples:</p> <ul style="list-style-type: none"> <li>• employers are only permitted to employ workers under 18 years in jobs which are suitable for their health so as to ensure their physical, spiritual and personal development;</li> <li>• employers are responsible to take care of workers under 18 years with respect to their labour, wages, health and training through the course of their employment;</li> <li>• employers are not allowed to employ workers under 18 years in extremely heavy, toxic or dangerous work, or in workplaces or jobs which adversely affect the personality of such workers;</li> <li>• working hours of workers from 15 years and under 18 years shall not exceed 8 hours per day and 40 hours per week;</li> <li>• working hours of workers under 15 years shall not exceed 4 hours per day and 20 hours per week;</li> <li>• workers under 18 years cannot be employed in the production and trading of alcohol, spirits, beer, tobacco, or other addictive substances;</li> <li>• employers must facilitate vocational and cultural training for workers;</li> <li>• employers are only permitted to employ workers from 13 up to 15 years on light work in accordance with the list issued by the MOLISA and must arrange working hours which do not adversely affect the school study hours of such workers; and</li> <li>• employers are not permitted to employ workers under 13 years except in a number of specific jobs stipulated by the MOLISA.</li> </ul> |

| Title   | Obligations  | Extent of compliance with obligations   |
|---|--|---|
| <p>7. Worst Forms of Child Labour Convention (1999)</p> <p>The Worst Forms of Child Labour Convention became in forced for Vietnam from 19 December 2000.</p> | <p>The provisions of the Worst Forms of Child Labour Convention require each State Party to:</p> <ul style="list-style-type: none"> <li>• take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency (Article 1); and</li> <li>• take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Worst Forms of Child Labour Convention including the provisions and application of penal sanctions or, as appropriate, other sanctions (Article 7.1).</li> </ul> | <p><b>Compliant</b></p> <p>The prohibition, elimination and sanctions of the worst forms of child labour are scattered across various laws of Vietnam, in particular:</p> <ul style="list-style-type: none"> <li>• the Constitution prohibits any harassment, persecution, abandonment, abuse and exploitation of child labour and other acts that violate the children's rights;</li> <li>• the Law on Human Trafficking prohibits the trafficking in persons (including children), the transfer, receipt, recruitment, and transport of persons (including children) for forced labour;</li> <li>• the Law on Protection, Care and Education of Children prohibits the child trafficking, any measures that offend or degrade the honor and human dignity of children, any abuse of child labour and the employment of children for any heavy, toxic or dangerous work or other work contrary to the labour law;</li> <li>• the Labour Code prohibits the employment of workers under 18 years in extremely heavy, toxic or dangerous work, or in workplaces or jobs which adversely affect the personality of such workers; and</li> <li>• the Penal Code sets out a stricter criminal liability for offenders of forced or compulsory labour offences if victims are under 16 years.</li> </ul> |



## 2 Regional and Bilateral Agreements

| Title  | Obligations   | Extent of compliance with obligations   |
|--|---|---|
| <p>1. ASEAN Declaration against Trafficking in Persons, Particularly Women and Children (2004) (the “<b>2004 Declaration</b>”)</p> | <p>The 2004 Declaration requires the ASEAN member States, to the extent permitted by their respective domestic laws and policies, to address human trafficking through the following measures:</p> <ul style="list-style-type: none"> <li>• to establish a regional focal network to prevent and combat human trafficking in the ASEAN region;</li> <li>• to adopt measures to protect the integrity of passports, official travel documents, identity and other official travel documents of victims from fraud;</li> <li>• to undertake regular exchange of views, information sharing on relevant migratory flows, trends and pattern, strengthening of border controls and monitoring mechanisms, and the enactment of applicable and necessary legislations;</li> <li>• to intensify cooperation among enforcement authorities;</li> <li>• to distinguish victims of human trafficking from perpetrators, identify the countries of origin and nationalities of such victims, and thereafter ensure that such victims are treated humanely and provided with such essential medical and other forms of assistance deemed appropriate;</li> <li>• to undertake actions to respect and safeguard the dignity and human rights of genuine victims of human trafficking;</li> <li>• to undertake coercive actions or measures against individuals and/or syndicates engaged in human trafficking and offer other ASEAN State Members the widest possible assistance to punish human trafficking activities; and</li> <li>• to take measures to strengthen regional and international cooperation to prevent and combat human trafficking.</li> </ul> | <p><b>Compliant</b></p> <p>The Vietnamese Anti-Trafficking Laws generally satisfy the requirements of the 2004 Declaration.</p> |

| Title   | Obligations  | Extent of compliance with obligations  |
|---|--|--|
| <p>2. ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007) (the “<b>2007 Declaration</b>”)</p> | <p>To ensure the human dignity of migrant workers, the 2007 Declaration outlines general principles and obligations of the ASEAN member States in:</p> <ul style="list-style-type: none"> <li>• the protection of migrant workers from exploitation, discrimination and violence;</li> <li>• the governance of labour migration; and</li> <li>• the combat of human trafficking.</li> </ul> <p>For the purpose of implementation of the 2007 Declaration, an ASEAN Committee was set up accordingly and is currently in the progress of developing an ASEAN instrument on the protection and promotion of the rights of migrant workers.</p>   | <p>Not applicable.</p>   |
| <p>3. ASEAN Convention Against Trafficking in Persons, Especially Women and Children (2015) (the “<b>ACTIP</b>”)</p>                | <p>The objectives of the ACTIP are (i) to prevent and combat human trafficking, especially against women and children, (ii) to ensure just and effective punishment of traffickers, (iii) to protect and assist victims of human trafficking with full respect for their human rights, and (iv) to promote cooperation among the ASEAN member States in order to meet these aforementioned objectives (Article 1.1).</p> <p>The ACTIP shall apply to the prevention, investigation and prosecution of criminal offences in relation to human trafficking established in accordance with the ACTIP, where such criminal offences are transnational in nature, including those committed by organised criminal groups, as well as to the protection of and assistance to victims of human trafficking (Article 3).</p> <p>Some provisions of the ACTIP requires each ASEAN member State to:</p> <ul style="list-style-type: none"> <li>• establish national guidelines or procedures for the proper identification of victims of human trafficking, and where appropriate, collaborate with relevant non-governmental victim assistance organisations (Article 14.1);</li> </ul> | <p><b>Compliant</b></p> <p>The Vietnamese Anti-Trafficking Laws generally satisfy the requirements of the ACTIP.</p> |

| Title  | Obligations   | Extent of compliance with obligations   |
|--|---|---|
|  | <ul style="list-style-type: none"> <li>• ensure that its domestic legal system contains measures that offer victims of human trafficking the possibility of obtaining compensation for damage suffered (Article 14.13);</li> <li>• ensure that its legal system is efficient to deal with human trafficking cases (Article 16.3); and</li> <li>• afford other ASEAN member States the widest measure of mutual legal assistance in criminal investigations or criminal proceedings in relation to human trafficking offences which are transnational in nature in accordance with the <i>ASEAN Treaty on Mutual Legal Assistance in Criminal Matters</i> (29 November 2004) (Article 18).</li> </ul>  |   |
| <p>4. Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region (29 October 2004) (the “MOU”)</p> | <p>The MOU requires the ASEAN State Members to carry out actions in the fight against human trafficking in various areas, in particular:</p> <ul style="list-style-type: none"> <li>• <i>Policies and cooperation</i>, such as developing national plans of action against all forms of human trafficking and improving regional cooperation against human trafficking through bilateral and multilateral agreements;</li> <li>• <i>Legal framework, law enforcement and justice</i>, such as adopting and enforcing appropriate legislation against human trafficking;</li> <li>• <i>Protection, recovery and reintegration</i>, such as working together to facilitate the successful recovery and reintegration of victims of human trafficking and to prevent them from being re-trafficked; and</li> <li>• <i>Preventive measures</i>, such as raising public awareness in relation to human trafficking and applying national labour laws to protect the rights of workers based on the principles of non-discrimination and equality.</li> </ul> | <p><b>Compliant</b></p> <p>The Vietnamese Anti-Trafficking Laws satisfy the required actions under the MOU.</p> |

| Title   | Obligations   | Extent of compliance with obligations  |
|---|---|--|
| <p>5. Agreement between Vietnam and Cambodia on Cooperation to Eliminate Trafficking in Women and Children and Assisting Victims of Trafficking (2005) (as amended in 2012) (the “<b>Vietnam-Cambodia Agreement</b>”)</p> <p>For the implementation of the Vietnam-Cambodia Agreement, Vietnam and Cambodia have also entered into (i) a cooperation agreement between the Cambodian and Vietnamese police forces stipulating joint practices for combatting human trafficking, especially women and children across the Vietnam-Cambodia border (2007), and (ii) an agreement on Standard Operating Procedures for the Identification and Repatriation of Trafficked Victims (2009).</p> | <p>Under the Vietnam-Cambodia Agreement, Vietnam is required to:</p> <ul style="list-style-type: none"> <li>• <i>Prevention</i>: undertake necessary and appropriate measures to ensure that its legal framework is in conformity with human rights instruments which Vietnam have signed or been a party; and make the best effort to prevent human trafficking through various preventive measures;</li> <li>• <i>Protection</i>: ensure the humane treatment and security of victims of human trafficking; and ensure that its legal remedies may allow victims of human trafficking to claim, among others, compensation from traffickers;</li> <li>• <i>Prosecution</i>: work in close cooperation to uncover domestic and cross border human trafficking; and intensify the investigation and the prosecution of offenders and criminal syndicates relating to human trafficking; and</li> <li>• <i>Repatriation and Reintegration</i>: comply with the agreement on Standard Operating Procedures for the Identification and Repatriation of Trafficked Victims (2009); use diplomatic channel of communication for the arrangement of repatriation in the best interest of victims; and make all possible efforts towards the safe and effective reintegration of victims into their families and communities.</li> </ul> | <p><b>Compliant</b></p> <p>The Vietnamese Anti-Trafficking Laws satisfy the requirements under the Vietnam-Cambodia Agreement.</p> <p>The Ministry of Public Security of Vietnam is responsible for ensuring Vietnam’s compliance with the Vietnam-Cambodia Agreement.</p> |

| Title  | Obligations   | Extent of compliance with obligations  |
|--|---|--|
| <p>6. Agreement between Vietnam and China on Strengthening Cooperation on Preventing and Combating Human Trafficking (2010) (the “<b>Vietnam-China Agreement</b>”)</p>                                     | <p>Under the Vietnam-China Agreement, Vietnam is required to:</p> <ul style="list-style-type: none"> <li>• <i>Protection</i>: protect the safety and privacy of victims of human trafficking; and provide them with appropriate assistance and protection, including accommodation on the way of transfer, legal assistance, physical rehabilitation and psychological consultation;</li> <li>• <i>Reintegration</i>: repatriate victims of human trafficking once confirmed in their identity in a timely manner through official channels; and</li> <li>• to jointly establish a liaison mechanism at the Vietnam-China border to enhance the communication and cooperation in the combat of transnational human trafficking relating to the two countries.</li> </ul>  | <p><b>Compliant</b></p> <p>The Vietnamese Anti-Trafficking Laws satisfy the requirements under the Vietnam-China Agreement.</p> <p>The Ministry of Public Security of Vietnam is responsible for ensuring Vietnam’s implementation with the Vietnam-China Agreement.</p> |
| <p>7. Agreement between Vietnam and the Lao PDR on Cooperation in Preventing and Combating Trafficking in Persons and Protection of Victims of Trafficking (2010) (the “<b>Vietnam-Lao Agreement</b>”)</p> | <p>The Vietnam-Lao Agreement protects victims of human trafficking who are Lao or Vietnamese citizens residing in either the Lao PDR or Vietnam respectively.</p> <p>Under the Vietnam-Lao Agreement, Vietnam is required to:</p> <ul style="list-style-type: none"> <li>• <i>Prevention</i>: provide vocational training and education; and implement media campaigns in domestic and border areas in order to raise awareness of human trafficking, especially for high-risks groups;</li> <li>• <i>Protection</i>: take appropriate measures to protect victims of human trafficking; ensure the safety of the victims, witnesses and their families against revenge or threats during and after investigation; cooperate on the collection and exchange of information of human trafficking cases; and</li> <li>• <i>Repatriation and Reintegration</i>: ensure that victims of human trafficking are identified as well as repatriated safely and quickly; and support victims of human trafficking in their integration back into society and their families safely.</li> </ul> | <p><b>Compliant</b></p> <p>Similar to Vietnam’s compliance with the Vietnam-Cambodia Agreement.</p>  |

| Title  | Obligations  | Extent of compliance with obligations  |
|--|--|--|
| <p>8. Agreement between Vietnam and Thailand on Eliminating Trafficking in Persons, Especially Women and Children and Assisting Victims of Trafficking (2008) (the “<b>Vietnam-Thailand Agreement</b>”)</p> <p>For the implementation of the Vietnam-Thailand Agreement, Vietnam and Thailand has entered into an agreement on Standard Operating Procedures for the Identification and Return of Victims of Human Trafficking (2013).</p> | <p>The provisions of the Vietnam-Thailand Agreement are similar to the provisions of the Vietnam-Cambodia Agreement.</p>   | <p><b>Compliant</b></p> <p>Similar to Vietnam’s compliance with the Vietnam-Cambodia Agreement and the Vietnam-Lao Agreement.</p>  |
| <p>9. Memorandum of Understanding between the government of the Socialist Republic of Vietnam and the government of the Kingdom of Thailand on Labour Cooperation (2015) (the “<b>Vietnam-Thailand MOU</b>”)</p>   | <p>The goals of the Vietnam-Thailand MOU are to encourage the bilateral cooperation in the field of labour, in particular:</p> <ul style="list-style-type: none"> <li>• to enhance skills of manpower and social security of both countries;</li> <li>• to strengthen the transparency and efficiency in the sending and receiving process of workers between the two countries; and</li> <li>• to exchange information for the prevention of illegal recruitment of manpower and human trafficking for employment.</li> </ul> <p>For the implementation of the Vietnam-Thailand MOU, Vietnam and Thailand have agreed to conclude the “Agreement on Employment of Workers” setting out the implementing details of the sending and receiving process for workers from Vietnam who intend to work legally in Thailand (or vice versa). However, the “Agreement on Employment of Workers” has not been concluded yet.</p> | <p><b>Compliant</b></p> <p>The MOLISA is responsible for Vietnam’s implementation of the Vietnam-Thailand MOU.</p> <p>Vietnamese workers who intend to work legally in Thailand are currently protected in accordance with the Law on Guest Workers. While Thai workers who intend to work legally in Vietnam are protected in accordance with the Labour Code and its implementing guidelines in relation to foreigners working in Vietnam.</p> |

| Title  | Obligations  | Extent of compliance with obligations  |
|--|--|--|
| <p>10. Agreement between Vietnam and Australia on the Implementation of ASEAN and Australia Asia Program to Combat Trafficking in Persons (AAPTIP) (2015) (the “<b>Vietnam-Australia Agreement</b>”)</p> | <p>The goal of the Vietnam-Australia Agreement is to implement the AAPTIP, which is aimed at reducing the incentives and opportunities for human trafficking activities generally in the ASEAN region and particularly in Vietnam. In this case, “incentives” means the influences that motivate the effort of perpetrators considering the crime of human trafficking, and “opportunities” means the favourable circumstances that arise to enable perpetrators to commit the crime of human trafficking.</p> <p>Under the Vietnam-Australia Agreement, assistance will be provided to Vietnam to achieve the following outcomes at both national and regional levels:</p> <ul style="list-style-type: none"> <li>• law enforcement agencies of Vietnam improve the effective and ethical investigation of human trafficking cases;</li> <li>• prosecutors of Vietnam improve the effective and ethical prosecution of human trafficking cases;</li> <li>• judges and court officials of Vietnam improve the fair and timely adjudication of human trafficking cases; and</li> <li>• Vietnam and other ASEAN members enhance regional cooperation and leadership on the criminal justice response to human trafficking in the ASEAN region.</li> </ul> <p>For the above, Vietnam is required to:</p> <ul style="list-style-type: none"> <li>• coordinate in general the participation of government bodies in activities of the AAPTIP;</li> <li>• appoint representatives engaged in the Regional Project Steering Committee;</li> <li>• provide government bodies with relevant information relating to the AAPTIP;</li> <li>• enhance the participation of organisations which are interested in activities of the AAPTIP; and</li> <li>• support and facilitate the approval of the AAPTIP and annual plans.</li> </ul> | <p><b>Compliant</b></p> <p>The Vietnamese Anti-Trafficking Laws satisfy the requirements under the Vietnam-Australia Agreement.</p> <p>The Ministry of Public Security of Vietnam is responsible for coordinating Vietnam’s implementation with the AAPTIP. While the Ministry of Public Security, the Supreme People’s Court, the Supreme People’s Prosecutor, the Ministry of Justice and other relevant authorities of Vietnam are responsible for implementing the AAPTIP.</p> |

### **SCHEDULE 3 – KEY VIETNAMESE ANTI-MONEY LAUNDERING LEGISLATION**

1. Penal Code No. 100/2015/QH13 dated 27 November 2015;
2. Law No. 12/2017/QH14 dated 20 June 2017 amending and supplementing some articles of the 2015 Penal Code;
3. Law on the Prevention of Money Laundering No. 07/2012/QH13 dated 18 June 2012 (the “Law on AML”);
4. Decree No. 116/2013/ND-CP dated 4 October 2013 stipulating in details a number of articles of the Law on AML;
5. Decree No. 96/2014/ND-CP dated 17 October 2014 on sanctions of administrative penalties in the sectors of foreign exchange control and banking;
6. Circular No. 148/2010/TT-BTC dated 24 September 2010 guiding the implementation of anti-money laundering measures in the sectors of insurance, securities and prize-winning games;
7. Circular No. 12/2011/TT-BXD dated 1 September 2011 guiding the implementation of a number of articles of Decree No. 74/2005/ND-CP dated 7 June 2005 on the prevention of money laundering in the real estate sector;
8. Circular No. 35/2013/TT-NHNN dated 31 December 2013 guiding the implementation of a number of provisions on the prevention of money laundering, as amended by Circular No. 31/2014/TT-NHNN dated 11 November 2014;
9. Joint Circular No. 09/2011/TTLT-BCA-BQP-BTP-NHNNVN-VKSNDTC-TANDTC dated 30 November 2011 guiding the application of the provisions of the Penal Code on the crime of retaining or consuming criminal assets and on the crime of money laundering;
10. Decision No. 470/QD-TTg dated 13 April 2009 on the establishment of the Central Anti-Money Laundering Steering Committee;
11. Decision No. 378/QD-NHNN dated 8 March 2011 issuing the working plan for the prevention and fight against the money laundering and the financing of terrorism in the banking sector;
12. Decision No. 121/QD-BCDPCRT dated 17 October 2012 on the operational regulations of the Central Anti-Money Laundering Steering Committee;
13. Decision No. 20/2013/QD-TTg dated 18 April 2013 regarding the value level of high value transactions subject to reporting; and
14. Decision No. 2112/QD-TTg dated 25 November 2014 on the issuance of a national action plan for the prevention of money laundering from 2015 to 2020.



## SCHEDULE 4 – COMPLIANCE WITH INTERNATIONAL AND REGIONAL AGREEMENTS IN RELATION TO ANTI-MONEY LAUNDERING

| Title  | Obligations  | Extent of compliance with obligations  |
|--|--|--|
| <p>Convention against Transnational Organised Crime (2000) (the “<b>Palermo Convention</b>”)</p> <p>The Palermo Convention was signed by Vietnam on 13 December 2000 and became effective for Vietnam on 8 June 2012.</p> <p>Vietnam has made some reservations and declarations under the Palermo Convention.</p> | <p>The provisions of the Palermo Convention in relation to money laundering require each State Party to:</p> <ul style="list-style-type: none"> <li>• adopt legislative and other measures as may be necessary to establish money laundering activities as criminal offences, when committed intentionally (Article 6.1);</li> <li>• seek to apply money laundering offences to the widest range of predicate offences, include all serious crimes as predicate offences, which shall include certain offences committed both within and outside the jurisdiction of the State Party (Article 6.2);</li> <li>• institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money laundering, in order to deter and detect all forms of money laundering, which regime shall emphasise requirements for customer identification, record-keeping and the reporting of suspicious transactions (Article 7.1);</li> <li>• adopt to the greatest extent possible within its domestic legal systems such measures as may be necessary to enable confiscation of proceeds of crime derived from money laundering offences, for example, proceeds transferred or converted into other property, proceeds intermingled with legitimate property, and income or benefits derived from proceeds (Article 12);</li> <li>• adopt necessary measures to enable the identification, tracing, freezing or seizure of items for the purpose of eventual confiscation (Article 12.2); and</li> <li>• empower its courts or other competent authorities to order bank, financial or commercial records to be made available or be seized (Article 12.6).</li> </ul> | <p><b>Compliant</b></p> <p>The State Bank of Vietnam is responsible before the Vietnamese government for the state management of the prevention of money laundering.</p> <p>The Vietnamese AML Laws generally satisfy the requirements of the Palermo Convention.</p> <p>The Penal Code and Joint Circular No. 09/2011/TTLT-BCA-BQP-BTP-NHNNVN-VKSNDTC-TANDTC dated 30 November 2011 are currently the key legislation that criminalise money laundering activities and impose criminal penalties for those found guilty of money laundering offences.</p> <p>Money laundering offences apply to all serious offences and so include a wide range of predicate offences. Vietnam’s approach in relation to predicate offences is to describe them generally by reference to “all acts stipulated in the Penal Code”, rather than by listing all predicate offences.</p> <p>The Vietnamese AML Laws requires banks and non-bank financial institutions in certain sectors, such as banking, securities, insurance, real estate and gambling, to comply with various obligations to prevent the money laundering, such as verifying customer identification, keeping records, reporting and dealing with suspicious or high-value transactions, and establishing internal regulations on the prevention of the money laundering.</p> <p>The Penal Code provides for the confiscation of all or part of properties connected with the crime of money laundering. Under the Penal Code, 15 years imprisonment for the most severe money laundering offences may be imposed by Vietnamese courts if criminal assets or losses valued at VND500 million or more (approximately US\$21,950) or illicit profits valued at VND100 million or more (approximately US\$4,390), or if the offence has a negative impact on security of the national currency or finance system.</p> <p>The Penal Code, the Law on AML, Decree No. 116/2013/ND-CP and Joint Circular No. 09/2011/TTLT-BCA-BQP-BTP-NHNNVN-VKSNDTC-TANDTC enable the identification, tracing, freezing and seizure of items for the purpose of eventual confiscation, and empower Vietnamese courts and other competent authorities to order bank, financial and commercial records to be made available or seized.</p> |

## SCHEDULE 5 – KEY VIETNAMESE ANTI-CORRUPTION LEGISLATION

1. Penal Code No. 100/2015/QH13 dated 27 November 2015;
2. Law No. 12/2017/QH14 dated 20 June 2017 amending and supplementing some articles of the 2015 Penal Code;
3. Law on Public Employees No. 58/2010/QH12 dated 15 November 2010;
4. Law on Cadres and Civil Servants No. 22/2008/QH12 dated 13 November 2008;
5. Resolution No. 110/2015/QH13 dated 27 November 2015 guiding the implementation of Criminal Procedure Code No. 101/2015/QH13;
6. Resolution No. 109/2015/QH13 dated 27 November 2015 guiding the implementation of Penal Code No. 100/2015/QH13;
7. Resolution No. 82/NQ-CP dated 6 December 2012 regarding the action plan for combatting and preventing corruption and waste for the period of between 2012 and 2016;
8. Law on Anti-Corruption No. 55/2005/QH11 dated 29 November 2005, as amended by Law No. 01/2007/QH11 dated 4 August 2007 and Law No. 27/2012/QH13 dated 23 November 2012;
9. Decree No. 90/2013/ND-CP dated 8 August 2013 regarding the accountability of State agencies in the implementation of assigned tasks and powers;
10. Decree No. 59/2013/ND-CP dated 17 June 2013 guiding a number of articles of the Law on Anti-Corruption;
11. Decree No. 19/2008/ND-CP dated 14 February 2008 providing allowances for the duties of preventing and combatting corruption;
12. Decree No. 47/2007/ND-CP dated 27 March 2007 guiding a number of articles of the Law on Anti-Corruption regarding responsibilities of the public in the prevention and combatting of corruption;
13. Decree No. 107/2006/ND-CP dated 22 September 2006 providing responsibilities of heads of State agencies upon occurrence of corruption in their State agencies (as amended by Decree No. 211/2013/ND-CP dated 19 December 2013);
14. Circular No. 04/2014/TT-TTCP dated 18 September 2014 on judgement of the situation of corruption and evaluation of anti-corruption works;
15. Circular No. 02/2012/TT-TTCP dated 13 July 2012 stipulating in detail the competence and inspection of responsibility to implement legal provisions on the prevention and combat of corruption;
16. Circular No. 08/2007/TT-BNV dated 1 October 2007 guiding the implementation of Decree No. 107/2006/ND-CP;
17. Joint Circular No. 01/2008/TTLT-BNV-BTC dated 13 March 2008 guiding the implementation of Decree No. 19/2008/ND-CP;
18. Decision No. 445/QD-TTg dated 7 April 2010 approving the plan for the implementation of the United Nations Convention Against Corruption; and
19. Decision No. 64/2007/QD-TTg dated 10 May 2007 on the promulgation of the regulations on giving, receiving gifts and returning gifts in relation to the public sector (as amended by Decree No. 29/2014/ND-CP dated 10 April 2014).

## SCHEDULE 6 – COMPLIANCE WITH INTERNATIONAL AND REGIONAL AGREEMENTS IN RELATION TO ANTI-CORRUPTION

| Title  | Obligations   | Extent of compliance with obligations   |
|--|---|---|
| <p>1. Convention against Transnational Organised Crime (2000) (the “Palermo Convention”)</p> <p>The Palermo Convention was signed by Vietnam on 13 December 2000 and became effective for Vietnam on 8 June 2012.</p> <p>Vietnam has made some reservations and declarations under the Palermo Convention.</p> | <p>The provisions of the Palermo Convention in relation to corruption require each State Party to:</p> <ul style="list-style-type: none"> <li>• adopt legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, as prescribed in the Palermo Convention (Article 8);</li> <li>• adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials to the extent appropriate and consistent with its legal system (Article 9.1); and</li> <li>• take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions (Article 9.2).</li> </ul> | <p><b>Compliant</b></p> <p>The Vietnamese Anti-Corruption Laws generally satisfy the requirements of the Palermo Convention. Particularly, while the Penal Code concerns the criminalisation of specified corruption/bribery offences and sets out the various criminal penalties attaching to such offences, the Law on Anti-Corruption focuses on the prevention and detection of corruption.</p> |

| Title   | Obligations   | Extent of compliance with obligations   |
|---|---|---|
| <p>2. Convention against Corruption (“UNCAC”)</p> <p>The UNCAC was signed by Vietnam on 10 December 2003 and became effective for Vietnam on 19 August 2009.</p> <p>Vietnam has declared that it does not consider itself bound by Articles 20 and 26 of the UNCAC.</p> | <p>The provisions of the UNCAC require each State Party to:</p> <ul style="list-style-type: none"> <li>• endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption (Article 5.3);</li> <li>• promote integrity, honesty and responsibility among its public officials (Article 8.1);</li> <li>• enhance transparency in public administration and reporting (Article 10);</li> <li>• prevent opportunities for corruption among members of the judiciary (Article 11);</li> <li>• promote the active participation of individuals and group outside the public sector in the prevention of and the fight against corruption and raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption (Article 13);</li> <li>• implement measures to prevent money laundering (Article 14); and</li> <li>• criminalise corruption/bribery offences in both the public sector and the private sector (Articles 15, 16, 17, 18, 19, 21 and 27).</li> </ul> | <p><b>Compliant</b></p> <p>The Vietnamese Anti-Corruption Laws generally satisfy the requirements of the UNCAC.</p> <p>A draft of the new Law on Anti-Corruption of Vietnam (which was initially issued in 2005 and then amended in 2012) is being evaluated by the authorities after more than 10 years of implementation. It is expected that new Law on Anti-Corruption will assign specific tasks for each State agency in the prevention and combat of corruption.</p> <p>The Law on Accession to Information was passed by the National Assembly on 6 April 2016 and will be effective from 1 July 2018. It is expected that this law will enhance the transparency in public administration and reporting as required under the UNCAC.</p> <p>In 2008, the Supreme People’s Court issued a decision providing the code of conduct of cadres and civil servants in the court sector, which specifically addresses, among other matters, the prevention and combatting of corruption.</p> <p>Decree No. 47/2007/ND-CP dated 27 March 2007 guiding a number of articles of the Law on Anti-Corruption provides, among other, the roles of the media, enterprises, business groups and the public in the prevention and combatting of corruption. This decree is aimed at promoting the active participation of the public in the prevention and combatting of corruption.</p> <p>Chapter XXIII of the Penal Code criminalises corruption/bribery offences in both the public sector and the private sector in which the number of corruption/bribery offences criminalised in the public sector is greater than in the private sector. Also, the penalties for corruption and bribery offences under the Penal Code vary from a fine only, non-custodial probation, imprisonment up to 20 years or life imprisonment and capital punishment. Where the primary penalty is not a fine, offenders may also be required to pay a fine. In addition, offenders may have some or all of the property received in connection with the offence confiscated and/or face a ban on holding certain employment positions or practicing certain occupations for a period of time.</p> |

