

Clearing Out the Corrupt

Although Vietnamese leaders have spoken frankly in the last few years about corruption and the threat it poses to the country's development, and despite some senior officials having been exposed as receiving bribes, few National Assembly (NA) delegates appeared eager to discuss the issue last month.

Even though the law-making body kicked off its first session of the year last month in Hanoi with discussions on a law to combat corruption, delegates held differing views on the establishment of a specialised anti-corruption agency.

There is a degree of reluctance to discuss the issue openly at NA sessions for fear that the general public could take it to mean that corruption has spiralled out of control. In truth, although the vice has been uncovered at major state owned corporations like the Petro Joint Stock Insurance Company (PJICO) and PetroVietnam, only a few senior officials were found to have dirt on their hands. "I do not think that the impact of corruption has increased over time in Vietnam," said Mr Joshua Magennis, a senior lawyer at the law firm Phillips Fox. "It is still endemic, but at least the government and other authorities are acknowledging its existence and impact. The establishment of an agency is reflective of that acknowledgment."

Business corruption

In the months prior to NA delegates gathering at Ba Dinh Hall, the government proposed the law-making body delay discussions on the law on anti-corruption until later in the year so as to be better prepared. In the end, however, both agreed to put it forward at this session as an expression of their strong commitment to allay voter concerns.

In the days after the NA opened on May 6 there was further evidence of good intentions; the State Inspectorate held a seminar to gain public opinion about the draft law.

The government's efforts seem to have intensified. Shortly before the NA session, the Economic Police Task Force caught four officials from Nam Dinh province receiving bribes from construction companies. In mid-April, an official from Phuong Lien Ward in Hanoi, who is the brother of the Ward Chairman, was arrested after receiving a VND35 million (\$2,200) bribe from street merchants to lobby on their behalf for licence renewals. Meanwhile, a number of executives at the state run PetroVietnam were found guilty of misappropriating state monies in bidding deals.

The CEO of PJICO - a joint-stock company invested by state-owned corporations such as Petro Export-Import Corporation (Petrolimex), the Bank for Foreign Trade of Vietnam (Vietcombank) and others - and his deputy illegally obtained state monies through a problematic insurance contract.

Despite their different nature, when taken together the above cases represent the type of crooked behaviour among senior officials that voters hope will eventually be eliminated. The practice of "dirty lobbies", in which local officials use state money to seek favours from central authorities, should also fall under the law on anti-corruption and the laws on waste, say some NA delegates. According to Mr Tao Huu Phung, NA delegate and Deputy Chairman of NA's Economics and Budgetary Commission, punishment for "dirty lobbies" should be strictly enforced by the two laws. "The Ministry of Finance has tabled a regulation with the Prime Minister that requires all state officials to declare gifts valued at more than VND500,000 (\$31)," he said. "But I think that would only be a temporary solution."

Temporary solution or not, there should be more such regulations. During his recent meeting with foreign donors, Prime Minister Phan Van Khai committed Vietnam to continuing its on-going fight against corruption in order to create a better business environment. According to analysts, though, implementation is the key. "As with the competition law and many others, one can only wait and see how it will be implemented," said Mr Magennis. "There are many laws that have no implementing decrees and decisions, and are therefore impotent. The same could be said for this attempt to deal with corruption."

A necessary lubricant?

Some argue that bribery and corruption should be viewed as a lubricant for the machinery of authority, so that deals and contracts proceed more smoothly. Analysts, though, find the notion of it being a necessary lubricant to be mistaken. "Our ultimate goal should be a government that serves the people both fairly and efficiently," said Mr Ross Meador, senior lawyer at the US-based Rogers & Meador LLP law firm. Government officials, like workers everywhere, will do a better job if they are properly paid and motivated. Corruption, he said, encourages government officials to apply the law unevenly, which harms society as a whole. "Corruption, even 'small corruption', erodes people's respect for the rule of law and their confidence in the government."

The problem, of course, is that "small corruption" is often built into the system because government officials are poorly paid, and there is a tacit understanding that the bulk of their income will come inside brown envelopes. Mr Meador spoke of the US Foreign Corrupt Practices Act, which has an exception for "facilitating or expediting payments to a foreign official ... to secure the performance of a routine governmental action." "The exception was not meant to endorse the practice, but rather to recognise its ubiquity," he said. Nevertheless, he added, the practice is a recipe for disaster that leads to pervasive corruption at all levels. "The incentives must be changed so that officials are rewarded for doing a good job and not rewarded for being corrupt."

The need for an agency

There are still differences among NA delegates and government officials over the establishment of a specialised agency to directly deal with bribery and corruption, which was raised by Prime Minister Khai at last year's final NA session. Although he did not answer directly about the need for an agency, Mr Nguyen Dinh Loc, NA delegate and former Minister of Justice, believes there is a need to strengthen existing agencies in the fight against corruption. "I think current agencies such as the Ministry of Public Security (MoPS), the Supreme People's Court and nationwide courts are able to fight corruption," Mr Loc told local media on the sidelines of the NA meeting. "We need to review the capabilities of these agencies." However, another NA delegate, Mr Ta Huu Thanh, former Director-General of the State Inspectorate and current Deputy Chairman of the Party's Central Economics Board, believes that such an agency should be established. "We need to combine special tasks between the State Inspectorate and MoPS as the foundation of this agency's duties," he said. And there is no need to identify clearly whether the agency belongs to the NA or the government, according to Mr Thanh.

Participants at the State Inspectorate's seminar last month on the draft law thought that a specialised agency would better support the fight against corruption. "Unless we have such an agency, fighting corruption will be ineffective," said Mr Nguyen Van Bang, Deputy Chief of the Ministry of Finance's Inspection Bureau. He also pointed out that the agency's major duty, as stated in the draft law, is unclear and could make the job even tougher.

Foreign analysts, meanwhile, say that an agency is needed and that the most important thing is the power given to it. "I think the establishment of an anti corruption agency would be a great step and would show investors that at least Vietnam has recognised the problem," said Mr Magennis from Phillips Fox. Of course, he added, there will be much debate: Should we acknowledge there is a problem? Where is the problem? What powers do we give the authority? Should the power be limited to dealing with lower level corruption? For his part, Mr Meador from Rogers & Meador believes that it is important for the Vietnamese government to take a firm and public stand against corruption and that the government's fight is a step in the right direction. "A specialised agency, if it was operated fairly and efficiently, would be of

great benefit," he said. However, he cautioned, other countries that have tried this approach have found that the agency itself became corrupt, which led to even deeper despair among those who cared about the issue. Thus, the potential for positive results from such an agency is great, but the potential for failure cannot be ignored. "If the agency is formed, it must be operated openly and given wide support," he insisted.

If a specialised agency is established, the key to success is how it works and whether it has power. Independence from interference and wide ranging powers to penalise - not just make recommendations that may go no further - are what Mr Magennis would suggest for its powers and duties. Of the same view, Mr Meador added that the agency should have broad powers of investigation and the full support of the courts. "It also must be answerable to multiple constituencies, with checks and balances to prevent the agency itself from becoming too powerful," he said

"We should say frankly to each other that corruption is still widespread at a serious level. Myself and Mr Vo Van Kiet, former Prime Minister, knew of some particular cases but could not unravel them and make them public. Corruption is guarded by the perpetrators and even defended by outside sources. This really is a fierce battle in which, if we wish to win, the Party and the State must take a closer look at themselves."

Mr Le Kha Phieu, former Party General Secretary

(in an interview with local media last month)

"Corruption is everywhere and may even appear within the Inspectorate if we are not diligent. So it is possible that corruption could exist in any anti-corruption agency."

NA delegate Mr Mai Quoc Binh,

newly-appointed Deputy Chief of the State Inspectorate.

Ha Anh reports.
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