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HOW TO BE COMPLIANT AS A BUSINESS

Focus on the new Penal Code

AGENDA

- ABOUT ACSV LEGAL
- GOVERNANCE, RISK MANAGEMENT AND COMPLIANCE
- COMPLIANCE – PENAL CODE
- CONTACT US



ABOUT ACSV LEGAL

ACSV Legal is a Ho Chi Minh City, Vietnam-based law firm. The firm is led by Managing Partner, Mark Oakley who has been living and working in Vietnam since 2007.

Established in 2014 and most recently, at the end of March 2018, it was rebranded to ACSV Legal, with a new logo and new website: www.acsvlegal.com.

ACSV Legal has a premier corporate/M&A practice in Vietnam and its approach is to understand the legal, commercial and political dynamics of every matter. We have extensive experience in private equity transactions with a focus on a strong commercial approach.

ACSV Legal currently has a team of lawyers who are qualified in Vietnam and abroad in civil and common law jurisdictions. Our lawyers are bi-lingual in Vietnamese, German, English, Italian, Dutch, French and Malay.

Our clients are active in a wide range of sectors and industries: manufacturing, food & beverage, hospitality and leisure, education, pharma, health, beauty & fitness, IT, apparel and fashion, retail and public relations.



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GOVERNANCE, RISK MANAGEMENT AND COMPLIANCE

GOVERNANCE, RISK MANAGEMENT, AND COMPLIANCE

- **Governance**
is the combination of processes established and executed by the directors (or the board of directors) that are reflected in the organisation's structure and how it is managed and led toward achieving goals
- **Risk Management**
is predicting and managing risks that could hinder the organisation from reliably achieving its objectives under uncertainty
- **Compliance**
refers to adhering with the mandated boundaries (laws and regulations) and voluntary

Source: GRC Capability Model 3.0 / Wikipedia



GOVERNANCE, RISK MANAGEMENT, AND COMPLIANCE (CONTINUED)

- Governance, Risk Management, and Compliance (GRC) are 3 related facets that help assure an organisation reliably achieves objectives, addresses uncertainty and acts with integrity.
- GRC is a discipline that aims to synchronise information and activity across governance, risk management and compliance in order to operate more efficiently, enable effective information sharing, more effectively report activities and avoid wasteful overlaps.

Source: GRC Capability Model 3.0 / Wikipedia



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COMPLIANCE: PENAL CODE

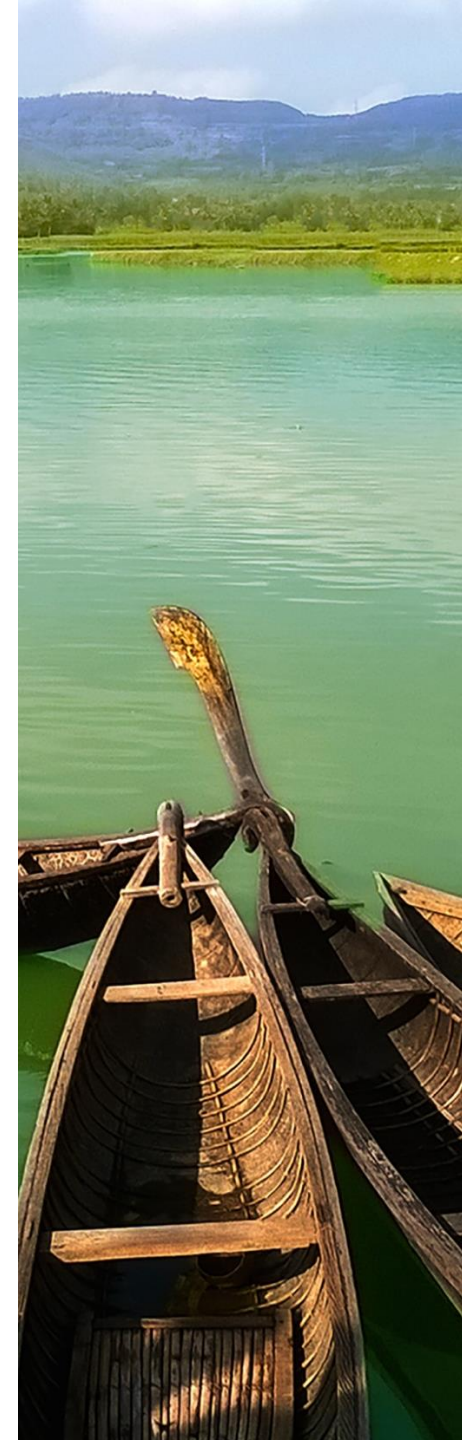
RELEVANT LAWS

- Penal Code
- Criminal Procedural Law
- Civil Code
- Law on Handling Administrative Violations
- Intellectual Property Law
- Law on Investment
- Law on Civil Sentence Enforcement
- Law on Competition
- Law to Prevent and to Combat Money Laundering
- Anti-corruption Law



CRIMINAL LIABILITY FOR EMPLOYEES

- Bribery / corruption;
- Trade in counterfeit products;
- Violate Law on Food Safety and Hygiene laws;
- Insider trading;
- Produce/trade in counterfeit products;
- Violate regulations of Law on Accounting;
- Violate regulations of Law on Occupational Safety, Occupational Hygiene and Safety;
- Environmental pollution / emergency violation;
- Commit fraud in performance of duties;
- Money laundering;
- IPR infringement (copyright / industrial property rights);
- Environmental emergency violation;
- Terrorism financing;
- Violate regulations on Law on Bidding;
- Abuse of power or position to influence another person for personal gain; and
- Reveal work secrets, appropriate, trade or destruct work secret documents.



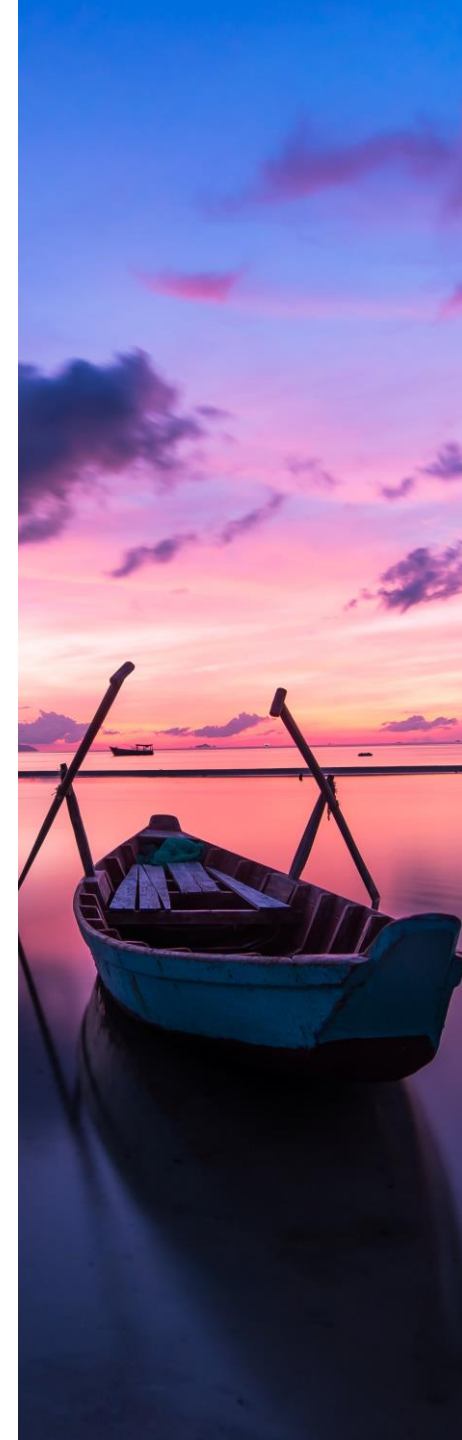
CRIMINAL LIABILITY FOR LEGAL REPRESENTATIVE (ADDITIONAL)

- Employment (coercion / illegal termination);
- Anti-competitive behaviour; and
- Evasion of social, unemployment, and health insurance payment.



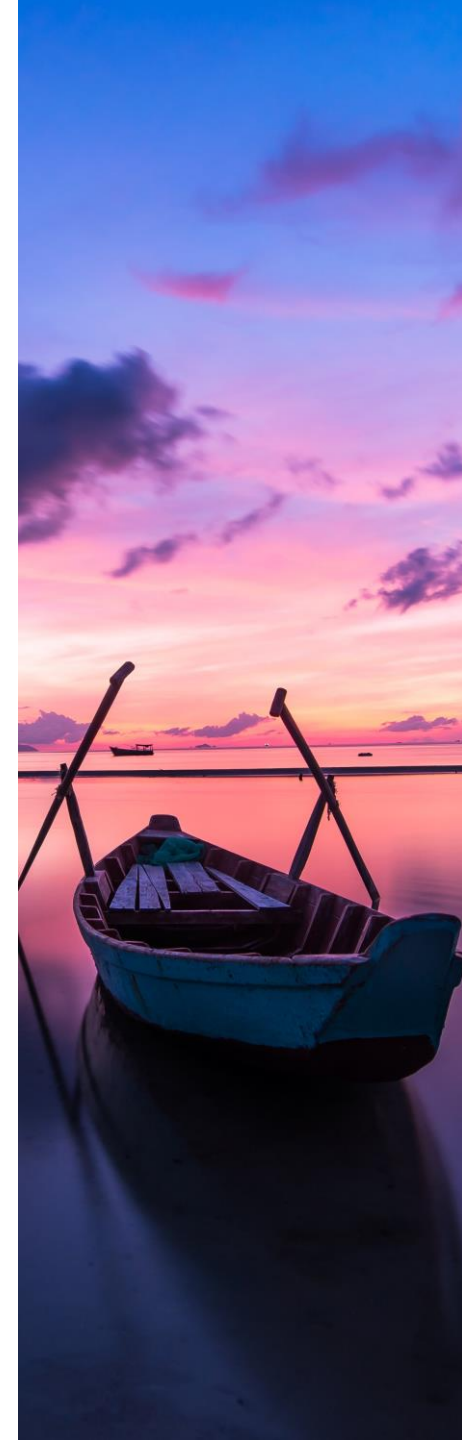
CRIMINAL LIABILITY FOR CORPORATE LEGAL ENTITIES (ART 76)

- Tax evasion;
- Environmental pollution;
- IPR infringement (copyright / industrial property rights);
- Insider trading;
- Publish false information or conceal information in securities activities;
- Insurance fraud;
- Social insurance payment evasion;
- Environmental emergency violation;
- Manufacture / trade of counterfeit foods, foodstuff or food additives;
- Anti-competitive behaviour; and
- Terrorist financing.



CRIMINAL LIABILITY FOR CORPORATE LEGAL ENTITIES (CONTINUED)

- ▶ Violations related to tax, competition, environment, business and trading which are not a criminal offence, can be *administratively* sanctioned. (art 2.1 Law on Handling Administrative Violations).
- ▶ There is no relevant provision dealing with the liability of directors or managers for not having adopted (intentionally or negligently) measures to prevent a crime. However, according to the Penal Code, any person could be criminal liable who
 - conceals crimes; or
 - knows that a crime is being prepared, being carried out, or has been carried out but fails to report (misprision, with some exceptions).



South Korean firm becomes
in HCMC to face criminal
for social insurance evasion

Vietnam securities watchdog
seize stock fraud profits.

Vietnam inspects Coca-Cola,
Metro Cash & Carry for alleged
tax evasion.

Grab, Uber reject accusations
of tax evasion.

More (Vietnamese) companies
evade social insurance
payment.

Agoda.com accused of
evasion.

Vietnam
sauce case discovered.



Owner of BMW dealer in
rested on smuggling

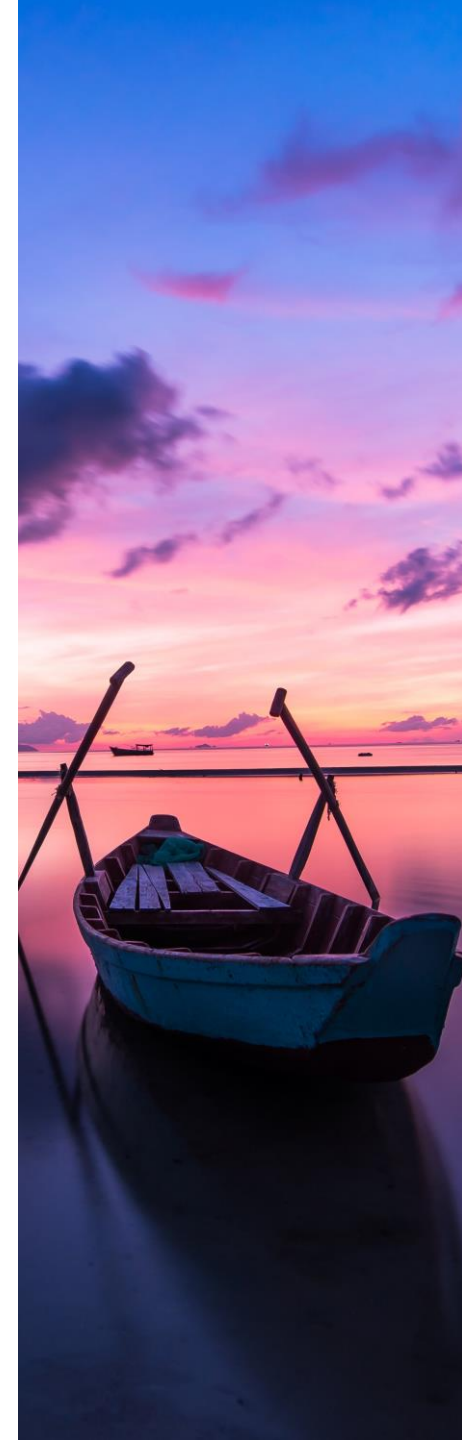
Vietnam questions possible
lab monopoly in wake of Uber
recovery in South-east Asia.

Ex-director of Vietnamese
pharmaceutical firm stands trial
for importing fake medicine.

Police to prosecute tax evasion
related to Equatorial Hotel.

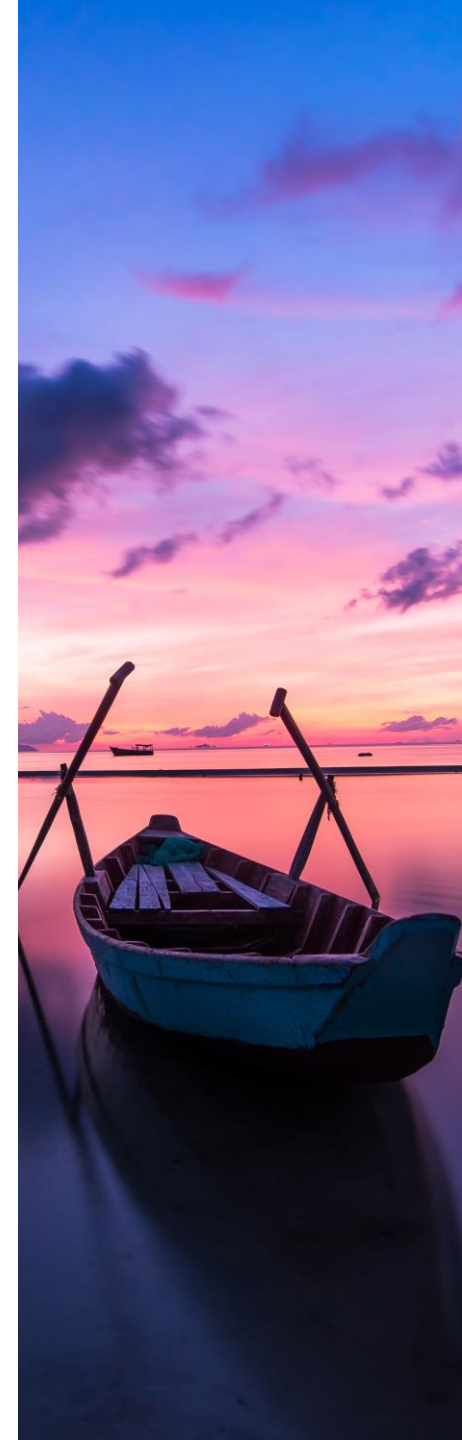
Company long told to pay settlement
anti-competition case.

Two fish deaths reported
near Armosa plant.



CRIMINAL LIABILITY FOR CORPORATE LEGAL ENTITIES (CONTINUED)

- Corporate legal entity bears criminal liability if
 - The criminal offence is committed in the name of the corporate legal entity; *and*
 - The criminal offence is committed in the interests of the corporate legal entity; *and*
 - The criminal offence is under instructions or approval of the corporate legal entity; *and*
 - The time limit for criminal prosecution has not yet expired.
- ➡ The fact that corporate legal entity has criminal liability does not exempt criminal liability of individuals.
- ➡ If a convicted corporate legal entity is divided, separated, consolidated or merged, the succeeding corporate legal entity inherits rights and duties from the convicted corporate legal entity and will be liable for any pecuniary penalties and damages. (art 445.3 Criminal Procedural Law)



ENTITIES COVERED (ART 19)

- The Penal Code applies to both *foreign* and *Vietnamese* corporate legal entities.
“A commercial juridical person (or corporate legal entity) means a juridical person whose primary purpose is seeking profits and its profits shall be distributed to its members and include enterprises and other business entities.” (art 75 Civil Code)
- In case the criminal offence is committed by
 - a *subsidiary*, the parent company will *not* be liable (as independent entity);
 - a *Representative Office or branch*, the parent company *could* be liable (as not independent legal entities).



TERITORIES COVERED (ART 6)

- Criminal offence committed on Vietnamese territory; and
- Criminal offence committed outside Vietnamese territory by
 - *Vietnamese corporate legal entity* and criminal offence is defined in the (Vietnamese) Penal Code shall face criminal prosecution in Vietnam; and
 - *Foreign corporate legal entity* if
 - the offence infringes the lawful rights and interests of Vietnamese citizens or interest of the Socialist Republic of Vietnam; or
 - under an international agreement to which Vietnam is a signatory.



PENALTIES

- Applicable penalties
 - Monetary fine;
 - Forced suspension or termination of business operations; or
 - Ban to conduct certain business activities and/or to raise capital.

 - Additional measures
 - Judicial measures;
 - Interim measures;
 - Cease-and-desist order;
 - Bans; or
 - Confiscatory measures.
- ▶ In case of aggravating circumstances punishments can be higher.



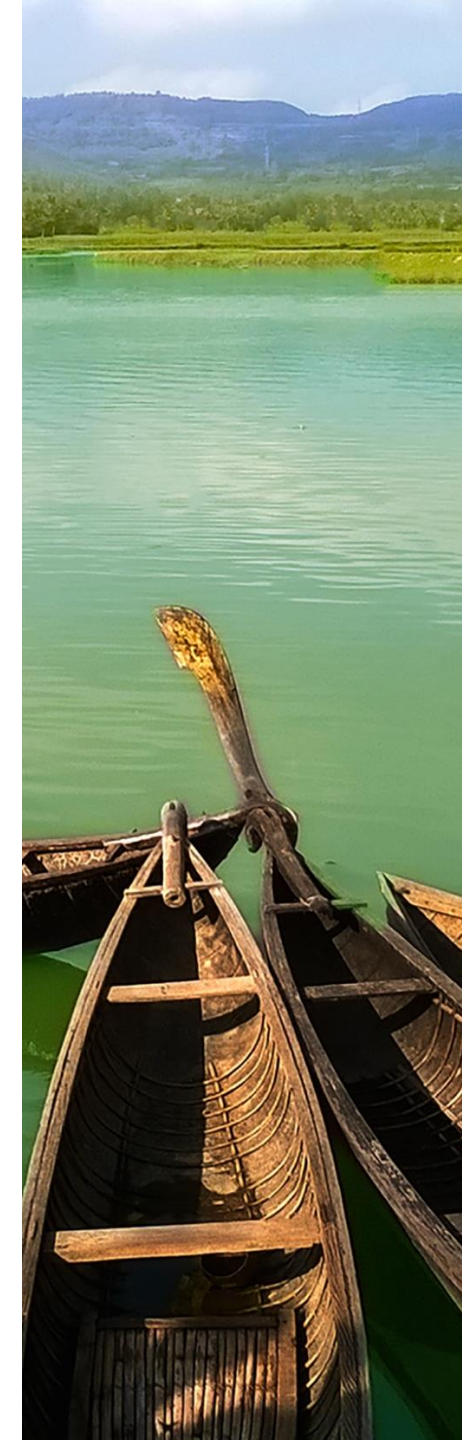
COMPLIANCE

- Use of internal information to deal in securities (art 210)
 - Launder money (art 324)
 - Bribery and abuse of power (art 354, 355, 356, 364, 365, 366)
 - Implement policy and appoint compliance officer; and
 - Include reference to policy in (depending on the person) in
 - internal labour rules;
 - appendix labour contract; or
 - have every employee/relevant person in the company sign a document that he/she has read the policy and will comply with it.
- ➡ Note that giving bribes (directly or via intermediary) to private officials is now also a criminal offence.



COMPLIANCE (CONTINUED)

- Violate anti-competition regulations (art 217)
 - ▶ The competition law is being reviewed, the following is likely to fall under the scope of the Competition Law:
 - offshore activities having an impact on the Vietnamese market; and
 - M&A deals between offshore entities and indirect equity interests in a Vietnam-based entity.





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