**Asset Recovery in Anti-corruption in Vietnam:**

**Possibilities and Challenges**

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**Introduction**

Corruption is a global issue, and "mutual disease" of governments, and Viet Nam is not an exception.

In Vietnam, the Communist Party of Vietnam (CPV) argues that corruption is an "internal invader,"[[1]](#footnote-1) a suicide threat of political regime, the main factor leading to ineffective governmental administration[[2]](#footnote-2). Therefore, since the Doi moi era (1986), anti-corruption occupied a great concern of the State and CPV. In recent years, these two have expressed a higher determination towards this issue by prosecuting a plethora of significant corruption cases regarding senior public officials[[3]](#footnote-3), which is unprecedented.

In contrast, Vietnam's corruption issue is still endemic, problematic, and happened in different sectors, levels, and departments. This disease is especially more organized with mutual benefits; corruption damages are more and more severe. Despite the prosecution of certain corruption cases, the citizens have to suffer from public officials' intangible demands. Corruption is considered one of the most pressing social problems in Vietnam[[4]](#footnote-4).

The leading cause could be the limits of anti-corruption efforts in Vietnam, especially the asset recovery process.

There is a wide range of questions needed for the answers: Why is asset recovery in Vietnam ineffective? What are the challenges that Vietnam may face? Do these obstacles concern the strategy, the policy, the jurisdiction, or the implementation? What should Vietnam gravitate towards to strengthen the effectiveness of asset recovery?

This article contributes to the resolutions of questions above by analyzing the policy and legal framework, practices of stolen asset recovery in Vietnam currently, simultaneously consulting the lessons from other nations having the progress of this operation.

1. **The Vietnamese conception of the asset, stolen asset, and asset recovery**
	1. **Asset and stolen Asset in Vietnam**

 In Vietnam, "asset" possesses a variety of definitions. According to the Vietnamese dictionary: "*Asset is the material used for production or consumption*"[[5]](#footnote-5); Legal dictionary: *Asset is price objects and the subject of property rights and other material benefits. An asset can be real, existing, or future objects such as yields, income, object manufactured by the agreement of parties, money or valuable papers, and property rights*"[[6]](#footnote-6). The Legal book *terms* stated that: *Property comprises objects, money, valuable papers, and property rights. The property includes immovable property and movable property. The immovable property encompasses land, house, and constructions attached to the land, other property attached to land, houses, constructions, or other property as prescribed by Law. Movable property is the property that is not immovable* "[[7]](#footnote-7).

 In Vietnamese jurisdiction, the Civil Code is the only legislation providing assets: "*Property includes objects, money, valuable paper and property rights*."[[8]](#footnote-8)

 Similarly, the term "corruption" has a wide range of definitions with a slight difference. According to the Vietnamese dictionary, *corruption abuses power to misuse public funds and insist upon citizens.[[9]](#footnote-9) The* Vietnamese legal dictionary defines: "*Corruption is abusing power to defalcate illicitly, which damages the national, collective, personal property and violates the appropriate operation of institutions and organizations.*"[[10]](#footnote-10)

 Article 3.1 of Anti-corruption Law 2018 regulates that corruption means an office holder's abuse of his/her capacity for personal gain". Also, Article 3.2 expresses that office holder means a designated person, elected or employed under a contract or another form of employment, receiving or not receiving salaries, and assigned specific duties and authority to perform such duties. Officeholder include: a) Officials and public employees; b) Commissioned officers, career military personnel, national defense workers and public employees of the People's Army units; commissioned officers, non-commissioned officers, and workers of the People's Police units; c) Representatives of state investment in enterprises; d) Holders of managerial positions in organizations; dd) Other persons assigned specific duties and authority to perform such duties".

 Combining the concepts of asset and corruption, Anti-corruption Law 2018 provides the definitions of stolen Assets in Article 3.3: "corrupt-acquired asset means an asset that is obtained through corrupt activities." Meanwhile, "corrupt-acquired asset" has different perspectives in Vietnam. The first argument is that this type of asset is not springing from activities considered as corrupt criminals but originating from the abuse of power to affect others; frauds in public duties; bribery; bribery broker; illicit use of the national property.[[11]](#footnote-11) The second view is that corrupt-acquired asset is legalized and laundered to invest in businesses or repay bank loan; even for charity purposes such as building hospitals, schools, shrines, and pagodas[[12]](#footnote-12).

 Based on the analytics above, a stolen asset's concept seems to be narrow and unprecise compared to the international community's mutual cognition. According to Article 2 of the United Nations Convention against Corruption (UNCAC), stolen property "shall means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets"; "proceeds of crime shall mean any property derived from or obtained, directly or indirectly, through the commission of an offense." Article 31 UNCAC expresses the concept of a stolen asset by clarifying the term of proceeds of crime: "(1.a)proceeds of crime derived from offenses established following this Convention or property the value of which corresponds to that of such proceeds; (1.b) property, equipment or other instrumentalities used in or destined for use in offenses established under this Convention; (6) Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled, shall also be liable to the measures referred to in this article, in the same manner, and to the same extent as proceeds of crime". Therefore, according to these provisions of UNCAC, stolen assets could be tangible or intangible, derived directly from corruption or indirectly from money laundering. Similarly, Organization for Economic Cooperation and Development (OECD) defines a stolen asset as money, fortune, or another property accumulated by corruption, including bribery, embezzlement of property or public funds, doing business by abusing his/ her ability in the public sector[[13]](#footnote-13). For instance, South Africa broadens the meaning of stolen assets and its provisions, including the exposed-corruption asset. This perspective means a mix of legal and illicit funds could face the risk of being confiscated[[14]](#footnote-14).

Additionally, nations are criminalizing illicit funds and considering public officials' illegal income as a stolen asset. For instance, Article 395 in Criminal Law of the People's Republic of China provided that "*when the property or expenses of state functionaries exceed the legitimate income, when the difference is huge, they shall be ordered to explain the sources of their property. When state functionaries fail to explain the legitimacy of their property, that part of the property shall be considered an illegal income, and they shall be sentenced to not more than five years or fixed-term imprisonment or criminal detention, and the difference must be handed over to the state*"[[15]](#footnote-15).

 In light of unprecise provisions, the cognition of stolen Assets in Vietnam stays different significantly. Survey of public officials in anti-corruption institutions in Vietnam, the answers for the question "*From your standpoint, which property below could be considered as a stolen asset?*"[[16]](#footnote-16).

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | Inspectorate institution | Investigation agency | Procuracy | Court | Enforcement agency | Others | Total |
| Receive money to raise winning bid rate | 95% | 63% | 94% | 89% | 94% | 100% | 89% |
| Receive money after winning bid | 68% | 47% | 64% | 37% | 71% | 39% | 58% |
| Promise to support without authority | 41% | 17% | 25% | 41% | 52% | 72% | 39% |
| Donate a luxury appartment | 89% | 40% | 89% | 89% | 77% | 83% | 79% |
| Sponsor travelling abroad | 50% | 20% | 56% | 41% | 55% | 72% | 48% |
| Long-term sponsor for relatives studying abroad | 48% | 20% | 47% | 41% | 48% | 33% | 41% |

* 1. **Asset recovery in Vietnam**

Owing to the unprecise provisions (mentioned above), Vietnam does not reach a mutual perspective about the manner of asset recovery. The table below compiles the answers to the question, "*As far as you are concerned, what is asset recovery?*"[[17]](#footnote-17).

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | Inspectorate institution | Investigation agency | Procuracy | Court | Enforcement agency | Others | Total |
| Compensate for property damage | 67% | 83% | 89% | 74% | 81% | 72% | 77% |
| Pay a fine | 9% | 13% | 33% | 18% | 36% | 0% | 19% |
| Confiscate stolen asset | 79% | 73% | 93% | 85% | 81% | 89% | 82% |
| Confiscate illegal income | 49% | 20% | 44% | 26% | 61% | 17% | 38% |

The analysis illustrates the unclear and narrow provisions of asset recovery in Vietnam compared to international standards. For instance, when the proceeds of crime disappeared, undefined, or devalued, Article 31.5 UNCAC recommends that "*such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.*" The fine is considered equal to the proceeds of crime determined by the Court after evaluating the accused's solvency. This solution seems to be a flexible and thorough manner. The advantage of this procedure is that even when the criminal actor transferred all of his/her assets to others, the third party manages (intentionally or incidentally) the property facing the threat of confiscation[[18]](#footnote-18). This process has not been applied in Vietnam, which led to the deadlock in asset recovery of significant corruption cases in which property spread out already[[19]](#footnote-19).

 In short, there is no mutual concept of stolen assets in the light of unclear provisions, especially the proceeds of crime. The anti-corruption authorities do not distinguish sharply stolen asset and property damages caused by corruption, stolen assets, and seized assets in corruption cases. This obstacle is the precursor of a controversial asset recovery approach, the narrow approach of asset recovery. Thus, asset recovery is still regarded as the remedy for damages, the last stage of prosecution in corruption cases instead of the first step to thoroughly trace, prevent, and resolve corruption damages. This limit's background is that the national authorities do not fully understand the importance of corrupt officials' motive-elimination. In terms of this process, nations' lessons demonstrate that asset recovery reduces social damages and degenerate corruption.

1. **Possibilities of asset recovery in Vietnam**

The most significant advantage of stolen asset recovery in Vietnam is that the political context and legal basis are whole. Besides, Vietnam ratified UNCAC; hence, this country enabled international support and learned lessons of nations in terms of stolen asset recovery.

* 1. **Political context**

In terms of political context, for the unitary political system in Vietnam, the resolution regarding major legal-socio issues needs the leading party's directive basis, the Communist Party of Vietnam (CPV).

Identified the danger of corruption towards the existence of political regime (considered corruption as "internal invader"), since the Doi moi era (1986), the CPV insisted on the anti-corruption efforts and continuously expressed in Documents of Communist party, including Documents of National Party Congress (the most supreme); Resolutions of the Central Executive Committee and Directives of the Politburo, the Secretariat…

In terms of stolen asset recovery, the Document of XI National Party Congress provided that "*Statutory, timely and public process applied for corruption officials: confiscate stolen asset, proceeds of crime.*" The 3rd Central Resolution (Session X) expressed the anti-corruption efforts: "*Focus on asset recovery;* *apply a leniency policy towards those who commit offenses with a sincere attitude, compensated for damage or overcome economic damages, cooperate closely with authorities; study to amend the criminal law towards more leniency towards those who give or receive bribes but voluntarily declared and returned their assets before being discovered; focus on fines to increase the ability to recover corrupt assets."*

Thus, the political stance of the Communist Party of Vietnam on stolen asset recovery is apparent. In order to institutionalize these perspectives into the provisions of Law, the conclusion of the 5th Central Conference (Session XI) requested the authorities to *"Amend the criminal law towards increasing the form of fines, exemption or reduction of other penalties for those who commit acts of corruption but have actively reported and overcome damages."*

* 1. **Legal basis**

Article 93 Anti-Corruption Law 2018 provided two principles: "(1) corruptly-acquired assets shall be recovered and returned to their lawful owners or managers, or confiscated as the National Assembly by law; (2) the corrupt individuals shall pay compensation for the damage caused by their corrupt activities as prescribed by law".

Article 92 Anti-Corruption Law 2018 regulated that: "(1)corrupt individuals, regardless of their positions, shall face harsh penalties as prescribed by law, including those who have retired, resigned or reassigned; (2) a person who commits any of the acts of corruption specified in Article 2 of this Article shall face disciplinary actions, administrative penalties or criminal prosecution depending on the nature and severity of his/her violations". In contrast, "(4) an individual who confesses to his/her corruption before being discovered, shows cooperation, voluntarily gives up the corruptly-acquired assets and relieves the damage caused by his/her act of corruption may be granted leniency or absolution as prescribed by law".

Related to stolen asset recovery, Article 91 Anti-Corruption Law 2018 stated that: "(1) On the basis of international treaties to which Socialist Republic of Vietnam is a signatory and Vietnam's basic rules of law, Vietnamese authorities shall cooperate with foreign authorities in distraining assets, freezing accounts, confiscating or forfeiting illegal assets and returning them to their legitimate owners or managers; (2) The People's Supreme Procuracy shall the central agency for international cooperation in asset recovery in criminal proceedings; receive and process requests for judicial assistance in recovery of corruptly-acquired assets; request foreign parties to provide judicial assistance for Vietnam in asset recovery; (3) Government Inspectorate, the Ministry of Justice, the Ministry of Foreign Affairs and relevant state agencies, within the scope of their duties and entitlements, shall cooperate with the People's Supreme Procuracy in seeking international cooperation in asset recovery".

Thus, the Anti-Corruption Law 2018 mentioned two channels of stolen asset recovery: international law and the use of national Law. However, the Anti-Corruption Law provisions are only principal; they are not specific about the authority, responsibility, order, and procedures to recover stolen assets.

In addition to the Anti-Corruption Law, the issue of stolen asset recovery is also regulated in several other Vietnamese legislation, specifically as follows:

In the current Criminal Code, the general provisions on asset recovery, including stolen asset recovery, are contained in the provisions on the imposition of fines, foreclosure, and judicial measures against crimes, including corruption crimes. There is a provision in specific laws governing corruption offenses of the 2015 Penal Code (amended in 2017)[[20]](#footnote-20) for the imposition of fines or the confiscation of part or all property with corrupt offenders.

There is no specific provision in the current Criminal Procedure Code for stolen asset recovery; however, this recovery can be made with any other property recovery. In this regard, the Criminal Procedure Code contains provisions on the order, procedures, competence, and responsibilities of functional agencies to detect and handle assets in criminal cases, preventive measures for asset recovery, and handling of exhibits in criminal proceedings. For suspects and defendants committing crimes defined by the Penal Code, they may confiscate property or impose fines. Against persons responsible for compensation under Law, the Criminal Procedure Code allows agencies conducting proceedings to carry out the distraint of property. These are measures to ensure the effective enforcement of the Court's decisions on fines, confiscation of the asset, and forcible damages in general criminal cases (including corruption cases).

There are no direct provisions in the current Civil Code on stolen asset recovery. However, this Code contains provisions on the owner's rights over property, determining the owner's right to reclaim the illegally appropriated property, claim compensation for property damage caused by the infringement, the obligation to return property due to possession, use, or benefit of property without a legal basis. As such, in cases where the property illegally appropriated; damage caused by an illegal act (including the act of corruption); being possessed, used, or benefited without a legal basis (including assets derived from corruption), the owner has the right to request the competent authority to apply the regulations of the Ministry. civil Law to reclaim those assets and to claim damages for property caused by the infringement

Like the Criminal Procedure Code, the current Civil Procedure Code does not have specific provisions for the recovery of corrupt assets. However, this Code contains provisions on the order, procedures, competence, and responsibilities of functional agencies to detect and handle property in civil cases; Interim emergency measures in civil proceedings. These provisions may be applied to the recovery of property (including corrupt assets) in civil cases.

The Law on Enforcement of Civil Judgments has no separate provisions for the recovery of corrupt assets. However, the recovery of corrupt assets in civil judgment can be made like in other money and property recovery cases. In this regard, the Law on Enforcement of Civil Judgments contains provisions related to the execution of civil court judgments and decisions, fines, confiscation of property, a retrospective collection of money, and beneficial property. Illegal handling material evidence, assets, court costs, and civil decisions in criminal cases judgments and decisions.

Law on Prevention of Money Laundering has provisions on preventing, detecting, preventing, and handling organizations and individuals who have legalized property origin due to crime and international cooperation on money laundering efforts. Thus, in the case of corrupt subjects legalizing the origins and moving assets due to crimes, the Law on Prevention of Money Laundering can be applied to recover the property.

Law on Credit Institutions has provisions on credit institutions' responsibilities in preventing and combating money laundering; cooperate with authorities in investigating money laundering activities. These are regulations that effectively prevent and detect the transfer of corrupt assets, help detect and capture corrupt assets favorably.

Law on State Audit regulated that "Audit activities of the State Audit Office of Vietnam mean evaluation and verification of the accuracy and truthfulness of information on public finance and public assets or financial statements concerning the management and use of public finance and public assets; the compliance with the law and the effectiveness in the management and use of public finance and public assets" (Article 3).

Law on Inspection contains provisions on the competence of heads of administrative inspection teams, specialized inspectors, and administrative and specialized inspection decision-makers in requesting temporary seizure of money and objects and blockade of assets. This law also stipulates the inspection decision issuer's authority in deciding to recover the money, property that has been appropriated, illegally used, or lost due to the subject's illegal acts. These rules also apply to stolen assets.

Law on Legal assistance provides principles, competence, order, and procedures to implement civil and criminal legal assistance and Vietnamese state agencies' responsibilities in legal assistance. This code is the legal basis for competent agencies to carry out mutual legal assistance activities between Vietnam and other countries, including activities related to the recovery of corrupt foreign assets.

1. **Imperatives and challenges facing Vietnam in asset recovery**
	1. **Imperatives**

Until the late 2010s in Vietnam, stolen asset recovery did not attract the Communist Party, the State, and the public. This tendency explained that stolen assets are often not large due to corrupt practices associated with other crimes such as smuggling, fraud, illegal trafficking, transporting drugs; approval, project level, bidding in capital construction; VAT refund, or in procedural agencies when resolving cases ...

However, in the past decade or so, corruption crimes in Vietnam have changed, in which many acts of corruption are associated with financial activities, credit, banking, securities, and management use of land, mineral resources, the state capital, and assets management in some SOEs. In these cases, property damage is caused by corruption, and the amount of corruption is often considerable. Previously, corruptly acquired assets worth billions of VND were considered unusually large; today, corrupt assets often amount to tens, hundreds, even trillions of dongs[[21]](#footnote-21). Therefore, the problem of stolen asset recovery is urgent.

The imperative is expressed through the limitations of stolen asset recovery. According to a Vietnamese authorities report, in 2013, the percentage of corrupt assets recovered was less than 10%;[[22]](#footnote-22) in 2014, it was over 22%[[23]](#footnote-23). While the situation has improved over the last two years, with asset recovery rates in corruption cases reaching more than 50% in 2019 and 64.7% in the first six months of 2020,[[24]](#footnote-24) those figures are still low and do not reflect the reality (the total value of assets taken up due to corruption may be much higher). For example, surveyed officials of anti-corruption agencies in some localities in Vietnam, with the question "Would you please give your opinion on the rate of stolen asset recovery."[[25]](#footnote-25)

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | Inspectorate institutions | Investigation agencies | Procuracy | Court | Enforcement agency | Others | Total |
| Very high | 0 | 0 | 1 | 0 | 0 | 0 | 1 |
| High | 2 | 0 | 1 | 3 | 0 | 0 | 6 |
| Medium | 10 | 6 | 1 | 10 | 4 | 2 | 33 |
| Low | 23 | 20 | 22 | 9 | 15 | 13 | 103 |
| Very low | 7 | 3 | 9 | 4 | 11 | 2 | 36 |

The low recovery of corrupt assets has caused the State to lose a significant source of assets. However, more importantly, this also caused shocks in public opinion, severely damaged the credibility, and created unprecedented pressure on the Communist Party and the State.

* 1. **Challenges**

 Stolen asset recovery remains a complex and lengthy issue for all nations, and Vietnam is not an exception.

 Despite the wholly political context and legal basis, there are many challenges imposed on Vietnam in stolen asset recovery. These obstacles could be divided as below.

 *Criminological barriers*

 In Vietnam, the subjects of corruption crimes, especially major corruption, are often people with positions and powers; they have special education and expertise, know the Law, recognize loopholes in the legal system, and even intervene to create those loopholes intentionally. These subjects also often have conditions to create many relationships capable of "covering," "protecting" for wrongdoing, and often have thoughtful preparation when committing crimes, actively erasing all traces, destroying papers, vouchers, invoices, books, conceal, disperse corrupt assets. In recent times, major corruption cases in Vietnam are often carried out in a closed process, involving many people but with the linkage, protection, unity in terms of interests, and organization. Close from heads, accountants, treasurer; has a high consensus on self-interest purposes; Therefore, in many cases, it is challenging to personalize criminal responsibility when there is a phenomenon of collective corruption; objects in many forms have transformed the common property into the private property of a group of people concerned. In other words, in Vietnam, corruption is classified as a crime group with a high "hidden tendency." There are significant challenges facing judiciaries in dealing with crime and recovering property due to crime.

 The level of difficulty for the judiciary is even higher due to ineffective control of assets, income, and recovery of corrupt assets, so many criminals are mentally willing to accept penalties for enjoying corrupt property (Vietnamese people have a saying "sacrificing father's life to strengthen the child's life"). These people often refuse to cooperate with legal proceedings to hide or disperse corrupt assets. Besides, because the criminal policy is not reasonable, leading to the situation that offenders believe that even if they confess and return corrupt property, they can still face a high sentence, so they accept the punishment—refusing to declare or conceal corrupt assets for the benefit of family members.

 *Social background*

 Although payment via account has become more and more familiar in Vietnam since the Doi Moi era (1986), the habit of using cash in payment is still prevalent, especially in civil transactions. "The culture of using cash" has taken root in society, while the mechanism of controlling assets, income, and management of civil transactions in Vietnam is still relatively lax. The banking system has not yet fulfilled its role in controlling cash flows in the economy, the level of asset transparency remains low, and a new asset registration system is being developed. Besides, the declining values ​​of integrity in society and the prevalence of corruption over many decades led to the mentality of "living with corruption," "accepting corruption" in a profitable segment. Large people - make corrupt acts and corrupt property concealment less exposed and denounced. These create an unfavorable social environment for anti-corruption in general, for the recovery of corrupt assets in particular.

 *Legislative limits*

 Although it has been mentioned in many legal documents, in terms of content, the legal system on the recovery of stolen assets still has many gaps, and regulations are not specific, unreasonable while working. The competent authorities have not promptly explained and instructed law enforcement.

 Regarding the above issue, in the survey of officials with anti-corruption functions in some localities in Vietnam, 79% of the respondents said that the legal framework for the recovery of corrupt assets in Vietnam is incomplete,[[26]](#footnote-26) which the main limitations include:

 The provisions on the corruptly acquired asset and stolen asset recovery in the Anti-Corruption Law 2018 are not specific, leading to many different interpretations (mentioned above), while there is no implementation guidance[[27]](#footnote-27).

 Although the Penal Code has provisions for the recovery of corrupt assets, crimes of corruption have too many "qualitative" details, making it challenging to identify corrupt assets, for example, such as: causing severe, grave, particularly serious consequences; Besides; the Penal Code has not fully codified some provisions related to the recovery of corrupt assets in the UNCAC, particularly the act of enrichment.

 The provisions in the Criminal Procedure Code only pay attention to the detection and handling of criminal acts; not paying attention to clarifying that assets are corrupt, assets derived from corruption to recover; the responsibilities of procedure-conducting agencies in detecting, verifying, clarifying, and recovering corrupt assets have not been clearly defined. Property distraint is an essential procedural measure to secure property recovery in connection with the act of corruption. However, at present, all distraint of property is only covered by a law of the Criminal Procedure Code (Article 128 of the CPC 2015). Many necessary procedural measures with significant effects on the identification and recovery of property in criminal cases in general and corruption cases, in particular, have not been regulated in the Criminal Procedure Code. It makes it difficult for the procedural agency to handle the case over the past time, for example, regulations on account blockade at banks.

 The Law on Legal assistance does not have specific provisions on detecting, recovering, transferring corrupt assets, or sharing information with foreign authorities related to corrupt assets. Meanwhile, the number of mutual legal assistance agreements that Vietnam has signed with other countries is still small. Besides, the fact that Vietnam still holds the death penalty for corruption also makes it difficult for international cooperation to investigate and adjudicate corruption cases and recover corrupt assets dispersed abroad.

 Provisions on the recovery of corrupt assets in the Law on Inspectorate are only appropriate if state inspection agencies recover money. If the corrupted assets are land, houses, and other real estate, the state inspection agency's decision to recover will be difficult due to the authority, management functions, and no mechanism for distraint: the property, security for enforcement. Likewise, regulations on asset recovery in Inspection are only appropriate when property recovery is also the Inspection subject. In case the object managing the corrupted property is not the subject of Inspection, the inspection agency will have difficulty deciding to withdraw and cannot apply measures to block the account to secure the examination. Onions. Besides, the Inspection Law provisions on the recovery of corrupt assets are only suitable for handling corruption cases, not to the extent of criminal prosecution, but not explicit, specific to the school. The inspection agency to recover corrupt assets in corruption cases. According to the current regulations, the head of the inspection agency who makes the inspection decision has the right to recover the appropriated money or property, but these are exhibits and exhibits in a corruption case. The seizure and handling of property must comply with the judicial body's procedural process and decisions and rulings. In case the Inspector decides to recover the property to the state budget, the Court decides to handle the property. Differently, the Inspector's asset recovery will not be appropriate.

 There are not enough legal corridors for investigation agencies to play their roles and responsibilities in investigating, detecting, seizing, and distraining corrupt assets; due to delay in issuing a joint circular to unify views on dealing with corrupt acts recovering corrupt assets among the judiciary. There are no regulations forcing agencies, organizations, and individuals to be given or donated corrupt property by corrupt subjects. (usually in the form of transferring to owners who are relatives in the family, lineages; repayment of principal and interest on old loans from banks, credit institutions, individuals and other organizations; donations, donations or donations to temples, shrines, temples, and shrines; charity schools, clinics, transport infrastructure) must return the property.

 There are unclear legal provisions on the responsibilities of agencies, organizations, and units whose property has been damaged by corrupt acts in actively requesting competent agencies to recover corrupted assets to the State. There are insufficient regulations on the management and control of assets and accounts of individuals and enterprises, so it is complicated to verify judgment debtors' judgment execution conditions, especially in the corruption case. Failure to agree and synchronize regulations on mechanisms for inspecting, monitoring, and managing income and assets of judgment debtors through property registration and declaration, causing difficulties for judgment enforcement agencies. In the verification, discovery, and distraint of the judgment debtor's property.

1. **Solutions strengthening the effectiveness of asset recovery in Vietnam**

In order to improve the efficiency of recovering corrupt assets, Vietnam needs to apply the experiences of some countries in this issue to perfect its current legal and policy framework, specifically as follows:

***First, it is necessary to have a comprehensive strategy and strong determination in the recovery of corrupt assets***

Experience from other countries shows that institutional obstacles affect the effectiveness of corrupt assets' effectiveness the most. These obstacles are reflected in the incomplete asset recovery strategy and lack of strong and consistent political determination. In such a case, asset recovery will not be considered a priority in anti-corruption and will not be provided with sufficient human and financial resources and legal tools needed for effective implementation.

As analyzed above, in the last ten years or so, Vietnam has had a more apparent awareness of corrupt asset recovery; however, so far, Vietnam has not had a Comprehensive policy and strategy, with clear objectives and a concrete roadmap for implementation in this regard. Therefore, to ensure the success of the recovery of corrupt assets, Vietnam needs to overcome these limitations, and it is necessary to create consistent and unified coordination among the authorities to act together with decisions. They seek and recover corrupt assets to the very end, realizing the message that international organizations have proposed: "there is no place that can be considered safe for corrupt and talented people. their illegal products ".

***Second, increase control over assets and income of people with positions and powers***

The international community's experience shows that reasonable control of assets and income is one prerequisite for implementing measures to recover corrupt assets. Control assets and income, which is reflected firstly through the transparency of assets and incomes of persons with positions and powers to help authorities distinguish between assets of appropriate origin. Legal and where the property has an illegal origin, on that basis, propose solutions accordingly.

In Vietnam, over the years, the transparency of assets and incomes of people with positions and powers has remained superficial and ineffective. Therefore, to improve the recovery of corrupt assets, Vietnam needs to overcome this limitation. However, it is necessary to reform the declaration of assets and income of cadres, civil servants, and public employees in the quality, tested, verified, and widely publicized for people to monitor. The State also needs to develop an effective control mechanism for society's assets to identify corrupt assets, and assets are formed from corrupt assets, and facilitate the stolen asset recovery.

***Third, building a mechanism to recover corrupt assets not based on the criminal conviction***

This measure is a mechanism applied and proven effective in some countries but has not been applied in Vietnam. To improve the efficiency of recovery of corrupt assets, Vietnam should apply the experience of asset recovery not based on criminal convictions that many countries around the world have applied, including issues such as: (1) Reduce the obligation to prove in property recovery for crimes (as defined in UNCAC and UNTOC); (2) Transfer the obligation to prove the legal origin of property to a suspected criminal after a competent authority has reliable evidence that the property has an illegal origin; (3) Authorizes seizure of property not based on a criminal judgment or when a crime is not proven; (4) Authorizes the decision to directly or indirectly recover assets not based on a foreign court's judgment; (5) Permits the blockade or recovery of legal replacement property of an equivalent value to the lost property; (6) Recognize and enforce the civil part of foreign court decisions and judgments, especially relating to confiscation and return of property resulting from crimes.

***Fourth, the criminalization of illegal enrichment***

 Currently, Vietnam is facing difficulties in identifying and disposing of public servants' assets that significantly increase compared to their legitimate income without being reasonably proving their source. The root of that increase. To deal with this matter, Article 20 of the UNCAC stipulates: Each State Party shall take the legislative and other measures necessary to define a crime if it is deliberately done. An unjust act of enrichment means that a civil servant's property increases significantly compared to the civil servant's regular income, which the civil servant cannot reasonably explain the reason for such a significant increase. The regulation that Vietnam can apply to solve the above difficulties because establishing the crime of illicit wealth means transferring part of the burden of proof so that individuals must prove the legality of their property. If the property is legally acquired, it will not be forfeited. When applying the reverse of the burden of proof rule, the parties involved must prove the legality of the assets they own.

***Fifth, effectively apply anti-money laundering measures***

When anti-money laundering measures are not taken effect, the corrupt people will quickly disperse their assets due to corruption in the financial centers. Although Vietnam has an anti-money laundering law in place since 2012, anti-money laundering measures such as checking customer information or reporting suspicious transactions have not been implemented effectively, agencies and organizations. Finance has not yet performed the role of controlling the circulation of lost assets to the financial centers. To overcome these limitations, Vietnam needs: (1). Strictly implementing the provisions of the Law on prevention of money laundering in 2012. (2). Full implementation of anti-money laundering measures as specified in international treaties and standards (including UNCAC and the Financial Task Force's recommendations on anti-money laundering); (3). Implementing the StAR Initiative's recommendations regarding political powerhouses, forcing financial centers to Apply customer information checks on all politicians be a citizen of the host country or a foreign citizen. Request a declaration of the beneficial owner; income and asset declaration required; conduct periodic reviews of politically powerful clients and set an individual to be considered political power for an unlimited time.

***Sixth, to perfect the institution of blockade, distraint, seizure, and return of property that is due to crimes***

The blockade, distraint, seizure, and property return due to crimes are associated with credit institutions' operations. This manner is a measure to prevent and combat money laundering recommended by international and regional organizations and international treaties[[28]](#footnote-28).

 As mentioned in the above sections, these are also problems that still have many limitations in Vietnam. Therefore, Vietnam needs to study and supplement specific provisions on asset distraint, account blockade at banks, and credit institutions that apply to criminals, thereby securing property recovery. Vietnam also needs to study and supplement regulations on the order and procedures for blockade, distraint, seizure, and property return due to crime, in case this request is issued by foreign courts in the Ministry Criminal Procedure law. Besides, Vietnam should also develop tools to support the identification and blockade of assets, including building and maintaining a publicly available database of assets and records. The company, housing papers, and records of nonprofits. It is also necessary to develop a banking information database at the national level that includes account information, names of beneficial owners, and authorized persons.

 ***Seventh, to strengthen international cooperation in the recovery of corrupt assets***

Successful foreign-element corruption requires an effective international cooperation mechanism between the claiming country and the requested country. However, up to now, apart from the Agreement on mutual legal assistance in criminal matters with ASEAN countries and the Agreement on mutual legal assistance on criminal and extradition with South Korea, most other mutual legal assistance agreements that Vietnam Both signed no provisions on the recovery of criminal property. The Law on Judicial assistance currently lacks institutions on property recovery, and it is not clear whether the recovery of criminal property is within the scope of criminal mutual legal assistance.

Therefore, Vietnam should prioritize the application of signed agreements and agreements to recover corrupt assets. Vietnam also needs to continue participating in and signing bilateral mutual legal assistance agreements in criminal and criminal extradition with other countries to create a legal basis and a coordination mechanism in handling cases. There are foreign elements. There should also be specific regulations on the authority, procedures, and international cooperation in implementing fiduciary or competent authorities' orders on the verification, blockade, seizure, and property confiscation. corruption originating from abroad and recovering corrupt assets originating in Vietnam are currently located in another country, enhancing the role of central focal agencies in mutual criminal justice assistance; regularly exchange and urge foreign procedural agencies to promptly implement Vietnam's mutual legal assistance requests.

***Eighth, join the Egmont Financial Intelligence Unit Group***

To confirm the importance of international cooperation in combating money laundering and terrorism financing, several intelligence units (FIUs) of several countries met at Egmont Arenberg Palace, Belgium's Brussels, and decided to establish an information network of FIUs to promote international cooperation. Today this network is known as the Group Egmont FIUs. This group is responsible for promoting FIUs' development for cooperation in information exchange, training, and expert sharing.

In Vietnam, on June 12, 2014, the Prime Minister issued Decision No. 35/2014/QD-TTG defining the functions, tasks, powers, and organizational structure of the Inspection and supervision agency banks, affiliated to the State Bank of Vietnam. In the Banking Inspection and Supervision Agency's organizational structure, there is the Department of Anti-Money Laundering. This Department has functions and duties equivalent to the FIUs of Vietnam. However, Vietnam still needs to build more focal points (units) in the central agency to assume the same functions and tasks as FIUs, and at the same time, appoint one of these focal points to join the Unit Group Egmont financial intelligence.

***Ninth, amending and supplementing unreasonable provisions in important legal documents related to property recovery***.

As mentioned in the above sections, there are still unreasonable provisions in important legal documents relating to asset recovery that need to amend and supplement, typically as follows:

- Expand the concept of "corrupt assets" in the Anti-Corruption Law towards the notion that corrupt assets also include assets derived from corrupt acts (such as damage to the State's property). , of society, of individuals caused by corrupt acts, but this property is not appropriated by the person committing corruption. However, it is a property with intangible damage or property of other individuals or organizations. to benefit from corrupt acts of others) or property obtained from the application of sanctions against persons committing corrupt acts (civil sanctions, administrative sanctions, criminal sanctions).

Similarly, the connotation of the concept of "recovery of corrupt assets" also needs to be extended in the direction of the conception that recovery of corrupt assets is the activity of the competent state agencies to recover assets owned by the appropriation of corrupt acts, property derived from corrupt acts, property derived from corrupt acts or property obtained from the application of sanctions against persons committing corrupt acts." Measures to recover corrupt assets, including compensation for property damage; impose a fine penalty; apply preventive measures, judicial measures to recover corrupt assets; confiscation of property obtained from corruption; confiscation of property without proof of origin. Security measures for the recovery of corrupt assets, including distraint of property; soliciting judicial expertise; temporarily seize money, objects, and permits; Prohibit the transfer of assets; Request account blockade.

Amending relevant provisions of the Penal Code in the direction: Compulsory provisions in handling corrupt criminals must apply additional penalties to fully recover the value of property damaged due to criminal acts. cause; at the same time bear material responsibility for the State's losses caused by the criminal acts; Provisions to increase the level of fines, reduce termed imprisonment and other penalties for those who commit corrupt acts but actively declare and overcome consequences, in order to increase the ability to recover their assets. property corruption: Provisions that not only offenders are obliged to return property, repair or compensate for damage that anyone possessing without a legal basis must also perform the above obligation.

To amend relevant provisions of the Criminal Procedure Code in the direction: Regulating the order and procedures to ensure the recovery of corrupt assets as a special procedure; Additional measures to block accounts at banks; specific provisions on distraining procedures; Regulations allow investigating agencies to apply special investigative measures to several crimes, including corruption crimes such as recording, listening to the phone, checking correspondence, bank accounts, help to detect and clarify corrupt behaviors as well as assets quickly; To concretize the provisions that the People's Court in the trial preparation phase has the right to verify property in case the offender will have to return the property, will have to compensate for damage to decide whether or not security warrant for enforcement. Also, Vietnam needs to study and amend regulations on the death penalty with corruption to create a basis for collaborative investigation, criminal extradition, and recovery of dispersed corrupt foreign assets.

To amend relevant provisions of the Civil Procedure Code towards Supplementing regulations on rights, obligations, and responsibilities of agencies and organizations assigned to manage state-owned assets in the initiation of take civil lawsuits to reclaim property under the management of their agencies or organizations but have been infringed upon by corrupt acts, for return to the State. Simultaneously, stipulate sanctions against responsible persons who fail to take responsibility to initiate lawsuits, prove that property has been infringed or caused by corrupt acts; Complete regulations on property ownership to effectively prevent legalization of ownership of corrupt assets through civil transactions.

To amend relevant provisions of the Law on mutual legal assistance in the direction: Supplementing provisions on property recovery and identifying property recovery problems due to crimes within the scope of mutual legal assistance. Criminal. Specifically, focusing on full regulations on international cooperation competence, order, and procedures to request foreign competent authorities to verify, block, seize, and transfer corrupt assets. originating from Vietnam abroad to the State of Vietnam, performing a mandate or order of a foreign competent authority on verification, blockade, seizure, and confiscation of corrupt foreign assets.

Researching, providing for the Inspector's initial investigation authority to collect records, or take measures to prevent illegal acts, blockade, and property recovery. Add content on the legal validity of conclusions, inspection handling decisions, sanctions for failure to comply with Inspection handling proposals and decisions of concerned organizations and individuals; supplementing the right to distrain property for state inspection agencies and persons competent in inspection activities to ensure the execution of decisions on property recovery through inspection activities.

Study and supplement specific regulations on judgment execution for corrupt cases, allowing the proactive and enhanced application of asset security measures in the process of handling corrupt acts in order to increase the ability to recover corrupt assets. Civil judgment enforcement agencies must proactively issue judgment execution decisions and organize the execution of judgments concerning corrupt money and property collection without the need for agencies, organizations, or enterprises, including home enterprises. State or non-state enterprise is entitled to civil judgment enforcement filing a petition for judgment enforcement, publicizing the identity, full name, and address of the judgment debtors right after the judgment or decision takes effect, especially the corrupt judgment debtors have not yet executed.

To study and propose developing the Law on Property Registration so that all agencies, organizations, and individuals having assets must declare and register to create favorable conditions for state management of the property. nationwide, thereby supporting the enforcement of corrective actions to recover corrupt assets more smoothly. Clearly define the responsibilities of agencies, organizations, and units to manage the fields of finance, land, houses, works, and means in coordination with legal protection agencies to do so. Recovering corrupt assets.

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