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THE GOVERNMENT INSPECTORATE
OF VIETNAM

Managing Conflict of Interest in the Public Sector

LAW AND PRACTICE IN VIETNAM



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Managing Conflict of Interest in the Public Sector Law and Practice in Vietnam

Hong Duc Publishing House
Hanoi, October 2016

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1818 H Street NW, Washington DC 20433
Telephone: 202-473-1000; Internet: www.worldbank.org

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Abbreviations

APIM	Asia-Pacific Institute of Management
CCIA	Central Party Committee for Internal Affairs
COI	Conflict of Interest
FDI	Foreign Direct Investment
GI	Government Inspectorate
GIRI	Government Inspectorate Research Institute
HCMC	Ho Chi Minh city
MoNRE	Ministry of Nature Resources and Environment
MoT	Ministry of Transportation
OECD	Organisation for Economic Co-operation and Development
PAM	Public Accountability Mechanisms
PC	People's Committee
T&C Consulting	Transformation and Change Management Consulting Co., Ltd.
UK-DFID	United Kingdom - Department for International Development
WB	The World Bank

Acknowledgements

This study was jointly conducted by the Government Inspectorate (GI) and the World Bank in Vietnam. The overall process was guided by an Advisory Board comprising representatives from GI, the Party's Central Committee on Internal Affairs (CCIA), the Ministry of Home Affairs (MOHA), and the World Bank. The Advisory Board was headed by Le Thi Thuy, Central Party Committee member, Deputy President of Central Inspection Committee, Former Deputy Inspector General of the Government Inspectorate.

The study received financial support from the World Bank and UK-DFID. Technical advice was provided by experts from all the aforementioned institutions. The COI surveys were implemented by Transformation and Change Management Consulting Co., Ltd. and the Asia-Pacific Institute of Management, with support from GI, and the World Bank.

Overall leadership for the COI Surveys was provided by a task force of seven people from GI. The task force, which was established to support and supervise the research process, was led by Dinh Van Minh, Director of Government Inspectorate Research Institute (GIRI), and comprised Phi Ngoc Tuyen (Deputy Director, Anticorruption Bureau); Nguyen Tuan Anh (Deputy Director, Legal Department); Pham Thi Hue (Division Deputy Head, GIRI); Tran Van Long (Division Head, GIRI); Nguyen Xuan Son (Deputy Director, International Cooperation Department), Ho Thi Thu An (Division Head, Legal Department),

Nguyen Huong Giang (Division Head, International Cooperation Department). The Task Force provided the essential link between the consultant team and the provincial and ministerial contact persons for data collection, monitoring and supporting the data collection process. The Task Force also provided crucial comments on the research approach, initial data analysis and results.

The World Bank team provided technical guidance and participated in the pilot survey, and co-led the focused group discussions, monitoring and quality assurance of the data collection process. The core members of the team from the World Bank were Huong Thi Lan Tran (Team Leader), Maria Delfina Alcaide Garrido (Consultant), Adu Gyamfi Abunyewa, Hoang Xuan Nguyen, Loan Thi Phuong Nguyen, and Khanh Linh Thi Le. The questionnaires and approach were developed jointly by GI, CCIA, the World Bank, the team from T&C Consulting and APIM, which was contracted to carry out the surveys, and individual consultants including Nguyen Thi Mai and Hoang Manh Chien.

The Consultant Team, led by Nguyen Van Thang, included 10 researchers/experts from T&C Consulting and Asia Pacific Institute of Management (National Economics University). The Consultant Team helped develop the questionnaires, and took overall responsibility for data collection and quality assurance under close supervision and strong support from the World Bank team and GI Task Force. The Consultant Team relied on

the support of 10 provincial team leaders during data collection, and more than 50 interviewers.

Data analysis and drafting of the present report was carried out by Huong Thi Lan Tran (World Bank), Maria Delfina Alcaide Garrido (Consultant), and Nguyen Van Thang, Le Quang Canh, Nguyen Vu Hung, and Vu Cuong (T&C and APIM).

We are grateful for detailed comments on the study concept from James Anderson, Soren Davidsen, Kathy Lalazarian, Francesca Recanatini, and Ivana Maria Rossi. Peer-review comments from Francesca Recanatini, Ivana Maria Rossi, and Charles Undeland (WB), Vu Thu Hanh (Director, Research Department, CCIA), Phan Ba (Director, Southern Department, CCIA), and Ngo Manh Hung (Deputy Director, GI) were greatly acknowledged. We are grateful to Victoria Kwakwa (Regional Vice President, East Asia and Pacific Region), Ousmane Dione (Country Director),

Achim Fock (Portfolio Manager), Sandeep Mahajan (Advisor, Managing Director Unit), Sebastian Eckardt (Program Leader), Robert Taliercio (Practice Manager), and Nicola Smithers (Lead Public Sector Specialist) for their comments, guidance and encouragement during the course of the study. We also appreciate the close guidance of Phan Van Sau, Inspector General of the Government Inspectorate, and Nguyen Van Thanh, Deputy Inspector General of the Government Inspectorate, in the completion of report.

The study could not have been implemented without the cooperation of 10 provincial inspectorates and 5 ministries, the hands-on support of Government Inspectorate Research Institute, as well as the online media outlet, VnExpress which provided the platform for citizen surveys. Special thanks are due to the 2,647 citizens, enterprise managers and public officials who provided their time and candid reflections.

Summary

Vietnam has made great strides in socio-economic development in the transition from a central planning economy to a market-oriented one during the past three decades. The transition has seen Vietnam embark on many bold transformative processes across all economic, social, and institutional frontiers. These processes are characterized by an increase in the interface between the public and private sectors, thus making government systems more susceptible to arising conflicts of interest. At the same time, there is increasing demand from society for more effectiveness and integrity in public institutions where decisions for resource allocation are made in a transparent and impartial manner. As Vietnam aspires to becoming a prosperous country with modern institutions by 2035, managing conflict of interest is essential because this very process of institutional modernization will determine how state and market institutions, rules and regulations are shaped for the next generation.¹ It is, therefore, imperative that a clearer division between the public and private spheres is set and that conflict of interest (COI) provisions are adopted to enable better separation of these spheres.

This study is a first attempt to put COI issues into perspective in Vietnam. The ultimate objective of the study

is to recommend measures for the Government of Vietnam and relevant stakeholders to be aware of and minimize COI situations encountered by public servants² in their work, improve the institutional quality of the public sector and better prevent corruption.

The study comprises:

- (i) A review of COI-related legal regulations in Vietnam;
- (ii) Field surveys of citizens, enterprises and public servants; and
- (iii) Research into international experiences in managing COI that are deemed relevant for Vietnam's context.

In particular, this study examines COI in six types of activities in the public sector, including:

- Public service delivery;
- Recruitment and appointment;
- Procurement;
- Licensing and approval of projects;
- Inspection and auditing; and
- Handling of violations.

Four popular forms of COI examined in this study are:

- Gift-giving/receiving (cash and non-cash gifts);
- Interest-sharing investment;
- Using inside information for personal interest;
- Making decisions in favor of family members.

Key findings

Results from the legal review

The legal review shows that Vietnam's existing legal framework does not yet provide a definition of COI and systematic COI management in the public sector. Current regulations, including the 2008 Law on Public Officials, the 2010 Law on Public Employees, the 2005 Law on Anti-Corruption, the 2013 Law on Procurement, the 2014 Law on Enterprises, the 2015 Civil Procedure Code and the 2015 Criminal Procedure Code, have initially recognized and proposed some forms of preventing specific COI situations such as gift-giving/receiving, doing business outside public duties, post-service employment or in procurement. The existing COI-related regulations are sometimes inconsistent with other relevant legislations, making implementation of these regulations less effective. This lack of cohesion and consistency is also attributed to an absence of a generally accepted understanding of COI and the fact that COI has not been seen as an issue that could hamper public sector accountability in Vietnam.

Understanding of COI

A majority of survey participants misunderstood or did not fully understand the concept of COI. Over 60% of respondents viewed COI as conflict between parties. Only around 25% of respondents properly understood COI as conflict between personal and public interests which are inherent in

decisions made by public servants.

Nevertheless, survey respondents were able to identify COI situations, their common forms, and negative impacts on the effectiveness, objectivity, and efficiency in the public sector. All three groups of respondents, public officials, firms, and citizens agreed that the following situations could distort objectivity and fairness in public servant decisions:

- Public officials (working in tax, customs, inspection, police, procuracy, and court) receiving material (cash or in kind) from the people, who need to have their case solved;
- Public officials taking gifts from contractors; or
- Cadastral officials working as estate brokers

Between 62% and 90% of participants from the three respondent groups viewed these situations as having major impacts on public servant decisions. In general, the percentage of enterprises and citizens aware of COI's negative impact on public servant objectivity and fairness is higher than that of the public servant group.

A majority of public servants, enterprises, and citizens did not agree that cultural factors encouraged public servants to take gifts or make private benefit-sharing investment at work. Participants of group discussions argued most gifts given to public servants represented personal interest, or even bribery. Therefore, genuine cultural values do not support COI situations.

Prevalence of COI

COI present in six types of public servant activities	COI situations happen most frequently in	But the three most frequent forms of COI are
<ol style="list-style-type: none"> 1. Public service delivery 2. Recruitment and appointment 3. Procurement 4. Project licensing and approval 5. Inspection and audit 6. Handling of violations. 	<ol style="list-style-type: none"> 1. Procurement 2. Project licensing and appraisal 3. Recruitment and appointment. 	<ol style="list-style-type: none"> 1. Gift-giving 2. Doing family members or relatives favors 3. Using inside information for personal benefit.

A considerable percentage of public servants who were surveyed (from 25% to 35%) had witnessed COI situations, including those infringing upon current regulations such as the recruitment and appointment of family members or doing family members favors to win contracts or projects. Again, enterprises have a more “negative” view of COI prevalence in public sector activities than public servants.

Gift-giving to public servants, a popular form of COI, was further examined. Nearly 20% of surveyed public servants responded that they have witnessed gift-giving/taking cases in their agencies, related to the gift-givers’ businesses. In addition, a large percentage of enterprises responded that they have witnessed other enterprises giving gifts to public servants (48%), or public servants taking gifts and make decisions in favor of the gift-givers (46%).

Nearly 70% of witnesses believed the purpose of these gifts were to facilitate

the gift-givers’ businesses. Both public servants and enterprises agreed that giving gifts has become a “trend”, “custom”, or even “a rule of the game”. Enterprises give gifts in order to avoid “discrimination”, while public servants give gifts to supervisors to be “nice” to them. Thus, current gift-reporting regulations and/or implementation have not been as effective as expected.

Procurement and staff appointment, two activities perceived as most prone to COI, were further examined. Public servants viewed procurement activities quite positively. Among 32% of interviewed public officials, who knew about procurement activities taking place in their office during the previous 12 months, 71% believed bidding was transparent and objective.

A small percentage of public servants assumed there was a “back door lobby” in order to win the bid (12%) and there was favoritism over family members or relatives (18%). By contrast, enterprises

held a more negative view. Among firms bidding for a contract with a state agency in the previous 12 months, only 36% agreed bidding was objective and transparent while 38% believed there was a “back door lobby” and 50% thought there was bias towards family members or relatives of public officials.

In recruitment and promotion, there are considerably different views held between public servants, and the two other groups of enterprises and citizens on the importance of factors determining recruitment and appointment. Public servants identify candidates’ (a) formal training, and (b) competency, experience, and good achievement record as the two most important criteria in considering recruitment or appointment (between 81% and 91%). By contrast, enterprises and citizens believed (c) being related or having a good relationship with high-ranking officials, and (d) using material benefit or other benefits were the most important determining factors (between 44 and 70%).

Implementation of COI management measures

The surveys show many existing COI-restricting regulations are not properly implemented. Between 25% and 40% of public servants reported their agencies did not implement COI regulations (including requiring public servants to: report on gifts, not give favors on procurements to enterprises with which they are associated, not hold a management roles in private enterprises, not work in a particular areas upon post-employment, not favor investment in enterprises that their spouses directly manage, not recruit or appoint relatives). Such poor implementation of these

restrictions in the public sector is a cause of concern.

The three most important causes for such limited implementation, according to the survey respondents, include:

- Lack of strict handling of violations;
- Leaders do not act as a role model;
- Lack of effective tools to monitor the implementation of COI restrictions.

The “culture” factor does not influence implementation of COI restrictions, according to respondents. However, “culture” is used by some public servants as an excuse for poor implementation of current COI restrictions, such as regulations on gift-giving and receiving or on private business interests.

Recommendations

The study suggests situations in which COI can arise (potential COI) have become prevalent in the public sector and may occur in different fields and sectors. At the same time, measures to restrict COI actual situations are being poorly implemented and violations of COI regulations are being loosely handled.

An effective COI management system is one that helps *minimize risk of COI situations in the civil service (potential COI), manages and removes “gaps” that can create COI (actual COI), and offers timely detection and strict handling of violations of COI.* In considering the findings from the surveys as well as relevant international experience, three sets of recommendations are put forward:

1. Raising awareness of COI and COI management

It is crucial to communicate and

improve understanding of public servants, citizens and enterprises about COI. It is important that public servants are aware of and avoid COI situations while conducting public duties. COI can have an impact on socio-economic development goals, reduce effectiveness in resource allocation decisions, undermine public confidence in the government, and make corruption harder to control. In the short term, better communication to the public on COI, and incorporation of concrete examples of COI situations, measures to identify, prevent and handle COI in training plans for public servants are needed. In the longer term, professional training and guidance on how to identify, prevent and respond to COI situations need to be developed and made mandatory in recruitment, appointment of, and education and training for, public servants.

2. Improving policy and legislation on COI management

This set of recommendations includes passing into law several new regulations as well as revising current restrictions on COI in Vietnam.

a. Defining COI and instituting mechanisms for COI management

It is important to adopt an agreed definition of COI as well as mechanisms for preventing, detecting and handling COI violations within the legal framework for public governance in Vietnam. More specifically, in the up-coming revision of the Law on Anti-Corruption, provision for COI and COI management could be added. Translating COI restrictions into specific provisions in the Law on Anti-Corruption would ensure consistency

in understanding and in setting systems to manage COI, including handling of violations.

In the future, other important laws relating to public sector governance will need to be amended in accordance with new provisions on COI management prescribed in the Law on Anti-Corruption.

b. Expanding the governing scope of COI legal regulations

Currently, only public servants themselves are governed by COI-related regulations. Public servants can use other close relationships to “disguise” COI situations for personal gain. Therefore, apart from imposing “hard” restrictions on public servants, it is necessary to broaden the governing scope of COI regulations to other actors enjoying close relationships with public servants. These may include spouses, biological and adoptive children, siblings, biological and adoptive parents (via marriage and family relationships).

c. Revising regulations on gifts giving and taking

It is important to revise regulations on gift-giving and taking to reduce COI risks in the public sector. It means public servants would be prohibited from taking gifts of any forms and at any value. This prohibition is particularly needed for public servants working in sectors with a high risk of COI such as procurement, licensing, recruitment and promotion. Other at-risk sectors that require work with citizens and enterprises include taxation, customs, and inspection.

Gift-giving and receipt may be acceptable in exceptional circumstances such as diplomatic events or receptions

under the names of the agencies or organizations where the gifts represent spiritual and cultural values. Besides, it is also important to assign a focal agency to follow-up, receive information, report on public servants' gift-giving and taking, and adopt concrete sanctions for violations.

d. Engaging in outside employment and post-employment

Although general restrictions on public servants engaging in outside employment and post-employment activities have been mentioned in the Law on Public Servants and Public Officials and Government Decree No. 102/2007/NĐ-CP (dated 14 June, 2007), it is recommended that concrete and specific restrictions, corresponding to the nature and requirements of different sectors and professions, be adopted. They would include which areas public servants must not engage in after retirement, and for how long. Not only do concrete COI restricting provisions aid implementation, they also help enhance transparency and integrity in the public sector and, at the same time, do not deprive public officials of legitimate personal interests.

e. Strengthening the management of assets and income

It is important to reduce the number of public officials who are required to file assets and income declarations in order for functional authorities to be able to track changes in assets and incomes of public servants. At the same time, the requirement to declare assets and income needs applying to close family members of public officials. An information system on public servants' assets and income needs to be developed with data

on asset and income declaration utilized by public bodies to better detect COI. The connection between the data on declarations and other data on public servants and enterprises' business (for example, tax), will help detect and effectively address COI situations.

3. Strengthening capacity in managing COI situations

For effective management of COI in the public sector, it is essential to assign a focal agency for COI management. The focal agency, in coordination with agencies in charge of public servant management, would organize activities helping raise awareness of COI and COI management as well assessing implementation and providing policy advice to strengthen regulations. The focal agency would review, handle and recommend solutions for handling COI-related cases and violations according to their mandated authority.

Additionally, the development of a system that collects, provides feedback, responds to reports of COI cases from different entities and from public servants themselves, should be a priority. The survey shows public servants are reluctant to confront problems or they assume that their complaints and reports are useless, which might be the main barrier stopping them from reporting instances of COI. Therefore, an effective mechanism should provide confidential and protective measures with proper channels for receiving information and responding to feedback and complaints. These should ensure people are not afraid of retaliation as a result of their disclosure. Moreover, the oversight role of the public, civil society, and media in COI management in particular, and public service in general, also needs to be promoted.

Context and Introduction to the Study

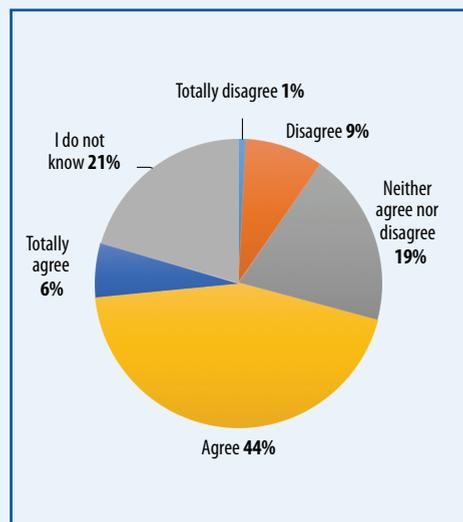
Vietnam's remarkable progress in economic growth and poverty reduction over the past decades has been well documented. From one of the poorest countries in the world, in just a quarter of century, Vietnam became a low middle-income country in 2009. The poverty headcount fell from 58% to 14% between 1998 and 2014 (WB-GSO). Annual growth rates averaged 5%-6% during the past 10 years. The country is well underway in its transition from central planning to a market-oriented economy.

Vietnam's transition has seen an

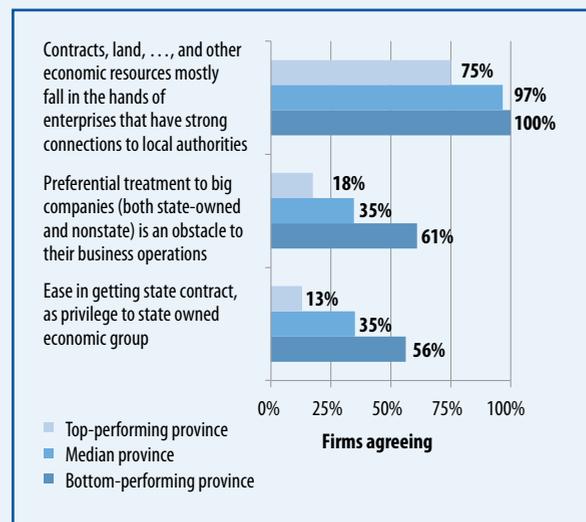
increase in the interface between the public and private sectors, as in all countries. In Vietnam, this interface is, however, characterized as a commercialization of the state, in which influential groups and individuals seek to impact on government decisions.³ Citizens and firms consistently report that connections to the state are important to succeed in business and that vested-interest groups are becoming more influential. Meanwhile, relations with state agencies provide opportunities for government contracts, and access to land and credit (Figure 1).

FIGURE 1 Evidence of state commercialization

A. Special interest groups are on the rise



B. State connections are key to business



Sources: World Bank 2012.

Sources: Provincial Competitive Index (PCI) 2013.

An increasingly commercialized state sector that works closely with business makes government systems more susceptible to conflicts of interest, new forms of conflict between individual private interests of public officials and their public duties. When conflict-of-interest situations are not properly identified and managed, public decision-making can be untransparent and compromised by the private interests of public officials. This means that public resources are not allocated in an efficient manner, which undermines not only the effectiveness of the state, but also the integrity of the public sector. In the worst situations, it erodes public trust and can result in corruption and social instability.

Yet, conflict of interest (COI) is a concept that is understood differently by different people, both in Vietnamese society and among officials. While a COI situation refers to opposing interests within one organization or one public official, it is not uncommon to hear citizens, firms, or public officials referring to COI as a conflict or a dispute between two or more persons or stakeholders. This might include a conflict over working conditions between workers and employers, or a conflict between real estate developers and a rural population.

Vietnam has set institutional reform as a top priority for the coming decade. Such a focus is well lauded, particularly when institutional reform has been seen as the fundamental challenge facing Vietnam. To achieve Vietnam's aspirations to becoming a prosperous country with modern institutions by 2035, it is imperative a clearer division between public and private spheres is set. To do that, provisions for managing COI need to be adopted to enable better separation

of these spheres. After all, when public officials perform duties in a fair and unbiased way, and official decisions are not improperly affected by self-interest, the integrity of markets and fair business competition is supported, and state management effectiveness is enhanced.

Managing conflict of interest in the very process of institutional reform is essential because this process will determine how state and market institutions, rules and regulations are shaped for the next generation. The way the process occurs has critically important implications, both for the structure and functioning of the market economy as well as for the nature of the state that results from the reform process. How Vietnam manages this reform process and the shifting boundaries between the state and the private sector will fundamentally shape what economy, state and society will look like. This will be particularly critical when the private sector is expected to play an increasingly bigger role in the economy. If not well planned, the institutions created could make it even more challenging to manage conflict of interests.

This study is a first attempt to put "conflict of interest" issues into perspective in Vietnam. The overarching goal of the study is not to eliminate COI in Vietnam. Rather, it seeks to raise awareness of the need to address COI in public conduct, and inform policy dialogues on enhancing state accountability and anti-corruption, as well as a broader institutional reform agenda in Vietnam.

The report is organized as follows: the next section (Section 2) describes the objectives and scope of the study. Section 3 provides a general discussion on concepts pertaining to conflict

of interest. Section 4 outlines the methodology used for the study. Section 5 presents the findings of the literature review, including scanning the current

legal framework in Vietnam, pertinent international experience, and the results of field surveys. Section 6 concludes and deals with the report recommendations.

Objectives and Scope of the Study **2**

2.1. Objectives

This study aims to provide evidence-based recommendations to the government and relevant stakeholders to better manage COI situations encountered by public servants⁴ in their work. In doing so, the aim is to improve public sector institutions and prevent corruption more effectively. Specifically, the study addresses the following research questions:

1. Which areas do current COI regulations in Vietnam cover?
2. What levels of awareness do public servants, enterprises and general public have of COI?
3. How prevalent is COI from the perspective of public servants, enterprises and citizens?
4. How are COI-related regulations implemented? What factors impact their effectiveness?
5. What international practices are relevant to Vietnam in minimizing COI in the public sector?
6. Which measures can Vietnam apply in order to minimize and better manage COI situations?

2.2. Scope of the study

With the afore-mentioned objectives, this study focuses on COI situations facing individual civil servants and government officials (generally referred to as public servants) within the public sector and in

their interactions with the private sector. COI situations at organizational level and in the private sector do not fall into the scope of this study.

Geographic and sectorial coverage⁵

The study covers 10 provinces/cities, namely Hanoi, Ho Chi Minh City (HCMC), Son La, Thai Binh, Dong Thap, Nghe An, Thua Thien Hue, Danang, Hai Phong and Can Tho⁶. The study also collected data from officials of five ministries, including the Ministry of Transport, Ministry of Construction, Ministry of Industry and Trade, Ministry of Finance and Ministry of Natural Resources and Environment.

Types of respondents

The survey collected data from three groups of respondents: public servants, citizens and enterprises. Details on survey samples are presented in the study methodology and Annex 1.

Types of information collected in the surveys

The surveys sought to understand awareness, perception and experience of three respondent groups on the COI situation in the public sector. The forms of COI studied included:

- Gift-giving/taking to and by public servants;
- Public servants doing favors for family and friends;

- Public servants using inside information for personal gain;
- Public servants colluding with the private sector for personal gain within their spheres of responsibility.

Types of public sector activities included in the surveys are

- Public service delivery;
- Recruitment and promotion;
- Procurement;
- Project licensing and approval;
- Inspection and audit;

- Handling of violations.

Given the fact that these types of activities are performed by most sectors, this study did not place the focus on any particular sector.

The surveys also gathered the viewpoints and assessment of public servants on the implementation of current COI-related regulations, factors affecting implementation, and their recommendations. Finally, the impact of cultural factors on COI issues also constitutes another set of questions to the survey respondents.

3.1. Definition of conflict of interest

COI is no longer a new concept in state governance. COI management is closely linked with such concepts as public cadre ethics, accountability, integrity, etc. Together, these measures create an environment that encourages good public sector performance while tackling corruptions and/or irregularities.

Despite different interpretations of the “conflict of interest” concept, the definition of conflict of interest (COI) is generally consistent around the world. This study uses the definition of COI provided by OECD (2004) as following:

A “conflict of interest” involves a conflict between the public duty and private interests of a public official, in which the official’s private-capacity interest could improperly influence the performance of their official duties and responsibilities.”

By this definition, two basic factors that can create conflict of interest are the presence of private (personal) interests and participation (or authorized responsibility) in decision making.

- **Private (personal) interest:** The first factor is personal interest of public servants. The main question is: “What benefit does the public servant gain from a public sector decision or no decision issuance? Is such benefit valuable to them?” In this study, the

terms “personal interest” and “private interest” are used interchangeably.

- **Connection with public authority:** Personal interest itself may not cause conflict of interest. The second factor leading to conflict of interest is that concerned individuals participate in the decision-making process. Conflict of interest arises when there is a direct or predictable relationship between the participation of a public servant in the decision-making process and his/her personal interest. This factor can be interpreted as: “Since I participated in and/or influenced the decision making process, I gain this personal benefit (for example: receiving gifts).”

While conflict of interest could be applied to both individuals and organizations, this study just focuses on COI among public servants. Conflict of interest exists at two main levels: (1) potential COI and (2) actual COI (Table 1). If not properly managed, COI may affect the integrity and effectiveness of the public sector, and/or undermine public trust. When COI actually occurs (actual COI), the decisions of public servants may not be objective. When there is potential for COI or even just an appearance of COI, the damage might be already significant. Perception of COI might cause a loss of confidence and an erosion of societal harmony.

3.2. Conflict of interest and corruption

Conflict of interest and corruption are two different but related concepts. In a narrow sense, following *Vietnam's 2005 Anti-Corruption Law*, corruption is an act committed by a person holding a position of power who has abused that power for personal benefit. Thus, the concepts of corruption (in the current law) and COI in this study have some similarities and differences:

- **Subject:** The subject of both corruption and COI is public servants
- **Personal interest:** Both concepts refer to public servants' personal benefit. However, while personal benefit is a clear corruption objective, it is not necessarily so in COI. COI only refers to conflict between public interest and personal interest in the decision-making process, regardless of whether the public servant intends to act for that personal interest or not.
- **Governing scope:** Corruption refers

to “behaviors”, while COI speaks of “situations”. COI situations might lead to corrupt acts when a public servant makes decisions for his/her personal benefit and harms public interests. In contrast, if public servants make decisions for common good, COI does not cause corruption. Theoretically, corruption could be reduced significantly, but COI situations always occur and should be managed to avoid corruption.

Thus, COI can be objective, arising from functions, duties, policies, regulations and operational mechanisms of organizations, sectors, localities, or the whole country. Meanwhile, corruption is specific as it is about conscious behaviors and decisions of public servants. COI entails corruption risks, but does not necessarily lead to corruption. However, COI situations are always challenging for public servants in making decisions. Confining COI situations and/or issuing clear guidelines for public servants to

TABLE 1 Levels of COI

Potential Conflict of Interest	Actual Conflict of Interest
A public official is in a position where he/she <u>may</u> be influenced <u>in the future</u> by his/her private interests when doing his/her duties.	A public official is in a position to be influenced by his/her private interests when doing his/her duties.
<i>Example:</i> The son of a senior manager in a Ministry owns a construction company. The company bids for a construction contract managed by the Ministry. In this situation, there is a <u>potential</u> conflict of interest.	<i>Example:</i> An <u>actual</u> conflict of interest will occur if the senior manager does not disclose the fact that his son's company bids for the contract and participates himself in the tendering process.

properly handle these cases will help prevent corruption and lead to more objective and just decisions.

3.3. Forms of conflict of interest

COI can be represented in different forms, depending on situations facing public servants. Based on the literature and legal reviews, the following four forms of COI are looked at:

- ***Gifts giving-receiving (cash/in-kind and non-cash/non in-kind)***: Business partners (or those related to a public servant's decisions) give gifts to a public servant.
- ***Interest sharing investment***: Public servants invest then share the benefits with businesses that operate in the public servants' regulatory fields. These businesses are called public servants' "backyard businesses".
- ***Possessing inside information that can be used for personal interest***: Public servants use inside information gained from their employed position for their personal benefit. Examples include public servants using inside information for investment, real estate

speculation/brokerage, and securities investment.

- ***Being in a position to make (or influence) decisions in favor of family members***: Public servants make decisions (or influence decision making process) that benefit their relatives when handling public duties, including influencing decisions for employment of close family members in the public sector.

In these situations, personal benefit could be directly to persons performing their duties or indirectly to relatives (spouses, children, parents, brothers and sisters). Gifts offered to public officials can lead to decisions that do not serve the interest of the public. Contracts awarded to backyard businesses could be more costly meaning resources are not efficiently used. Likewise, employment in the public sector based on patronage can discourage talents joining the public service and weaken public administration. If these boundaries between public and private spheres are not properly policed, they can undermine the effectiveness and accountability of the state.

This study deploys an innovative approach which combines different methods in order to enhance the reliability of the results, including:

- A desk review of the current COI-related regulations in Vietnam, using the widely accepted COI framework of PAM and OECD.
- A desk-study of international practices and experiences in managing COI from selected countries, the region and some transition economies.
- Qualitative and quantitative surveys, drawing from the results of the legal review, with the aim of understanding the prevalence of COI in Vietnam and how current COI restrictions are implemented in practice.

The breadth of the methodology allows for integrating information from various sources, comparing regulations and practices, and triangulating perspectives from different groups. This approach is particularly important for new and sensitive topics such as conflict of interest.

4.1. Reviewing legal frameworks and international experiences

The legal review draws primarily on the “COI management” database within the World Bank’s initiative “Public Accountability Mechanism” (PAM)⁷. The database consists of COI management

provisions from 90 countries in 2012, including Vietnam. The team adapted the PAM COI database framework for legal review of Vietnam COI-related regulations and updated the most recent legal provisions, including the 2013 Constitution; the Anti-Corruption Law in 2005 and its amendments in 2007 and 2012; the amended Law on Bidding in 2013; the 2014 Law on Enterprises; the 2008 Law on Public Officials; the 2010 Law on Public Employees; the 2010 Law on Inspection; the 2015 Criminal Procedure Code; and the 2015 Civil Procedure Code. The legal review also serves as a basis for the development of questionnaires for quantitative and qualitative surveys that focus on COI high-risk areas.

The documentation of international experiences was based also on the “Public Accountability Mechanism” (PAM) of the 14 OECD countries and selected transition countries. Transition countries selected for reference are all middle income or high-income countries in South East Asia, Central Asia and Eastern Europe.

Apart from the PAM database, the team made references to OECD reports on COI management. The team used examples from several countries that are not in the PAM database, such as the Republic of Korea, China, and Singapore and how these countries dealt with COI, in order to provide additional reference points for Vietnam.

4.2. Surveys

The survey was conducted in 10 selected provinces/cities, namely: Hanoi, Ho Chi Minh City, Hai Phong, Danang, Can Tho, Son La, Thai Binh, Nghe An, Thua Thien Hue, and Dong Thap. At the central level, the survey was carried out with public servants of five Ministries: Ministry of Finance, Ministry of Natural Resources and Environment, Ministry of Transport, Ministry of Construction, and Ministry of Industry and Trade.

Three groups of respondents included in this survey were: citizens, enterprises and public servants. The survey of public servants was conducted through direct interviews at central and local level, while the survey of enterprises was carried out on-line using Survey Monkey. The citizen survey was conducted via VnExpress online newspaper. Each survey group had its own questionnaire that was designed and refined multiple times by World Bank experts in collaboration with GI, CCIA and the consultant team.

Survey samples and methodology

The surveys gathered responses from 570 citizens, 512 enterprises and 1,374 public servants. The citizen survey was conducted on the basis of voluntary participation and the number of responses was much higher than expected (500). The average age of participants in the survey was 35. The overall education level of respondents is higher than that of the national population. The sample structures in terms of education levels and rural/urban population were similar in the citizen and public servant surveys (see Annex 1). This allows for comparison of results of similar questions or situations in the questionnaires.

The enterprise survey collected 512 completed responses⁸. The characteristics of the enterprise survey sample are mostly similar to those of the Vietnam enterprise census conducted by GSO in 2013. However, the percentage of FDI enterprises taking part in the survey was lower than the GSO census. In addition, the percentage of medium and large enterprises in the sample was higher than that of the GSO one. In general, the enterprise sample met requirements for statistical comparison or analysis.

The number of public servants participating in the survey at four administrative levels was as follows:

- Commune level: 538 people (39.2%)
 - District level: 537 people (39.1%)
 - Provincial level 247 people (18%)
 - Ministerial level: 52 people (3.8%).
- Public servants holding leadership positions accounted for more than half of the samples (see Annex 1).

4.3. Group discussions

Group discussions were conducted for public servants and enterprises. The objective of these group discussions was to receive detailed views of public servants and enterprises on COI concepts, real-life examples of COI situations, the prevalence of COI, impacts of COI, and measures to prevent COI.

The contents and methodology of group discussions conducted with public servants and enterprises were agreed in advance to ensure that the collected information is objective and comparable. In addition to the 20 focused discussion groups (for public servants and enterprises) in 10 provinces, one group discussion was held with public servants at ministerial level in Hanoi.

Group discussions were directly led by T&C Consulting and APIM teams with the assistance of the World Bank.

A total of 84 enterprises participated in 10 group discussions, in each of the 10 provinces. The enterprises were of different types of ownership and size, but most were small to medium private enterprises. Group discussions with public servants (11 discussions) attracted participation of 107 public servants, mostly inspectors of provinces.

4.4. Limitations of the field surveys (surveys and group discussions)

It would be difficult to cover all COI situations in all areas of public duty in a field study. This study only touched upon

some forms of COI in a number of activities by public servants.

Since the survey of citizens was conducted online via an electronic newspaper, the representativeness of survey samples can not be ensured. The results of this survey were used as a reference regarding public servants and enterprises.

Finally, the group discussions enhanced the reliability of the study in various ways. Not only did the results of group discussions help explain survey results, they also synergize with the surveys to generate better insights. However, public servants participating in the group discussions were not really diverse, with a large proportion coming from the Inspectorates only (of Departments/Ministries).

5.1. The legal framework for managing COI and international experiences

As mentioned above, the review of the legal framework on managing COI was conducted based on analytical frameworks for “conflict of interest restrictions” and “financial disclosure” of the “Public Accountability Mechanism” (PAM). The review shows there is not yet an overarching legislation to COI in Vietnam.

The Constitution of Vietnam has several prohibitions applying to government members, in which government members should not be members of the Standing Committee of the National Assembly at the same time. The Law on Anti-Corruption has introduced comprehensive measures to prevent COI by establishing a code-of-conduct, professional ethics codes and monitoring public servant performance. Additionally, Law on Public Officials, Law on Public Employees, Law on Organization of the National Assembly, Law on Organization of People’s Councils, and the Law on Bidding also contain provisions to minimize COI to different extents.

Although various laws and guidelines contain a number of COI restrictions and require disclosure of some personal interests, the concept of COI has not been clearly defined in any legal document. The absence of a consistent definition of COI makes managing COI more

difficult in Vietnam. Most COI-related provisions are applied to individuals who are public servants and employees, typically head of state apparatus, members of the National Assembly, ministers and members of the cabinet or officials of peoples’ committees. Other COI-related provisions are applied to their family members, but to a more limited extent and inconsistently across areas with high risks of COI. Depending on the types of COI, spouses or relatives are also subject to regulations. Family members are subject to a COI regulation in relation to contracts with government.

Annex 2 compiles detailed analysis on current legal provisions for managing COI in Vietnam, adapted from the analytical framework of PAM. This framework includes a set of key measures to restrict behaviors of public servants and public employees in order to prevent COI. The framework also contains other measures to manage COI such as the requirements to disclose gifts, assets, liability and income, or outside employment of public officials, resolutions of potential COI situations, and monitoring and oversight of the implementation.

Behavioral restricting measures help prevent public servants and public employees from performing or engaging in activities that can put themselves in COI. The following sections summarize regulations restricting three main types of COI in Vietnam. These are restrictions

on (i) income and assets; (ii) business activities; (iii) public office mandate. Annex 3 provides examples from OECD countries and some transition countries in restricting these types of COI as well as examples of how these countries manage COI in their public sector. These examples are meant to provide pointers for Vietnam in developing a COI management system in the future. It would require an additional analysis on the types of governments and political systems in order to suggest specific institutions most suited for Vietnam.

5.1.1. Restrictions on income and assets

Behavioral restrictions on income and assets include restrictions on gift-taking, ownership or stock holding in firms, ownership of real estate or land. Most OECD countries and the selected transition countries have restrictions on accepting gifts. These restrictions apply to civil servants and a number of high-level officials in legislative and executive bodies. In this respect, Vietnam is already in line with this dominant pattern in OECD and transition countries.

Article 40 of the 2005 Law on Anti-Corruption (amended in 2007 and 2012) and Decision No. 64/2007/QĐ-TTg specify that public servants and public employees are prohibited from receiving money, assets or other material benefits from organizations or individuals in connection with their duties. However, these provisions do not apply to family members of public servants.

Comparison of regulations on receiving gifts between Vietnam and a number of East Asian countries show a clear difference. Specifically, in other East Asian countries, regulations on receiving gifts are applied to public servants' family members.

For example, in South Korea, a public servant must prevent their spouse, and relatives from receiving gifts or valuables that they are not allowed to receive. South Korea provides a long list of gifts that public servants are allowed to receive, and all off-list gifts must be returned. In Singapore, public servants are not allowed to accept any gifts. If a minister or his/her spouse or children receive a gift, such gift must be valued and displayed at the ministry office (Box 1).

BOX 1 Gift-taking regulations in South Korea and Singapore

South Korea's code of Conduct for Public Officials

Restriction of receiving money and other valuables: A public official shall not receive money, valuables, real estate, gifts or gifts of entertainment, including from a duty-related public official and from an individual who was a duty-related party or a duty-related public official in connection with his or her

current public duties. A public official shall prevent his/her spouse or lineal ascendants/descendants from receiving money or other valuables that are also prohibited for public officials. The above-mentioned provisions do not apply to the following items:

- Money or other articles provided by a lawful ground of claim such as the payment of debt;

- Foods or convenience provided within the scope of conventional practices;
- Transportation, accommodation or foods uniformly provided by a sponsor to all participants in an official event related to duties;
- Souvenirs or promotional goods distributed to many and unspecified persons;
- Money or other valuables publicly provided to a public official in need who is afflicted with a disease or suffers other kind of disaster;
- Money or other valuables provided to a public official to facilitate the performance of his or her duties within the limit set by the Agency Head;
- A small gift offered according to common practices;
- A friendship society publicly offers money or other valuables;
- A superior public official offers money or other valuables to his or her subordinates to promote their morale or to console, encourage or reward them.

Sources: South Korea's Code of Conduct for Public Officials (2008).

Legal provisions on gift-taking in Singapore

If a *public official* is presented with a gift, they must reject it outright. If they are presented with a gift from a visiting dignitary, they are to accept the gift and then surrender it to the head of their department. The value of the gift will be assessed and the official may pay for it if they wish to keep it.

Ministers are also required to refuse and return all gifts. If it is believed that returning the gift will cause an offense to the donor, then the Minister is required to turn the gift over to the Permanent Secretary of the Minister's Ministry for disposal. If the Minister wishes to purchase the gift, an evaluation of it must be performed, after which the Minister may purchase it at its cash value, or if valued under \$50, he/she may keep the gift without payment. If the Permanent Secretary believes that the gift is of interest to the government, then the gift may be displayed or used officially in the Minister's premises. The same rules apply when gifts are exchanged during official visits. If the Minister or his/her spouse or child receives a gift they may have it evaluated or may have it displayed in his/her premises. If the Minister wishes to reciprocate with a gift, the Minister may purchase one at the government's expense.

The *evaluator of all gifts* is the Accountant-General of Singapore.

Sources: Deployment for Democratic Development (DDD) global program of the Institute of Public Administration of Canada (IPAC), "Conflicts of Interest and Ethics in Government. Briefing Note: Singapore".

Vietnam's legal framework also imposes restrictions on ownership in business. The Law on Anti-Corruption, the Law on Public Officials, the Law on Public Employees, and the Law on Enterprises prohibit public servants from establishing private businesses, limited liability companies, joint stock companies, cooperatives, private hospitals and private research institutions. In addition, heads and deputy heads of agencies and their spouses must not invest in enterprises directly managed by those public servants.

Although public servants are restricted in business ownership, ownership of other important properties such as real estate and land is not subject to restrictions. Current regulations do not contain provisions limiting public servants' ownership or acquisition of those properties. There is only a restriction (Article 37, Clause 1, of the Law on Anti-Corruption) of the use of internal information for personal interest, which could also apply to using real estate or land for private purposes. Some countries have controlling regulations over ownership of land and real estate. Public servants are not prohibited from owning real estate but are from taking advantage of information or gift receipts to acquire real estate or important assets.

5.1.2. Restrictions on business activities

Most OECD countries and the selected transition countries have provisions limiting civil servants and senior officials from benefiting from private business operation and off-duty business.

Similarly, Vietnam also has provisions, mainly in the Law on Anti-

Corruption and the Law on Public Servants, restricting public servants and members of the families of agency heads and deputy heads from enjoying benefits from private business operation and off-duty affairs.

In particular, public servants are prohibited from engaging in management and operation of private enterprises, limited liability companies, joint stock companies, cooperatives, private hospitals and private research institutions. In addition, public servants are not allowed to act as consultants for organizations, enterprises, and individuals in fields related to confidentialities in their duties and state affairs, or to cases currently being dealt with. Relatives and family members of agency heads and deputy heads must be kept away from doing business in their duty-related fields.

Decree No. 102/2007/ND-CP and the Law on Public Servants also specify that public servants are prohibited from working in areas that they previously administered within a certain period of time after leaving a position. In addition, public servants working in confidential areas in state affairs are prohibited from working for individuals, and domestic and foreign organizations in their professions for at least five years after retirement. This restriction does not apply to family members of public servants.

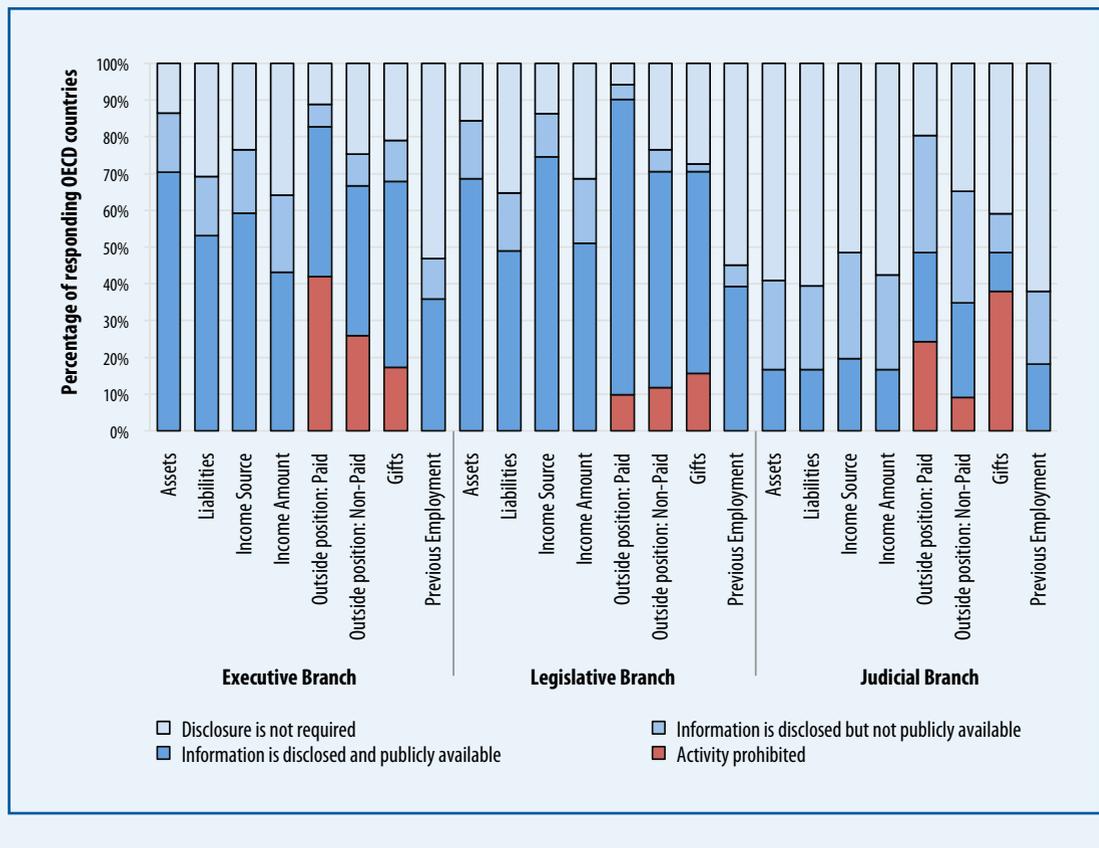
Several countries completely prohibit certain types of public servants from engaging in employment outside their duties. According to the 2010 OECD Survey on Integrity, as much as 42% of OECD countries prohibit presidents, prime ministers and ministers or cabinet members from engaging in affairs outside their paid duties, and 26% of

OECD countries prohibit top decision-makers from engaging in affairs outside “unpaid duties” (Figure 2).

A smaller percentage of OECD countries prohibit other public positions from engaging in affairs outside their main

duties: 24% for judges and prosecutors, 10% for legislators, 12% for tax collectors and customs officers, 11% for procurement staff, and 6% for officers working in financial management authorities (Figure 2 and 3).

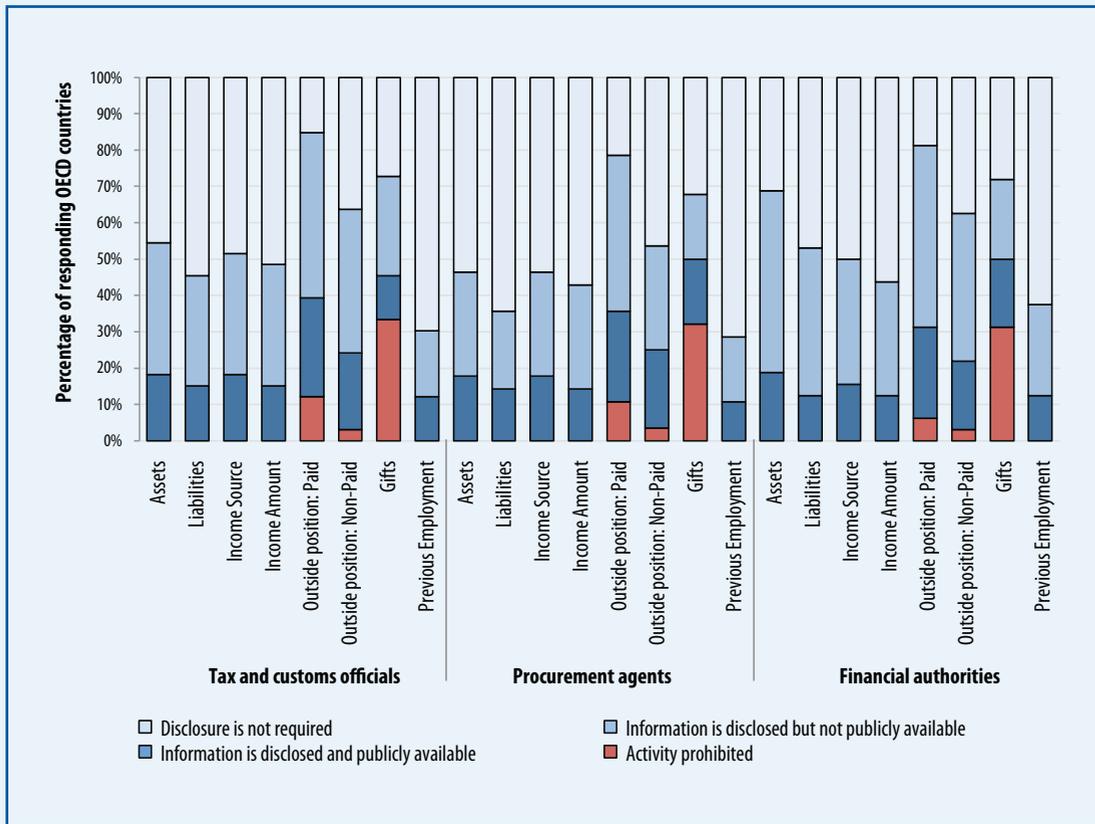
FIGURE 2 Level of disclosure of top decision-makers’ private interests in OECD countries



Sources: OECD Survey on Integrity (2010).

Note: Based on 35 OECD countries excluding Luxembourg. For the Executive branch, the data refers to the President, Prime Minister and Ministers or cabinet members. For the Legislative branch, the data refers to legislators in both the lower and upper houses. For the Judicial branch, the data refers to judges and prosecutors.

FIGURE 3 Level of disclosure of private interests of selected public officials in high-risk areas in OECD countries



Sources: OECD Survey on Integrity (2010). Note: Based on 35 OECD countries. Luxembourg is not included.

Getting government contracts is also regulated and restricted by law in Vietnam. The Law on Anti-Corruption (Article 37) has a general clause prohibiting agency heads and deputy heads from letting family members do business in the areas that they manage. However, this clause does not specify if those restrictions are applied to the case of awarding government contracts. Moreover, current legal restrictions only apply to agency heads and deputy heads of agencies, not to other senior agency staff. The Law on Anti-Corruption (Article 37, items 4 and 5)

also specifies restrictions in winning governmental contracts, but is only applied to managers of state-owned enterprises. The 2013 Procurement Law (Article 17, 75, 78, and 89) provides similar restrictions, but is applied only to public servants engaged in procurement activities.

In most of the selected OECD and transition countries, gaining government contracts is restricted to some types of public servants. The restrictions related to gaining government contracts in these countries are usually general clauses and applicable to other business activities, but

some countries have specific restrictions on holding government contracts. For example, the Civil Servant Management Code of the United Kingdom stipulates departments and agencies are not allowed to award contracts to:

- Any civil servant working in that department or agency;
- Any partnership that a civil servant working in the department or agency is a member of;
- Any company where a civil servant working in the department or agency is a director, unless the civil servant has fully disclosed the measure of his or her interest in the contract and senior management has given permission. (Box 2).

5.1.3. Restrictions on public office mandate

Restrictions on public office mandate

include regulations limiting (i) decisions that influence personal interests of public servants, (ii) holding of conflicting positions such as policy making and policy implementing positions in one, (iii) assisting family or friends in obtaining public sector employment, and (iv) assisting businesses of family or friends in obtaining a government contract.

Decision-making process that affects personal interests of public servants may include participation in the administrative procedure of preparing or issuing a policy. Although, there is not yet a general restriction on the participation of public servants this process in Vietnam's current legal framework, there are already some provisions under the Law on Audit, the Civil Procedure Code, the Criminal Procedure Code, and Law on Inspection limiting this sort of behaviors.

In contrast, a majority of the selected OECD countries and several of the

BOX 2 Examples of restrictions on implementing government contracts

Estonia: Civil servants may not conclude transactions with the state through his/her agency. (*Public Service Act, 1995*)

United Kingdom: Departments and agencies must not give contracts to: any civil servant in the department or agency; any partnership of which a civil servant in the department or agency is a member; or any company where a civil servant in the department or agency is a director, unless the civil servant has fully disclosed the measure of his/her interest in the contract and senior management has given permission. (*Civil Servant Management Code, 2010*)

Croatia: A business entity in which a public official has at least 0.5% of its equity is not allowed to engage in a business transaction with a state agency in which that official is working for, nor in a joint bid as a partner or subcontractor. This applies to all business entities in which a family member of the public official has at least 0.5% of their equity in the case where that family member is able to acquire, either directly or indirectly, the ownership in question or the shares of the in-question official from a period of two years prior to his or her appointment or election to public office until the end of the exercise of office. (*Act on the Prevention of Conflicts of Interest, 2011*).

surveyed transition countries have this type of general regulation. The laws of the Baltic States provide some good pointers. In Estonia, for example, the Anti-Corruption Act prohibits public officials from making an action or a decision “if the decision or the action is made in connection to the public official or a connected person to him or her”. The Law on Prevention of Conflict of Interest of Latvia restricts heads of state, ministers, parliamentary members and civil servants from having a vote on policy decisions related to the official’s personal interests. In Lithuania, the Law on the Adjustment of Public and Private Interests in the Civil Service specifies that a person in the civil service and parliamentary members are prohibited

from participating in the preparation, review or passing of decisions or from otherwise influencing the decision-making process, which may face a risk of conflict of interest (Box 3).

Vietnam does not have any legal restriction stopping public servants from simultaneously holding policy-executing and policy-overseeing positions. In fact, in some legal documents, certain public servants are allowed to play these two conflicting roles. For example, in the Law on Complaints and the Law on Denunciations, heads of government bodies¹⁰ are assigned to play oversight role that conflict with their primary role as policy implementer. More specifically, these two laws assign heads of government bodies the role of dealing with complaints

BOX 3 The Baltic States: Restrictions on participating in decision-making processes that affect personal interests

Estonia

A public official is prohibited from making an action or a decision if: (1) the decision is made or the act is performed with respect to the official’s interest or to a “connected person” to him or her; (2) the official is aware of economic or other interests of that official or a person connected to him or her, which may have an impact on the action or decision being made; (3) the official is aware of a risk of corruption. (*Anti-Corruption Act, 2012*).

Latvia

Head(s) of state, ministers, parliamentary members and civil servants are restricted from voting on policy decisions related to an official’s personal interests. (*Law On Prevention of Conflict of Interest, 2002*;

Cabinet Instruction No. 1 “Principles of behavior for Civil Servants”, 2001).

Lithuania

A public servant in the civil service and parliamentary members are prohibited from participating in the preparation, review or passing of decisions or from otherwise influencing the decision-making process, where they may face a risk of conflict of interest. A public servant in the civil service and parliamentary members shall not use his/her duties, authority or title in order to influence other persons’ decision, which would result in the emergence of a conflict of interest. (*Law on the Adjustment of Public and Private Interests in the Civil Service, 1997*).

on issues that were administered by themselves.

Unlike Vietnam, almost all OECD and transition countries restrict parliamentary members from simultaneously acting as policy-makers and implementers (Annex 3, Box 3). Those restrictions are stipulated in their constitutions and/or in laws regulating conflict of interest. For example, the Czech Republic's Act on Conflict of Interest specifies that parliamentary members are prohibited from holding any position within public administration. Another example is the Slovak Republic's Constitution that states "the discharge of a post in the government shall be incompatible with the discharge of a parliamentary member" (Annex 3, Box ix).

Nevertheless, one positive aspect to note is that the Law on Anti-Corruption contains restrictions for public servants from assisting family members to gain employment in the public sector. The Law on Anti-Corruption and the Law on Enterprises do not allow managers of state-owned enterprises, agency heads and deputy heads to arrange for close family members to hold certain positions or perform some tasks in public agencies. There are no restrictions for these public servants to arrange jobs

for other relatives and friends.

Narrow scope of application is a deficiency of the above-mentioned restrictions. Public servants (and family members) who are not managers of state-owned enterprises or do not act as agency heads or deputy heads are not subject to comply with these restrictions. In addition, these restrictions do not cover public servants' relatives (such as siblings-in-law) and others such as public servants' friends.

Another deficiency of the above-mentioned restrictions is they do not capture the risk that job arrangement for family members can be delegated from a supervisor to his/her subordinates, from a subordinates to his/her supervisors, or from a public servant to his/her colleagues in another public agency or state-owned enterprise.

More than half of surveyed OECD countries and transition countries have restrictions regarding helping relatives or friends in the public sector. Such countries as Japan, Poland or Croatia set a broader scope of application to cover relatives of all public servants rather than of only agency heads and deputy heads. Moreover, the term "relatives" here is interpreted to include other such as spouses, cousins and friends. See Box 4.

BOX 4 Examples of restrictions on assisting family members and other persons in obtaining a job in the public sector

Restriction on civil servants in China:

Where there is such relationship as husband and wife, lineal descent, collateral consanguinity within three generations or close affinity between civil servants, the concerned person shall not assume a subordinating post immediately under the same leader in the same agency or hold a post relating to the immediate supervisor and subordinator, or engage in such work related to organization, human resource, disciplinary investigation, supervision and inspection, auditing and finance management in an agency where one concerned party is acting as the top leadership. (*Civil Servant Law of China, 2005*).

Restriction on civil servants in Bulgaria:

A person shall not be appointed as a civil servant in an agency where (s)he is immediate subordinate under management and control of his or her spouse, linear descent, collateral descent within four generations, or marriage relationship within four generations. (*Civil Servant law, 1999*).

Restriction on public officials in Croatia:

Officials shall not offer a promise of recruitment or any other benefit in exchange for any gift or any promise of getting a gift.

Public officials shall not influence work arrangement or contract awarding through public procurement. (*Law on the Prevention of Conflicts of Interest, 2011*).

Restriction on civil servants in Poland:

Civil servants must be neutral and impartial in performing his/her duties. They must avoid any risk of doubt regarding mixing private and public interests and, in administrative issues. Civil servants shall not discriminate among cases and shall avoid being under influential pressure as a result of family relationship, friendship, or membership. A subordinate-supervision relationship shall not exist between spouses or relatives or civil servants. (*Civil Service Code of Ethics, 2002; Law on Civil Service, 2008*).

Restriction on the president, ministers and parliamentary members in the Slovak Republic:

The President, ministers and parliamentary members shall not use his/her office or powers pertaining to his/her office and information acquired by the performance of his/her office or in relation therewith to his/her benefit, to the benefit of his/her close natural or legal relationships. (*Constitutional Act on Protection of Public Interest, 2004*).

Vietnam's COI legal framework also has restrictions on **assisting family members in gaining a government contract**. The Law on Anti-Corruption prohibits managers of state-owned enterprises from awarding contracts to enterprises owned by close family members. In addition, the law prohibits agency heads and deputy-heads from letting close family members “do business” in their direct duty-related areas. As in the case of restrictions on assisting family members in obtaining employment, the restrictions stipulated in the law are limited. They do not restrict public servants (and family members) who are not managers of state-owned enterprises or do not hold positions of agency heads or deputy heads, members of the extended families of public servants (such as siblings-in-law), or friends in general.

The 2013 Public Procurement Law addresses some deficiencies on the gaps in the Law on Anti-Corruption. It prohibits all public servants involved in procurement process from directly engaging in selection for packages bid for by members of their extended families (i.e. parent, parent-in-law, spouse, natural child, adopted child, son-in-law, daughter-in-law, and sibling). Importantly, the Public Procurement Law requires all bid inviters and evaluating agencies to “ensure honesty, objectivity and fairness throughout the bidding process” and forces cancellation of the bidding if violations occur.

Although the Public Procurement Law has a general requirement on integrity throughout the bidding process, it does not explicitly prohibit public servants from assisting friends and other connected

persons involved in procurement. Moreover, the law does not explicitly define the relationship of public servants with “sub-contractors” of bidders.

5.2. Field study results

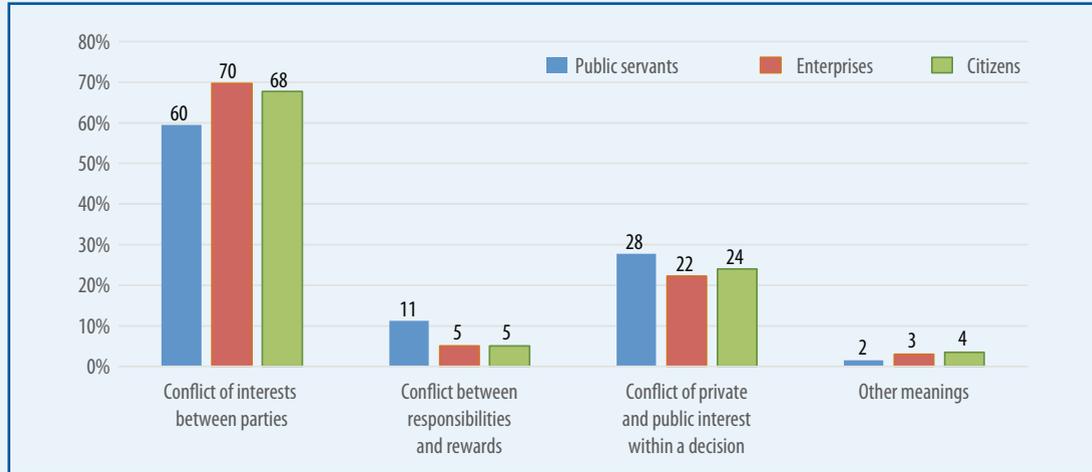
This chapter presents the findings from the surveys of public officials, enterprises, and citizens on their awareness and experience of COI, the areas that are prone to COI, as well as how current COI regulations are being implemented.

5.2.1. Awareness of COI

Awareness and understanding of COI concept

The survey results showed that most public servants (86%), business (89%), and citizens (94.6%) had heard the phrase “conflict of interest”. However, the meaning of this phrase was understood very differently. Survey results (Figure 4) and group discussions emerged two main issues:

- The majority of survey participants (60% of public servants, 70% of enterprises, and 68% of people) believed the phrase “COI” refers to conflicts of interests **between parties**. Only about a quarter of respondents in the survey understood COI as conflicts between personal benefit and public interest that **occur within a decision** made by a public servant.
- There is no notable difference between public servants, enterprises, and people in their understandings of the COI concept.

FIGURE 4 “Conflict of interest” as understood by public servants, enterprises and citizens

Assessment of risk in specific situations

Although only about a quarter of respondents understood COI in the same way as the definition used in this research, most could identify potential COI in specific situations. The questionnaire listed specific situations and respondents were asked whether or not these situations could affect objectivity and fairness in decisions made by public servants. The results (Figure 5) showed:

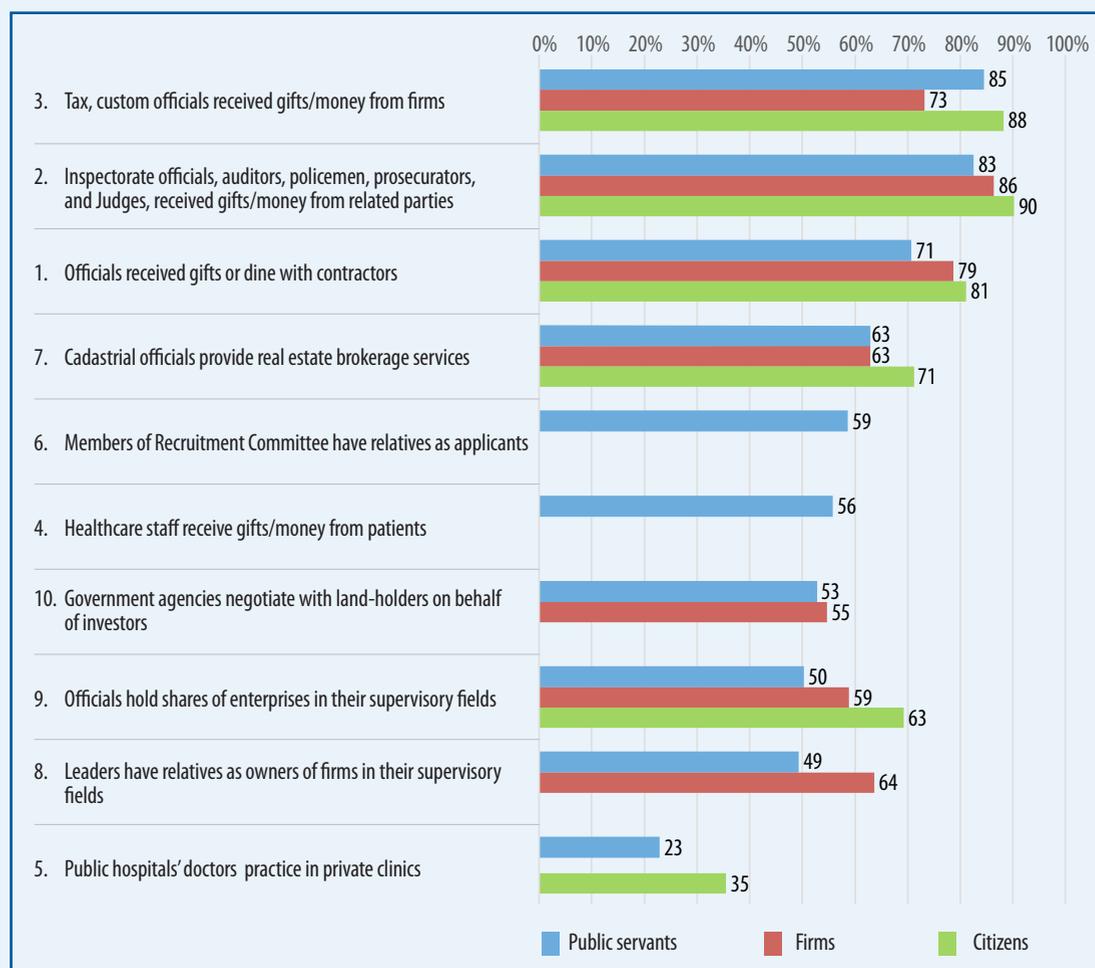
- Three groups were in agreement in the view that situations in which officials from tax, customs, inspectorate, police, procuracy, and court offices could receive gifts/money, or public servants receive gifts from contractors, or cadastral officials act as real estate brokers, etc. could greatly affect objectivity and fairness of decisions made by involved public servants. From 62% to 90% of respondents believed these situations have significant influence on public servants' decisions.
- In all given situations, the proportion of citizens who recognize potential effects on the objectivity and fairness of officials' decisions was higher than that of the public servants sample. The most remarkable disparity was found in the situations where public servants hold shares in enterprises under their field of supervision (70% of citizens compared with 50% of public servants), or doctors of public hospitals practice in private clinics (35% of citizens compared with 22% of public servants), or officials receiving gifts from contractors (81% of citizens compared with 70% of public servants) and cadastral officers engaging in real estate brokerage services (71% of citizens compared with 62% of public servants).
- Generally, enterprises held similar views as public servants. The most diverse views between the two groups was where a public servant supervises enterprises that are owned by his/her relatives: Only 49% of public servants

believed that this situation could affect the decisions of the public servant, while the proportion of business managers was 63.5%.

Public servants in the survey believed that a lack of objectivity and fairness in decision-making might result in the following consequences:

- Damaging common good for the public (66% of public servants in the sample agreed);
- Affecting citizens' confidence in the state (67.5% of public servants in the sample agreed);
- Affecting public servants' personal reputation (74% of public servants in the sample agreed);
- Setting a bad precedence in organizations (61% of public servants in the sample agreed).

FIGURE 5 Do given situations reduce the objectivity and fairness of public servants' decisions? (% agree)



Note: Some situations were not asked in the surveys of firms and citizens to shorten the online survey questionnaires.

Culture and the existence of COI situations

Common COI situations such as gift-giving/receiving by public servants or doing favors for relatives are often justified as following “traditional culture” and therefore the existence of those situations in Vietnam is “natural”.

However, the majority of public servants, enterprises, and citizens in the survey did not attribute traditional culture as a promoter of gift-giving/receiving or investment for personal benefit by the public servants in their lines of duty. Survey results (Figure 6) can be summarized as follows:

- Up to 62% of public servants **did not agree** that: “*receiving gifts at work by public servants is natural since gift-giving/receiving is considered as a cultural practice, or a way to express thanks*”. A similar proportion of enterprises have the same opinion. 64% of citizens **disagreed** with the phrase “*gift-giving/receiving is a cultural value, so public servants receiving gifts is normal*.”
- 82% of public servants **did not agree** that: “*gift-giving is an expression of cooperation, thus public servants receiving gifts is natural*”. A lower proportion of enterprises, 67% disagreed with this phrase. This partially reflects the willingness to exchange benefits with public servants by enterprises.
- The Vietnamese old saying: “*If a person is a state official, his whole clan will receive favor from him*”, which was used as a justification for public servants to do favors for their relatives, was objected to by 84% of public servants, 72.5% of enterprises and 70% of citizens.

- By contrast, up to 50% of public servants and 65% of enterprises agreed that gift-giving/receiving by public servants is disguised bribery.

Group discussions converged with the survey results. They indicated that: participants of the group discussions recognized that gift-giving is a traditional culture. However, gifts for public servants rarely convey cultural or emotional value. Nearly all gifts for public servants hide some personal interest, even bribery; and therefore, genuine traditional values do not promote COI situations. If anything, “traditional culture” has been abused by involved parties to justify acts of seeking personal benefit at the price of the common good.

“There are some cases of gift-giving deriving from sincere affection... but very rare.”

[a public servant in group discussions]

“I am concerned about the consideration of gift-giving as COI. I think when someone gives gift to a public servant, it should be regarded as bribery.”

[a public servant in group discussions]

“Definitely, gift-giving by enterprises contains COI.”

[a business leader in group discussions]

Business leaders in group discussions considered gift-giving to public servants as a normal, even necessary, business activity. They may not like that practice, but they are willing to accept the reality.

FIGURE 6 Cultural values and personal benefit seeking



Notes:

1. Gift-giving/taking is a cultural value.
2. Gift-giving is a way to thank.
3. Gift-giving is an economic exchange.
4. "One person is mandarin, the whole clan get favor".
5. Gift-giving to public servants is mostly a bribery.
6. Public servants receiving gifts is mostly receiving bribery.

Thus, for most people, COI has not been viewed as a sensible concept or a systematic issue of state governance. While the legal review finding is that there is no adequate definition of COI in Vietnamese regulations, COI situations and consequences are clearly recognized by public servants, enterprises and citizens. Most public servants, enterprises, and citizens participating in this study did not accept the use of traditional cultural values to justify the existence of COI.

5.2.2. Perception and experience of COI situations

This section presents the main findings related to the perception and experience of the respondents (public servants, enterprises, and citizens) with COI situations. It covers:

- Findings about perception of the prevalence of COI situations
- Findings about experience of COI situations
- Findings about actual practices that result from COI situations, involving gift-giving/receiving, procurement management, and recruitment and appointment.

Perception of the prevalence of COI situations

Questions about the prevalence of COI situations were not exactly the same for public servants and enterprises. The research team wanted to ensure that respondents have the *ability* to respond reliably for given situations of a specific activity. The COI forms (or types) include:

- a) Giving/receiving gifts in cash and/or in kind,

- b) Giving / receiving gifts in another types (e.g. tours, study, health treatment),
- c) Interest sharing investments with a business,
- d) Taking advantage of inside information gained from work position for personal interest, such as buying/selling real estates or stocks,
- e) Making a decision (or influencing decision-making) in favor of family members.

Public servants were asked about the prevalence of the above COI types in six categories of public servant activities:

- (1) Public service delivery (charged or free of charge)
- (2) Personnel recruitment and appointment
- (3) Procurement management
- (4) Project licensing and approval
- (5) Inspection, monitoring, auditing
- (6) Handling of law violations.

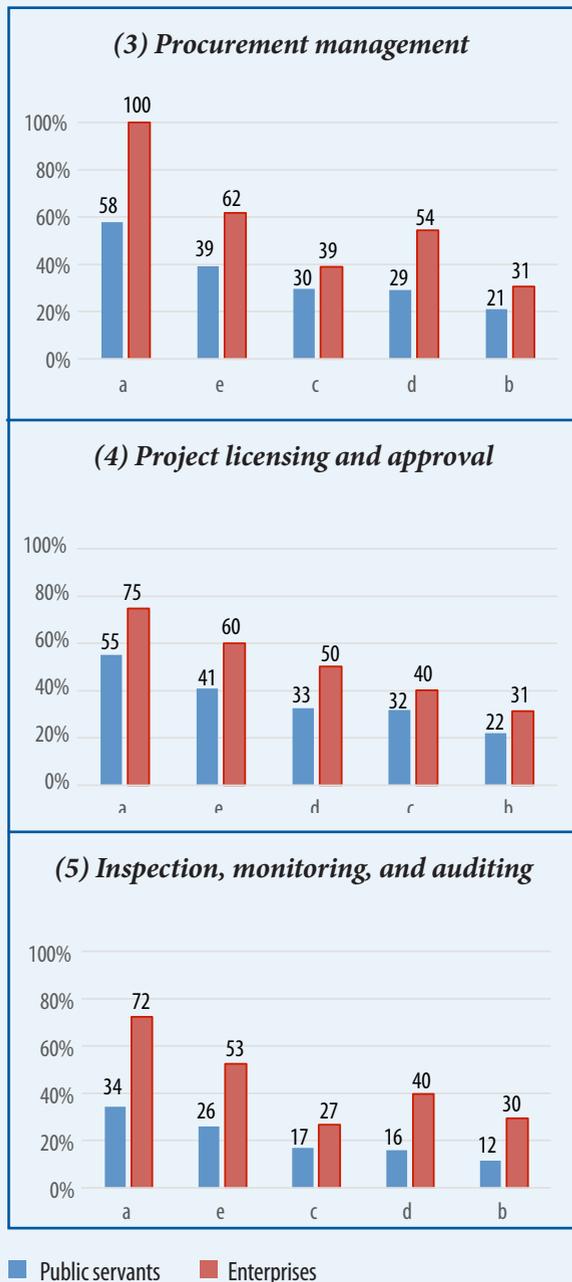
Meanwhile, the enterprises were only asked about the prevalence of the activities in which they were involved in, including (3), (4) and (5).¹¹

Firstly, for activities (3), (4) and (5), the questions regarding perception of COI prevalence were given to both groups of public servants and enterprises. Therefore, we can directly make comparison between the two groups:

The results of the survey in these three activities showed that: the two forms of COI (a) Giving /receiving gifts in kind and/or in cash, and (e) Making a decision (or influencing the decision-making) in favor of his or her family members were the most common (Figure 7).

A comparison between two groups also showed some noteworthy findings as follows:

FIGURE 7 Perceived prevalence of COI situations (% responding prevalent and very prevalent)



- (a) Giving/receiving gifts in kind and/or in cash.
- (e) Making a decision (or influencing the decision-making) which would materially affect his or her family members.
- (d) Buying/selling real estates or stocks taking advantage of information provided from working position.
- (c) Having investment and sharing interests with a business.
- (b) Giving/receiving gifts in other types (e.g.: tours, study, health treatment).

- Firstly, activities (3) (Procurement management) and (4) (Project licensing and approval) were perceived by both groups as having the most frequent COI situations.
- Secondly, the enterprise group perceived COI situations as more prevalent than the group of public servants in all three situations. In particular, while the majority of the public servants (above 50%) only perceived a prevalence of giving/receiving gifts in kind and/or in cash in (3) procurement management and (4) project licensing and approval – the majority of the enterprise group, (over 50%) perceived the prevalence of both situations of giving/receiving gifts in kind and/or in cash and making a decision (or influencing the decision-making) which would materially affect family members in all three activities (3), (4) and (5).
- Thirdly, the perception of the prevalence of (a) Giving /receiving gifts is very significant in the enterprise group. In particular, all (100%) of the enterprise respondents perceived the prevalence of gift giving/receiving procurement management and not one person said that they did not know of this situation. This finding is also consistent with the results of the latest World Bank Enterprise Survey for Vietnam which shows that 57% and 91% of firms are expected to give gifts to public officials to secure a government contract and to “get things done”, respectively.¹² The findings from in-depth interviews related to forms and nature of gift-giving and receiving are detailed in the next part of this section.

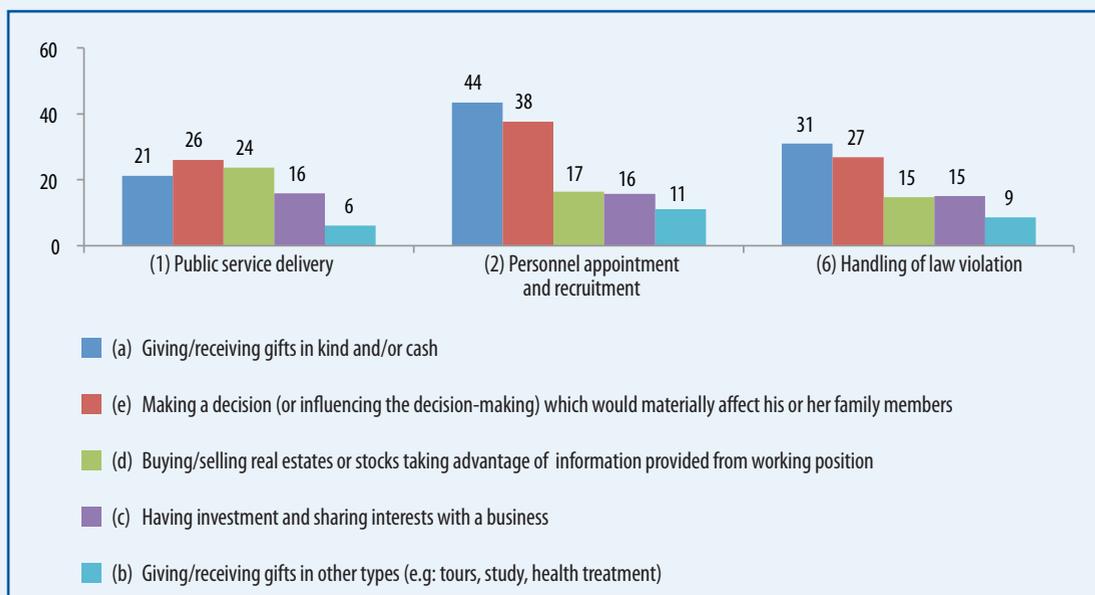
For the three activities that the survey asked public servants only, namely (1) public service delivery, (2) personnel recruitment and appointment and (6) handling of law violations, the survey results showed that generally, the two situations where COI is considered most prevalent are (a) Giving/receiving gifts in kind and/or in cash and (e) Making a decision (or influencing the decision-making) which would materially affect his or her family members (Figure 8).

It should be noted that results shown in this section are about the percentages of respondents agreeing about the prevalence of given situations including both “happening prevalently” and “happening very prevalently”. If we had included the response option of “happening occasionally” the prevalence of the situations given by both groups

would have been significantly higher. For example, if the three response options were combined from “happening occasionally” to “happening very prevalently”, most enterprises (81%) and public servants (68%) would have agreed on the prevalence of COI where public servants “buy/sell real estate, stocks by taking advantage of their privileged access to information”.

In summary, the survey results showed that, public servants and enterprises considered two activities (1) procurement management and (2) project licensing and approval as the most prevalent COI situations. Meanwhile, giving/receiving gifts in cash/in-kind and making a decision (or influencing decision-making) which would materially affect his or her family members were said to be the most common instances of COI.

FIGURE 8 Perceived prevalence of COI situations among public servants (% responding prevalent and very prevalent)



Generally, enterprises seemed to have more “negative” attitudes than those of public servants regarding the prevalence of COI in the public sector. In fact, the vast majority of enterprises (53% - 100%) held the view that giving/receiving gifts and helping family members on work-related issues happened prevalently and very prevalently. Although perception may be different from what is actually happening, it is associated with personal trust in the current economic, political, social systems with regards to COI problems.

Experience of COI situations

In this section, the survey on experience asked the respondents if they “knew clearly” of COI situations in the previous 12 months. It should be noted that, the question did not require respondents to have experienced or been involved in COI situations but they should know the situations happened (or not).

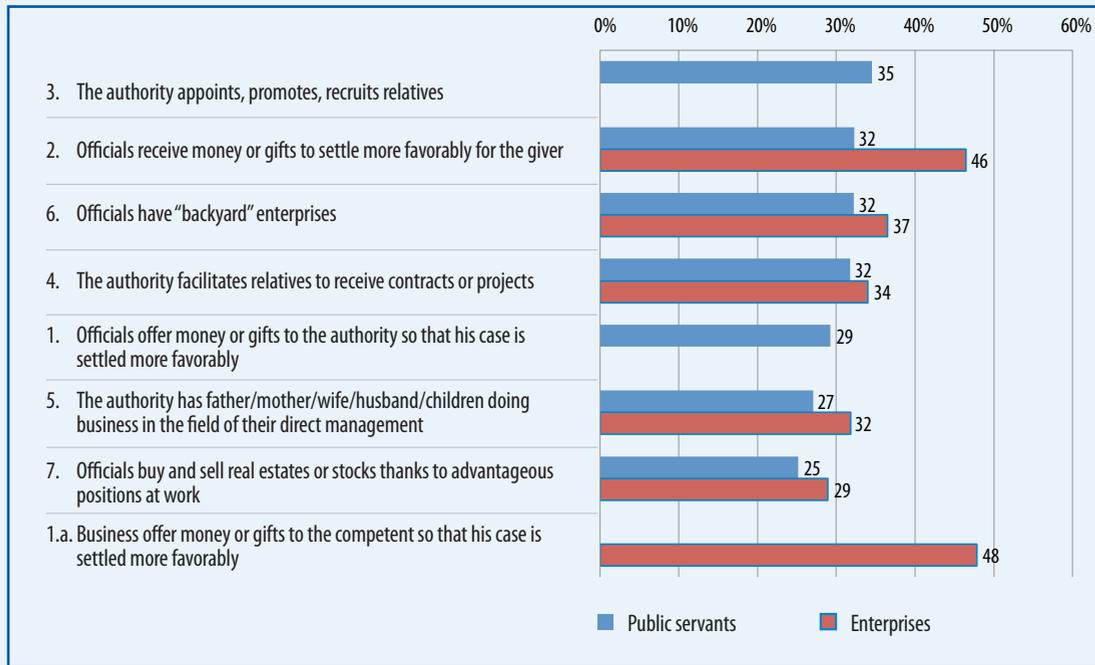
Eight COI situations were used in the survey. Out of the eight situations, two were used for the public servants only and one just for the enterprises. The remaining five situations were used for both groups and these could be compared directly. The survey results showed some noticeable findings (Figure 9):

- Firstly, there were between 25% and 35% of public servants who responded

that they “knew clearly” that the situation had occurred. The situation recognized by most respondents was authorities appointing, promoting and recruiting relatives (35%); officials receiving money or gifts to settle more favorably towards the giver (32%); officials having “backyard” enterprises (32%); and authorities facilitating relatives to receive contracts or projects (32%). These are high percentages, especially in regard to the fact that most of the given situations involve current law violations.

- Secondly, a relatively high proportion of enterprises responded that they “knew clearly” of the different COI situations occurring (ranging from 29% to 48%). Similarly, the situation experienced by most enterprises was offering money or gifts to an authority so that a case is settled more favorably (48%); officials receiving money or gifts to settle more favorably for the giver (46%); and officials having “backyard” enterprises (37%).
- Thirdly, the share of enterprises responding they knew clearly of the different situations occurring was higher than the share of public servants. The biggest difference was found in the situation of officials receiving money or gifts to settle more favorably for the giver (46% of enterprises compared with 32% of public servants).

FIGURE 9 Experience of COI situations among enterprises and public servants
 (% responding knowing clearly of situations)



The group discussions are consistent with the survey results. Some of the following quotes help illustrate the existence and the variety of forms of these situations.

“There are many public servants who used to be enterprise leaders and still keep economic interests in business. If they are still benefiting from a business, without monitoring or control, they will, of course, act in favor of the enterprise under their authority.”

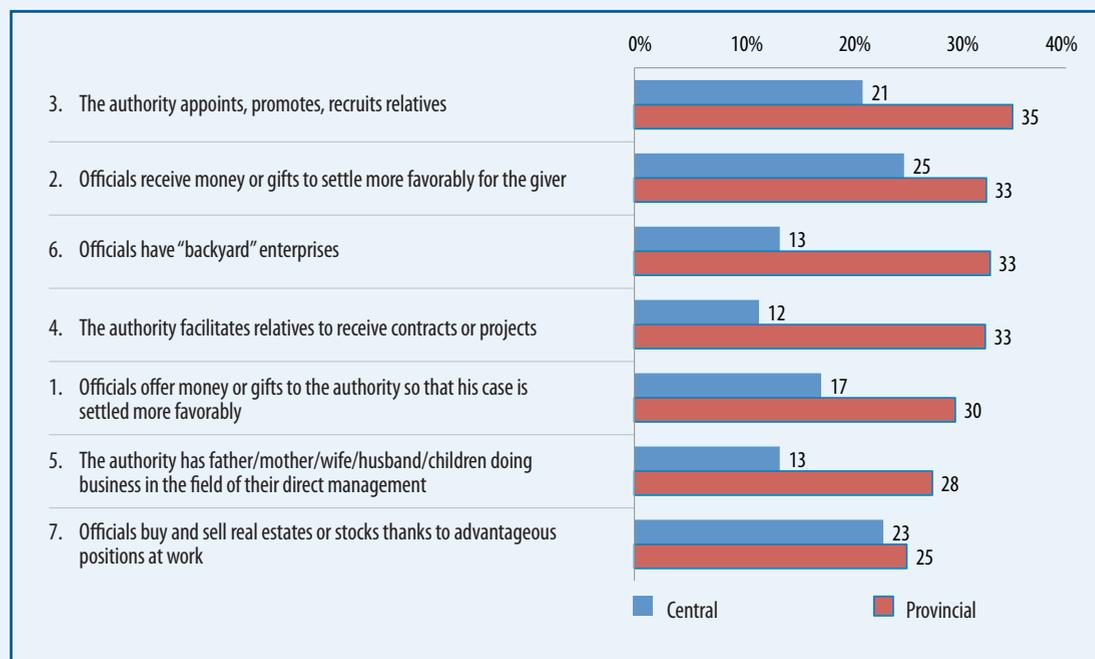
“There are COI at the district (department) level. The program 135, provides seeds and fertilizer for farmers ...but the suppliers are relatives of district officials.”

“In my agency [Department of

Finance], the head of division in charge of medical and educational assistance got his family business involved, benefiting from up to 5% of total revenue. His case was discovered due to mobile phone messages.”

[Some citations from group discussions of public officials]

Data surveyed from public servants was used to compare with groups in central government and those in provincial government. The results showed significant differences between both groups. In particular, significantly more of those in provincial governments experienced than those in central government, for most of the COI situations (Figure 10).

FIGURE 10 Comparison of COI experience between groups of public servants

In summary, survey results showed that the actual experience of public servants and enterprises are similar to their perceptions on the prevalence of COI situations. The most common situations involved: (1) officials receiving money or gifts to settle more favorably for the giver; and (2) the authority making decisions in favor of relatives (in both appointment and facilitation to win projects or contracts). In addition, official's "backyard" enterprises are a fairly common situation according to both respondent groups. The next section presents specific findings detailing experience relating to actual situations, including giving/receiving gifts, bidding, and appointment/recruitment.

Experience of giving/ receiving gifts

As presented in the previous section,

public servants giving/receiving gifts was not considered by respondents as being excused by traditional culture and could affect the objectivity and fairness in decision-making by competent public servants. The situation of giving/receiving gifts related to COI was considered to occur quite commonly.

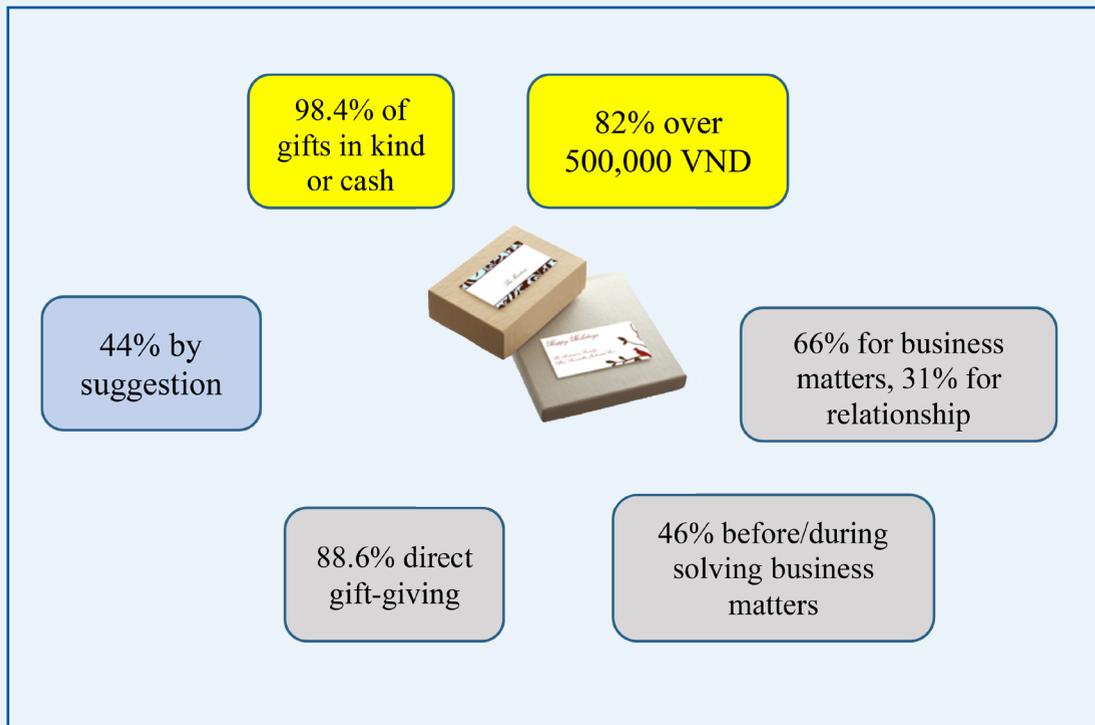
- To further analyze the issue, the two groups of respondents, public servants and enterprises, were asked to describe more specifically, situations of public servant giving/receiving gifts that they knew well (or had directly conducted for respondents from enterprises) during the past 12 months.
- The results for the enterprise group showed that 48% of surveyed respondents admitted to having given gifts to public officials in the last 12 months. The time and form of gifts

- given by those enterprises showed some noteworthy issues (Figure 11).
- Firstly, the possibility of actual COI when enterprises give gifts to public servants is high. The results showed that the vast majority of enterprises have given gifts in cash and/or in-kind to public servants (98%) recently and the value of most of gifts were over VND 500,000 – the threshold amount allowed by law for public servants to receive gifts.
 - Secondly, there exists situations where public servants abuse power in order to be given gifts by enterprises. The survey data showed that up to 44% of total incidents of recent gift-giving by enterprises were as a result of demand (rather than enterprises proactively

giving gifts). The proportion of enterprises giving gifts was 56%. This indicates that the majority of enterprises consider giving gifts to public servants as a “must”.

- Thirdly, gift-giving was mainly direct and seen as a way to solve business matters for enterprises. The survey data showed that nearly 90% of most recent gifts had been directly given to public officials. The purposes of gift-giving was mainly for solving related business matters (66%) rather than to build relationships (31%). Consistent with these results, the survey data also showed that 46% of most recent gift-giving had been done before or to solve business matters.

FIGURE 11 Enterprises’ gifts given to public officials – The most recent gift-giving



Given the above findings, the next question is whether enterprises are behaving this way because they have limited awareness of the concept and impact of COI. To somewhat answer this question, we compared two groups of enterprises: one has a good understanding of COI concepts (including 55 enterprises that have given gifts within the past 12 months) and the other has an inaccurate understanding of COI concept (including 191 enterprises that have given gifts within the past 12 months). The comparison results show several noticeable points (Figure 12):

- Firstly, no matter how accurately the COI concept is understood, the percentage of enterprises giving gifts to public employees out of the total number of enterprises for each group are the same at 48%.
- Secondly, the group of enterprises with better understanding of COI concept may have behaved more “positively” than the compared group with a limited understanding of COI concept

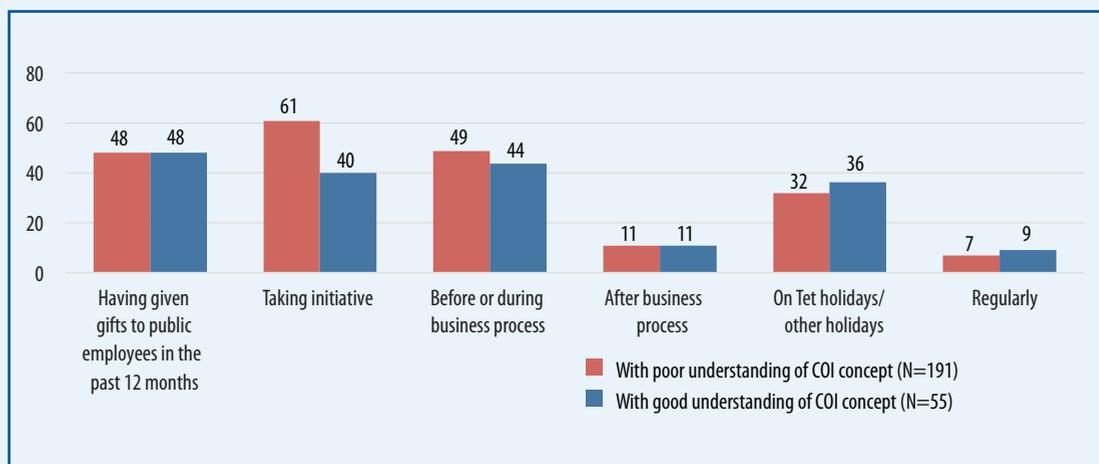
in recent gift-giving. Specifically, the group that better understands is less likely to actively give gifts to public employees (40% compared to 61%, respectively), is less likely to give gifts to public employees before or during solving business matters (44% compared to 49%, respectively) and is more likely to give gifts during Tet and other holidays (36% compared to 32%, respectively).

The result once again indicates that while raising awareness within enterprises regarding COI is an important step, it will not eradicate COI-related gift-giving.

The result from group discussions with enterprises shows that gift-giving to public employees by businesses is motivated by three factors. Firstly, giving gifts serves as a competitive weapon to gain favor and advantage. This often occurs in project bids and in gaining project approval. The gift’s value varies due to the contract or project’s value.

“I consider public employees as my

FIGURE 12 Enterprises’ giving gifts to public employees – comparison between groups



company's customers. When trying to promote our products, it is a common practice to give gifts to customers, which helps my company stand out and get customers' attention."

"The gift could be the commission that is taken from the funding that we receive. If it is a long-term business relationship, the commission could be higher."

Secondly, giving gifts helps develop and maintain relationships for future businesses. Gifts for this purpose are often given during Tet and other holidays and are not related to specific business transactions.

"Giving gifts is to keep in touch and maintain relationships. If the contact is not made regularly, they may forget us."

"Each enterprise somehow makes contact with one or two persons who are related to their enterprise but not necessarily direct related to their enterprise. Businesses give regular gifts to develop the relationship as well as using these people to approach other people."

Thirdly, gifts are given in order to

avoid discrimination and to follow the "trend". This form of gift-giving often occurs when businesses need to undergo administrative procedures.

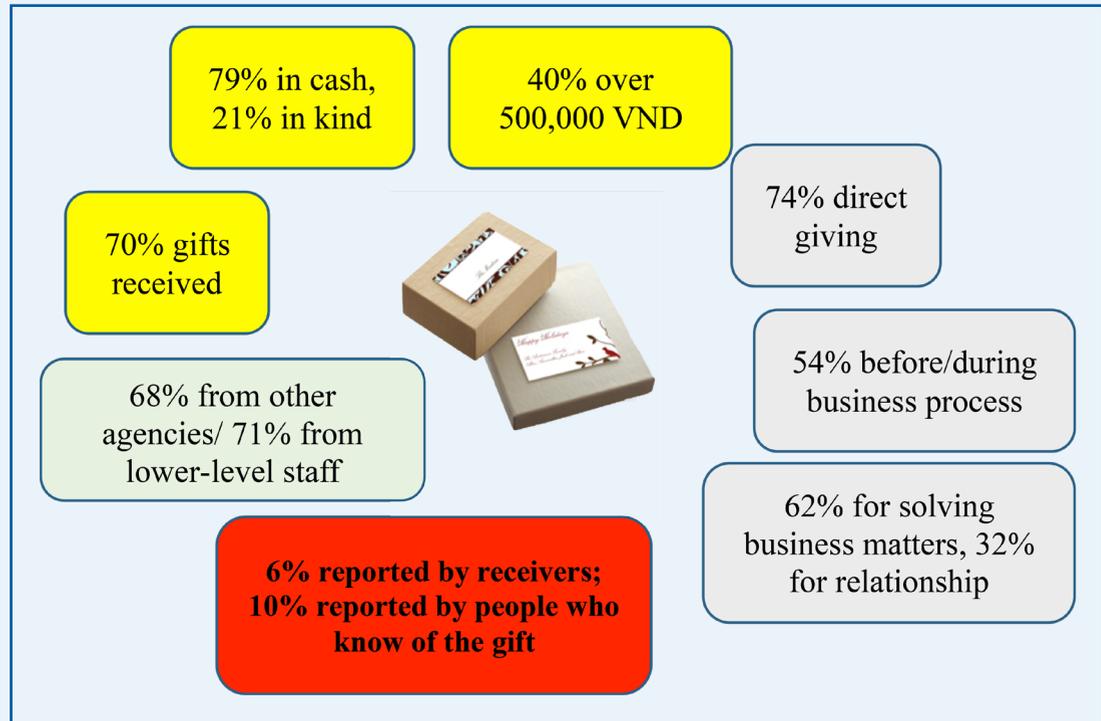
"Actually I am following the trend as I see others doing so."

"Many times when we haven't given gifts, things still happen, but with gifts given, we feel more confident."

[Extracts from group discussions with enterprises]

A similar survey on gift-giving and receiving was also conducted with public servant respondents but questions focused on whether they knew it was clear that these gifts were related to public servants carrying out their work. The result shows that nearly 20% of public employees asked were well aware of incidents related to gift-giving. It should be noted that this figure reflects the percentage of public employees being aware of gifts given in their own workplace, which should be lower than the percentage of public employees being aware of gift-giving in general (32%) in the past 12 months as mentioned above (Figure 13).

FIGURE 13 Public employees' gifts giving and receiving in their workplace



However, forms of gift-giving and receiving (Figure 13) under these circumstance can be noteworthy as follows:

- Firstly, the majority of gifts is in cash or in kind (with 79% in cash and 21% in kind), while a considerable percentage of gifts are valued over VND 500,000 (40%) and are received (70%). These results are notable, as the value of gifts acceptable is made clear in legal regulations. This raises the question of the effectiveness and relevance of current gift-taking regulations.
- Secondly, the purpose of gifts is clearly related to solving business matters (which is likely to cause actual COI). The survey data suggests that 74% of gifts were given directly rather than through a third person,

54% before or during the process of business, and up to 62% of gift giving was directly for business. Only 32% of gifts given were recognized by public employees as being for maintaining relationships.

- Thirdly, most gifts were given by persons from other agencies (68%). Within one's own agency, the gifts were usually given by lower-level staff to upper levels (71%). The high percentage of gifts given by lower-level staff (rather than by upper level or same level) is worthy of concern.
- Finally, only 6% of those who received gifts reported receiving them while less than 10% of incidents were reported by someone else who knew of it. The

fact that the rate of report is low, no matter how likely it is related to COI, raises concerns over implementation of current policies related to COI.

Similar to the enterprise group, a comparison between two groups of public employees is conducted: one with a better understanding of COI concepts and the other with a poor understanding. Results from the comparison do not show much difference between these two groups (Figure 14). Specifically:

- The result shows that, no matter how well public employees are aware of COI concepts, the rate of reporting gift reception is low (respectively 9% and 10%).
- The major reason for such low reporting rate is that they do not want to interfere with others' business (respectively 50% and 47% for two groups) and do not want themselves

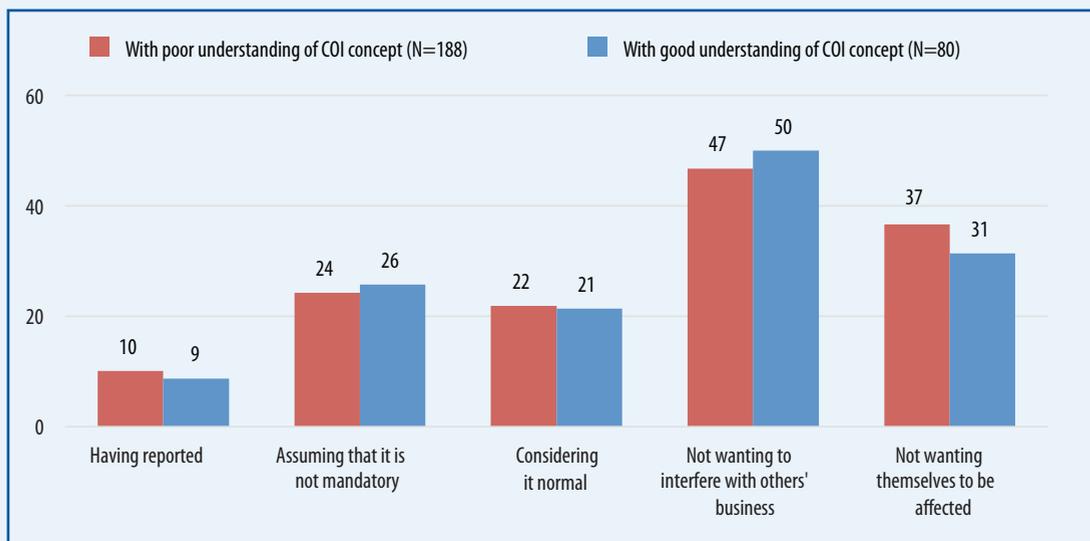
to be negatively affected (respectively 31% and 37% for two groups).

- Notably, there is a remarkable percentage of public employees who know about the gift reception and assume that it is not mandatory to report (respectively 26% and 24% for two groups) and consider that normal (respectively 21% and 22% for two groups).

Group discussions with public employees also show similar findings. Specifically, public employees generally consider gift-giving and taking as a "habit" or "custom" in the public sector, to obtain "business results", rather than to show an appreciation. Some public employees state that gift rejection is against the trend and prompts hostility from colleagues.

"I give gifts because I don't want to be different from others."

FIGURE 14 The reasons for not reporting on gift-giving and receiving by public employees – a comparison between groups



“Taking gifts has become a habit. If someone does not give gifts to me, I think that person “does not know how to behave.”

“If gifts are given when we are in a group (for example, when a group of us go on an inspection at an enterprise), later I will return the gift. If I don’t receive the gift, while others do, they will feel uneasy and think that I am like this or that.”

[Extracts from group discussions with public employees]

Another thing to consider is that many gifts for public employees are considered a “payable debt”, due sooner or later. Some gifts are directly in return for a specific favor. Other gifts are to create a sense of a relationship debt, which makes receivers finding it hard not to favor givers.

“Giving gifts does not necessarily mean a specific connection with a project but generally signifies some kind of trust. It means that when the gift is given, there is no specific benefit attached at that point, but they should remember me later.”

“Giving gifts ... has become an art. Now

they don’t give gifts to Ms. Manager but to her husband or Mr. Manager’s mother. His mother will say “They visit me even more often than you [Mr. Manager], without him taking me to the hospital that day, I might be dead now.”

[Extracts from group discussions with public employees]

The question now is whether public employees should be allowed to receive gifts. The question was asked of both businesses and public employees and results show nearly 60% of enterprises asked agreed with allowing public employees to receive gifts in work, while the rate among public employees is lower (34%). Notably, among businesses supporting allowing public employees to take gifts, only 23% agree with the current legal limit of 500,000 VND. (Table 2)

In reality, businesses support the idea of “allowing” gift-giving to public employees so as to facilitate their business. This result is clearly shown from the group discussions with businesses.

In summary, gift-giving and taking among public servants shows signs of COI from both businesses and public employees’ perspectives. Current gift-

TABLE 2 Should public servants be allowed to take gifts?

	Public servants sample	Businesses sample
Not allowing gift-taking	66%	41%
Allowing gift-taking	34%	59%
Under VND 500,000	56%	23%

giving and taking practice might be a “trend” that both benefits and puts pressure on public employees. However, current policies on gift-giving and taking have not effectively enabled reporting on COI-related incidents.

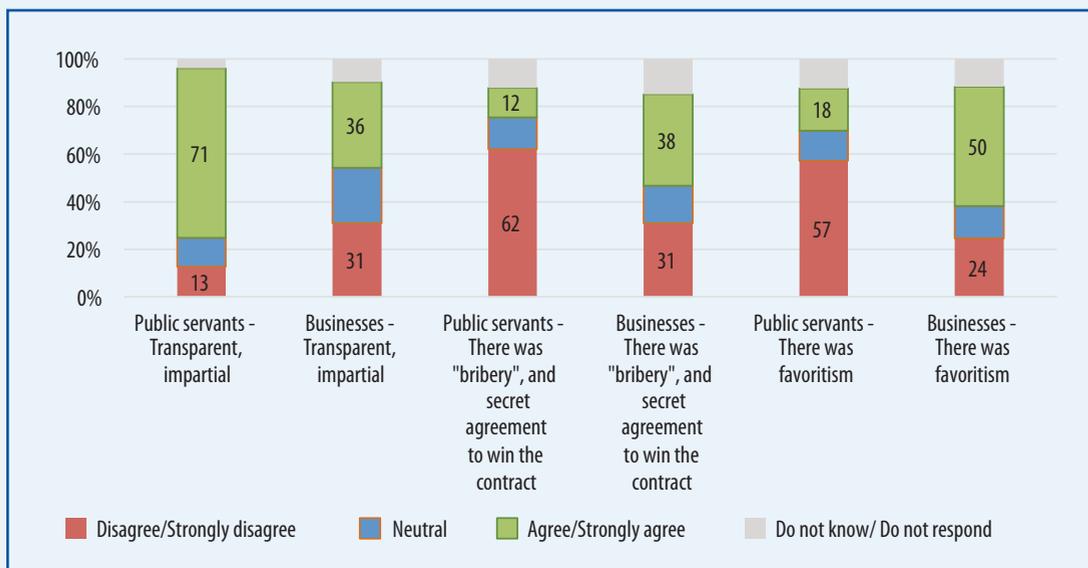
Experiencing situations with COI in procurement management

Next, a question was raised for both enterprise and public servant groups to see if they are aware of procurement activities in their agencies or in their businesses’ participation in bidding for procurement. The result shows 32% of public employees were aware of procurement in their agencies and 18% of businesses were bidding for procurement in the past 12 months. The result (Figure 15) covers three criteria for evaluation, which were compared directly between enterprise and public servant groups.

Notably, public employees have quite a positive view on recent procurement with 71% thinking that (agreed or strongly agreed that) the procurement process was transparent and impartial. Only 12% and 18% respectively assumed there was “bribery” to win the contract or favoritism was given to relatives. Businesses have a more negative view. The corresponding rates are 36% (transparent and impartial), 38% (there was “bribery”) and 50% (there was favoritism).

Findings from group discussions also show formally declared procurement processes may be less complicated than current actual process. Formally, all procurements would strictly follow fair and transparent processes. However, in less formal procurement, such criteria might be distorted for other non-transparent purposes. Impartiality in procurement process can be “distorted”.

FIGURE 15 Views on most recent procurement



- Firstly, the project owner can impose selection criteria that match the designated enterprise thus disqualifying other bidders (although many of these criteria do not necessarily help improve the quality of work).
- Secondly, favored businesses might have the advantage of knowing information in advance to better prepare for the bid.
- Thirdly, some bidders may taking part in the procurement process just to ensure it appears competitive without any actual influence on the result.

Some typical quotes illustrate this point:

“...the agency calling for the bid in a procurement will put forward criteria that fit my company’s capacity, the influence of the senior leader of the project is very important.”

“Bid-rigging happens sometimes: some businesses know the criteria beforehand, so if they want to win the contract, they will include additional criteria to disqualify competitors, though these additional criteria do not improve the quality of the project.”

“Bidding collusion happens too. Many businesses win contracts although they are incapable. After winning the contract, they resell it to my company.”

“Early disclosure, procurement appointment, and inclusion of technical requirements are some of the tactics. Knowledge of regulation of joint ventures, sub-contracting and slice and procurement package bidding can be used to legalize the bid result”

“...knowing for sure that they won’t be

successful and getting nothing out of it, many businesses do not bid. That is the reason why there is courtesy procurement bid, in which businesses only bid for the sake of appearance. They already know the designated winner. The backyard enterprise’s power is huge.”

[Extracts from group discussions with businesses]

“In the construction field, direct procuring and collusion have been prohibited but only formally. In most cases, contracting is agreed from the top level so bidding evaluation is just for the purpose of formality.”

“Bidders, utilizing relationships, (for example, inviting the project owner to dinner) do not receive any benefits such as the contract right away, but the benefit will come later. In order to win the contract, businesses can take care of the project owner for years.”

[Extracts from group discussions with public employees]

In summary, public procurement management retains a lot of COI potential. From enterprises’ perspective, transparency is only for the formal surface of public procurement. COI could be hidden inside. It varies and happens even well before the bidding process.

COI in public personnel appointment and recruitment

Job appointment and recruitment are activities that have a high potential for COI in Vietnam. In order to get a clearer picture of this, questions are raised for all three groups of respondents: public

servants, businesses and citizens. They were asked to rank the importance (from the most to least important) of different factors in current recruitment and job appointment practice in public agencies.

The result from the survey shows a contrast between the public servant group and the other two.

Specifically, according to public employees, the two most important factors in recruitment and job appointments are (a) formal training, and (b) ability, experience and good achievement record (from 81% to 91%). Meanwhile, the two most important factors ranked by businesses and general public are (c) being relatives or having good connections with a competent public servant, and (d) using material benefits or other benefits (from 44% to 70%), in which, being relatives or having good connections is seen as the most important factor (Table 3).

It should be noted that although the public servant group does not highly value the factor of being a relative of,

or having a good connections with, a competent public servant (just 17% to 20%), up to 35% of public employees were aware of appointment and recruitment of relatives of persons in authority (see the previous section).

Besides, findings from group discussions with businesses and public employees also indicate that the likelihood of COI in recruitment and appointment activity does exist. On one hand, many public employees thought that current reform in recruitment and appointment in the civil service has brought about positive change. Recruitment through formal processes increases transparency and fairness and reduces cases of recruiting public employees' relatives. Many agencies appoint staff using a transparent process and open exams. Although the impact of such positive change takes time to show, it is still an optimistic sign.

On the other hand, public employees and businesses both admitted that helping relatives in the recruitment and

TABLE 3 Views on the importance of different factors in recruitment and appointment

<i>Percentage agreeing first and second importance</i>	Public servants		Businesses		Citizens	
	Recruitment	Appointment	Recruitment	Appointment	Recruitment	Appointment
a) Formal training	91	81	40	38	40	36
b) Ability, experience and good achievement record	82	85	41	44	44	46
c) Being relatives or having a good connection with a competent public servant	17	20	69	70	67	68
d) Using material benefits or other benefits	9	11	47	44	46	46
e) Pleasing everyone	4	7	4	4	4	5

appointment process is still happening a lot in the public sector. The reasons vary. First, the demand for a job in a government agency is high. Under such circumstances, pressure is put on public employees to help relatives. Second, the recruitment process is not completely open or strictly monitored, leaving loopholes for manipulation.

Interference within the recruitment and appointment process can be even more sophisticated. In some cases, exam scores are pre-arranged, even more so with interview scores. The interview score is the most difficult part to check. Another way is to arrange for a relative to apply for less competitive position (for example, a vacant positions at local level). After being recruited, the relative will be “transferred” to the preferred position. The third way is to use specific selection criteria that qualify the intended applicant and disqualify other applicants.

The following typical quotes illustrate this approach:

“Some people use their relationships so they can get a job. Considering the current workload, one week’s work here in the department can take just one day to handle. The question is why it takes so many people to handle such a small workload.”

[Extracts from group discussions with businesses]

“They are recruiting 100 new staff in the Ministry where I work, but there are almost 500 applications. My unit is recruiting 10 persons, but my boss said that over 100 applicants were close relatives of people from the Ministry. Many others are close relatives of officials from other ministries. The

pressure is huge, because whether recruiting them or not, it will be a matter of mutual diplomatic relationships.”

“The Ministry applies a strict recruitment process with high requirements. However, they will get in the Ministry by taking the exams at local level, getting a job there and then being transferred to the Ministry level. Some even do that kind of transfer process in a very short time, and become a leader right after the transfer.”

“Job appointments also follows certain criteria, however, these criteria have been ‘tailor-made’ to fit designated applicants, which serves as a way to legitimize the appointment of applicants.”

[Extracts from group discussions with public employees]

Thus it can be seen that COI is considered to exist in recruitment and appointments. In particular, the thoughts of the general public and businesses seems very negative on this matter.

In summary, the result from the survey suggests five types of COI may appear in all six activities of public servants. However, procurement management, project licensing and approval, and personnel recruitment and appointment are considered three activities most common to have COI. At the same time, gift/money giving, helping relatives (in different activities such as winning procurement contracts and recruitment/appointment), and using an information advantage are the three most popular types likely to involve COI. In addition, there is a disparity in terms of the perception on prevalence of COI situations among

different groups. Our findings show enterprises are more likely to perceive the prevalence of COI-related situations than that of public servants. Among public servants surveyed, more of those from local government perceive COI situations than those from central level (excluding gift giving/receiving in procurement and project licensing, approval).

Notably, there is a considerable percentage (25% to 35%) of public servants who responded knowing clearly of COI situations. The incidents include cases that violate current policies.

Finally, gift-giving and taking seems to remain a “habit” and “trend” in public servants’ workplaces. The majority of businesses actively give gifts (56% recent gift-giving) and wish to continue to allow public employees to take gifts at work (59%). This creates both the opportunity and “pressure” to receive gifts.

Related recommendations should consider all issues related to perception, awareness and policies regarding the prevention of COI for different groups, including public servants, businesses and citizens. Evaluation of the effectiveness of current policies and regulations regarding this issue will help shed light onto what can be expected from recommended solutions.

5.2.3. Evaluating the effectiveness of enforcement of COI-related regulations

This section addresses the development and implementation of COI managing measures and regulations in government agencies. It is based on survey results and factors that influence implementation of regulations as part of seeking feasible solutions for managing COI in Vietnam.

Developing and implementing organizational measures

Development and implementation of COI measures in each agency is critical for managing COI. Public servants are asked to evaluate the implementation of six COI managing measures in their own agencies. These measures are:¹³

- Agency code of conduct and code of ethics
- Dissemination of COI-related regulations to employees
- Regular training on COI-related issues
- Assign a focal point that provides support to public servants when they encounter COI situations
- Measures to monitor public officials’ behaviors
- Handling of violations.

Between 62% and 96% of agencies have developed the above COI managing measures, depending on the situation. The two least used measures are “regular training on COI-related issues” and “assign a focal point that provides support to public officials when they encounter COI situations”, at 67% and 62% of agencies, respectively.

“All measures have already been developed and/or issued. However, they aren’t used.”

[Focus group discussion with public officials]

“In my opinion, these measures [on COI managing] are good, but they are not very effectively implemented, just 30% to 40%”.

[Focus group discussions with enterprises]

Public servants were asked to give their opinions on implementation of six

major COI managing measures in their agencies. Depending on the measures, only 36% to 73% of agencies fully implemented them, according to the public servants (Figure 16).

Centrally-governed cities have a higher rate of full implementation than in other provinces in all measures, with differences ranging from 5% to 14%. Agencies at ministerial level have a lower rate of full implementation compared with that at local level in almost all organizational measures, except the measure of “assign a focal point that provides support to public officials when they encounter with COI cases.”

The two measures on “training” and “focal point/person in charge” are the least fully implemented overall, and only around one third of agencies in provinces fully implemented these two measures, according to public servants.

Obviously, organizational measures have been widely developed by agencies. However, the implementation of these

measures is lower than expectation. Among the developed measures, the one measures such as issuing the code of conduct, code of professional ethics and regulations on handling violations were well done by all agencies. However, for everyday operating measures such as guidance on implementation, the rate of implementation is lower.

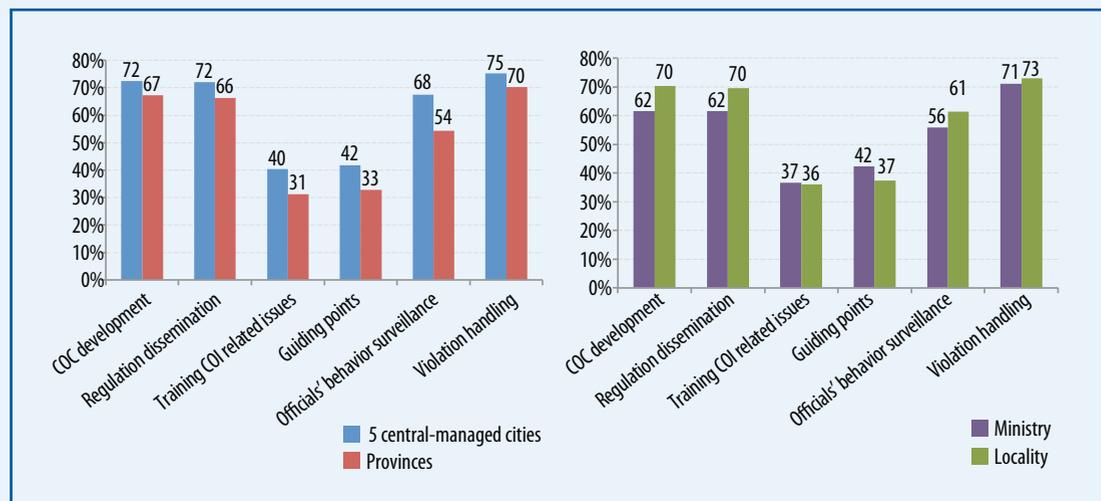
“There are plenty of regulations and mechanisms; however who will implement them and what is the mechanism for enforcement and monitoring?”

[An opinion from public officials in focus group discussions]

Implementation of state regulations

The government has issued regulations on COI management in differing legal documents. Unlike agency internal measures, these regulations are mandatory. Depending on the specific measures, from 46% to 96% of the

FIGURE 16 View on public agencies implementing COI managing measures (%)



surveyed public servants, reported that their agencies have implemented those regulations (Figure 17).

Two regulations, seen by the respondents as being implemented by most agencies include the declaration of income and making public recruitment and promotion. Only 43% to 68% of public officials in the survey admitted that their agency implemented the six remaining measures. Particularly, 25% to 40% of public officials responded that their agencies did not implement these six measures. This is a concerning issue as these measures are legally mandatory.

The rate of implementing the above regulations is very different among the four administrative levels. At ministerial level, the rate of agencies implementing eight regulations on managing COI is high, ranging from 79% to 98%; while at local level, this rate is from 45% to 95%. Ministry-level agencies have a considerably higher rate of implementation than

local-level agencies in all regulations surveyed (Figure 18).

The lower the level of state agencies, the more likely they did not comply with these regulations. For example, regarding regulations on gift-taking reporting, up to 46% of public officials at commune level thought that their agencies did not comply. This rate is 43% at district level, and 29% and 6% at provincial and ministry levels, respectively. Obviously, implementation and monitoring of regulations at local levels are critical in the enforcement of COI regulations.

Public servants were asked how effectively these COI managing measures were implemented at their agencies (Figure 19). The rates of evaluating the implementation as “effective” and “very effective” are from 47% to 81%. The effectiveness for gift-taking reporting regulations was the lowest, at ministry level (32%).

FIGURE 17 View on implementation of COI regulations in state agencies (%)

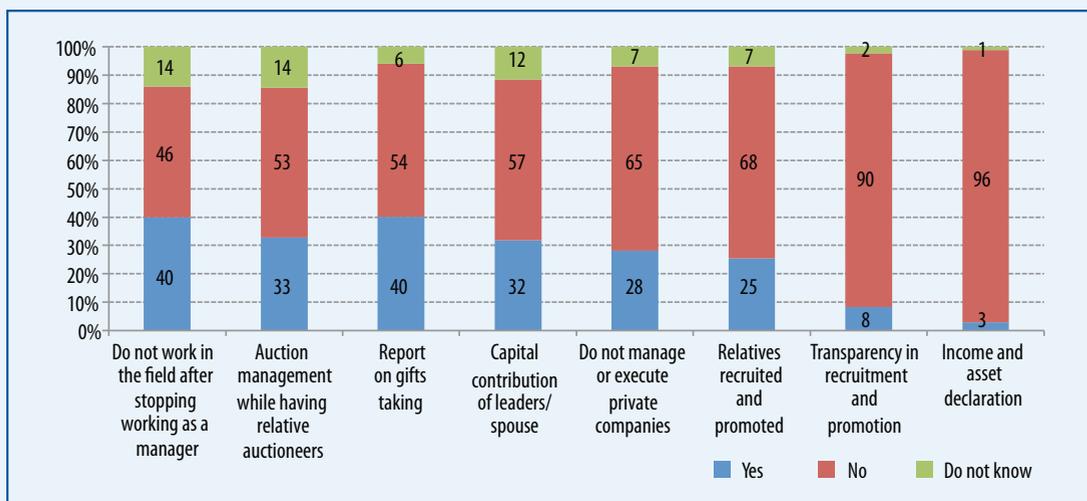


FIGURE 18 The differences in the rate of non-compliance with COI-related regulations at different government levels

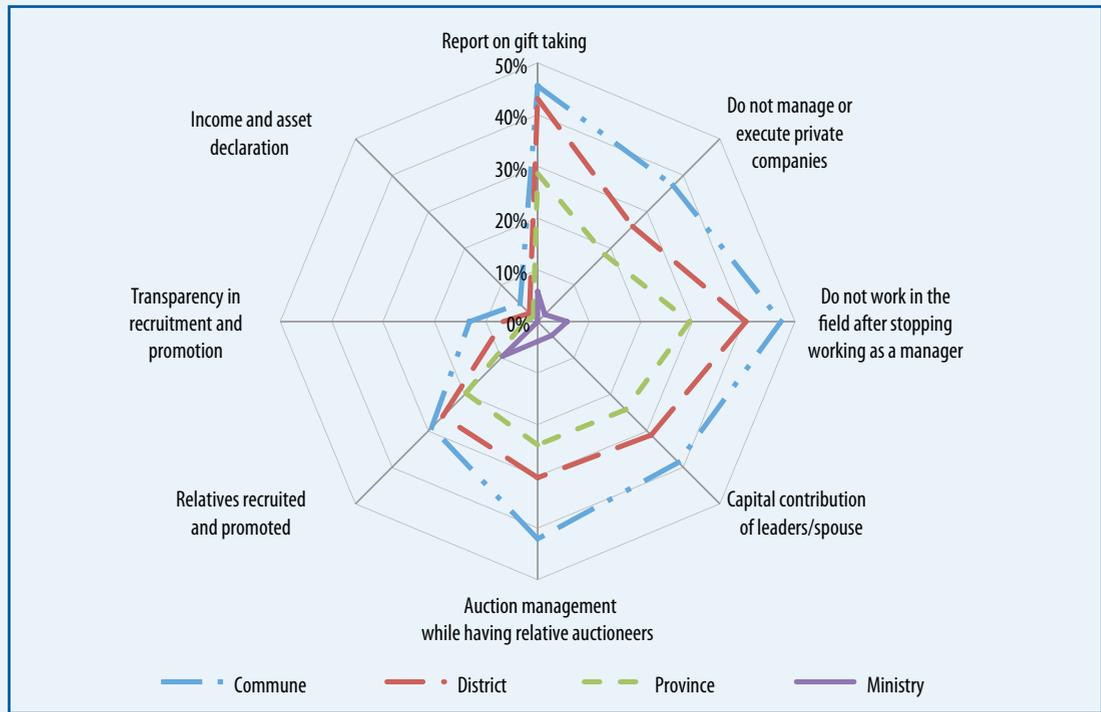
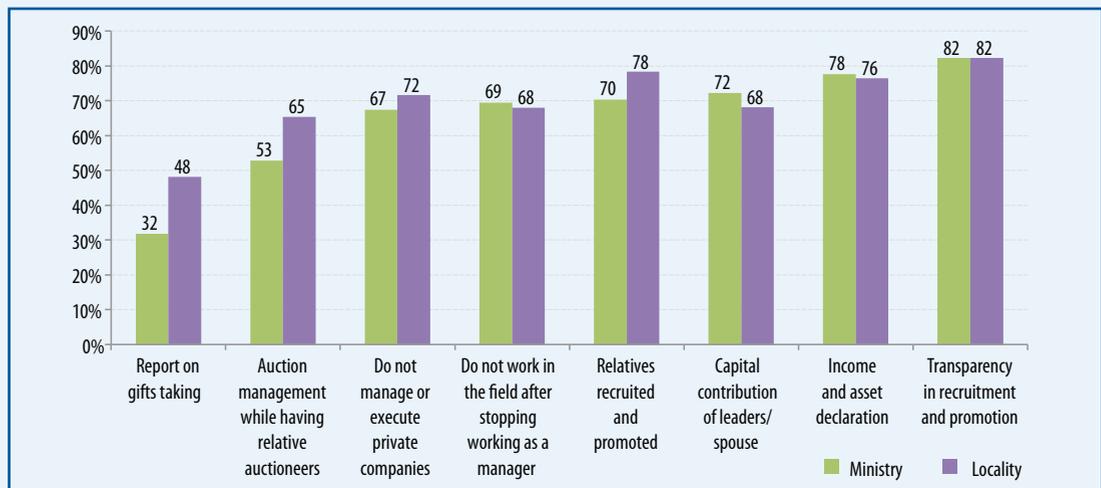


FIGURE 19 Assessment on the effectiveness of COI preventive measures (% responding effective and very effective)



Another considerable result was that the rate of implementation of those regulations was higher at ministry level. However, evaluation on effectiveness of such implementation was higher at local level. This suggests that public officials at local levels were more optimistic than those at ministry level in viewing the effectiveness of enforcement of COI managing regulations.

The results from the public official survey were supported in focus group discussions with enterprises (it should be noted that this question is not included in the enterprise survey). A majority of enterprises said that there were many regulations but they were poorly implemented.

“Most of the government’s regulations on managing COI are not implemented in practice”

Regulations (related to COI) were

made in a way that was impossible to implement.”

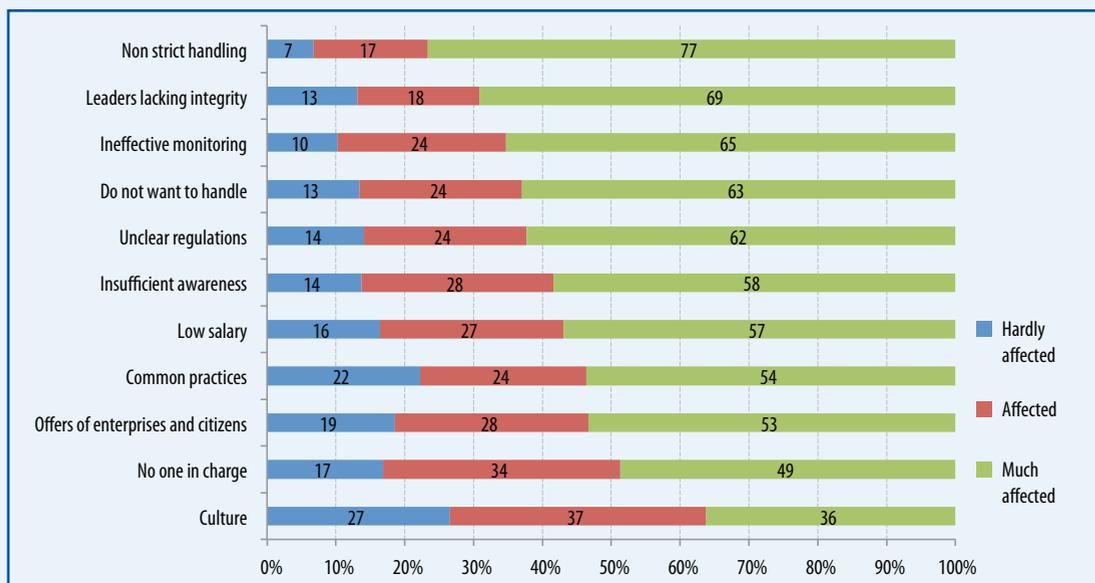
[Focus group discussions with enterprises]

The result from the survey also indicates a gap in implementation and effectiveness of implementation of COI regulations between local and ministry level. While the rate of implementation was high, the effectiveness was far behind. The question is - what factors can contribute to a good implementation of COI-related regulations?

The factors affecting implementation of COI regulations

Public officials were asked to evaluate the impact of 11 factors effecting COI regulations’ implementation (Figure 20). These factors are shared in government officials’ reports, studies, and communications materials on mass media.

FIGURE 20 Factors influencing the effectiveness of COI regulations’ implementation



The overall result affirms that the three most important factors affecting the implementation of COI regulations are:

- Violations are not strictly handled;
- Leaders do not act as a good role models; and
- Inspection and monitoring have not been effectively done.

Cultural factors were believed to have very little impact on the implementation of these regulations. The result is quite

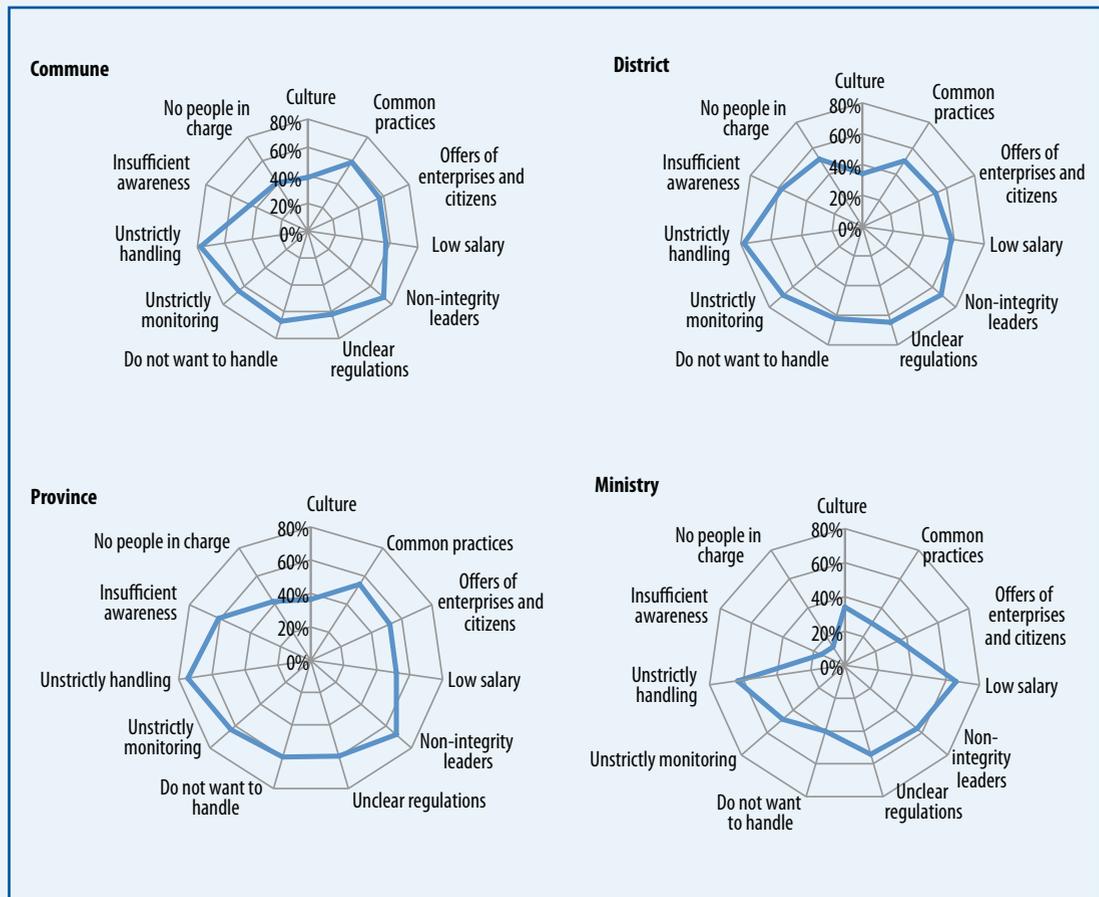
similar among five centrally-governed cities and the other five provinces. However, there are differences among the public officials’ opinions regarding the three most influential factors (Figure 21).

“Leaders does not act as a role model, so all regulations are merely a formality”

“The implementation was not effective due to a lack of supervision”

[Focus group discussions with public officials]

FIGURE 21 Factors affecting the implementation of organizational measures and regulations – Public servants’ perspective



Public servants at lower levels are more likely to attribute poor implementation to higher levels, such as leaders not handling violations strictly, not acting as a role model, and/or not closely supervising implementation. The fact that “receiving gifts has become a habit/common practice” has a big impact on the implementation of COI managing measures and regulations, according to local public servants. In contrast, public servants at ministerial level tend to attribute poor implementation of COI managing measures and regulations to objective factors such as low wages and unclear regulations.

“...I must say that as a public officials, my wage is not enough to pay my children’s school fees that is why gift-taking now becomes a cultural part of life”.

[Focus group discussions with public servants]

5.2.4. The attitude of public employees toward COI situations

COI management measures and regulations are developed to encourage individuals to report COI situations they have recognized or witnessed. This survey explores public servants’ possible actions and reasoning when they face COI situations.

According to the survey, 87% of public servants said they would be willing to report COI cases. 81% of public officials at ministry level said they would discuss or report when seeing COI cases, compared to 88% of public servants at local level. There is still a significant percentage of public servants who are unwilling to discuss or report COI cases, especially

those at ministerial level.

The question is - why are they unwilling to discuss and/or report COI cases. Common reasons include public servants are reluctant to report others’ irregularities; they do not believe in unsettling those in authority; or COI situations directly involve people in power. Public servants at ministry level do not report COI cases since they do not know who to report to (14%) and believe cases are common practices and not necessary to report (10%). Meanwhile, public servants at local level avoid reporting against others, disbelieve in the violation handling of leaders, and are concerned that COI cases directly involve upper authority levels. This result reinforces previous findings that only few state agencies have a focal point/person in charge to provide support on COI managing measures and regulations.

“Everybody knows, the managers know, and so do the leaders but violations are not handled. What happens to me if I speak out?”

[A public official in a focus group discussion]

In summary, the findings show that implementation of regulations is still weak, especially at local level. Important reasons include un-strict handling measures, lack of role-model leaders, and lack of effective monitoring mechanisms. A significant proportion of public officials are reluctant to report as they are wary of being exposed against when encountering COI cases. In other words, regulations are issued but motivation and discipline in implementation are weak.

Conclusion and Recommendations

6

COI refers to specific situations where public servants make decisions or behave in a way to benefit him/herself in civil service. The prevalence of COI situations may affect the effectiveness of state apparatus and the socio-economic development of each and every nation. COI undermines the objectivity of public resource allocation decisions and deteriorates their effectiveness. COI is also among the main contributors to corruption. Therefore, managing and mitigating COI situations not only help improve effectiveness in performance of state apparatus but also strengthen integrity and prevent corruption in public affairs.

This study provides initial evidence to support policy makers and public administrators in developing a more effective mechanism to manage COI situations. This study is particularly important considering the fact that the new manifesto of the 12th National Congress of the Vietnam Communist Party (2016-2021) strongly emphasizes the importance of improving the effectiveness and better controlling corruption in the public administration. The study is also an important background document that can inform medium-to-long-term institutional reform efforts of Vietnam and boosts Vietnam's development towards a nation of prosperity, innovation, inclusion and democracy by 2035.¹⁴ Managing COI should be seen as a priority among those institutional reform efforts towards these ambitious goals.

6.1. Conclusion

6.1.1. COI has not been perceived by public servants, enterprises and citizens as a problem in public governance

This study shows that the majority of survey respondents do not understand or have a full understanding of the concept of COI. Only around 25% of respondents demonstrated proper understanding of COI as a conflict between public servants' personal and public interests, which is derived from the public servants' decisions. Nevertheless, respondents can identify situations, manifestations and negative impacts of COI on the objectivity, efficiency and effectiveness of state governance.

It is notable that there was little difference between public servants, enterprises and citizens in how they understand the term "COI" and how they identify COI situations in practice. The only difference arose in how they see the impact of COI on the objectivity and fairness of decisions. Specifically, enterprises and citizens saw COI as having a more negative impact than public servants. Although the "perception" did not always match "the real experience", the "perception" could still lead to the potential risk of losing trust of enterprises and citizens in public servants and public administration.

While COI can be identified in specific

situations, it has not been considered a critical problem in public governance. This leads to an inconsistent and fragmented introduction of intervention to manage and mitigate COI in different legal documents, instead of being proposed via a systematic approach.

6.1.2. COI and COI management have not been officially institutionalized in legislation in order to improve the effectiveness of public governance and anti-corruption efforts

A review of legal documents showed that existing legislation has not offered an official definition of COI and COI management. They have just initially recognized and proposed measures for handling ad hoc COI cases such as:

- Gift-giving and receipt (material benefits);
- Making decisions and/or influencing in favor of himself/herself, or his/her family members;
- Making investments or sharing investment returns with other investors;
- Taking advantage from information learned as part of his/her duty.

The absence of a concrete definition of COI has resulted in a lack of formality and comprehensiveness in current COI-related regulations. From international experience, managing COI is related not only to individual public servants. It should be seen in broader relationships, including working relationships in public affairs, family relationships, friendship and social relationships at large. Personal interest pursued by a public servant can be tangible (i.e. assets and other valuables) or intangible (i.e. spiritual value or non-material benefits). Personal interest could

be enjoyed directly by a public servant, or indirectly by his/her spouse, children, other family members or relatives. Personal interest could be realized before, during or after the managerial decisions or conducts occur.

At present, concrete COI-directly-related regulations have not been compatible or aligned with other relevant legislations. Managing COI-related situations is specified in a number of codes¹⁵. At the same time, many other legal documents regulate COI situations and COI management. There is a lack of necessary alignment and compatibility among legal documents to guarantee enforcement¹⁶. Those deficiencies are also attributed to the absence of a common understanding on COI and the underestimation of COI as systematic problem in state governance.

6.1.3. COI situations are prevalent in different forms and are likely to become a “common practice” in public affairs

The survey shows that COI situations are prevalent in various forms. They occur in all six categories of activities conducted by public servants, most likely in procurement management, licensing and project approval, and recruitment and appointment. The three most popular forms of COI are:

- (i) Gift-giving;
- (ii) Doing favors for friends or relatives;
- (iii) Using inside information for personal benefit.

In general, the prevalence of COI situations was perceived much more seriously by businesses and citizens than by public servants, typically in the fields of procurement, recruitment and

appointment. No matter what is the main cause, this perception gap should be filled in order to rehabilitate trust of businesses and citizens in Vietnam's public governance.

The study results show real concern that differing forms of COI are considered the “rules of the game” when interacting with public servants. One of the “rules” is giving gifts to public servants. Businesses give gifts to public servants to create competitive advantage, maintain relationship and avoid “discrimination” when exposed to public administrative procedure.

Similarly, gifts exchange among public servants is carried out mainly for personal purposes, and it has increasingly become a “common practice”, the “norm” and being recognized as “well behaved” in working relationships. Such “rules of the game” or “practices” are contradictory to existing regulations and need to be better managed in a more effective manner.

6.1.4. COI management is less effective and not well aligned with anti-corruption requirements

The survey shows that measures for COI prevention and management have been internally developed in all state agencies. However, the effectiveness of such measures remains low due to lack of guidance and implementation support. The lower the hierarchical levels these state agencies are, the poorer the implementation is. Similarly, many COI management measures required by laws have not been enforced. Over a quarter of surveyed public servants admitted their agencies did not implement some COI management regulations.

Lenient sanction against violations, leaders not acting as role models and lack of effective monitoring and assessment

tools are listed as the three most important factors undermining enforcement. Besides, lack of incentives for citizens and other public servants to investigate, report or disclose COI situations, and weaknesses in dealing with specific COI situations, remain an important cause of low effectiveness of COI management.

“Culture” was not considered of great influence on effectiveness of COI management. This result is aligned with citizens and enterprises' views that gifts intentionally given to public servants (as a prevalent form of COI) are “rent-seeking” rather than a “tradition”. “Tradition” is used as an excuse by some public servants to mask a lack of determination, integrity and/or competence in implementing state regulations.

6.2. Recommendations

The results show COI situations have become prevalent in different sectors of the public sector. However, management of COI and the handling of COI violations continue to be limited. An effective COI management system is one that can help *minimize risk of COI situations in public affairs conducted by public servants (potential COI), manage and fill the “gaps” in public administration that can create COI (inherent COI), and promptly detect, as well as strictly punish, violations with COI regulations.*

The recommendations in this study focuses on three groups of measures to reform institutions, improve the effectiveness of public governance and prevent corruption in Vietnam.

They include:

- (i) Raising awareness;
- (ii) Institutional improvement; and
- (iii) Strengthening of enforcement of COI regulations.

Managing COI needs to run in parallel with public administrative procedure simplification, better management of public affairs systems, and strengthening of transparency, publicity, and accountability of public administration.

Accelerating administrative procedure reform also helps reduce the risk of COI occurrences in practice due to the removal or minimization of direct contact between public servants and citizens and enterprises. Better management of public affairs systems can help prevent COI occurrences by imposing tight restrictions on public servants, including managing their assets, income and performance, which makes it possible to detect and handle arising violations. Strengthening transparency, publicity and accountability will help manage COI situations and reduce the risk of violations. Following these three groups of measures, concrete recommendations are presented hereafter. Additionally, Annex 4 also presents a detailed list of findings on COI based on this study and correspondingly recommended solutions with references to international good practices.

6.2.1. Raising the awareness of COI

It is crucial to communicate and raise public servants', citizens' and enterprises' awareness of COI. COI should be perceived as a need-to-avoid issue in public governance since it directly affects socio-economic development goals, reduces effectiveness in resource allocations, deteriorates public trust in the government, and makes corruption harder to control.

In the short term, better communication and incorporation of concrete

COI cases and measures to identify, prevent and handle COI into anti-corruption plans and training curricula for public servants is needed. In the long term, professional training and guidance on how to identify, prevent and respond to COI situations need to be developed and made mandatory in recruitment, appointment of, and education and training for, public servants.

Similarly, prevention of, and response to, COI situations also need to be incorporated in the Code of Conduct for business operation, which should be considered an integral part of the integrity enhancement agenda in business conduct.

6.2.2. Improving policy and legislation on COI management

Improving policy and legislation remains a key factor for better managing COI in Vietnam. This group of measures includes the issuing of several new regulations as well as amending existing COI management regulations.

a. Setting COI definition and mechanism for COI management

It is important to adopt an agreed definition on, as well as mechanism for preventing, detecting and handling COI violations, in the legal framework on public governance in Vietnam. Specifically, in the coming comprehensive revision of the Law on Anti-Corruption, COI and COI management should be added. Translation of COI regulations into specific law articles in the Law on Anti-Corruption will ensure consistency in understanding of COI, measures applied to manage COI, and organization

of law implementation, management and handling of violations. Articles related to COI and COI management in the Law on Anti-Corruption need to provide:

- Definition of COI;
- Signals for identifying COI risks;
- Principles for handling COI violations;
- Different types of sanction applied to COI violations; and
- Process, procedure and authority for handling COI violations.

Based on these legal articles, the government and relevant agencies in public administration will be responsible for detailing and guiding implementation. In the future, other important laws related to public affairs systems and organizational arrangement will need to be revised in alignment with new articles on COI management prescribed in the Law on Anti-Corruption.

b. Broadening the scope of application of COI-related regulations

The survey results suggest that currently, only public servants are subject to COI-related regulations. This is among the main causes leading to severe impediments in managing COI in practice, since public servants can use other relationships to “mask” COI situations. Therefore, apart from imposing “hard” restrictions on public servants as direct subjects being governed by regulations on COI management, it is crucial to broaden the scope of application of COI regulation to cover other actors having close relationship with public servants, including spouses, birth children, adopted children, siblings, parents and adoptive parents (via marriage and family relationship).

c. Revising regulations on gift-giving and receipt

The study shows that regulation on gift-taking has not been effectively implemented. Administrative reports on anti-corruption efforts also confirm that statistics on gift-giving and receipt do not accurately reflect reality.

In order to address this shortcoming, it is important to revise regulations on gift-giving and receipt towards adopting framework principles to reduce COI risks in the public sector. It means public servants should be fully prohibited from taking gifts in any form and at any value. Especially, for those public servants working in sectors with a high risk of COI such as procurement, licensing, recruitment and appointment, or other sectors that require a lot of transactions with citizens and enterprises such as taxation, customs, and inspection.

Gift-giving and receipt may be acceptable in some exceptional occasions such as in diplomatic events or receptions under the names of agencies or organizations, and the gifts contain mostly spiritual and cultural value. But, it is also important to assign a focal agency to follow-up, monitor and receive information and report on public servant gift-giving and taking practice and specify concrete sanctions for violations.

The study also suggests that the “culture” attribute is not the primary purpose of gift-giving and receipt in public sector, in contrast to critics stating that a prohibition on gift-giving and receipt would deteriorate this cultural value. Therefore, it is crucial to adopt a stricter attitude and standpoint in developing legal regulations on gift-taking and giving in public affairs

in order to make a critical switch in perceptions and attitudes of public servants, enterprises, and citizens.

d. Managing outside employment and post-employment

Built on existing regulations on public servants, enterprises, and other fields of public administration, it is recommended to continue to review and update restrictions on public servants from engaging in outside and post-employment in accordance with the nature and requirements of different sectors and professions. Although this has been mentioned in the Law on Public Officials and the Law on Public Employees and Government Decree No.102/2007/ND-CP (dated 14 June, 2007) specific restrictions in typical sectors and areas have not specifically instructed, causing ineffectiveness, inconsistency and a lack of a solid base for implementation. This, in turn, affects the effectiveness of COI management.

It is also urgent that regulations are adopted on public servant engagement in outside public employment in order to ensure transparency and publicity of these activities. Such regulation would also help better manage additional income arising from outside employment, which contributes towards preventing and detecting corruption effectively. Clear restrictions in this respect will also help ensure legitimate personal business interests of public officials and their family members.

e. Strengthening effectiveness of assets and income management

To be proactive in identifying COI situations, law-implementing agencies

should develop a database on public servants' incomes and assets, and utilize information extracted from that database. The connection between data gathered from public servants' self-declaration of incomes and assets and other data relevant to them and to business operations (for example, for tax purposes), will help detect and effectively respond to COI situations.

To ensure effectiveness of the regulations, reducing the number of public officials who are obliged to declare their incomes and assets will be essential. At the same time, the requirement to declare assets and incomes needs applying to close family members of public officials too. Strengthening the control system over changes in public servants' incomes and assets will also be crucial.

6.2.3. Strengthening the capacity to manage COI and handle COI situations

Apart from improving policies and legislation on COI management, strengthening capacity to prevent, detect and handle COI violations is critical. Accordingly, assigning an agency or organization to act as a focal point in managing COI needs to be taken into consideration. The focal agency, in coordination with the agencies in charge of public servant management, will organize activities that help raise awareness of COI and COI management, take stock of implementation and provide policy advice to strengthen regulations. The focal agency would review, handle or recommend solutions for handling COI-related cases and violations according to their mandated authority.

Additionally, the development of a

system that collects, provides feedback on, and responds to complaints and reflections on COI-related cases from different entities, especially those from public servants, should be a priority for early action.

The survey prevails that public servants are reluctant to confront the problem or they usually assume that their complaints and reflections are useless. Such an attitude and mindset is the main barrier that prevents them from reporting on COI situations. Therefore, an effective mechanism should provide

protective measures or design proper channels for receiving information and responding to feedback and complaints. The mechanism or channels need to ensure that information providers are free from fear of being threatened or avenged for their disclosure. Moreover, intensifying checking and inspection activities over public affairs in general and COI management practice in particular, also needs to be emphasized. In this regard, the oversight role of the society, media, civil society organizations, as well as businesses cannot be underestimated.

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- 2 Public servants in this study also cadres and officials working in peoples' councils at local levels, and public employees working in public service delivery units. In this report, the terms "public servants" and "public officials" are used interchangeably.
- 3 World Bank; Ministry of Planning and Investment of Vietnam. (2016). Vietnam 2035: Towards Prosperity, Creativity, Equity, and Democracy. <https://openknowledge.worldbank.org/handle/10986/23724>
- 4 Public servants in this chapter include also cadres and officials working in peoples' councils at local levels, and public employees working in public service delivery units.
- 5 The provinces, cities, and Ministries selected for this study are also those selected for the 2012 Anti-Corruption Diagnostics jointly conducted by the World Bank and the Government Inspectorate.
- 6 Hai Duong was one of selected provinces to take part in the survey. However, for some reason, public servants in Hai Duong could not participate in the survey and were replaced by ones from Thai Binh. The enterprise survey was still conducted with enterprises in Hai Duong as planned.
- 7 <http://www.agidata.org/pam>
- 8 The number of enterprises participating the survey was 570, however, 512 of which completed the questionnaire and only these complete responses were used for analysis.
- 9 Financial disclosure covers the declaration of interests, income and assets.
- 10 Heads of People's Committees of all local levels, departments of provincial-level People's Committees, ministries and equivalent bodies, agencies of ministries and equivalent bodies.
- 11 This question was not included in the survey of citizens due to the need to shorten the online questionnaire.
- 12 The World Bank Enterprise Surveys are regularly conducted with a representative sample of an economy's private sector. The surveys have been conducted in 126 countries so far. The latest survey for Vietnam was carried out in 2015. <http://www.enterprisesurveys.org/data/exploreconomies/2015/vietnam>
- 13 These measures are based on existing regulations or international practices.
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- 15 Law on Public Officials in 2008, Law on Public Employees in 2010, Law on Anti-Corruption in 2005

(amended and supplemented in 2007 and 2012), Law on Enterprises in 2014, Law on Inspection in 2010, etc., and the documents providing details and guidance for implementation.

16. Such incompatibility and misalignment are manifested in several aspects as follow:
 - Legislation on public servants provides for what public servants shall not do, including using duty-related information for personal gains. However, sector-related laws on such areas as procurement, business operations, and banking and finance do not provide guidance for identifying actual owners of legal entity, which indeed is required base for nullifying violated transactions;
 - Restrictions are imposed on public servants in order to prevent COI; however, measures to manage behavior of public servants' spouses, children, and especially relatives are lacking, while these actors play key roles in benefit capturing for public servants (in such form as running "backyard" businesses or seeking rents from duty-related information);
 - Similarly, legislation on public servants prescribes how to manage COI potentially happening from holding duty-related information. Unfortunately, legislation on information management in state agencies (including the Law on

Information Access, the Ordinance on Protection of State Confidentials and other legal documents regarding internal control of information in government agencies) has not been well developed. Specifically, there is an absence of effective measures to manage internal information and enforcement when violated. Declaration of assets and income is legally compulsory and implemented every year; however, there is a lack of tools to keep track as over time income and wealth flows as well as a lack of overarching regulation to control incomes of public servants and other actors in society. Similarly, regulations on gift-giving and receipt is developed while a mechanism for implementing, monitoring and dealing with violations is not yet available.

- 17 'Public servants' in the survey with public servants include both officials working at People's Councils at all levels and ones at public offices.
- 18 H= Head(s) of state; M= Ministers/ cabinet members; MPPC= Members of Provincial People's Committees; MP=Members of Parliament; CS= Civil Servants; PE= Public Employees; Close family members = parents, spouses, children and siblings; Broad family members = Close family members and other relatives.

Annex 1. Detailed field survey methods and samples

Similar to the 2012 survey, three groups of respondents were included in this survey:

- *Public servants*¹⁷: Public servants who participated in this survey are at all four levels: ministry, province, district and commune. At ministry level, respondents were Head of Directorate or Department and below. Ministers or Vice Ministers were not included in the survey. At the province level, respondents were staff members up to Department Head. Higher level officials included representatives of the provincial People's Councils. People's Committee Chairmen or Vice Chairmen were not included in the survey.
- *Enterprises*: The survey was aimed at formally registered enterprises whose headquarters are located in 10 provinces / cities. Respondents from

enterprises could be members of the Board of Directors or the Head of Planning, Logistics, Administrative, or Accounting Departments. The questionnaire-based survey was conducted online using the Survey Monkey tool. The study team sent e-mails to enterprises asking them to appoint appropriate persons to join the survey. There was a single respondent per enterprise.

- *Citizens*: Citizens who were 18 years old or older were eligible for the survey. Surveys with citizens were conducted online, through VnExpress online newspaper. Any citizen can go online and answer questions. The viewpoints of the citizens do not represent the households or organizations but are simply personal opinions of their perception and experience of conflict of interest. The answers of those under 18 years of age (if any) were not used in the analysis.

Features of surveys of public officials and citizens

Features	Public servants	Citizens
Total respondents	1,374	570
Average age	43	35
Female (%)	37.1	45.3
Urban (%)	79.1	8.2
Education background (%)		
University and post graduate (public servants)/ Post graduate (citizens)	87.1	45.4
Junior college & College (public servants)/ College & University (citizens)	12.2	49.8
Others	0.7	4.8
Location of work (%)		
Ward/Commune	39.2	
District	39.1	
Province/ City	18	
Ministry/ Central	3.8	
Highest position (%)		
Head /Deputy Head of the Department	34.6	
Head /Deputy Head of the Division	26.3	
Other positions	5.8	
Not holding any position	33.2	

Features of survey samples and Viet Nam enterprise survey

Criteria	Survey samples (%)	Viet Nam Enterprise Survey (%)	Criteria	Survey samples (%)	Viet Nam Enterprise Survey (%)
Ownership			Year of operation		
<i>FDI</i>	6.1	2.6	<i>Under 2 yrs</i>	6.4	27.1
<i>State capital</i>	1.2	0.9	<i>From 2 to 5 yrs</i>	36.9	35.4
<i>100% private capital</i>	92.8	96.5	<i>Above 5 yrs</i>	56.6	37.5
Scale			Field/Industry		
<i>Small</i>	81.1	96.0	<i>Industry</i>	15.0	17.2
<i>Medium</i>	14.7	1.8	<i>Trade, services</i>	64.1	50.6
<i>Large</i>	4.2	2.2	<i>Construction, Property</i>	20.1	29.6
			<i>Others</i>	0.8	2.7

Note: The figures of Vietnam firms in general were taken from the 2013 Enterprise Survey conducted by the GSO.

BOX i Enterprise survey

The survey with enterprises was conducted online using an online survey tool, namely Survey Monkey. Selected enterprises for the surveys are ones with name, address, phone number and email listed in the 2013 Enterprise survey carried out by the General Statistic Office. At first, the consultant team sent emails to 5,000 enterprises (that is 10 times the number of enterprises expected to respond) and then called ones which had answered but not completed the questionnaire.

After three weeks, the team sent invitations to another 2,000 enterprises and later called ones participating in the survey to complete the questionnaire. In the last week, the team made phone calls to enterprises at provinces where the number of participating enterprises was less than expected, asking them to fulfill the questionnaire. After six weeks of data collection, the number of complete responses was above expectation in nine provinces, and Son La was the exception.

Annex 2. COI Legal Review Matrix

Conflict of Interest in the Legal Framework of Vietnam

COI regulatory issue	Short	Detailed	Coverage ¹⁸	Citation
I. General characteristics of the legal framework				
Laws regulating conflict of interest	Yes	The Conflict of Interest (COI) legal framework of the Socialist Republic of Vietnam is laid down in several laws and their implementing decrees and decisions. The laws regulating COI restrictions and disclosure are listed in this citation section. The Anti-Corruption Law is the one that covers COI prevention measures more comprehensively. In addition, there are some laws that regulate specific enforcement aspects, such as the Criminal Procedure Code, the Civil Procedure Code, the Law on Complaint and the Law on Denunciation, the Law on Inspection, etc.	H, M, MPPC, MP, CS, PE	Anti-Corruption Law (2005, amended in 2007 and 2012); Law on Cadres and Civil Servants (2008); Law on Public Employees (2010); Law on Bidding (2013); Law on Inspection (2010); Law on Enterprises (2014), Law on Audit (2014), Criminal Procedure Code (2015), the Civil Procedure Code (2015).
Constitutional requirement to avoid specified conflict(s) of interest	Partial	The Constitution just prohibits the members of the Standing Committee of the National Assembly to be members of Government at the same time.	H, M	Constitution (2013).

COI regulatory issue	Short	Detailed	Coverage	Citation
Code of conduct/ethics	Yes	The Code of Conduct, Rules of Professional Ethics, in the Anti-Corruption Law, establishes conflict of interest restrictions for all public servants.	H, M, MPPC, MP, CS, PE	Section 3, Anti-Corruption Law (2005, amended in 2007 and 2012).
General restriction on conflict of interest	Yes	Cadres and civil servants shall practice diligence, thrift, integrity, public-spiritedness and selflessness in performing public duties. Cadres and civil servants are prohibited to take advantage of or abusing tasks and powers; using civil service-related information for self-seeking purposes. Public employees have the general obligations of “adopt healthy lifestyles, to be honest, industrious, thrifty, incorruptible, upright, public-spirited and selfless” and “self-improve and self-train in professional ethics and code of conduct of public employees”.	H, M, MPPC, MP, CS, PE	Articles 15 and 18, Law on Cadres and Civil Servants (2008); Article 16, Law on Public Employees (2010).
Clear definition of conflict of interest	No	Although the laws of Vietnam establish some restrictions related to conflict of interest and require the disclosure of some private interests, they do not define conflict of interest clearly and explicitly.		Anti-Corruption Law (2005, amended in 2007 and 2012); Law on Cadres and Civil Servants (2008); Law on Public Employees (2010); Law on Bidding (2013); Law on Organization of National

COI regulatory issue	Short	Detailed	Coverage	Citation
				<p>Assembly (2001, amended 2007); Law on the Organization of People's Councils and People's Committees (2003); Law on Inspection (2010); Law on Enterprises (2014); Law on Audit (2014), Criminal Procedure Code (2015), Civil Procedure Code (2015).</p>
<p>Inclusion of family members and friends of public servants</p>	<p>Partial</p>	<p>The legal framework of Vietnam on conflict of interest does include family members of public servants, but only partially and unevenly. Depending on the type of conflict-of-interest issue, the family members are not included at all (e.g. accepting gifts), close and extended family members are included (e.g. firm ownership), or close family members are included (e.g. doing business in the area managed by the public servant). Friends of public servants are not included, except for those provisions on disclosure that apply to everybody (e.g. disclosure of recruitment results).</p>	<p>H, M, MPPC, MP, CS, PE</p>	<p>Anti-Corruption Law (2005, amended in 2007 and 2012); Law on Cadres and Civil Servants (2008); Law on Public Employees (2010); Law on Bidding (2013); Law on Inspection (2010); Law on Enterprises (2014); Law on Audit (2014), Criminal Procedure Code (2015), Civil Procedure Code (2015).</p>

COI regulatory issue	Short	Detailed	Coverage	Citation
II. Behavior Restrictions				
<i>Restrictions on Income and Assets</i>				
Accepting gifts	Partial	Public servants cannot receive money, properties or other material interests from organizations or individuals involved in affairs that fall under their respective management. However, the regulations on accepting gifts do not apply to spouses, children or other family members.	H, M, MPPC, MP, CS, PE	Article 40, Anti Corruption Law (2005, amended in 2007 and 2012); Prime Minister Decision No. 64 (2007).
Ownership of private firms, state-owned enterprises, and/or stock holdings	Yes	Public servants cannot establish or participate in the management and administration of private enterprises, limited liability companies, stock companies, cooperatives, private hospitals and private scientific research institutions; and agency heads, deputy heads and their spouses cannot contribute capital to enterprises over which they directly manage.	H, M, MPPC, MP, CS, PE, spouses	Article 37, Points 1 and 2, Anti-Corruption Law (2005, amended in 2007 and 2012); Article 18, points 2d, Law on Enterprises (2014).
Ownership of real estate or land	Partial	The relevant laws do not include a specific restriction on this, but there is a restriction on the use of internal information for self-seeking purposes. However, this restriction does not explicitly mention real estate and	H, M, MPPC, MP, CS, PE	Article 37, Point 1, Anti-Corruption Law (2005, amended in 2007 and 2012); Article 18, Law on Cadres and Civil Servants (2008).

COI regulatory issue	Short	Detailed	Coverage	Citation
		land and does not cover other types of conflicts of interest that could result in the ownership of these assets.		
<i>Restrictions on Business Activities</i>				
Outside employment and private firm work	Yes	Public servants cannot establish or participate in the management and administration of private enterprises, limited liability companies, stock companies, cooperatives, private hospitals, private schools, and private scientific research institutions. In addition, public servants cannot act as consultants for enterprises, organizations and individuals on issues related to state and work secrets, or affairs that fall under their respective settling jurisdiction.	H, M, MPPC, MP, CS, PE	Article 37, Points 1 and 4, Anti-Corruption Law (2005, amended in 2007 and 2012); Article 18, points 2d, Law on Enterprises (2014).
Post-employment	Yes	Public servants cannot work in domains that they previously had managed within a given period of time after they resigned. A Decree regulates the periods of business-ineligibility for the various domains. In addition, cadres and civil servants working in areas related to state secrets cannot, for at least	H, M, MPPC, MP, CS, PE	Article 37, Point 1, Anti-Corruption Law (2005, amended in 2007 and 2012); Decree No. 102 (2007); Article 19, Law on Cadres and Civil Servants (2008).

COI regulatory issue	Short	Detailed	Coverage	Citation
		<p>five years from their retirement, work for national or foreign organizations or individuals on work related to their previous branch or profession.</p>		
<p>Holding government contracts</p>	<p>Partial</p>	<p>The Anti-Corruption Law prohibits public servants managing state enterprises to conclude contracts with businesses of their close family members. It also prohibits heads and deputy-heads of agencies to let their close family members “do business” in the areas they directly manage. The Bidding Law prohibits public servants involved in procurement to participate in the tendering activities managed by the public servant. It also prohibits public servants involved in procurement to participate in the process of selection of bidders for bidding packages in which their extended family members participate. Neither the Anti-Corruption Law nor the Bidding Law contain any explicit restriction on holding government contracts applicable to public servants in general.</p>	<p>H, M, MPPC, MP, CS, PE, family members</p>	<p>Article 37, Points 4 and 5, Anti-Corruption Law (2005, amended in 2007 and 2012); Articles 17, 75, 78 and 89, Law on Bidding (2013).</p>

COI regulatory issue	Short	Detailed	Coverage	Citation
NGO or labor union membership	No	This restriction is not covered in the relevant laws.		Section 3, Anti-Corruption Law (2005, amended in 2007 and 2012); Law on Cadres and Civil Servants (2008); Law on Public Employees (2010).
<i>Restrictions on Public Office Mandate</i>				
Simultaneously holding a policy-making position and a policy-execution position, or two distinct policy-making positions	Partial	While a Member of Government cannot at the same time be a member of the Standing Committee of the National Assembly, there is no restriction on holding other policy-making or policy-executing positions e.g. deputy of National Assembly (NA). While a Member of People's Committees cannot concurrently be a member of the Standing Bodies of the People's Councils at the same level, there is no restriction on holding other policy-making or policy-executing positions e.g. deputy of People's Councils.	H, M, MPPC	Article 90, Constitution (2013); Article 6, Point 3, Law on Organization of National Assembly (2001, amended 2007); Article 52, Law on the Organization of People's Councils and People's Committees (2003).
Simultaneously playing a policy-execution role and an oversight role	No	The relevant legislation does not include this restriction, for example, a member of the government can concurrently be a member of the National Assembly.		Constitution (2013); Law on the Organization of the National Assembly (2001, amended 2007); Law on the Organization of Government (2001);

COI regulatory issue	Short	Detailed	Coverage	Citation
				Law on the Organization of People's Councils and People's Committees (2003); Anti-Corruption Law (2005, amended in 2007 and 2012); Law on Cadres and Civil Servants (2008); Law on Public Employees (2010).
Assisting family or friends in obtaining employment in the public sector	Partial	The Anti-Corruption Law prohibits heads and deputy-heads of agencies, organizations and units to arrange their close family members to hold certain positions or conduct certain tasks in their agencies, organizations or units. In addition, the Law stipulates that public servants managing state enterprises cannot arrange their close family members to hold certain positions or conduct certain tasks in their enterprises. These restrictions have a limited coverage. Public servants (and family members of public servants) who do not manage state enterprises or do not hold head or deputy head positions are not covered by the restrictions. The restrictions do not cover the extended family members and other	H, M, MPPC, CS, PE, close family members	Article 37, Points 3 and 5, Anti-Corruption Law (2005, amended in 2007 and 2012).

COI regulatory issue	Short	Detailed	Coverage	Citation
		<p>persons such as friends of public servants, either. Moreover, the restrictions do not capture the possibility that the arrangement of employment for family members is delegated from a superior public servant to his/her subordinated public servant, from a subordinated public servant to his/her superior/friend public servant, or from a public servant to his/her friend public servant in another agency, organization, unit or state enterprise.</p>		
<p>Assisting (businesses of) family or friends in obtaining a government contract</p>	<p>Yes</p>	<p>The Anti-Corruption Law prohibits public servants managing state enterprises to conclude contracts with businesses owned by their close family members. It also prohibits heads and deputy-heads of agencies to let their close family members “do business” in the areas they directly manage. As in the case of the restrictions on assisting family in obtaining employment, these restrictions have a limited coverage. The Law on Bidding addresses some of the coverage gaps of the Law on Anti-Corruption. The Law on Bidding prohibits all public servants involved in procurement (i.e.</p>	<p>H, M, MPPC, CS, PE, extended family members</p>	<p>Article 37, Point 5, Anti-Corruption Law (2005, amended in 2007 and 2012).</p>

COI regulatory issue	Short	Detailed	Coverage	Citation
		<p>heads and individuals of the bid solicitor and the investment owner) from directly participating in the selection of a bidder for bidding packages in which their extended family members participate (i.e. parent, parent-in-law, spouse, natural child, adopted child, son-in-law, daughter-in-law, sibling). Importantly, the Law on Bidding requires all bid solicitors and evaluating organizations to “ensure honesty, objectivity and impartiality throughout the process of tendering” and mandates the bidding cancellation for violating cases.</p>		
<p>Participating in official decision-making processes that affect private interests</p>	<p>Partial</p>	<p>Circular No. 05/2014/TT-TTTP dated October 16, 2014 requires that the leader and members of inspection teams should not have parents; parents-in-law; spouses, biological children; son-in-law or daughter-in-law, brother, biological siblings among the subject of inspection or possessing a close relationship with the subject of inspection, to ensure the objectivity of inspection; the Civil Procedure Code provides regulations to ensure impartiality and objectivity in civil proceedings; the Criminal</p>	<p>CS, PE</p>	<p>Article 9, Circular No. 05/2011/TT-TTTP; the Law on Inspection (2010); the Law on Audit (2015); Articles 16, 75 and 87, Civil Procedure Code (2015); Articles 21, 67, 72, 53, the Criminal Procedure Code (2015); Article 28, Law on State Audit (2014).</p>

COI regulatory issue	Short	Detailed	Coverage	Citation
		Procedure Code provides regulations to ensure the impartiality and objectivity of the stakeholders including defense counsel, the judge, the witnesses in the process of conducting legal proceedings; the Law on Audit requires that the audit team members should not have capital contribution or economic benefit in the audited agencies, or have family relationships with the head, the chief accountant or the person in charge of the audited agencies.		
III. Disclosure Requirements				
Gifts	Partial	Accepted gifts must be disclosed internally only i.e. to the agency or unit of the concerned public servant. Public disclosure is not required. The regulations do not apply to spouses, children or other family members.	H, M, MPPC, MP, CS, PE	Articles 9-12, Prime Minister Decision No.64 (2007).
Assets, liabilities and income	Partial	External publicity is not required. The disclosure of the declarations of assets and income must be done one of the following manners, to be decided by the head of the organization or unit: (a) posting them at the office of the organization or unit; or (b) announcing them at internal meetings.	H, M, MPPC, MP, CS, PE, spouses and children	Article 46a, Anti-Corruption Law (2005, amended in 2007 and 2012); Articles 13 and 14, Decree No. 78 (2013).

COI regulatory issue	Short	Detailed	Coverage	Citation
		The disclosed declarations must include the assets and income of spouses and underage children.		
Outside employment	No	The disclosure of this is not required in the relevant laws.		Anti-Corruption Law (2005, amended in 2007 and 2012); Law on Cadres and Civil Servants (2008); Law on Public Employees (2010).
Previous employment	No	The disclosure of this not required in the relevant laws.		Anti-Corruption Law (2005, amended in 2007 and 2012); Law on Cadres and Civil Servants (2008); Law on Public Employees (2010); Decree No. 102 (2007).
Recruitment and promotion of civil servants and public employees	Partial	The Anti-Corruption Law mandates transparency and publicity in the recruitment, promotion and appointment of cadres, civil servants and public employees. Decrees No. 24 and 29, applicable to civil servants and public employees, respectively, require the public posting of recruitment results, but promotion results are just required to be internally notified. Importantly, there is no requirement of	H, M, MPPC, MP, CS, PE, all applicants	Article 30, Anti-Corruption Law (2005, amended in 2007 and 2012); Art. 17 and 34, Decree No. 24 (2010); Art. 17 and 31, Decree No. 29 (2012).

COI regulatory issue	Short	Detailed	Coverage	Citation
		transparency of the decision-making processes e.g. rating obtained by each applicant, reasons for selection and rejection, handling of complaints from applicants.		
Recruitment and promotion in state enterprises	Partial	The Anti-Corruption Law has some important requirements on transparency and publicity for state enterprises. For example, the Law mandates to publicize “the appointment of leading and managerial positions in state enterprises” and the “full name, duty, salary and other incomes of persons in Members’ Council, Board of Directors, Director General, Deputy Director General, Director, Deputy Director, Controllers, Chief accountant”. However, there is no requirement of transparency of decision-making processes e.g. rating obtained by each applicant, reasons for selection and rejection, handling of complaints from applicants.	H, M, MPPC, MP, CS, PE, all applicants	Article 18, Anti-Corruption Law (2005, amended in 2007 and 2012).
Bidding activities	Partial	Both the Anti-Corruption and Bidding Laws have strict requirements on publicity of bidding activities and their results. Notices of invitation, short lists of bidders, and results of contract selection are required to be	H, M, MPPC, MP, CS, PE, all bidders	Article 13, Anti-Corruption Law (2005, amended in 2007 and 2012); Article 8, Law on Bidding (2013).

COI regulatory issue	Short	Detailed	Coverage	Citation
		disclosed. Although some transparency of some decision-making processes is required (e.g. information on the individuals/organizations violating regulations, information on the handling of violations), other key aspects of the decision-making process are not required to be publicized e.g. reasons for selection and rejection.		
IV. Monitoring, Oversight, and Sanctions				
Enforcement body for COI restrictions is specified	Yes	The institutional set-up for the enforcement is specified, but there are multiple bodies involved and none of them is specialized on conflict of interest or ethics. The enforcement of the anti-corruption regulations (including the COI restrictions) is the responsibility of multiple bodies: Government Inspectorate, State Audit, Ministry of Public Security, Ministry of Defense, Supreme People's Procuracy, Supreme People's Court, National Assembly and People's Councils. The performance of tasks and exercise of powers by cadres and civil servants (including the provisions on ethics) are enforced by the inspectorates of all levels, and the specialized inspectorate of	H, M, MPPC, MP, CS, PE	Chapter V, Anti-Corruption Law (2005, amended in 2007 and 2012); Articles 74-75, Law on Cadres and Civil Servants (2008); Article 87, Law on Bidding (2013).

COI regulatory issue	Short	Detailed	Coverage	Citation
		<p>the Ministry of Home Affairs and provincial Departments of Home Affairs. The banned acts in bidding (including COI acts) are enforced by the Public Procurement Agency's Inspectorate.</p>		
<p>Enforcement body for disclosure of private interests is specified</p>	<p>Yes</p>	<p>State inspection, oversight and audit agencies have the responsibility to detect violations of the provisions on gifts. The responsibility to provide instructions, urge, inspect, and recapitulate the provisions on transparency of assets and income is assigned to different bodies or authorities, depending on the agency, organization or unit of the public servant. Ministers, ministerial agencies, Governmental agencies, People's Committees of central-affiliated cities and provinces are responsible of the overall guidance and enforcement of the provisions on transparency of income and assets. The enforcement of the disclosure of the results of recruitment, promotion, and bidding process is the responsibility of the various anti-corruption bodies specified in chapter V of the Anti-Corruption Law and the Public Procurement Agency's Inspectorate.</p>	<p>H, M, MPPC, MP, CS, PE</p>	<p>Article 32, Decree No. 78 (2013); Article 17, Prime Minister Decision No.64 (2007); Chapter V, Anti-Corruption Law (2005, amended in 2007 and 2012); Article 87, Law on Bidding (2013).</p>

COI regulatory issue	Short	Detailed	Coverage	Citation
Mechanism to investigate conflicts of interest based on the disclosed information	Partial	Either limited or no mechanisms are specified to investigate improper conduct based on the disclosed information on private interests. In the case of assets and income, there is a process of verification of the declarations that starts with certain denunciations, requests or presumption grounds, but investigations based on anonymous denunciations and proactive investigations of selected declarations are not contemplated. As far as gifts are concerned, there is not a clear mechanism. It is only required that gift-disposing agencies and units notify the agencies and units managing gift-givers “for consideration and handling thereof”. Similarly, there is no specified mechanism for using the disclosed information on recruitment, promotion, and bidding process to investigate and detect improper conduct.	H, M, MPPC, MP, CS, PE	Articles 47 and 47a, Anti-Corruption Law (2005, amended in 2007 and 2012); Chapter 4, Decree No. 78 (2013); Articles 13, Prime Minister Decision No.64 (2007).
Public oversight	Yes	The Anti-Corruption Law includes the role of society (citizens, enterprises, mass-organizations, professional organizations, people’s inspections boards, press) in supervising the observance of the Anti-Corruption Law (includ-		

COI regulatory issue	Short	Detailed	Coverage	Citation
		<p>ing the COI restrictions and the provisions on disclosure), and detecting and denouncing corruption acts. The Vietnam Fatherland Front and associate organizations must supervise the implementation of the regulations on transparency of income and assets.</p>	<p>H, M, MPPC, MP, CS, PE</p>	<p>Chapter VI, Anti-Corruption Law (2005, amended in 2007 and 2012); Decree No. 47 (2007); Chapter 6, Decree No. 59 (2013); Article 33, Decree No. 78 (2013).</p>
<p>Complaints and denunciations system</p>	<p>Partial</p>	<p>While there is a system in place for complaints and denunciations on corruption acts and violations of the anti-corruption law, the current system has two major drawbacks to be effective in the denunciation of COI cases: (1) the full name and address of the complainant or denunciator are always required, and otherwise the complaint or denunciation may be rejected; (2) when the heads of government agencies or organizations are involved in the first settlement, then the impartiality of the settlement is not guaranteed. Anonymous denunciations “of corruption” that are “clear and provide concrete evidence and grounds for investigation” are the only explicit exception to point (1).</p>	<p>H, M, MPPC, MP, CS, PE</p>	<p>Articles 7, 8, 11 and 17-23, Law on Complaints (2011); Articles 19, 20 and 31, Law on Denunciations (2011); Chapter 3, Section 3, Anti-Corruption Law (2005, amended in 2007 and 2012); Chapter 6, Decree No. 59 (2013).</p>

COI regulatory issue	Short	Detailed	Coverage	Citation
Fines are stipulated for violations of COI regulations restricting behavior	Yes	According to the Penal Code, public servants who abuse their powers and/or positions (including COI) may be fined. According to the Anti-Corruption Law, persons who commit acts of corruption or acts violating the provisions of the Anti-Corruption Law (including the COI provisions) are subject to disciplinary or criminal handling.	H, M, MPPC, MP, CS, PE	Articles 281, 282 and 283, Penal Code (1999, amended in 2009); Articles 68-69, Anti-Corruption Law (2005, amended in 2007 and 2012).
Administrative sanctions are stipulated for violations of COI regulations restricting behavior	Yes	According to the Penal Code, public officials who abuse their powers and/or positions (including COI) must be banned from holding certain posts from one to five years. According to the Anti-Corruption Law (Anti-Corruption Law), persons who commit acts of corruption or acts violating the provisions of the Anti-Corruption Law (including the COI provisions) are subject to disciplinary or criminal handling. Temporary work suspension or temporary transfer to other positions will be applied to cadres, civil servants and public employees being presumed of having acts violating law related to corruption. According to the Law on Cadres and Civil Servants	H, M, MPPC, MP, CS, PE	Articles 281, 282 and 283, Penal Code (1999, amended in 2009); Articles 68-69 and 53a, Anti-Corruption Law (2005, amended in 2007 and 2012).

COI regulatory issue	Short	Detailed	Coverage	Citation
		<p>(CCS Law), cadres and civil servants who violate the CCS Law (including the COI provisions) are, depending on the nature and seriousness of violation, subject to one of the following disciplinary forms: reprimand, caution, salary reduction, demotion, removal from office and sack. Under both the CCS Law and Anti-Corruption Law, public officials committing a criminal offense and sentenced by court will be sacked.</p>		<p>Articles 78 and 79, Law on Cadres and Civil Servants (2008).</p>
<p>Penal sanctions are stipulated for violations of COI regulations restricting behavior</p>	<p>Yes</p>	<p>According to the Penal Code, public officials who abuse their positions (including conflict of interest violations) must be banned from holding certain posts from one to five years. According to the Anti-Corruption Law, persons who commit acts of corruption or acts violating the provisions of the Anti-Corruption Law (including the COI provisions) are subject to disciplinary or criminal handling.</p>	<p>H, M, MPPC, MP, CS, PE</p>	<p>Articles 281, 282 and 283, Penal Code (1999, amended in 2009); Articles 68-69, Anti-Corruption Law (2005, amended in 2007 and 2012).</p>

COI regulatory issue	Short	Detailed	Coverage	Citation
Sanctions are stipulated for violations of the regulations on disclosure of private interests	Yes	According to the Anti-Corruption Law, persons who commit acts violating the provisions of the Anti-Corruption Law (including the provisions on transparency and publicity) are subject to disciplinary or criminal handling. According to Decree No. 78 on transparency of income and assets, disciplinary actions (reprimand, warning or heavier penalties) will be imposed to persons responsible for late disclosure of income and assets declarations. According to Decision No. 64 on gift giving, receipt and hand-over, agencies, units, cadres, civil servants and public employees that receive gifts in contravention of regulations, fail to report or make untruthful report shall, depending on the nature and severity of their violations, be handled according to law.	H, M, MPPC, MP, CS, PE	Articles 68-69, Anti-Corruption Law (2005, amended in 2007 and 2012); Article 28, Decree No. 78 (2013); Article 19, Decision No. 64 (2007).
V. Other measures to prevent conflicts of interest				
Individual responsibility for identifying and resolving COI situations	Partial	The relevant legal framework does not specify the responsibility of public servants for identifying and resolving COI situations. The only responsibility that is legally specified with regard to private interests is to an-		Anti-Corruption Law (2005, amended in 2007 and 2012); Law on Cadres and Civil Servants (2008); Law on Public Employees (2010);

COI regulatory issue	Short	Detailed	Coverage	Citation
		nually declare income and assets, which shall be used “for serving recruitment, appointment and dismissal of public servants”. However, the information of such declarations is not related to whether it conflicts with public duties. Moreover, the identification and declaration of other important private interests that potentially conflict with public duties is not regulated.		Articles 7 and 10 of Decree No. 78 (2013).
Procedures for resolving COI situations	No	The relevant legal framework does not specify the procedures for resolving conflicts of interest situations.		Anti-Corruption Law (2005, amended in 2007 and 2012); Law on Cadres and Civil Servants (2008); Law on Public Employees (2010).
Institutional responsibilities for advising on COI situations	No	The relevant legal framework does not specify an individual or agency tasked with providing guidance on conflict of interest situations.		Anti-Corruption Law (2005, amended in 2007 and 2012); Law on Cadres and Civil Servants (2008); Law on Public Employees (2010).

* H= Head(s) of state; M= Ministers/cabinet members; MPPC= Members of Provincial People's Committees; MP=Members of Parliament ; CS= Civil Servants; PE= Public Employees; Close family members = parents, spouses, children and siblings; Broad family members = Close family members and other relatives.

Annex 3. Experience from OECD and transition countries on managing COI

Understanding how other countries, both OECD and transition ones have addressed and managed conflict of interest in their public sector is important for Vietnam in the development and implementation of a conflict of interest management system. What follows is selected examples of how countries have dealt with pertinent COI aspects that

bear relevance to the current context of Vietnam. An effective conflict of interest system will be based on shared expectations of what constitutes conflict of interest, the structure of relevant government institutions, and the state's capacity to monitor the private interests of public officials.

BOX i Examples of constitutional requirements to avoid conflicts of interest**Constitution of the Czech Republic**

Members of Government may not engage in activities, which are by their nature incompatible with the performance of a Minister's duties.

The office of Deputy or Senator is incompatible with holding the office of the President of the Republic, the office of judge, and with other offices to be designated by statute. Deputy or Senator's mandate shall lapse on the day she/he assumes the office of President of the Czech Republic, the office of judge, or other offices incompatible with the office of Deputy or Senator. A Deputy or Senator's mandate shall lapse when an incompatibility of offices of a Deputy or a Senator and President of the Czech Republic arises.

The office of a judge is incompatible with that of the President of the Republic, a Member of Parliament, as well as with any other function in public administration; a statute shall specify which further activities are incompatible with the discharge of judicial duties.

Constitution of the Slovak Republic

The discharge of the post of a *Member of Government* shall be incompatible with discharge of a Member of Parliament's mandate, with discharge of a post in another public authority, with public service relationship, with employment or with a similar labor relation, with an entrepreneurial activity, with membership in governing or control body of a legal person, which pursues an entrepreneurial activity or with another economic or gainful activities apart from the administration of his or her own

property and scientific, pedagogical, literary or artistic activity.

If the *President* elect is a Member of Parliament, a Member of Government of the Slovak Republic, a judge, a public prosecutor, a member of the armed forces or the armed corps, or a member of the Supreme Audit Office of the Slovak Republic, he or she shall discontinue to perform his/her previous function on the day of the election. The President shall hold no other paid position in any profession, business and shall not be a member of executive board of a legal entity conducting entrepreneurial activity.

The offices of judge of the Constitutional Court and judge are incompatible with any other function in public administration or civil service. The office of a judge of the Constitutional Court is incompatible with that of the Member of Parliament and member of the Government.

A Public Defender of Rights cannot be a member of a political party or movement.

Constitution of Croatia

The *Prime Minister and the members of the Government* may not perform any other public or professional duty without consent of the Government.

The *President of the Republic* shall not perform any other public or professional duty. Once elected, the President of the Republic shall resign from membership in any political party and shall notify the Croatian Parliament thereof.

BOX ii Definition of conflict of interest in the OECD Guidelines

Historically, defining the term conflict of interest has been the subject of many and varying approaches. As all public officials have legitimate interests which arise out of their capacity as private citizens, conflicts of interest cannot simply be avoided or prohibited, and must be defined, identified, and managed. The OECD Guidelines adopt a definitional approach which is deliberately simple and practical to assist effective identification and management of conflict situations, as follows:

A “conflict of interest” involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.

Defined in this way, conflict of interest has the same meaning as “actual conflict of interest”. A conflict-of-interest situation can thus be current, or it may be found to have existed at some time in the past. By contrast, an “apparent conflict of interest” can be said to exist where it appears that a public official’s private interests could improperly influence the performance of their duties but this is not in fact the case.

A “potential conflict of interest” arises where a public official has private interests which are such that a conflict of interest would arise if the official were to become involved in relevant (i.e. conflicting) official responsibilities in the future.

Where a private interest has in fact compromised the proper performance of a public official’s duties, that specific situation is better regarded as an instance of misconduct or abuse of office, or even an instance of corruption, rather than as a conflict of interest.

In this definition, “private interests” are not limited to financial or pecuniary interests, or those interests which generate a direct personal benefit to the public official. A conflict of interest may involve otherwise legitimate private-capacity activity, personal affiliations and associations, and family interests, if those interests could reasonably be considered likely to influence improperly the official’s performance of their duties. A special case is constituted by the matter of post-public office employment for a public official: the negotiation of future employment by a public official prior to leaving public office is widely regarded as a conflict-of-interest situation.

BOX iii Definition of conflict of interest in the “Act on the Prevention of Conflict of Interest” of Croatia

Article 1

- (1) This Act regulates the prevention of conflict between private and public interest in the exercise of public office. It also regulates the parties that are bound to proceed according to the provisions of this Act, the obligation to submit the declaration of assets and the content of the declaration of assets, the procedure of checking the data in such declarations, the duration of the obligations referred to in this Act, the election, composition and competence of the Commission of Conflict of Interest, and other issues of importance for the prevention of conflict of interest.
- (2) The purpose of this Act is to prevent conflict of interest in the exercise of public office, to prevent private matters from influencing decision-making in exercising public office, to strengthen integrity, objectivity and transparency in exercising public office, and

to strengthen the trust of citizens in bodies vested with public authority.

Article 2

- (1) When exercising public office, officials may not put their private interest above the public interest.
- (2) Conflict of interest arises when the private interests of officials are contrary to the public interest, and particularly in cases:
 - Where the private interest of an official affects his or her impartiality in exercising public office, or
 - Where there is a founded opinion that the private interest of an official affects his or her impartiality in exercising public office, or
 - Where the private interest of an official may affect his or her impartiality in exercising public office.

BOX iv Definition of conflict of interest in Poland

In Poland, a number of legal documents define conflict-of-interest situations.

The **Administrative Procedures Code** specifies genuine and potential conflicts of interests, and contains provisions on the exclusion of employees or administrative bodies from procedures in order to avoid such conflicts. *Genuine conflict of interest* occurs when:

- An official is in such legal relationship that the result of the case could have an effect on his/her rights and duties.
- The party is the official's spouse, relative or kin to the second degree.
- The party is tied to the official by adoption, guardianship or wardship.

In addition, such situations when an employee is a representative of one of the parties or a repre-

sentative is connected to the employee in such a way as specified above also consists a conflict-of-interest situation.

Moreover, in other cases not listed above but the mere probability of circumstances could raise doubts in the neutrality of an employee, a perceived conflict-of-interest situation exists, and the Code requires the exclusion of the employee involved from the procedures.

Other legal documents define conflict of interest in specific areas. This is the case, for example, of the Civil Service Act, which defines conflicts of interest related to outside employment and business activities of civil servants, and the Public Procurement Act, which defines conflicts of interest related to procurement procedures.

Source: OECD (2003). "Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences", Annex 1.

BOX v Croatia: legal provisions on receiving gifts

Article 11 of Croatia's Act on the Prevention of Conflicts of Interest regulates gift receiving with simple and clear legal provisions on what constitutes a gift and what gifts can be kept. These are the specific provisions:

- (1) Within the meaning of this Act, a gift shall mean money, items regardless of their value, rights and services provided without compensation, which bring an official or might bring him or her into a state of dependency or which create an obligation towards the giver.
- (2) Within the meaning of this Act, usual gifts between family members or relatives, and state and international acknowledgements, decorations and awards shall not be considered as gifts.
- (3) An official may keep a gift whose value is symbolic and if it does not exceed the value of HRK 500 from the same giver.
- (4) An official may not accept the gift referred to in paragraph 3 of this Article if it comes in the form of money, regardless of the amount, or in the form of a security or precious metal.
- (5) Gifts that are received as part of protocol and which exceed the amount of HRK 500, and other gifts that the official does not keep when entitled to do so, shall come into the ownership of the Republic of Croatia.
- (6) The Government shall prescribe by regulation the manner of dealing with gifts which are not of symbolic value.

Source: Croatia's Act on the Prevention of Conflict of Interest (2011).

BOX vi Legal provisions on gift-taking in Singapore

If a *public official* is presented with a gift, they must reject it outright. If they are presented with a gift from a visiting dignitary, they are to accept the gift and then surrender it to the head of their department. The value of the gift will be assessed and the official may pay for it if they wish to keep it.

Ministers are also required to refuse and return all gifts. If it is believed that returning the gift will cause an offense to the donor, then the Minister is required to turn the gift over to the Permanent Secretary of the Minister's Ministry for disposal. If the Minister wishes to purchase the gift, an evaluation of it must be performed, after which the Minister may purchase it at its cash value,

or if the value of it is under \$50, he/she may keep the gift without payment. If the Permanent Secretary believes that the gift is of interest to the government, then the gift may be displayed or used officially in the Minister's premises. The same rules apply for when gifts are exchanged during official visits. If the Minister or his/her spouse or child receives a gift they may have it evaluated or may have it displayed in his/her premises. If the Minister wishes to reciprocate with a gift, the Minister may purchase one at the Government's expense.

The *evaluator of all gifts* is the Accountant-General of Singapore.

Source: Deployment for Democratic Development (DDD) global program of the Institute of Public Administration of Canada (IPAC), Conflicts of Interest and Ethics in Government. Briefing Note: Singapore.

BOX vii South Korea's Code of Conduct for Public Officials

The Code of Conduct for Public Officials of South Korea sets several behavioral standards for public officials in situations involving a strong possibility of conflicts between public and private interests in performing their official duties. These are a few examples of the behavioral standards:

Recusation for conflicts of interest: When a public official should consider it difficult to perform his or her duties in a fair manner because they are related to his or her own private interest, the public official shall consult the immediate senior official or the Code of Conduct Officer about avoiding such duty.

Restriction on the use of duty-related information for financial transactions: A public official shall not involve in transactions of or make investment in marketable securities, real estate

and other financial instruments by using information he or she obtained in the course of performing his or her public duties; nor shall he or she give such information to any other person in order to help them make such financial transactions or investment.

Restriction of receiving money and other valuables: A public official shall not receive money, valuables, real estate, gifts or gifts of entertainment, including from a duty-related public official and from an individual who was a duty-related party or a duty-related public official in connection with his or her current public duties. A public official shall prevent his/her spouse or lineal ascendants/descendants from receiving money or other valuables that are also prohibited for public officials. The above-mentioned provisions do not apply to the following items:

- Money or other articles provided by a lawful

- ground of claim such as the payment of debt;
- Foods or convenience provided within the scope of conventional practices;
 - Transportation, accommodation or foods uniformly provided by a sponsor to all participants in an official event related to duties;
 - Souvenirs or promotional goods distributed to many and unspecified persons;
 - Money or other valuables publicly provided to a public official in need who is afflicted with a disease or suffers other kind of disaster;
 - Money or other valuables provided to a public official to facilitate the performance of his or her duties within the limit set by the Agency Head.
 - A small gift is offered according to common practices;
 - A friendly society publicly offers money or other valuables;
 - A superior public official offers money or other valuables to his or her subordinates to promote their morale or to console, encourage or reward them.

Source: South Korea's Code of Conduct for Public Officials (2008); Gae Ok Park (2007), "Korea's Policies and Instruments to Manage Conflicts of Interest", paper submitted to the 5th Regional Seminar of the ADB/OECD Anti-Corruption Initiative, Jakarta, 6-7 August 2007.

BOX viii Examples of restrictions on holding government contracts

General restrictions

Czech Republic: Public officials may not be engaged in business or any other gainful activity in general. (*Conflict of Interests Act, 2006*)

United States: Public officials are prohibited from participating in any matter which will have a direct and predictable effect on their financial interests. (*Executive Order 12674, Code of Federal Regulations Title 5*)

Specific restrictions

Estonia: Civil servants may not conclude transactions with the state through his/her agency. (*Public Service Act, 1995*)

United Kingdom: Departments and agencies must not give contracts to: any civil servant in the department or agency; any partnership of which a civil servant in the department or agency is a member; or any company where a civil servant in the department or agency is a director,

unless the civil servant has fully disclosed the measure of his/her interest in the contract and senior management has given permission. (*Civil Servant Management Code, 2010*)

Croatia: The business entity in which an official has 0.5% or more part ownership (company capital) cannot enter into a business relation with a state authority body in which the official exercises his or her office, nor can it be a member of a community of bidders or subcontractors in this business relation. This applies to business entities in which a member of the official's family has 0.5% or more part ownership, in the case where a member of the official's family has in any way, directly or indirectly, acquired the part ownership in question or the shares from the official from a period of two years prior to his or her appointment or election to public office until the end of the exercise of office. (*Act on the Prevention of Conflicts of Interest, 2011*)

Source: Public Accountability Mechanisms (PAM) database, World Bank (2012); Croatia's Act on the Prevention of Conflicts of Interest (2011).

BOX ix Examples of restrictions on holding two conflicting positions**Restriction on the Prime Minister and other Members of Government in Germany:**

The Prime Minister and other Members of Government may not hold other executive positions. The Prime Minister and other Members of Government may not hold other policy-making positions. (*Act on Federal Ministers, 1953*)

Restriction on the President in Mongolia:

The President shall not be Prime Minister, a member of the Parliament or a member of the Government and shall not concurrently hold any other posts and pursue any occupation not relating to his duties assigned by law. If the President holds another office or a post he/she shall be relieved of it from the date on which he/she takes his/her oath. (*Constitution, 1992*)

Restriction on members of parliament in the Czech Republic: Members of parliament are prohibited from holding any position within the public administration. No person may be

at the same time a member of both Chambers of Parliament. The office of Deputy or Senator is incompatible with holding the office of the President of the Republic. (*Conflict of Interests Act, 2006; Constitution, 1992; Rules of Procedure of the Senate, 1999*)

Restriction on members of parliament in the Slovak Republic:

The discharge of the post of a Member of Government shall be incompatible with the discharge of a Member of Parliament's mandate. (*Constitution of the Slovak Republic, 1992*)

Restriction on civil servants in Russia: Civil servants cannot occupy policy-making position and policy-executing position simultaneously. (*Law on State Civil Service, 2004*)

Restriction on civil servants in Mongolia: Civil servants may not occupy another public office. (*State Authority Law of Mongolia, 2002*)

BOX x Examples of restrictions on assisting family members and other persons in obtaining employment in the public sector

Restriction on civil servants in China: Where there is such relationship as husband and wife, lineal descent, collateral consanguinity within three generations or close affinity between civil servants, the persons concerned shall not assume posts immediately subordinated to the same leader in the same organ or hold posts with a relation of immediate superior and subordinator, or engage in such work as organization, human resource, disciplinary investigation, supervision and inspection auditing and finance in the organ where one party concerned holds the leading post. (*Civil Servant Law of China, 2005*)

Restriction on civil servants in Bulgaria: A person shall not be appointed as a civil servant, where he/she is in direct hierarchical subordination of management and control to a husband or wife, relative of direct descent, relative of collateral descent until the fourth degree inclusive, or relative by marriage until the fourth degree inclusive. (*Civil Servant law, 1999*)

Restriction on public officials in Croatia: Officials shall not promise employment or any other entitlement in exchange for any gift or any promise of a gift. Officials shall not

exert influence over the assignment of jobs or contracts through public procurement. (*Law on the Prevention of Conflicts of Interest, 2011*)

Restriction on civil servants in Poland: Civil servants must be neutral and impartial in discharging his/her duties: must not allow any suspicion on unification of private with public interests and, in administrative issues, civil servant must not discriminate between persons and must not get influenced by relationships arising from family, friendship, work or membership. There cannot be a subordinate relationship between spouses or related persons and civil servants. (*Civil Service Code of Ethics, 2002; Law on Civil Service, 2008*)

Restriction on the president, ministers and members of parliament in the Slovak Republic: The President, ministers and members of parliament may not use his/her office or powers pertaining to his/her office and information acquired by the performance of his/her office or in relation therewith to his/her benefit, to the benefit of his/her close relatives or other natural persons or legal persons. (*Constitutional Act on Protection of Public Interest, 2004*)

BOX xi The Baltic States: Restrictions on participating in decision-making processes that affect private interests**Estonia**

An official is prohibited from performing an act or making a decision if: (1) the decision is made or the act is performed with respect to the official or a connected person” to him or her; (2) the official is aware of an economic or other interest of that official or a person connected to him or her, and which may have an impact on the act or decision; (3) the official is aware of a risk of corruption. (*Anti-Corruption Act, 2012*)

Latvia

Head(s) of state, ministers, members of parliament and civil servants are restricted from voting on policy decisions related to an official’s private interests. (*Law on Prevention of Conflict*

of Interest, 2002; Cabinet Instruction No. 1 “Principles of behavior for Civil Servants”, 2001)

Lithuania

A person in the civil service and members of parliament are prohibited from participating in the preparation, consideration or passing of decisions or from otherwise influencing decisions, which may give rise to a conflict of interest situation. A person in the civil service and members of parliament may not use his duties, authority and name in order to influence other persons’ decision, which would result in the emergence of a conflict of interest situation. (*Law on the Adjustment of Public and Private Interests in the Civil Service, 1997*)

BOX xii Definition of “connected person” in the Anti-Corruption Act of Estonia

For the purpose of the Act, each of the following is a “connected person” (to an official):

1. Official’s spouse, grandparent, official’s or his or her spouse’s parent and descendant of official’s parent, including official’s child and grandchild. A parent is also deemed to include an adoptive parent, parent’s spouse and foster parent, and a relative in descending line is also deemed to include an adopted child and spouse’s child.
2. Legal person in which at least 1/10 of the holding or the right to acquire a holding belongs to an official or a person connected to him or her.
3. Legal person in which the official or any person specified in clauses 1 or 4 of this subsection is a member of the management or controlling bodies for the purposes of the Income Tax Act.
4. Person who has a shared household with an official, and any other person whose position or activities have a significant and direct

impact on the official outside his or her official position or whom the position or activities of an official outside his or her official position significantly and directly influence or who is subordinate to the orders issued by an official outside his or her official position or who acts in the interests or on account of an official.

A legal person is not deemed to be a connected person if the connection of the official and the legal person arises exclusively from the official duties of the official. The competence of representation of a state or local government agency or a legal person in public law the management or controlling bodies thereof is deemed to be an official duty for the purposes of the Act.

An official shall have no obligation concerning the interest of connected persons arising from this Act, if he or she does not or need not know the connection or interest of a connected person specified in this section.

BOX xiii Croatia: Features of the sanction regime for violations of the conflict-of-interest provisions

Titles IV and V of Croatia's Act on the Prevention of Conflict of Interest (2011) regulate respectively the "Commission for Conflict of Interest" and the "Violations of the Provisions of this Act". The Titles specify the sanction regime for violations of the conflict-of-interest provisions of the Act. These are some features of the sanction regime which are worth highlighting:

Specialized and independent body for deciding on infringements. Among other competences, the Commission for Conflict of Interest is competent for instigating conflict of interest proceedings and rendering decisions on whether a particular action or the failure to act of an official represents an infringement of the provisions of the Act. The Commission is a standing, independent and autonomous state body that reports to the Croatian Parliament. It is composed of the President of the Commission and four members, which are elected for a term of office of 5 years.

Clearly defined violations and sanctions: The violations corresponding to each sanction are clearly defined by referring to the violation of specific articles and/or provisions. The sanctions include: reprimand, suspension of payment of part of a net monthly salary, public announcement of the decision of the Commission, motion to dismiss an appointed official from public office, and invitation to resign from exercising public office. Imprisonment is not contemplated as a sanction.

Payment suspension of part of a monthly salary. The suspension of the payment of part

of a net monthly salary of public officials is one of the specified sanctions. This type of sanction applies to the violation of the provisions of several clearly specified articles of the Act. The amount of the sanction is decided by the Commission and ranges from HRK 2,000 to 40,000, taking into account the gravity and consequences of the violation. The sanction may last no longer than twelve months and the amount covered by the suspension may not exceed one half of the official's net monthly salary.

Fines for legal persons. There are monetary sanctions not only for public officials but also for legal persons and individuals within legal persons. Fines ranging from HRK 5,000 to 50,000 and from HRK 50,000 to 1,000,000 shall be imposed respectively on a public official and a legal person that violate Article 20 of the Act on post-employment. Fines ranging from HRK 50,000 to 500,000 and from 5,000 to 50,000 shall be imposed respectively on the legal person and the responsible individual within the legal person that violate Article 16 Paragraph 3 of the Act on notification for business relationships with state bodies, units or enterprises.

Public announcement of the sanction decision. Depending on the gravity and consequences of the violation of the Act, the Commission for Conflict of Interest may impose the public announcement of the sanction decision. The decision shall be published in the daily press. The Commission shall determine the period and manner of publication of the decision. The cost of publication shall be borne by the official.

BOX xiv China's efforts to enforce the regulations on conflict of interest**Promoting supervision to ensure the implementation of the regulations**

While devoted to improving its regulatory framework on preventing conflicts of interest, China pays no less attention to the implementation of these laws and regulations. A series of supervisory measures are adopted to ensure the full play of such laws and regulations in standardizing power exertion and safeguarding public interests.

On the one hand, special inspection measures are taken to ensure the implementation of the Guidelines of Integrity and other regulations on conflicts of interest throughout the country. Efforts are made to facilitate disclosure of items listed in the Regulations on Leading Cadres' Report of Relevant Personal Matters and the Interim Regulations on Strengthening Management of State Functionaries Whose Spouses and Children Have Emigrated Abroad. Prevalent issues and tendencies are discovered and rectifying requirements are specified so that the inspected can take targeted measures to enhance the implementation and effect of the regulations.

On the other hand, China gives full play to the supervisory system with Chinese characteristics composed of supervision by the National People's Congress and the local people's congresses, supervision within the governments, and democratic supervision by the Chinese People's Political Consultative Conference National Committee and local people's political consultative conferences, judicial supervision, supervision by the general public and supervision by public opinion and deepens the system of economic accountability auditing on leading cadres and public officials and the accountability system of public officials, so as to promote the transparent and standard operation of public

power and the effective supervision over conflicts of interest in a comprehensive manner.

Educating in the voluntary avoidance of conflicts of interest

Integrating the requirement of preventing conflicts of interest into anticorruption education and the cultivation of clean culture, China seeks to enhance the sense of integrity and self-discipline in public officials and foster throughout the society the fine tradition of conscious avoidance of conflicts of interests.

Education in the conscious avoidance of conflicts of interest has been incorporated into the teaching plans of the government's schools of administration at all levels, as well as other organizations of cadre training, making it a required course for leading cadres to ensure the ready identification of the causes and results of and solutions to possible conflicts of interest. Education in the conscious avoidance of conflicts of interest is also combined with education in ideology, discipline, ethical values, and anticorruption laws and regulations. Different forms of education are employed including demonstrative education with examples, admonishing education and targeted on-the-job education and training so as to prompt leading carders to consciously implement related requirements of preventing conflicts of interest. Utilizing the modern media such as radio, TV, newspaper and the internet, China devotes major efforts to promoting the social atmosphere that honors integrity and disgraces corruption. By means of launching anticorruption promotions, strengthening clean culture front, and initiating clean culture projects, China seeks to foster the ideological consensus and social atmosphere that applaud the voluntary avoidance of conflicts of interest.

BOX xv Identification, declaration and resolution of conflict-of-interest situations in New Zealand

As the organization responsible for the production of the “Public Service Code of Conduct” and “the Board Appointment and Induction Guidelines”, the State Services Commission is available to advise public servants and board members about these matters. Because awareness and understanding are insufficient unless they are reflected in behavior, the Commission has adopted a model of encouraging and facilitating an environment whereby public servants:

- support the objective of an open and equitable democratic system that encourages participation with minimal coercion
- are aware of values and standards that are necessary to achieve that objective
- are discussing, living and leading values and standards in their day-to-day work

In particular, the Commission’s aim is that all those involved in public management, whether elected representatives or officials: (1) recognize the risks; (2) declare and manage conflicts of interest in an appropriate manner; (3) welcome public interest and act on allegations of misconduct; and (4) practice zero tolerance.

Individual **public servants are responsible for avoiding and managing any conflict of interest** that involves them personally, according with a process agreed with the employer. Any breach of this obligation may result in disciplinary action, which may include dismissal, as determined by their employer. The responsibility for dealing with a public servant who fails to disclose or to manage appropriately a conflict of interest sits, as do all management decisions, with the chief

executive of their agency (the employer).

In relation to board members in the wider state sector, **Cabinet considers any declared conflicts of interest before making any appointment to a board.** Should any conflict of interest arise during the term of the appointment, the board would be responsible to deal with it (although the board may consult the responsible minister during the matter).

How a conflict of interest should be resolved is a matter that is considered on a case-by-case basis according to the particular merits. This is a **management responsibility**, there is no separate “ethics office”, but the Commission is available to provide general advice to chief executives, board members and employees.

The conflict of interest must be managed appropriately with **adequate measures put in place to protect the decision-making integrity of the organization** concerned and public confidence in it. The general principle is that:

- Many conflict situation may be resolved simply by transferring a duty from the concerned employee to another employee not affected by the circumstances.
- Alternatively, the employee may need to restrict or abandon the interest or activity giving rise to conflict of interest.
- If these options are not predictable, or if they do not enable the matter to be resolved on a basis that the concerned employee is able to accept, then the option of resignation from the organization may need to be considered.

BOX xvi New Zealand's good practice guide on procurement

In New Zealand, the procedures for resolving COI situations are particularly necessary in the area of contract management. The Auditor-General, in his “Good Practices for Purchasing by Government Departments” (updated in 2008 in the **good practice guide “Procurement Guidance for Public Entities”**), discusses identifying and managing conflicts of interest for staff involved in contracting and procurement. The good practice guide is used by the Auditor-General's staff, who raise any discrepancies they identify during the audit in their letter to their departmental management. Depending on the materiality of the conflict, the Auditor-General may raise the matter with the Parliamentary Select Committee reviewing the department.

The good practice guide contains a list of overriding considerations, which outline the broad procurement policy context, and the obligations and considerations that provide the framework for good procurement practice by public entities. The overriding considerations contain a **section on managing conflicts of interest**, which state the following, among other points:

- As part of the general obligation to act fairly, public entities must take care that their decision-making processes cannot be challenged on the basis of actual or potential bias and/or conflicts of interest.
- Complying with any relevant statutory requirements will not necessarily be enough to ensure that decision-making processes meet the more general public law requirement of fairness. Public entities must also take steps to ensure that no other aspect of the process could be tainted by a conflict of interest arising outside of those processes regulated by statute.
- Public entity staff should be aware of the potential for conflicts of interest for every staff member and adviser who is directly or indirectly involved in any aspect of the process. This includes governance, management, operational staff, and the approving authority.
- All staff involved in the procurement process should be required to declare any personal interest that may affect, or could be perceived to affect, their impartiality.
- The public entity will then need to decide what steps are necessary to manage the conflict, having regard to any statutory requirements.
- The public entity should maintain a register of declarations of conflicts of interest that records any conflicts of interest and how they would be managed.

Source: Controller and Auditor-General of New Zealand (2008). “Procurement guidance for public entities. Good practice guide”. OECD (2003). “Managing conflict of interest in the public service: OECD Guidelines and country experiences”, Part III, OECD Country Experiences.

BOX xvii Challenges of recusal

Recusal (or *withdrawal*) refers to the non-participation of public officials in matters where they have a personal financial interest.

Recusal requirements are found in many conflicts codes. Typically, they require an open declaration of a conflict coupled with a recusal. The recusal is often noted by some civil servant and may be publicly disclosed. As a mechanism for separating public from private interests, recusal appears quite attractive. It is meant to ensure that a public official takes no part in a decision that affects their private interests. However, there are complications and costs associated with recusal.

An effective recusal regime requires more than simply that the public official not vote on the issue affecting their private interest or take part in the final decision. This is because there are many ways and opportunities to affect a decision prior to the point where it is finally made, through a vote or otherwise. It is therefore important that recusal take place at the earliest stage, prior to the matter coming for actual decision.

Effective recusal regimes, “screen” affected public officials from any information relating to the subject matter of the officials’ private interest. For instance, if the public official held shares in a public or private company, an effective recusal regime would prevent any information from coming to the affected official and designate a responsible official for matters involving the company. It thus becomes critical under such a system to proactively identify real or potential conflicts of interest for the public official in order to establish such screening mechanisms in advance.

Such mechanisms are not without their costs. If

the public official is not able to deal with particular issues, this may place significant burdens on others who are designated to make decisions in that official’s stead. If the public official is a Minister, there are further potential costs. Delegation by an elected official to an unelected civil servant raises problems of democratic accountability. If the affected file(s) relate only to minor matter, it is preferable if another Minister is both responsible for decision-making on the affected file(s) as well as publicly accountable for them.

Effective recusal regimes also require transparency. Especially when it comes to collective decision making that is not taken in public (such as decisions of Cabinet), it may be tempting for Ministers not to recuse themselves from the decision-making process. The rationale may be that if there is no recorded vote that will ever be disclosed to the public, there is little incentive to disclose an actual or potential conflict of interest. The counterpoint to this may be that in cases of collective decision making where a public official is only one of many votes, there is little cost to the affected official to recuse themselves from the decision making process. In either event, a pro-active approach to identifying actual or potential conflicts of interest facilitates the recusal process and avoids conflicts of interest.

Moreover, a recusal regime presents the issue of the tension between experience and conflicts. There may be a public benefit to government decision-making made by those with significant experience in the area. However, if a Minister has experience in the area as a result of continued private interests such as an ongoing business, the Minister may be required to recuse himself or herself from too many decisions to be effective.

BOX xviii China's legal provisions on "avoidance"

The Civil Servant Law of China, which came into force on 1 January 2006, provides for avoidance related to a public official's taking posts, performance of duties, and regional avoidance. The Interim Provisions on the Avoidance of Civil Servants, issued in 2011, further provides for the procedures and supervisory methods of avoidance in the above-mentioned areas. These are the specific articles on avoidance in the Law on Civil Servant:

Article 70

When a civil servant performs his duties, under any of the following circumstances, he shall make avoidance: (1) Where any of his personal interests is involved; (2) Where any of the interests of his relatives as described in paragraph 1 of Article 68 of the present Law is involved; or (3) Any other circumstance that may have any impact on the impartiality of duty performance.

Article 71

Where there is any circumstance under which a civil servant shall make avoidance, he shall apply for avoidance by himself. Any interested party may have the rights to apply for avoidance of the civil servant concerned. Other people may report to the organ the circumstances concerning

the avoidance of a civil servant.

The organ shall, pursuant to the application of a civil servant himself or any interested party, decide whether the civil servant shall make avoidance after making examination or may make a direct decision on avoidance without the civil servant filing an application.

Article 72

Where there is any different provision on the avoidance of a civil servant by law, the provision shall prevail.

Paragraph 1 of Article 68 (referred in Article 70)

Where there is such relationship as husband and wife, lineal descent, collateral consanguinity within three generations or close affinity between civil servants, the persons concerned shall not assume posts immediately subordinate to the same leader in the same organ or hold posts with an relation of immediate superior and subordinator, or engage in such work as organization, human resource, disciplinary investigation, supervision and inspection auditing and finance in the organ where one party concerned holds the leading post.

BOX xix Estonia's procedural restrictions

Article 11 of Estonia's Anti-Corruption Act, on "procedural restrictions", mentions that an official is **prohibited from performing an act or making a decision if:** (1) the decision is made or the act is performed with respect to the official or a connected person" to him or her; (2) the official is aware of an economic or other interest of that official or a person connected to him or her, and which may have an impact on the act or decision; (3) the official is aware of a risk of corruption.

In the above-mentioned cases, the official is prohibited from assigning the task of performing the act or making the decision to his or her subordinates. Instead, the official shall **immediately inform his or her immediate superior** or the person or body who has the right to appoint the official. The latter shall perform the act or make the decision or assign the task to another official.

Article 11 of the Act lists eight **exceptions to the above-mentioned procedural restrictions.** These are some of them:

- Adoption of legislative acts, including the adoption of the state budget and local governments.

- If necessity and in the case of acts which cannot be postponed, upon threat of major damage.
- If replacement of the official is impossible due to lack of persons who comply with the requirements set for the substitute. A notice shall be immediately and be permanently published on the website of the agency performing public duties concerning non-application of the restrictions.
- In the case of acts or decisions by which an agency performing public duties ensures the organization of its work, except for service related decisions. A notice shall be immediately and be permanently published on the website of the agency performing public duties concerning non-application of the restrictions.

Finally, Article 11 stipulates that the **agency performing official duties shall ensure upon organization of its work that officials would not be required to make a decision or perform an act with respect to such official or a person connected to him or her.** If the agency fails to comply with this requirement, this shall not release officials from the obligations to comply with the restrictions.

BOX xx Croatia: Legal provisions on divestment of company shares

The Act on the Prevention of Conflict of Interest of Croatia provides a good example of legal provisions requiring the divestment of company shares held by public officials, in order to avoid conflicts of interest. These are the main provisions:

Article 16

- (1) An official who owns 0.5% or more of shares, or has such an ownership stake (company capital) while exercising public office shall transfer his management rights on the basis of shares in the capital of the company to another person, with the exception of the persons referred to in Article 4, paragraph 5 of this Act, or to a special body. This person or special body (commissioner) shall act with regard to exercising the membership rights and shares in the company on his, or, or its own behalf, and on account of the official.
- (2) A commissioner shall be deemed to be a person connected to the official in the

meaning of Article 4, paragraph 5 of this Act.

- (3) If the company referred to in paragraph 1 of this Article, through a public tender or in any other way, establishes a business relation with state authority bodies or with units of local or regional self-government or with companies in which the Republic of Croatia or a unit of local self-government has a controlling interest, it shall be obliged to notify the Commission of such business event.
- (4) For the time while his or her management rights in companies are transferred to another person or special body, the official may not give information, instruction, order or in any other way connection with his person or body and thus affect the exercise of the rights and the meeting of obligations arising from membership rights in these companies. The official has the right to be informed once a year of the state of the companies in which he or she has part of ownership.

BOX xxi Challenges of divestment

Avoidance requires public officials to take affirmative steps to avoid conflicts of interest, most often through the *divesting* of certain assets by their sale or by the transfer to a blind trust. The concept of a *blind trust* is that a public official transfers all assets into a trust which is managed by a trustee and the public official plays no part in the management of the business or investments under the trust. There are a number of advantages and challenges to the blind trust process.

The efficacy of the trust is a function of a number of factors, some of which involve the character of the trust and others its structure. First, the trust works best with *passive investments* like securities, bonds, commodities etc., because they are not unique and easily fungible. These types of assets can easily be sold and bought such that the public official may not know the contents of the trust. In this sense the trust remains blind because the public official does not know its contents.

However, when the assets transferred into the trust consist of an active business, the trust may be less effective in preventing conflicts of interest because the public official will still be able to identify his or her private interest, despite not playing an active role in the operation of the business. In the case of very large holdings, the perceived protections against the conflicts of interest may be somewhat illusory.

On the structure of a trust, its efficacy will be limited if it is not truly blind – that is if the public official is able to see into the trust or worse to interfere in its operation. The identity of the trustee is critical. Ideally, the trustee would be an unrelated, arm's length third party. This is more easily accomplished in passive investments than in active ones that involve the running of a business. For active investments, this may be unrealistic and undesirable. Often it will make sense in such cases for the trustee to be a person who is intimately familiar with the running of the business.

BOX xxii Institutional responsibilities for advising on conflict-of-interest situations in Croatia

Article 6 of Croatia's Act on the Prevention of Conflicts of Interest stipulates the following:

- (1) If there is doubt about whether certain conduct complies with the principles of public office, officials shall request an opinion from the Commission for Conflict of Interest (hereinafter: the Commission).
- (2) The Commission shall, within 15 days at the latest of receiving the request, provide a reasoned opinion on the official's request.
- (3) During the procedure to assess whether conflict of interest exists, the nature of tasks that the official performs will be especially taken into account.
- (4) After election or appointment to public office, an official shall be obliged to arrange his

or her private affairs in order to prevent foreseeable conflict of interest. If such conflict of interest occurs, the official shall be obliged to resolve in such a manner as to protect the public interest. In the case of doubt about possible conflict of interest, the official shall be obliged to do everything necessary to separate private from public interest.

Article 28 of the Act stipulates that the Commission shall be a standing, independent and autonomous state body, and that any form of influence on the work of the Commission which could threaten its autonomy and independence in making decisions within its remit shall be prohibited.

Source: Croatia's Act on the Prevention of Conflicts of Interest (2011).

BOX xxiii Institutional responsibilities for advising on conflict-of-interest situations related to post-employment in France and Spain

France

The movement of public servants to the private sector is a highly regulated practice in France as it is subject to judiciary, regulatory and legislative checks and controls. Following the Law on the Prevention of Corruption, approved in January 1993, three ethics commissions have been set up, one for each segment of the public service: i) the central government service; ii) the territorial authorities; iii) the public hospital sector.

It became obligatory for officials to consult these commissions before moving to the private sector for any reason. After almost 15 years' experience, based on the Public Service Modernization Law of February 2007, the Decree of 1 June 2007 created a single Ethics Commission with the aim of centralizing these three committees and reinforcing transparency. The Ethics Commission handles all individual cases related to post-public employment and the accumulation of activities.

The Commission is headed by a member of the Council of State and is composed of members

from the Court of Auditors, from the courts as well as from the Inspector General's Office and specialized public servants. The Commission reports to the Prime Minister, which indicates its importance to the government.

Spain

The Act on Conflict of Interest of Spain, approved in May 2006, introduced the following administrative process to prepare approval decisions related to the post-public employment conflict-of-interest cases of high-ranking officials, including ministers and secretaries of state:

First, former high-ranking officials should inform the Office of Conflict of Interest before undertaking any future employment activity. The Office of Conflict of Interest will analyze the situation and consider whether the activity violates the law. The Office of Conflict of Interest will communicate its opinion to the interested party. The interested party is allowed to reply and provide further information for consideration. Finally, the Office of Conflict of Interest will make an approval decision and communicate it to the former high-ranking official.

BOX xxiv Institutional responsibilities for advising on conflict-of-interest situations in the United States and United Kingdom**United States**

The Designated Agency Ethics Official for the agency where the official works, in conjunction with the Office of Government Ethics, are responsible for providing guidance to civil servants and ministers on conflict-of-interest cases. The Office of Government Ethics is responsible for providing guidance to the Head of State. (*Ethics in Government Act, 1978*)

The Select Committee on Ethics of the Senate and the Committee on Standards of Official Conduct of the House of Representatives are responsible for providing guidance to Members of Congress. (*Ethics in Government Act, 1978*)

United Kingdom

Senior management of the civil servant where a conflict of interest arises is responsible for consultation, along with the independent Advisory Committee on Business Appointments. Civil servants must declare their personal interests to senior management when a conflict of interest arises. (*Civil Service Management Code, 2010*)

The Permanent Secretary determines the handling of interests of ministers. Ministers must record in writing what action has been taken, and provide the Permanent Secretary and the independent adviser on Ministers' interests with a copy of that record. Upon appointment, Ministers must provide their Permanent Secretary with a written list of interests which may create a conflict, including those of the Minister's spouse or partner and close family. (*Ministerial Code, 2007*)

The Committee on Standards and Privileges considers matters relating to the conduct of the Members of Parliament (MPs). MPs are required to register any pecuniary interest or other material benefit that a Member receives which might reasonably be thought by others to influence his or her actions, speeches or votes in Parliament, or actions taken in his or her capacity as a MP. (*Code of Conduct and Guide to the Rules relating to the Conduct of Members, 1996*)

Annex 4. COI issues and specific recommendations

COI ISSUE	KEY FINDINGS (from survey, focus group discussions, and legal review)	POSSIBLE SOLUTIONS (based on key findings and international experiences)
COI incidence and effects	<ul style="list-style-type: none"> • The vast majority of enterprises and the majority of public officials perceive that COI cases happen usually, often or sometimes. • A significant share of public officials have observed COI cases. • At provincial level, a higher percentage of public officials have observed COI cases than at central level, and the rate of implementation of COI measures is lower. • A large majority of public officials say that the consequences of conflicts of interest include decisions to the detriment of the public interest, and a decline in trust in government. 	<ul style="list-style-type: none"> • Promote COI management. • Place a special attention on implementation at subnational level. • Evaluate results of COI management, e.g. via conducting another COI survey in the future. • Disseminate the content and the result of COI management as an effort to build up trust of citizens and enterprises.
Awareness and understanding of regulations	<ul style="list-style-type: none"> • A low share of public officials, enterprises and citizens understand the correct meaning of COI. • For enterprises, a better understanding of the meaning of COI is correlated with fewer offers of gifts. • The majority of public officials think the implementation is influenced by the fact that regulations are not clear and specific, and are hard to follow. • While training for new staff is implemented, periodic training on conduct and ethics is often not implemented or inadequately implemented. 	<ul style="list-style-type: none"> • Introduce concept of COI and its interpretations into the existing legal framework. • Clearly define COI circumstances and responsibilities for solving COI cases. • Increase awareness of public servants and the public by different measures, including training and communication to disseminate COI management solutions.
Monitoring and oversight system	<ul style="list-style-type: none"> • A large majority of public officials think that the implementation is influenced by the lack of strict handling 	<ul style="list-style-type: none"> • Set up a mechanism to deal with COI cases, especially to hold top

COI ISSUE	KEY FINDINGS (from survey, focus group discussions, and legal review)	POSSIBLE SOLUTIONS (based on key findings and international experiences)
	<p>of cases of violations, and an ineffective inspection and supervision of the implementation.</p> <ul style="list-style-type: none"> • A significant share of public officials have observed COI cases, including cases violating the current regulations. • Reasons for (public officials) not being willing to report COI cases include the involvement of the authority in the case, and lack of trust in the handling of the case by the authority. • There is no single/main enforcement body for COI or ethics, and limited mechanisms to investigate COIs based on disclosed information. • The system to settle denunciations is not fully independent and denunciations on COIs are not explicitly allowed. 	<p>management accountable.</p> <ul style="list-style-type: none"> • Proactively oversee and find out violations, and effectively utilize available information sources. • Allow individuals and organizations to report and provide information on COI cases, and set up mechanisms to guarantee confidentiality and to protect whistle-blowers. • Well define violating behaviors and corresponding sanctions and/or penalties. • Specify penalties and/or sanctions for enterprises, who violate COI regulations, e.g. offering second job for on-service public servants or hiring retired ones. • Set public disclosure of penalties to violators as compulsory requirement.
<p>Individual responsibility for identifying and resolving COI situations</p>	<ul style="list-style-type: none"> • The legal framework does not specify the individual responsibility of public officials to identify and resolve COI situations. • Making decisions that affect private interests take place usually, often or sometimes in different public management areas, according to most public officials and enterprises. • A large majority of public officials think that the implementation of COI 	<ul style="list-style-type: none"> • Specify in legal regulations responsibilities of individual public servants for identifying and dealing with any COI case possibly emerged during and after receiving new duties and under taking assigned duties in public agencies. • Legalize reporting on

COI ISSUE	KEY FINDINGS (from survey, focus group discussions, and legal review)	POSSIBLE SOLUTIONS (based on key findings and international experiences)
	<p>regulations is influenced by the fact that leaders are not exemplary.</p>	<p>COI cases as a personal responsibility in order to deal with such circumstances.</p> <ul style="list-style-type: none"> • Develop a guideline attached with concrete practical examples to guide public servant in identifying similar circumstance. • Enhance public servants' awareness on this responsibility. Special attention should be placed on awareness raising for top management of organizations, agencies and units, in which a need for becoming flagship is addressed. • Define penalties for non-reporting public servants.
Procedures for resolving COI situations	<ul style="list-style-type: none"> • The legal framework does not stipulate the procedures for resolving COI situations declared by public officials. • Making decisions that affect private interests take place usually, often or sometimes in different public management areas, according to most public officials and enterprises. 	<ul style="list-style-type: none"> • Include in the legal framework procedure for resolving COI cases. Either specific procedure (including such measures as dismissal, transfer, divestment, and resignation) or general principles for case-by-case application should be defined.
Institutional responsibilities for advising on COI situations	<ul style="list-style-type: none"> • The legal framework does not specify which organization and/or individuals are responsible for advising public officials when they encounter COI 	<ul style="list-style-type: none"> • Specify in the legal framework who (either organizations and/or individuals) being

COI ISSUE	KEY FINDINGS (from survey, focus group discussions, and legal review)	POSSIBLE SOLUTIONS (based on key findings and international experiences)
	<p>situations.</p> <ul style="list-style-type: none"> • Making decisions that affect private interests take place usually, often or sometimes in different public management areas, according to most public officials and enterprises. • A large majority of public officials think that having no focal point for advising on COI situations has a moderate or considerable influence on the implementation of regulations. 	<p>responsible for guiding or making decision on COI cases encountered by public servants.</p>
<p>Have Gift-taking and giving</p>	<ul style="list-style-type: none"> • Giving and receiving gifts in kind and/or cash take place often, usually or sometimes in different public management areas, according to the vast majority of public officials and enterprises. • About a third of public officials have observed cases in which officials receive money or gifts to settle more favorably the case of the giver. • Gifts are mainly given to facilitate the work of the giver. • Offered gifts are generally accepted, and in most cases, their value is above the allowed amount. • Gift recipients rarely report the receipt of gifts. • In some cases, gifts are given to relatives. • A key problem of the gift-taking regulations is the ambiguity of some of the criteria for the rejection, acceptance and handover of gifts. • The regulations on gift-taking apply to all public servants, but do not apply to any of their family members. • The information on gifts received 	<ul style="list-style-type: none"> • Mandate refusal with gift offerings. Cases for exception should be clearly defined. • More clearly define the cases of “receiving and keeping the gifts” and of “receiving and submitting the gifts”. • Mandate prohibition of gift receipt applied to relatives of public servants. • Stipulate effective and transparent penalties for violators, e.g. sanctioning a public servant who receive and keep the gift otherwise must refuse. • Define solutions for the cases when public servants are unable to determine nature of the gifts. • Define responsibility of organizations in instructing declarants and procedure for dealing with specific cases, including

COI ISSUE	KEY FINDINGS (from survey, focus group discussions, and legal review)	POSSIBLE SOLUTIONS (based on key findings and international experiences)
	<p>is just required to be internally disclosed.</p>	<ul style="list-style-type: none"> • gift refusal and/or submission. • Guarantee penalty-free treatments with gift declarants and submitters if they comply with defined regulations. • Strengthen perception and accountability of public servants in the gift giving and taking circumstances.
<p>Ownership of income and assets</p>	<ul style="list-style-type: none"> • Having investment and shared interest in a business takes place usually, often or sometime, according to a large majority of public officials and enterprises. • About a third of public officials have observed cases of public officials “have backyard businesses”. • There is a COI restriction on establishing private enterprises and other types of companies, applicable to all public officials. The majority of public officials say that this prohibition is implemented. • There is also a COI restriction on contributing capital to enterprises, but only applicable to heads and deputy heads of agency, and their spouses. The majority of public officials say that this prohibition is implemented. • Declarations of income and assets by public officials are mandatory, and according to the vast majority of public officials, they are implemented. However, the information in the declarations is not linked to whether the 	<ul style="list-style-type: none"> • Set prohibitions and /or limitations for public servants in contributing capital funding in businesses. A threshold for capital contribution and/or share allowable to hold by public servants in businesses must be set. • Set income and asset disclosure as compulsory responsibility of public servants, especially who hold high positions and power in the state apparatus and in high-risk sectors. • Mandate disclosure of non-salary income in the income and asset declaration sheets of public servants, including source and amount of income. • Use information in the declaration sheets as a basis for investigating and detecting COI cases, e.g.

COI ISSUE	KEY FINDINGS (from survey, focus group discussions, and legal review)	POSSIBLE SOLUTIONS (based on key findings and international experiences)
	<p>income and assets conflict with the public duties of the official. Moreover, the declarations are disclosed in a limited manner, and there are limited mechanisms to investigate COIs based on the disclosed information.</p>	<p>to check and verify facts in the declaration sheets in a proactive and random manner.</p> <ul style="list-style-type: none"> • Adopt new measures to prevent COI relating to income/asset ownership, including (i) to hold public servants accountable for identifying and disclosing their income/asset upon being appointed to a position in public agencies, and foreseeing potential risks of COI regarding their incomes and/or assets; (ii) clarifying responsibility of organizations to guide declarants; and (iii) specifying procedures to deal with COI cases, e.g. divestment from a certain asset. • Allow outsiders (individuals and organizations) to report or provide information on COIs.
<p>Use of information from work position</p>	<ul style="list-style-type: none"> • Taking advantage of information from work position to buy/sell real estate or stocks takes place usually, often or sometimes in procurement management, project licensing and service delivery, according to a large majority of public officials and the vast majority of enterprises. • Enterprises perceive a higher frequency of this type of COI case than public officials. 	<ul style="list-style-type: none"> • • Introduce in Anti-corruption Law clear provisions on rent seeking behavior from exploring information arisen in public affairs (e.g. real estate, land transactions or stock exchange). • Have provisions on public servants' reporting obligations and provide process

COI ISSUE	KEY FINDINGS (from survey, focus group discussions, and legal review)	POSSIBLE SOLUTIONS (based on key findings and international experiences)
	<ul style="list-style-type: none"> • About one fourth of public officials have observed cases in which officials buy/ sell real estate or stocks thanks to their advantageous position at work. • The Law on Anti-Corruption has a general restriction on the use of internal information for self-seeking interests, but this restriction does not explicitly mention real estate, land or stocks. • Declarations of assets (e.g. real estate, stocks) by public officials are mandatory, and according to the vast majority of public officials, they are implemented. However, the information in the declarations is not linked to whether the assets conflict with the public duties of the official. Moreover, the declarations are not publicly disclosed, and there are limited mechanisms to investigate COIs based on the disclosed information. 	<p>and instruction for dealing with violations, including taking back benefits gained due to using information in duty taking for personal interests.</p> <ul style="list-style-type: none"> • Strengthen public access to information, so that everyone (not only public servants) has access to publicized information.
Simultaneous positions or roles	<ul style="list-style-type: none"> • While members of Government and members of People's Committees are prohibited from concurrently being members of the Standing Committee of the National Assembly or the Standing Bodies of People's Councils, they are not restricted from holding other positions such as being deputies of the National Assembly and local People's Councils. • For members of National Assembly, civil servants and public employees, there is no restriction on simultaneously holding a policy-making position and a policy-executing position. 	<ul style="list-style-type: none"> • Introduce oversight strengthening mechanisms in Constitution and relevant legal documents to prevent members of the Cabinet, National Assembly and People's Councils from exposing to COI circumstances due to dual holding positions in the legislative and executive bodies. • Have provisions to delineate clearly oversight

COI ISSUE	KEY FINDINGS (from survey, focus group discussions, and legal review)	POSSIBLE SOLUTIONS (based on key findings and international experiences)
	<ul style="list-style-type: none"> • There are not any legal provisions restricting public servants from simultaneously playing a policy-executing role and an oversight role. • Some pieces of legislation of mandate to play an oversight role to certain public servants that already have a policy-executing role e.g. Law on Complaints, Law on Denunciations. 	<p>function from policy implementation function.</p> <ul style="list-style-type: none"> • Allow individuals and organizations to request agencies in charge of denunciation resettlement to replace handling officials when there is evidence of his biases and/or lack of neutrality in duty taking.
Recruitment and promotion	<ul style="list-style-type: none"> • Making decisions favoring relatives, take place usually, often or sometimes in personnel recruitment and appointment, according to a large majority of public officials. • About one third of public officials have observed cases in which the competent authority appoints, promotes and recruit relatives. • Most citizens and firms believe connections are the most important factor in recruitment and promotion, whereas public officials believe it is capacity and performance. • The current COI restrictions have a limited coverage of public officials and relatives, while connected persons to the public official are not covered. • The current COI restrictions do not capture the possibility that the arrangement of employment is delegated from one public servant to another public servant (either in the same agency or in a different one). • Based on the FGDs, there are cases in which the arrangement of employment is delegated from high-ranking 	<ul style="list-style-type: none"> • Stipulate regulations to control and eliminate chances for recruiting and/or appointing relatives. • Have provisions on COI management in duty arrangement among public servants to avoid favorability toward relatives. • Mandate as public servants' obligations involved in candidate selection to report to authorized agencies and/or person the participation of their relatives in the selection. • Provide guideline for dealing with COI circumstances in recruitment, appointment and duty arrangement. • Mandate public disclosure on the results of the recruitment, appointment and duty arrangement process as well as violation

COI ISSUE	KEY FINDINGS (from survey, focus group discussions, and legal review)	POSSIBLE SOLUTIONS (based on key findings and international experiences)
	<p>officials and heads of agency/departments to the public officials in charge of recruitment.</p> <ul style="list-style-type: none"> • The results of recruitment are required to be publicly disclosed, and there is a high level of implementation of this measure. • The results of promotion are just required to be internally notified. There are no transparency requirements of the decision-making processes in recruitment and promotion. 	<p>handling process.</p> <ul style="list-style-type: none"> • Ensure transparency and accountability in recruitment, appointment and duty arrangement process.
Procurement management and project licensing	<ul style="list-style-type: none"> • Making decisions favoring relatives, having investment/interests in a business, and abusing internal information, take place usually, often or sometimes in procurement and project licensing, according to a large majority of public officials and enterprises. • About one third of public officials have observed cases in which the competent authority facilitates relatives to receive contracts or projects. • Enterprises perceive a higher frequency of COI cases in procurement management and project licensing than public officials. • A large majority of public officials agree that procurement is transparent and objective, whereas only about one third of enterprises agree with that. • The restrictions on procurement stipulated in the Law on Anti-Corruption have a limited coverage of public officials and relatives, while connected persons to the public official are not covered at all. 	<ul style="list-style-type: none"> • Stipulate regulations to control and eliminate chances for contract awarding and project licensing to relatives and connected persons, including sub-contractors. • Clearly define obligations of public servants involved in bidding and project licensing to report to authorized agencies and/or persons on participation of their relatives, connected persons or their affiliates as contractors or investment owners in the bidding and/or project licensing process. • Clearly define obligations of contractors, investment owners and affiliates of the authorized persons to report any connections to public servants, who are in charge of procurement

COI ISSUE	KEY FINDINGS (from survey, focus group discussions, and legal review)	POSSIBLE SOLUTIONS (based on key findings and international experiences)
	<ul style="list-style-type: none"> • The Law on Bidding addresses some of the coverage gaps of the Law on Anti-Corruption, but it does not explicitly cover the connected persons to the public official and the relationship of public officials with the sub-contractors of the bidders. • The results of bidding activities are required to be publicly disclosed, but there are insufficient requirements of transparency of decision-making processes in bidding activities. 	<p>management or project licensing.</p> <ul style="list-style-type: none"> • Provide guideline to deal with COI cases in procurement management and project licensing. • Ensure transparency and accountability in making decisions on procurement and project licensing. • Mandate public disclosure on the results of bidding and project licensing process and regulation on handling COI violation in these activities.
<p>Outside employment</p>	<ul style="list-style-type: none"> • About a third of public officials have observed cases of public officials “having backyard businesses”. • There are comprehensive COI restrictions on outside employment and private firm work applicable to all public officials. • The majority of public officials say that the prohibition to establish, manage or run private enterprises is implemented. • The information on outside employment of public officials is not mandated to be disclosed, neither internally nor externally. • Outside employment of public employees in the health sector is believed to have little/medium effects on objectivity and impartiality. • Dual practice by public employees in 	<ul style="list-style-type: none"> • Adopt new measures to prevent COI-exposed extra jobs, including: (i) defining public servants’ obligation to foresee and report potential COI risks involved in extra jobs; (ii) specifying responsibility of organizations to guide declarants; and (iii) setting procedure to deal with COI circumstances in this context. • Mandate reporting on public servants’ extra job taking (either paid or unpaid) and making such information public, at least for top managers in both legislative and

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	<p>the health sector is restricted, but only in some broadly defined cases, and upon approval by state hospital directors.</p>	<p>executive agencies.</p> <ul style="list-style-type: none"> • Develop further regulations on extra job taking for public employees working in education and health care sectors. Taking extra jobs may be allowable, but exceptional cases and preconditions for extra job taking must be well placed.
Post-employment	<ul style="list-style-type: none"> • There are detailed regulations restricting post-employment of public officials i.e. employment after the ending of the job in the public sector. • Just about half of officials agree that the COI restriction on post-employment is implemented (i.e. not working in the field where they had previously managed for a certain period after resignation). It is the most weakly implemented measure among the eight surveyed measures. • The information on previous employment of public officials (i.e. name of entities where the official was previously employed) is not mandated to be disclosed, neither internally nor externally. 	<ul style="list-style-type: none"> • Conduct studies to investigate drivers causing weak enforcement of restrictions on post-resignation job taking and to revise those restrictions accordingly, e.g. deregulating in case of unclear evidence of COI exposure. • Mandate online disclosure on previous jobs performed by public servants in order to support inspectorates, citizens and enterprises in their detection and investigation of COI circumstances. • Specify penalties to enterprises who offer post-resignation jobs for public servants. • Adopt new measures to prevent COI exposure in post-resignation job taking, including: (i)

COI ISSUE	KEY FINDINGS (from survey, focus group discussions, and legal review)	POSSIBLE SOLUTIONS (based on key findings and international experiences)
		<p>defining public servants' obligation to foresee and report potential COI risks relating to post-resignation job taking; (ii) specifying responsibility of organizations to guide declarants; and (iii) setting up procedure to deal with emerged COI circumstance in this context.</p>

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Publishing responsible: BUI VIET BAC, Director

Content responsible: Dr. KHUAT DUY KIM HAI

Editor: NGUYEN PHUONG MAI

Cover and Layout: Hong Duc Publishing House

Associate partner

THE WORLD BANK IN VIETNAM

Add: 63 Ly Thai To, Ha Noi, Vietnam

Print 200 copies, size 20.5cm x 26.5cm

At SAVINA

Add: 22B Hai Ba Trung, Hanoi, Vietnam

Publishing permit: 1178/QĐ-NXBHĐ

Publishing registration plan: 1715-2016/CXBIPH/05-31HD

ISBN: 978-604-948-262-5

Completed and archived in 2016



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