

# ACSV

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# HOW WILL THE NEW PENAL CODE IMPACT YOUR BUSINESS

Dutch Business Association Vietnam  
19 June 2018

### 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](http://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 speak 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



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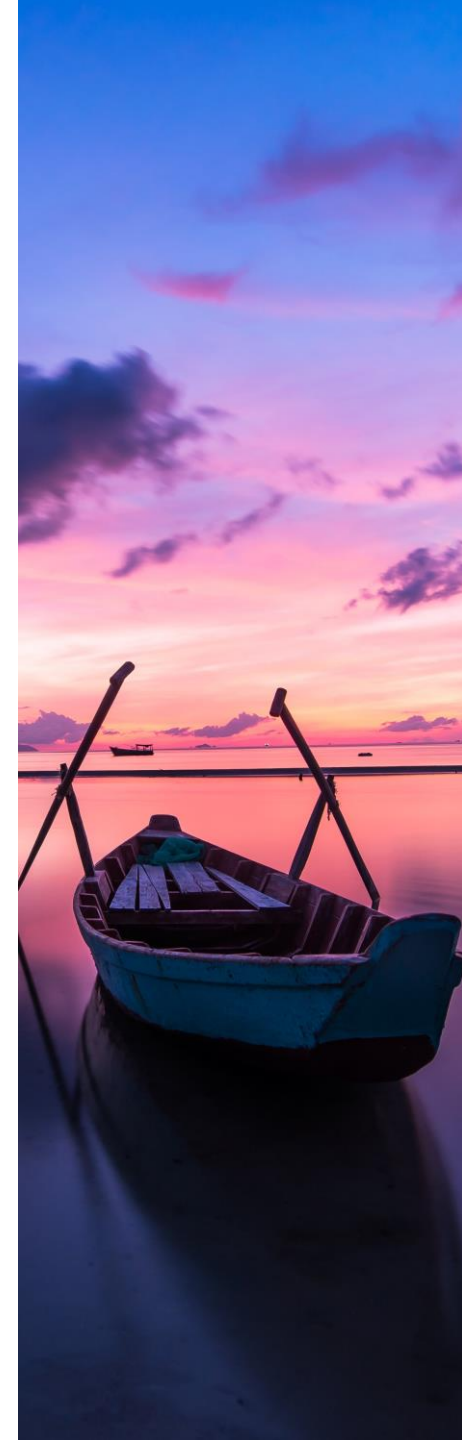
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COMPLIANCE: PENAL CODE

### DO YOU KNOW...

- ...what your Chief Accountant does exactly and what documents you sign?
- ...how your HR Manager terminates staff?
- ...how your Sales Manager obtains such good results?
- ...why your products have the same price as those of your competitors?





### EMPLOYEES

Violate regulations on Law on Bidding

Violate Law on Food Safety and Hygiene laws

Money laundering

Violate regulations of Law on Accounting

Insider trading

Produce/trade in counterfeit products

Commit fraud in performance of duties

Violate regulations of Law on Occupational Safety, Occupational Hygiene and Safety

Abuse of power or position to influence another person for personal gain

IPR infringement (copyright / industrial property rights)

Terrorism financing

Reveal work secrets, appropriate, trade or destruct work secret documents

Environmental pollution / emergency violation

Bribery / corruption



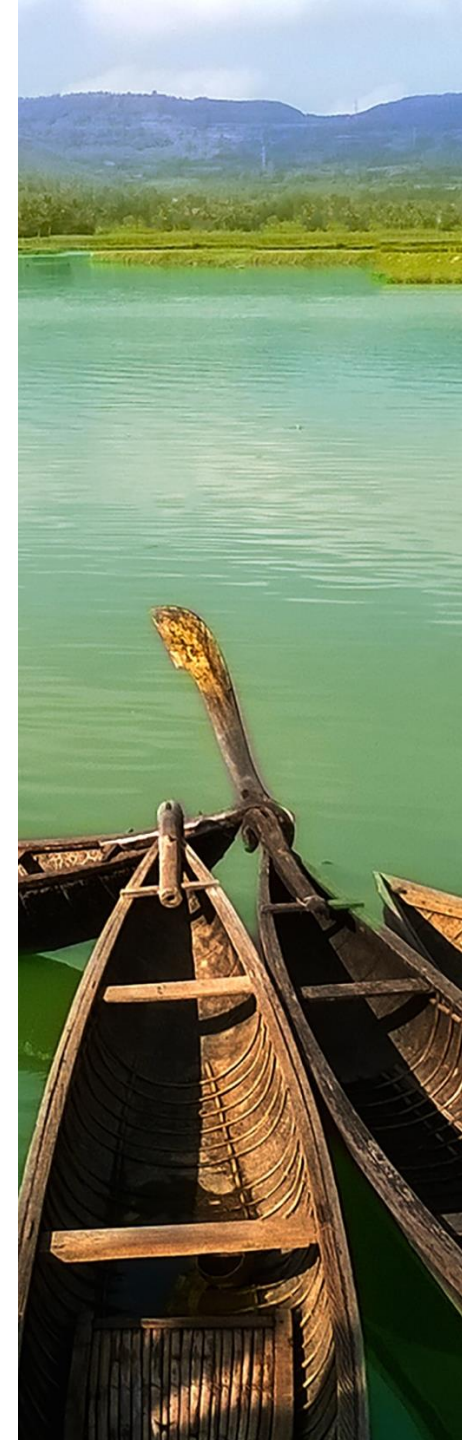
### LEGAL REPRESENTATIVE

Anti-competitive behaviour

Violate employment regulations (coercion / termination)

Evasion of social, unemployment, and health insurance payment

- 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;
  - knows that a crime is being prepared, being carried out, or has been carried out but fails to report it shall bear criminal responsibility for misprision (with some exceptions).



### CORPORATE LEGAL ENTITIES



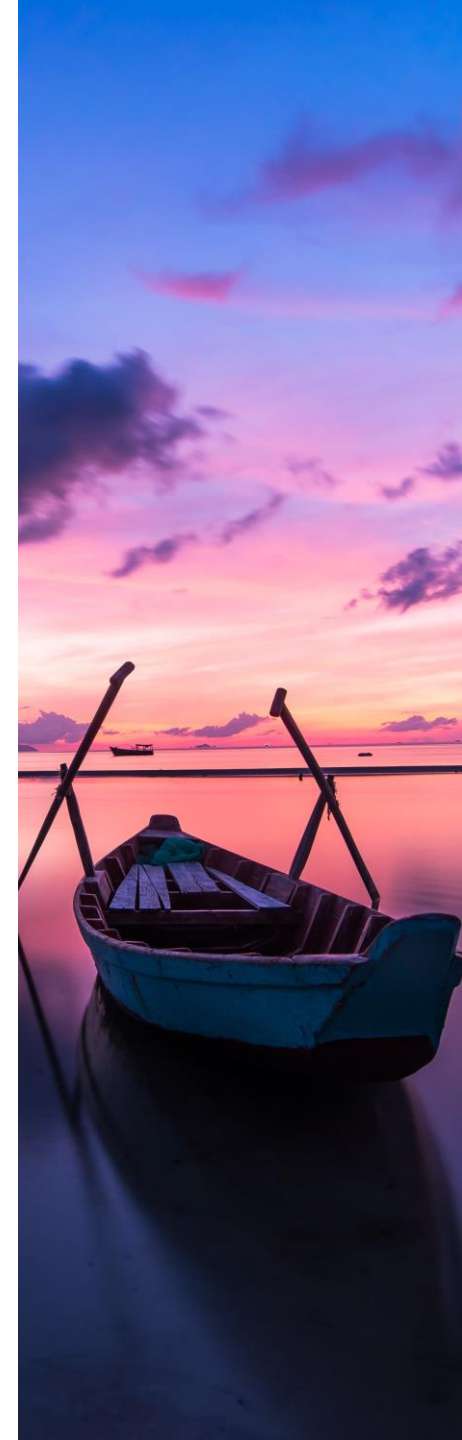
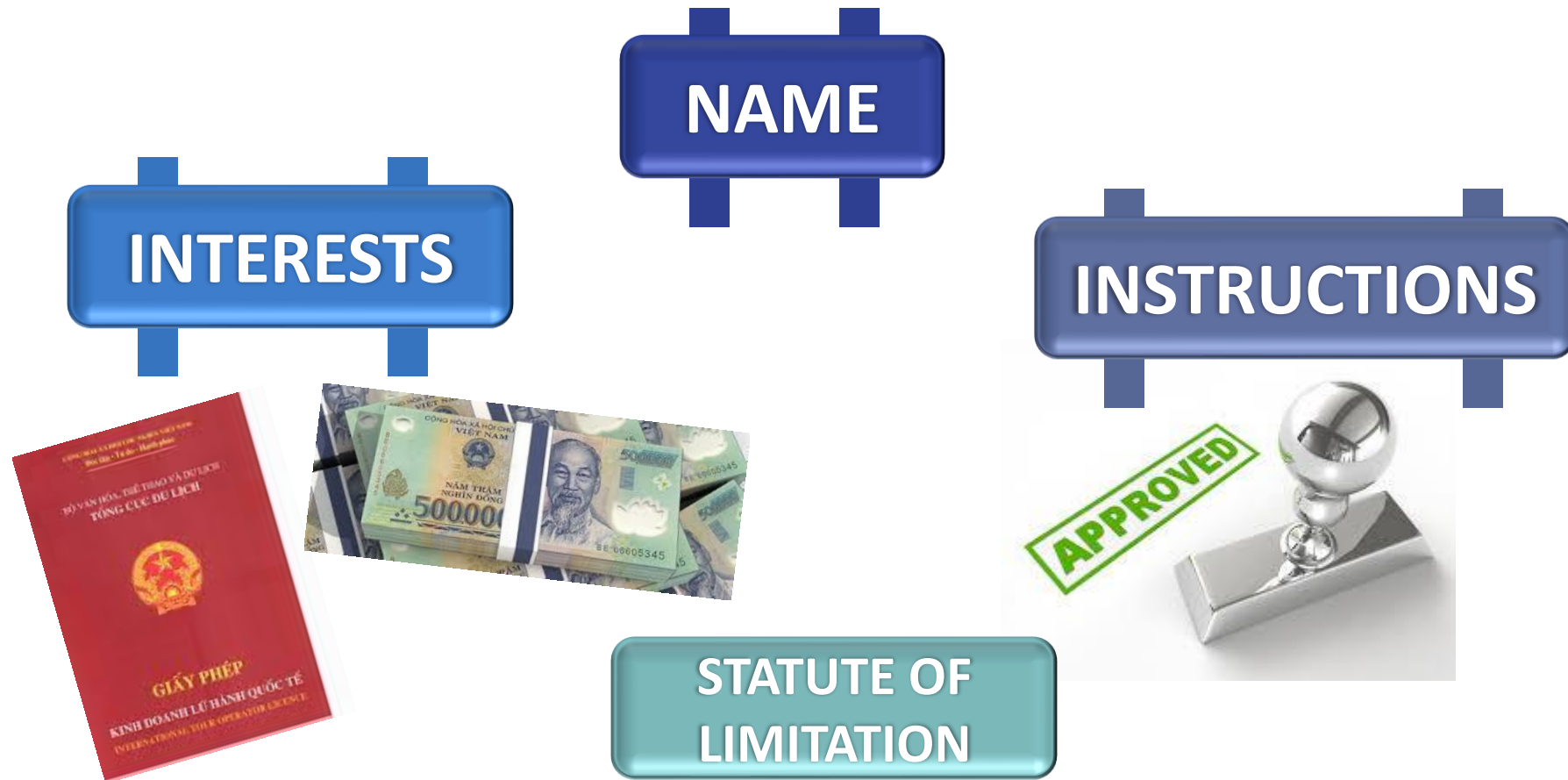
## CORPORATE LEGAL ENTITIES (CONTINUED)

Note that:

- 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.
- Giving bribes (directly or via intermediary) to private officials is now also a criminal offence.

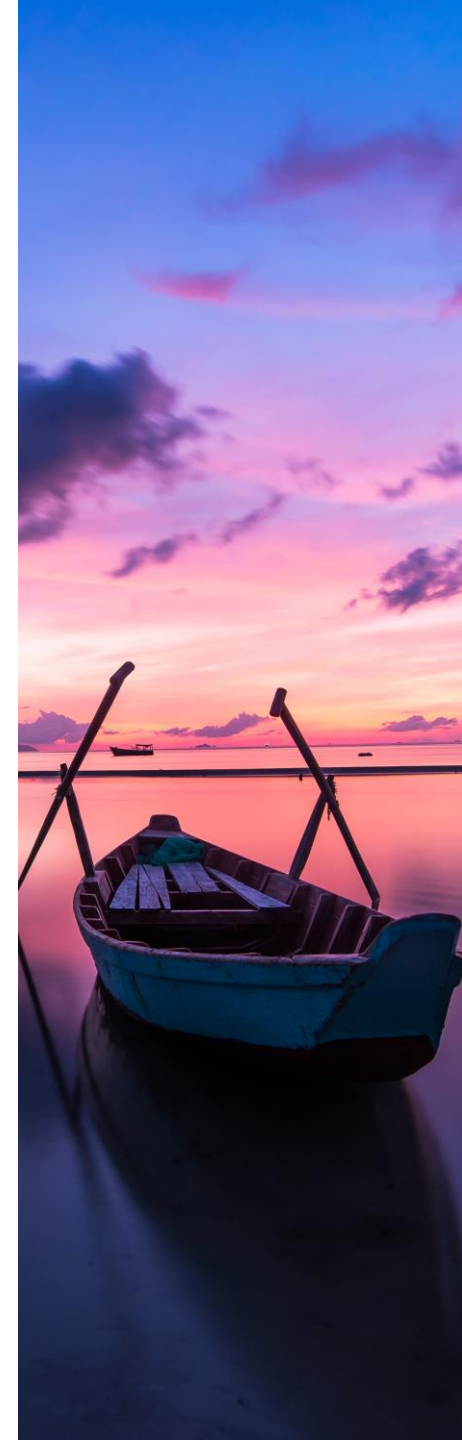


### WHEN CRIMINAL LIABILITY FOR CORPORATE LEGAL ENTITIES?



### WHEN CRIMINAL LIABILITY FOR CORPORATE LEGAL ENTITIES? (CONTINUED)

- ➔ The fact that corporate legal entity has criminal responsibility does not exempt criminal responsibility 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.
- ➔ Violations related to tax, competition, environment, business and trading which are not a crime, can be *administratively* sanctioned.



### ENTITIES COVERED

- 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.”*
- In case the criminal offence is committed by
  - a *subsidiary*, the parent company will *not* be liable (as independent legal entity);
  - a *Representative Office or branch*, the parent company *could* be liable (as not independent legal entities).



## TERITORIES COVERED

- Criminal offence committed on territory of Vietnam
- Criminal offence committed outside territory of Vietnam
  - *Vietnamese corporate legal entity* and criminal offence is defined in the (Vietnamese) Penal Code
  - *Foreign corporate legal entity* if criminal 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.





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

Vietnam securities watchdog to 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 tax evasion.

Vietnam's largest fake fish sauce case discovered.

Top executive of **BMW** dealer in Vietnam arrested on smuggling charges.

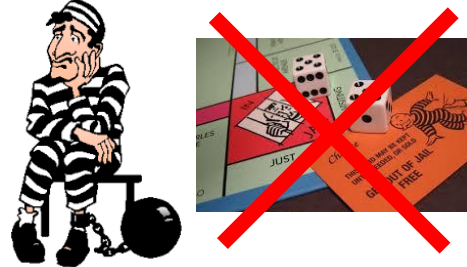
Vietnam questions possible **Grab** monopoly in wake of **Uber** takeover in South-east Asia.

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

Police to prosecute tax evasion related to **Equatorial Hotel**.

**Anh Duong** told to pay settlement fee in anti-competition case.

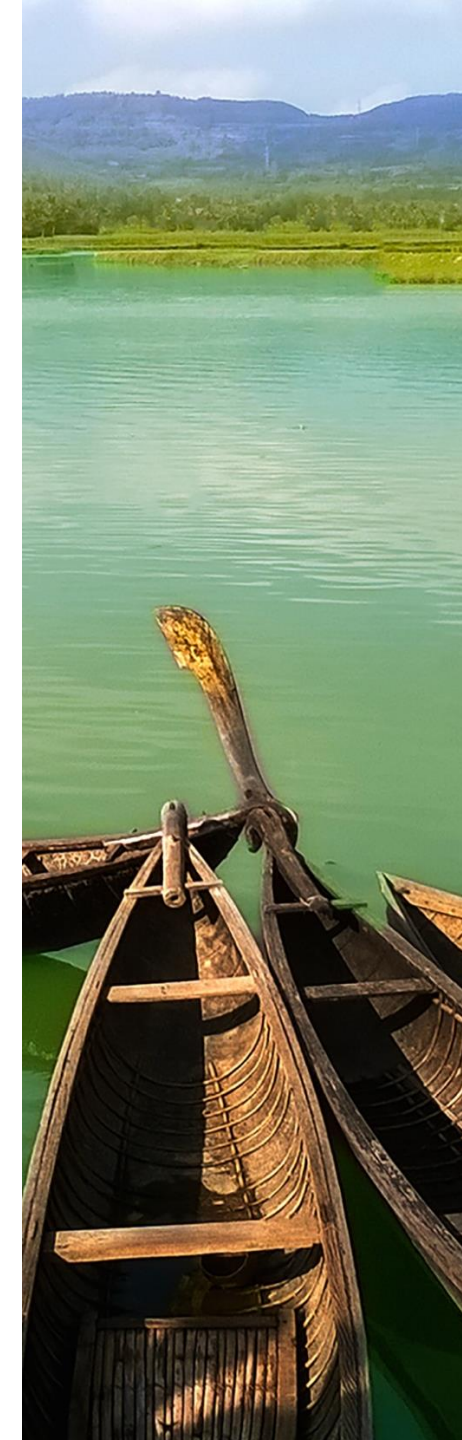
Mass fish deaths reported near **Formosa** plant.



### MEASURES



### WHY IS COMPLIANCE IMPORTANT?



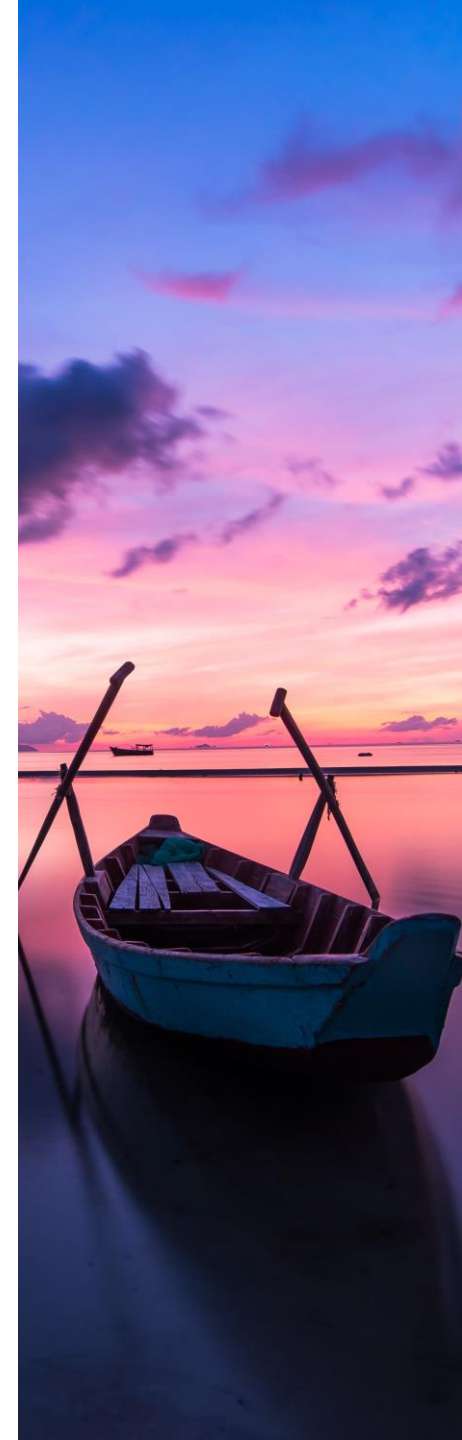
### HOW TO COMPLY?

- Draft, implement and enforce a compliance policy
- Appoint compliance officer
- 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.



## WHAT CRIMINAL OFFENCE COULD BE COMMITTED?

- You do not know what your Chief Accountant exactly does and which documents you sign.
  - **Tax evasion and/or social insurance evasion.**
- You do not know how your HR Manager terminates staff.
  - **Violation of labour code provisions or forcing staff to resign.**
- You do not know how your Sales Manager obtains such good results.
  - **Bribery or anti-competitive behaviour.**
- You do not know why your products have the same price as those of your competitor.
  - **Anti-competitive behaviour.**





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